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REVISED CODE OF WASHINGTON

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REVISED CODE OF WASHINGTON
1998 Edition

• 1998 State of Washington

CERTIFICATE

The 1998 edition of the Revised Code of Washington, published officially by the Statute Law Committee, is, in accordance with RCW 1.08.037, certified to comply with the current specifications of the committee.



MARY F. GALLAGHER DILLEY, Chair,
STATUTE LAW COMMITTEE

PREFACE

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

Citation to the Revised Code of Washington: The code should be cited as RCW; see RCW 1.04.040. An RCW title should be cited Title 7 RCW. An RCW chapter should be cited chapter 7.24 RCW. An RCW section should be cited RCW 7.24.010. Through references should be made as RCW 7.24.010 through 7.24.100. Series of sections should be cited as RCW 7.24.010, 7.24.020, and 7.24.030.

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

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

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

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

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

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

Sections repealed or decodified; Disposition table: Memorials to RCW sections repealed or decodified are tabulated in numerical order in the table entitled "Disposition of former RCW sections."

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

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

(2) Although considerable care has been taken in the production of this code, within the limits of available time and facilities it is inevitable that in so large a work that there will be errors, both mechanical and of judgment. When those who use this code detect errors in particular sections, a note citing the section involved and the nature of the error may be sent to: Code Reviser, Box 40551, Legislative Building, Olympia, WA 98504-0551, so that correction may be made in a subsequent publication.

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Title 37

FEDERAL AREAS—INDIANS

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Chapter 37.04

GENERAL CESSION OF JURISDICTION

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- 37.04.010 Consent given to acquisition of land by United States.
- 37.04.020 Concurrent jurisdiction ceded—Reverter.
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- 37.04.050 Concurrent jurisdiction—Governor authorized to accept—Procedures.

Authority of federal government over federal areas: State Constitution Art. 25.

Taxation of federal agencies and instrumentalities: State Constitution Art. 7 § 3 (Amendment 19).

37.04.010 **Consent given to acquisition of land by United States.** The consent of this state is hereby given to the acquisition by the United States, or under its authority, by purchase, lease, condemnation, or otherwise, of any land acquired, or to be acquired, in this state by the United States, from any individual, body politic or corporate, as sites for forts, magazines, arsenals, dockyards, and other needful buildings or for any other purpose whatsoever. The evidence of title to such land shall be recorded as in other cases. [1939 c 126 § 1; RRS § 8108-1.]

37.04.020 **Concurrent jurisdiction ceded—Reverter.** Concurrent jurisdiction with this state in and over any land so acquired by the United States shall be, and the same is hereby, ceded to the United States for all purposes for which the land was acquired; but the jurisdiction so ceded shall continue no longer than the United States shall be the owner of such lands, and if the purposes of any grant to or acquisition by the United States shall cease, or the United States shall for five consecutive years fail to use any such land for

the purposes of the grant or acquisition, the jurisdiction hereby ceded over the same shall cease and determine, and the right and title thereto shall revert in this state. The jurisdiction ceded shall not vest until the United States shall acquire title of record to such land. [1939 c 126 § 2; RRS § 8108-2.]

37.04.030 **Reserved jurisdiction of state.** The state of Washington hereby expressly reserves such jurisdiction and authority over land acquired or to be acquired by the United States as aforesaid as is not inconsistent with the jurisdiction ceded to the United States by virtue of such acquisition. [1939 c 126 § 3; RRS § 8108-3.]

37.04.040 **Previous cessions of jurisdiction saved.** Sections 8108 and 8109, Remington's Revised Statutes [1891 pp 31, 32 §§ 1, 2], and all other acts and parts of acts inconsistent with the provisions of this chapter are hereby repealed: **PROVIDED**, That jurisdiction heretofore ceded to the United States over any land within this state by any previous act of the legislature shall continue according to the terms of the respective cessions: **PROVIDED FURTHER**, That if jurisdiction so ceded by any previous act of the legislature has not been affirmatively accepted by the United States, or if the United States has failed or ceased to use any such land for the purposes for which acquired, jurisdiction thereover shall be governed by the provisions of this chapter. [1939 c 126 § 4; RRS § 8108-4.]

37.04.050 **Concurrent jurisdiction—Governor authorized to accept—Procedures.** (1) Upon the filing of a legally adequate notice with the governor by the secretary or administrator of any agency of the United States of America owning or having exclusive jurisdiction over certain property, the governor is authorized and directed to accept such jurisdiction as is necessary to establish concurrent jurisdiction between the United States and the state of Washington over the property as described in such notice and to the extent and periods of time authorized in such notice. The acquisition of such concurrent jurisdiction shall become effective upon filing the documents signifying such acceptance in the office of the secretary of state of the state of Washington.

(2) The authorization contained in subsection (1) of this section shall not be exclusive, shall not affect any existing jurisdiction or concurrent jurisdiction by the state over federal property, and shall be in addition to any other method or methods of assuming jurisdiction or concurrent jurisdiction over federal property. [1979 ex.s. c 49 § 1.]

Chapter 37.08

JURISDICTION IN SPECIAL CASES

Sections

37.08.180	Jurisdiction ceded.
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37.08.210	Olympic National Park.
37.08.220	National forests, establishment, consolidation, extension of.
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37.08.250	Additional right-of-way.
37.08.260	Auburn general depot.
37.08.270	Cession of jurisdiction.
37.08.280	Veterans hospitals.

37.08.180 Jurisdiction ceded. Jurisdiction ceded when acquisition of land for permanent military installations, see RCW 37.16.180.

37.08.200 Rainier National Park. Exclusive jurisdiction shall be, and the same is hereby ceded to the United States over and within all the territory that is now or may hereafter be included in that tract of land in the state of Washington, set aside for the purposes of a national park, and known as the Rainier National Park; saving, however, to the said state, the right to serve civil or criminal process within the limits of the aforesaid park, in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state, but outside of said park; and saving further to the said state the right to tax persons and corporations, their franchises and property on the lands included in said park: PROVIDED, HOWEVER, This jurisdiction shall not vest until the United States through the proper officer, notifies the governor of this state that they assume police or military jurisdiction over said park. [1901 c 92 § 1; RRS § 8110.]

37.08.210 Olympic National Park. Exclusive jurisdiction shall be, and the same is hereby ceded to the United States over and within all the territory that is now or hereafter included in that tract of land in the state of Washington, set aside for the purposes of a national park, and known as the Olympic National Park; saving, however, to the said state, the right to serve civil and criminal process within the limits of the aforesaid park, in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state, but outside of said park; and saving further to the said state the right to tax persons and corporations, their franchises and property on the lands included in said park: PROVIDED, HOWEVER, This jurisdiction shall not vest until the United States, through the proper officer, notifies the governor of this state that they assume police or military jurisdiction over said park: AND PROVIDED FURTHER, That full jurisdiction over a strip of land two hundred fifty feet wide, being one hundred twenty-five feet wide on each side of the now existing center line of primary state highway No. 9 together with existing pit sites and stockpile sites within said park shall be retained by the state of Washington. [1945 c 114 § 1; 1941 c 51 § 1; 1939 c 170 § 1; Rem. Supp. 1945 § 8110-1.]

37.08.220 National forests, establishment, consolidation, extension of. The legislature of the state of Washington hereby consents to the acquisition by the United States by purchase or gift of such lands in the state of Washington as in the opinion of the government of the United States may be needed for the establishment, consolidation and extension of national forests in this state under the provisions of the act of congress approved March 1, 1911, and entitled: "An act to enable any state to cooperate with any other state or states or with the United States for the protection of the watersheds of navigable streams and to appoint a commission for the acquisition of lands for the purpose of conserving the navigability of navigable rivers," as amended: PROVIDED, The state of Washington shall retain a concurrent jurisdiction with the United States in and over lands so acquired so far that civil processes in all cases, and such criminal processes as may issue under the authority of the state of Washington against any person charged with the commission of any crime without or within said jurisdiction, may be executed thereon in like manner as if this consent had not been granted: PROVIDED FURTHER, That before any acquirement of lands be made under the provisions of this section, such acquisition shall be approved by the department of natural resources: AND FURTHER PROVIDED, That the state of Washington shall retain concurrent jurisdiction to tax persons and corporations and their property and transaction on such lands so acquired. [1988 c 128 § 8; 1935 c 58 § 1; RRS § 9663-23.]

County may convey forest lands to United States: RCW 36.34.210.

37.08.230 Migratory bird preserves. Consent of the state of Washington is given to the acquisition by the United States by purchase, gift, devise, or lease of such areas of land or water, or of land and water, in the state of Washington, as the United States may deem necessary for the establishment of migratory-bird reservations in accordance with the act of congress approved February 18, 1929, entitled "An Act to more effectively meet the obligations of the United States under the migratory bird treaty with Great Britain by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and of water to furnish in perpetuity reservations for the adequate protection of such birds; and authorizing appropriations for the establishment of such areas, their maintenance and improvement and for other purposes," reserving, however, to the state of Washington full and complete jurisdiction and authority over all such areas not incompatible with the administration, maintenance, protection, and control thereof by the United States under the terms of said act of congress. [1933 c 159 § 1; no RRS.]

37.08.240 Lake Washington ship canal. That in aid of the construction, maintenance and operation of a ship canal, by the United States of America, to connect the waters of Lakes Union and Washington, in King county, with Puget Sound, together with all necessary and convenient locks, landways, spillways, buildings, power plant and other proper appurtenances, there be and hereby is granted by this state to said United States the right to place, construct, maintain, and operate, such ship canal, landways, spillways, buildings, power plant and other proper appurtenances, upon, along,

through and over any and all lands belonging to and waters of this state in said King county, within such limits as shall be defined by the plans and specifications for such improvement as the same shall be approved by the United States secretary of war, and the right to raise the waters of Salmon Bay and the right to lower the waters of Lake Washington, in prosecution of such improvement, and this state hereby releases the United States from all liability to damages to this state, its successors or assigns, that shall or might arise from such lowering or raising of waters, or otherwise from such improvement. But nothing in this section contained shall operate as an assumption of nor create any liability on the part of the state, for any damages which may result to any person, company or corporation. [1901 c 6 § 1; RRS § 8120.]

37.08.250 Additional right-of-way. That a right-of-way of not exceeding five hundred feet in width is hereby granted to the United States of America through any lands or shorelands belonging to the state of Washington, or to the University of Washington, and lying in King county between Lakes Union and Washington, or in or adjoining either of them, the southern boundary of such right-of-way on the upland to be coincident with the southern boundary of the lands now occupied by the University of Washington adjacent to the present right-of-way of said canal; the width and definite location of such right-of-way before the same is taken possession of by said United States shall be plainly and completely platted and a plat thereof approved by the secretary of war of the United States filed with the department of natural resources: PROVIDED, That nothing in this section contained shall be construed to repeal or impair any right, interest, privilege or grant expressed or intended in the act of the legislature of the state of Washington approved February 8, 1901, entitled, "An Act relative to and in aid of the construction, maintenance and operation by the United States of America of a ship canal with proper locks and appurtenances to connect the waters of Lakes Union and Washington in King county with Puget Sound and declaring an emergency." [1988 c 128 § 9; 1907 c 216 § 1; RRS § 8121.]

37.08.260 Auburn general depot. Concurrent jurisdiction shall be, and the same is hereby ceded to the United States over and within all the land comprising the Auburn General Depot area, being 570.08 acres, more or less, situate in King county, state of Washington; saving, however, to the state the right to serve civil and criminal process within the limits of the aforesaid area in suits or prosecutions for or on account of rights acquired, obligations incurred or crimes committed in said state, but outside of said area. The metes and bounds description of the land over which jurisdiction is ceded hereby is as follows:

A parcel of land in sections 24 and 25, Township 21 North, Range 4 East, Willamette Meridian, King County, as follows: Beginning at a point on the west line of the Northern Pacific Railway right-of-way which point is S 89°16'55" W, 423.65 feet and N 2°12'33" W, 20 feet from the southeast corner of section 25, thence S 89°16'55" W, 1548.93 feet along the north right-of-way line of Ellingson Road to a point, thence N 0°10'45" E, 1298.11 feet to a

point, thence S 89°31'28" W, 638.25 feet to the east right-of-way line of Greenhalgh Road, thence N 0°08'47" E, 1351.31 feet along said east right-of-way line to its intersection with the north right-of-way line of Algona Road, thence S 89°46'07" W, 1724.35 feet along said north right-of-way line to a point on the easterly right-of-way line of the Chicago, Milwaukee, St. Paul and Pacific Railroad, thence N 0°04'38" W, 1223.74 feet along said right-of-way to a point of spiral curve, thence along a spiral curve whose central angle is 1°36'14" and whose long chord bears N 0°27'20" E, 158.51 feet, thence along a circular curve to the right, whose radius bears S 88°28'24" E, 2822.01 feet, through a central angle of 21°16'24" for a distance of 1047.78 feet to a point of spiral, thence along a spiral curve whose central angle is 1°36'14", and whose long chord bears N 23°51'42" E, 158.51 feet, thence N 24°24'15" E, 3088.12 feet to a point of spiral curve, thence along a spiral whose central angle is 1°35'51", and whose long chord bears N 23°51'55" E, 161.51 feet to point of circular curve, thence along a circular curve, to the left, whose radius bears N 67°11'36" W, 2908.01 feet, through a central angle of 20°58'46" for a distance of 1064.80 feet, thence along a spiral curve to the left, whose central angle is 1°35'51", and whose long chord bears N 0°45'10" E, 161.51 feet, thence N 0°13'47" E, 1148.81 feet to the centerline of the Chicago, Milwaukee, St. Paul and Pacific Railroad and Northern Pacific crossover track being a point in a curve, thence along centerline of said crossover track on a curve to the left in a southeasterly direction, from a radius which bears N 63°36'26" E, 351.28 feet, through a central angle of 26°50'13" for a distance of 164.54 feet, thence S 53°13'47" E, 1840.78 feet along said centerline, thence along a curve to the right in a southeasterly direction, from a radius which bears S 36°46'13" W, 386.60 feet, through a central angle of 10°26'06" for a distance of 70.41 feet to the intersection of the westerly right-of-way line of county road No. 76, thence *S 2°12'33" E, 6596.21 feet along the westerly right-of-way line of county road No. 76 to the East-West centerline of said section 25, thence N 89°46'02" E, 60.04 feet to the westerly right-of-way line of the Northern Pacific Railway Company, thence S 2°12'33" E, 2605.01 feet to point of beginning. The jurisdiction ceded hereby does not extend to any existing perimeter railroad or county road right-of-way. [1951 c 40 § 1.]

***Reviser's note:** In the third from the last course, the "2" in the description "S 2°12'33" E" was by typographical error omitted from the session laws. The digit is inserted by the reviser after verification from original sources.

37.08.270 Cession of jurisdiction. Cession of jurisdiction, lease or conveyances to United States for flood control, navigation and allied purposes, see RCW 36.34.220-36.34.240.

37.08.280 Veterans hospitals. Upon the filing of an appropriate notice thereof with the governor by the administrator of veterans affairs, an agency of the United States of America, pursuant to the provisions of section 302 of Public Law 93-82 (87 Stat. 195; 38 U.S.C. Sec. 5007), the governor is hereby authorized and directed to accept such legislative jurisdiction as is necessary to establish concurrent jurisdiction between the United States and the state of Washington

to all land comprising the veterans hospital located at Vancouver in Clark county, Washington; the veterans administration hospital located at Walla Walla in Walla Walla county, Washington, and the veterans administration hospital located at American Lake in Pierce county, Washington. The acquisition of such concurrent jurisdiction shall become effective upon filing the documents signifying such acceptance in the office of the secretary of state. [1975 1st ex.s. c 142 § 1.]

Chapter 37.12

INDIANS AND INDIAN LANDS—JURISDICTION

Sections

- 37.12.010 Assumption of criminal and civil jurisdiction by state.
- 37.12.021 Assumption of criminal and civil jurisdiction by state—Resolution of request—Proclamation by governor, 1963 act.
- 37.12.030 Effective date for assumption of jurisdiction—Criminal causes.
- 37.12.040 Effective date for assumption of jurisdiction—Civil causes.
- 37.12.050 State's jurisdiction limited by federal law.
- 37.12.060 Chapter limited in application.
- 37.12.070 Tribal ordinances, customs, not inconsistent with law applicable in civil causes.
- 37.12.100 Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Intent.
- 37.12.110 Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Definitions.
- 37.12.120 Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Proclamation by governor.
- 37.12.130 Quileute, Chehalis, Swinomish, and Colville Indian reservations—Retrocession of criminal jurisdiction—Savings.
- 37.12.140 Quileute, Chehalis, Swinomish, and Colville Indian reservations—Retrocession of criminal jurisdiction—Short title.
- 37.12.150 Retrocession of federal jurisdiction over lands excluded from Olympic National Park.

Alienation of land by Indians: Chapter 64.20 RCW.

Annexation of federal areas by first class city: RCW 35.13.185.

Compact with the United States: State Constitution Art. 26 § 2.

Daylight saving time—Prohibition not applicable to federal areas: RCW 1.20.050.

Qualifications of voters: State Constitution Art. 6 § 1 (Amendment 63).

37.12.010 Assumption of criminal and civil jurisdiction by state. The state of Washington hereby obligates and binds itself to assume criminal and civil jurisdiction over Indians and Indian territory, reservations, country, and lands within this state in accordance with the consent of the United States given by the act of August 15, 1953 (Public Law 280, 83rd Congress, 1st Session), but such assumption of jurisdiction shall not apply to Indians when on their tribal lands or allotted lands within an established Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States, unless the provisions of RCW 37.12.021 have been invoked, except for the following:

- (1) Compulsory school attendance;
- (2) Public assistance;
- (3) Domestic relations;
- (4) Mental illness;
- (5) Juvenile delinquency;

(6) Adoption proceedings;

(7) Dependent children; and

(8) Operation of motor vehicles upon the public streets, alleys, roads and highways: PROVIDED FURTHER, That Indian tribes that petitioned for, were granted and became subject to state jurisdiction pursuant to this chapter on or before March 13, 1963 shall remain subject to state civil and criminal jurisdiction as if *chapter 36, Laws of 1963 had not been enacted. [1963 c 36 § 1; 1957 c 240 § 1.]

***Reviser's note:** Chapter 36, Laws of 1963, which became effective on March 13, 1963, amended RCW 37.12.010, 37.12.030, 37.12.040, and 37.12.060, repealed RCW 37.12.020, and enacted a new section codified herein as RCW 37.12.021.

37.12.021 Assumption of criminal and civil jurisdiction by state—Resolution of request—Proclamation by governor, 1963 act. Whenever the governor of this state shall receive from the majority of any tribe or the tribal council or other governing body, duly recognized by the Bureau of Indian Affairs, of any Indian tribe, community, band or group in this state a resolution expressing its desire that its people and lands be subject to the criminal or civil jurisdiction of the state of Washington to the full extent authorized by federal law, he shall issue within sixty days a proclamation to the effect that such jurisdiction shall apply to all Indians and all Indian territory, reservations, country, and lands of the Indian body involved to the same extent that this state exercises civil and criminal jurisdiction or both elsewhere within the state: PROVIDED, That jurisdiction assumed pursuant to this section shall nevertheless be subject to the limitations set forth in RCW 37.12.060. [1963 c 36 § 5.]

37.12.030 Effective date for assumption of jurisdiction—Criminal causes. Upon March 13, 1963 the state of Washington shall assume jurisdiction over offenses as set forth in RCW 37.12.010 committed by or against Indians in the lands prescribed in RCW 37.12.010 to the same extent that this state has jurisdiction over offenses committed elsewhere within this state, and such criminal laws of this state shall have the same force and effect within such lands as they have elsewhere within this state. [1963 c 36 § 2; 1957 c 240 § 3.]

37.12.040 Effective date for assumption of jurisdiction—Civil causes. Upon March 13, 1963 the state of Washington shall assume jurisdiction over civil causes of action as set forth in RCW 37.12.010 between Indians or to which Indians are parties which arise in the lands prescribed in RCW 37.12.010 to the same extent that this state has jurisdiction over other civil causes of action and, except as otherwise provided in this chapter, those civil laws of this state that are of general application to private persons or private property shall have the same force and effect within such lands as they have elsewhere within this state. [1963 c 36 § 3; 1957 c 240 § 4.]

37.12.050 State's jurisdiction limited by federal law. The jurisdiction assumed pursuant to this chapter shall be subject to the limitations and provisions of the federal act of

August 15, 1953 (Public Law 280, 83rd Congress, 1st Session). [1957 c 240 § 5.]

37.12.060 Chapter limited in application. Nothing in this chapter shall authorize the alienation, encumbrance, or taxation of any real or personal property, including water rights and tidelands, belonging to any Indian or any Indian tribe, band, or community that is held in trust by the United States or is subject to a restriction against alienation imposed by the United States; or shall authorize regulation of the use of such property in a manner inconsistent with any federal treaty, agreement, or statute or with any regulation made pursuant thereto; or shall confer jurisdiction upon the state to adjudicate, in probate proceedings or otherwise, the ownership or right to possession of such property or any interest therein; or shall deprive any Indian or any Indian tribe, band, or community of any right, privilege, or immunity afforded under federal treaty, agreement, statute, or executive order with respect to Indian land grants, hunting, trapping, or fishing or the control, licensing, or regulation thereof. [1963 c 36 § 4; 1957 c 240 § 6.]

37.12.070 Tribal ordinances, customs, not inconsistent with law applicable in civil causes. Any tribal ordinance or custom heretofore or hereafter adopted by an Indian tribe, band, or community in the exercise of any authority which it may possess shall, if not inconsistent with any applicable civil law of the state, be given full force and effect in the determination of civil causes of action pursuant to this section. [1957 c 240 § 7.]

37.12.100 Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Intent. It is the intent of the legislature to authorize a procedure for the retrocession, to the Quileute Tribe, Chehalis Tribe, Swinomish Tribe, Skokomish Tribe, Muckleshoot Tribe, Tulalip Tribes, and the Colville Confederated Tribes of Washington and the United States, of criminal jurisdiction over Indians for acts occurring on tribal lands or allotted lands within the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, or Colville Indian reservation and held in trust by the United States or subject to a restriction against alienation imposed by the United States.

RCW 37.12.100 through 37.12.140 in no way expand the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, or Colville tribe's criminal or civil jurisdiction, if any, over non-Indians or fee title property. RCW 37.12.100 through 37.12.140 shall have no effect whatsoever on water rights, hunting and fishing rights, the established pattern of civil jurisdiction existing on the lands of the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, or Colville Indian reservation, the established pattern of regulatory jurisdiction existing on the lands of the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, or Colville Indian reservation, taxation, or any other matter not specifically included within the terms of RCW 37.12.100 through 37.12.140. [1995 c 202 § 1; 1995 c 177 § 1; 1994 c 12 § 1; 1988 c 108 § 1; 1986 c 267 § 2.]

Reviser's note: This section was amended by 1995 c 177 § 1 and by 1995 c 202 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1986 c 267: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 267 § 8.]

37.12.110 Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Definitions. Unless the context clearly requires otherwise, the following definitions apply throughout RCW 37.12.100 through 37.12.140:

(1) "Colville reservation" or "Colville Indian reservation," "Quileute reservation" or "Quileute Indian reservation," "Chehalis reservation" or "Chehalis Indian reservation," "Swinomish reservation" or "Swinomish Indian reservation," "Skokomish reservation" or "Skokomish Indian reservation," "Muckleshoot reservation" or "Muckleshoot Indian reservation," or "Tulalip reservation" or "Tulalip Indian reservation" means all tribal lands or allotted lands lying within the reservation of the named tribe and held in trust by the United States or subject to a restriction against alienation imposed by the United States, but does not include those lands which lie north of the present Colville Indian reservation which were included in original reservation boundaries created in 1872 and which are referred to as the "diminished reservation."

(2) "Indian tribe," "tribe," "Colville tribes," or "Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Tulalip tribe" means the confederated tribes of the Colville reservation or the tribe of the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Tulalip reservation.

(3) "Tribal court" means the trial and appellate courts of the Colville tribes or the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Tulalip tribe. [1995 c 202 § 2; 1995 c 177 § 2; 1994 c 12 § 2; 1988 c 108 § 2; 1986 c 267 § 3.]

Reviser's note: This section was amended by 1995 c 177 § 2 and by 1995 c 202 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1986 c 267: See note following RCW 37.12.100

37.12.120 Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, Tulalip, and Colville Indian reservations—Retrocession of criminal jurisdiction—Proclamation by governor. Whenever the governor receives from the confederated tribes of the Colville reservation or the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, or Tulalip tribe a resolution expressing their desire for the retrocession by the state of all or any measure of the criminal jurisdiction acquired by the state pursuant to RCW 37.12.021 over lands of that tribe's reservation, the governor may, within ninety days, issue a proclamation retroceding to the United States the criminal jurisdiction previously acquired by the state over such reservation. However, the state of Washington shall retain jurisdiction as provided in RCW 37.12.010. The proclamation of retrocession shall not become effective until it is accepted by an officer of the United States government in accordance with

25 U.S.C. Sec. 1323 (82 Stat. 78, 79) and in accordance with procedures established by the United States for acceptance of such retrocession of jurisdiction. The Colville tribes and the Quileute, Chehalis, Swinomish, Skokomish, Muckleshoot, and Tulalip tribes shall not exercise criminal or civil jurisdiction over non-Indians. [1995 c 202 § 3; 1995 c 177 § 3; 1994 c 12 § 3; 1988 c 108 § 3; 1986 c 267 § 4.]

Reviser's note: This section was amended by 1995 c 177 § 3 and by 1995 c 202 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1986 c 267: See note following RCW 37.12.100.

37.12.130 Quileute, Chehalis, Swinomish, and Colville Indian reservations—Retrocession of criminal jurisdiction—Savings. An action or proceeding which has been filed with any court or agency of the state or local government preceding the effective date of retrocession of jurisdiction under RCW 37.12.100 through 37.12.140 shall not abate by reason of the retrocession or determination of jurisdiction. [1986 c 267 § 6.]

Severability—1986 c 267: See note following RCW 37.12.100.

37.12.140 Quileute, Chehalis, Swinomish, and Colville Indian reservations—Retrocession of criminal jurisdiction—Short title. RCW 37.12.100 through 37.12.140 may be known and cited as the Indian reservation criminal jurisdiction retrocession act. [1988 c 108 § 4; 1986 c 267 § 1.]

Severability—1986 c 267: See note following RCW 37.12.100.

37.12.150 Retrocession of federal jurisdiction over lands excluded from Olympic National Park. The state of Washington hereby accepts retrocession from the United States of the jurisdiction which the United States acquired over those lands excluded from the boundaries of the Olympic National Park by 16 U.S.C. Sec. 251e. The lands restored to the Quileute Indian Reservation by Public Law 94-578 shall be subject to the same Washington state and tribal jurisdiction as all other lands within the Quileute Reservation. [1988 c 108 § 5.]

Chapter 37.14

INDIAN CULTURAL FACILITY BOND ISSUE

Sections

- 37.14.010 General obligation bonds—Authorized—Issuance, sale, terms, etc.
- 37.14.020 Anticipation notes—Proceeds of bonds and notes.
- 37.14.030 Administration of proceeds.
- 37.14.040 Retirement of bonds from Indian cultural center construction bond redemption fund—Source—Remedies of bond holders.
- 37.14.050 Legal investment for public funds.
- 37.14.900 Severability—1975-'76 2nd ex.s. c 128.

37.14.010 General obligation bonds—Authorized—Issuance, sale, terms, etc. Solely for the purpose of providing a matching grant for the planning, design, acquisition, construction, furnishing, equipping, remodeling, and landscaping of a regional Indian cultural, educational, tourist, and economic development facility designated as the

"people's lodge," the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one million dollars or so much thereof as shall be required to finance that portion of the grant by the state for said project as is set forth by appropriation from the Indian cultural center construction account in the state treasury for such purposes, to be paid and discharged within thirty years of the date of issuance in accordance with Article VIII, section 1 of the Constitution of the state of Washington. All earnings of investments of balances in the Indian cultural center construction account shall be credited to the general fund.

If one hundred fifteen thousand dollars or more in additional federal and/or private funding is not secured within five years of September 1, 1979, and applied toward the completion of the "people's lodge," ownership of the property and/or facility developed with the proceeds of the bonds issued under this section shall be transferred to the state. Expenditure of these bond proceeds shall be conditioned on prior approval by the director of general administration of any real estate acquisitions and of construction plans for any building and/or grounds projects. The director's approval shall be based on a finding that any real estate to be acquired is appraised at or above the purchase price, that any construction plans for building and/or grounds projects provide for completion of any facilities contemplated therein, and that there are funds in an amount sufficient to finish the project so that it is fully operational for its intended uses.

The state finance committee is authorized to prescribe the form of such bonds, the time of sale of all or any portion or portions of such bonds, and the conditions of sale and issuance thereof.

Each such bond and bond anticipation note shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the principal and interest when due. The committee may provide that the bonds, or any of them, may be called prior to the due date thereof under such terms and conditions as it may determine. The state finance committee may authorize the use of facsimile signatures in the issuance of the bonds. [1985 c 57 § 20; 1983 1st ex.s. c 54 § 7; 1979 ex.s. c 246 § 1; 1975-'76 2nd ex.s. c 128 § 1.]

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

Severability—1983 1st ex.s. c 54: See RCW 43.83.196.

37.14.020 Anticipation notes—Proceeds of bonds and notes. At the time the state finance committee determines to issue such bonds authorized in RCW 37.14.010 or a portion thereof, it may issue, in the name of the state, temporary notes in anticipation of the money to be derived from the sale of the bonds, which notes shall be designated as "anticipation notes". The proceeds from the sale of bonds and notes authorized by this chapter shall be deposited in the Indian cultural center construction account of the general fund hereby created in the state treasury and shall be used exclusively for the purposes specified in this chapter and for the payment of expenses incurred in the issuance and sale of such bonds and notes: **PROVIDED,** Such portion of the proceeds of the sale of such bonds as may be required for the payment of the principal and interest on such anticipation

notes as have been issued, shall be deposited in the bond redemption fund created in RCW 37.14.040. [1975-'76 2nd ex.s. c 128 § 2.]

37.14.030 Administration of proceeds. The principal proceeds from the sale of the bonds authorized in this chapter and deposited in the Indian cultural center construction account in the general fund shall be administered by the executive director of the arts commission. [1975-'76 2nd ex.s. c 128 § 3.]

37.14.040 Retirement of bonds from Indian cultural center construction bond redemption fund—Source—Remedies of bond holders. The Indian cultural center construction bond redemption fund of 1976 is hereby created in the state treasury, which fund shall be exclusively devoted to the payment of interest on and retirement of the bonds and notes authorized by this chapter.

The state finance committee, on or before June 30th of each year, shall certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements, and on July 1st of each year the state treasurer shall deposit such amount in the Indian cultural center construction bond redemption fund of 1976 from any general state revenues received in the state treasury and certified by the state treasurer to be general state revenues.

The owner and holder of each of the bonds or the trustee for any of the bonds, by mandamus or other appropriate proceeding, may require and compel the transfer and payment of funds as directed herein. [1975-'76 2nd ex.s. c 128 § 4.]

37.14.050 Legal investment for public funds. The bonds authorized by this chapter shall be a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1975-'76 2nd ex.s. c 128 § 5.]

37.14.900 Severability—1975-'76 2nd ex.s. c 128. If any provision of this 1976 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 128 § 6.]

Chapter 37.16

ACQUISITION OF LANDS FOR PERMANENT MILITARY INSTALLATIONS

Sections

37.16.180 Jurisdiction ceded.

Reviser's note: Chapter 4, Laws of 1917, herein codified as chapter 37.16 RCW, is discussed in *State ex rel. Board of Commissioners v. Clausen*, 95 Wash. 214, 163 Pac. 744 (1917), where it is considered in conjunction with 1917 c 3, a special act authorizing (and directing) Pierce county to condemn property and issue bonds in payment of awards therefor in order to secure the location of Camp (now Fort) Lewis in that county. In prior compilations, Remington omitted 1917 c 4, and Pierce omitted all but section 22, ceding the state's jurisdiction to the United States. 1917 c 4 appears to have been a general act and for that reason was codified herein.

Most of the sections in this chapter were subsequently repealed by 1971 c 76 § 6.

Appropriation authorized in aid of federal or state improvement: RCW 8.08.090.

Condemnation for military purposes: RCW 8.04.170, 8.04.180.

Eminent domain by counties: Chapter 8.08 RCW.

Joint armory sites: RCW 36.64.050.

Lease or conveyance to the state or to United States for military, housing and other purposes: RCW 36.34.250.

Leases to United States for national defense: RCW 79.08.120.

Long term leases to United States by counties: RCW 36.34.310.

Tide and shore land grants to United States: RCW 79.94.410 through 79.94.440.

Transfer of property to state or United States for military purposes or housing projects: RCW 36.34.260.

37.16.180 Jurisdiction ceded. Pursuant to the Constitution and laws of the United States, and especially to paragraph seventeen of section eight of article one of such Constitution, the consent of the legislature of the state of Washington is hereby given to the United States to acquire by donation from any county acting under the provisions of this chapter, title to all the lands herein intended to be referred to, to be evidenced by the deed or deeds of such county, signed by the chairman of its board of county commissioners and attested by the clerk of such board under the seal of such board, and the consent of the state of Washington is hereby given to the exercise by the congress of the United States of exclusive legislation in all cases whatsoever, over such tracts or parcels of land so conveyed to it: PROVIDED, Upon such conveyance being concluded, a sufficient description by metes and bounds and an accurate plat or map of each such tract or parcel of land be filed in the auditor's office of the county in which such lands are situated, together with copies of the orders, deeds, patents, or other evidences in writing of the title of the United States: AND PROVIDED, That all civil process issued from the courts of this state, and such criminal process as may issue under the authority of this state against any person charged with crime in cases arising outside of such reservation, may be served and executed thereon in the same mode and manner and by the same officers as if the consent herein given had not been made. [1917 c 4 § 22; no RRS. Formerly RCW 37.08.180.]

General cession of jurisdiction: Chapter 37.04 RCW.

Jurisdiction in special cases: Chapter 37.08 RCW.

Title 38

MILITIA AND MILITARY AFFAIRS

Chapters

- 38.04 General provisions.
- 38.08 Powers and duties of governor.
- 38.12 Militia officers and advisory council.
- 38.14 Washington state guard.
- 38.16 Enlistments and reserves.
- 38.20 Armories and rifle ranges.
- 38.24 Claims and compensation.
- 38.32 Offenses—Punishment.
- 38.36 Trial procedure.
- 38.38 Washington code of military justice.
- 38.40 Miscellaneous provisions.
- 38.44 Enrollment of persons.
- 38.48 State and national defense.
- 38.52 Emergency management.
- 38.54 State fire services mobilization.

Explosives, manufacture, sale or storage: Chapter 70.74 RCW.

*Limitation on members of the legislature holding office in the state—
Exception: State Constitution Art. 2 § 14.*

*Microfilming of records to provide continuity of civil government: Chapter
40.10 RCW.*

Military subordinate to civil power: State Constitution Art. 1 § 18.

National guard conditional scholarship program: Chapter 28B.103 RCW.

Quartering soldiers in residences: State Constitution Art. 1 § 31.

Right to bear arms. State Constitution Art. 1 § 24.

*Special act relating to aerospace science and modeling center at Camp
Murray: 1969 ex.s. c 85.*

SPECIAL ACTS RELATING TO ARMORIES: *The following special or
temporary acts relating to particular armories are not codified herein:*

(1) 1959 c 181; 1961 c 135; 1963 c 146, Seattle.

(2) 1967 c 37, Prosser.

(3) 1967 c 43, Centralia.

(4) 1967 c 44, Chewelah.

(5) 1967 c 214, Stevens County.

(6) 1967 c 224, Tacoma and Pierce County.

(7) 1967 c 226, Yakima.

(8) 1969 ex.s. c 22, Kirkland.

Special legislation: State Constitution Art. 2 § 28(2).

Standing army in time of peace prohibited: State Constitution Art. 1 § 31.

State flag furnished to armed forces: RCW 1.20.010.

State militia: State Constitution Art. 10.

Veterans and veterans' affairs: Title 73 RCW.

Chapter 38.04 GENERAL PROVISIONS

Sections

- 38.04.010 General definitions.
 - 38.04.020 "Officer," "enlisted men," "enlisted persons" defined—
Convictions and punishments.
 - 38.04.030 Composition of the militia.
 - 38.04.040 Composition of organized militia.
- Acknowledgments and powers of attorney of military personnel: Chapter
73.20 RCW.*
- Military personnel classified as resident students: RCW 28B.15.014.*

38.04.010 General definitions. When used in this title, the following words, terms, phrases shall have the following meaning:

The word "militia" shall mean the military forces provided for in the Constitution and laws of the state of Washington.

The term "organized militia" shall be the general term to include both state and national guard and whenever used applies equally to all such organizations.

The term "national guard" shall mean that part of the military force of the state that is organized, equipped and federally recognized under the provisions of the national defense act of the United States, and, in the event the national guard is called into federal service or in the event the state guard or any part or individual member thereof is called into active state service by the commander-in-chief, the term shall also include the "Washington state guard" or any temporary organization set up in times of emergency to replace either the "national guard" or "state guard" while in actual service of the United States.

The term "state guard" shall mean that part of the military forces of the state that is organized, equipped, and recognized under the provisions of the State Defense Forces Act of the United States (32 U.S.C. Sec. 109, as amended).

The term "active state service" or "active training duty" shall be construed to be any service on behalf of the state, or at encampments whether ordered by state or federal authority or any other duty requiring the entire time of any organization or person except when called or drafted into the federal service by the president of the United States.

The term "inactive duty" shall include periods of drill and such other training and service not requiring the entire time of the organization or person, as may be required under state or federal laws, regulations, or orders, including travel to and from such duty.

The terms "in service of United States" and "not in service of United States" as used herein shall be understood to mean the same as such terms when used in the national defense act of congress and amendments thereto.

The term "military" refers to any or all of the armed forces.

The term "armory" refers to any state-owned building, warehouse, vehicle storage compound, organizational maintenance shop or other facility and the lands appurtenant thereto used by the Washington national guard for the storage and maintenance of arms or military equipment or the administration or training of the organized militia.

The term "member" refers to a soldier or airman of the organized militia. [1991 c 43 § 1; 1989 c 19 § 1; 1963 c 220 § 133; 1943 c 130 § 12; Rem. Supp. 1943 § 8603-12. Prior: 1917 c 107 §§ 1, part, 3, part; 1909 c 134 § 10, part; 1895 c 108 § 10, part.]

Short title: "This act shall be known as the Military Code of the state of Washington." [1943 c 130 § 1.]

Severability—1943 c 130: "If any provisions of this act or the application thereof to any person or circumstances is held invalid for any reason, such determination shall not affect other provisions or applications of the act which can be given effect without the invalid provisions, and to this end, the provisions of this act are declared to be severable." [1943 c 130 § 95.]

Martial law: RCW 38.08.030.

38.04.020 "Officer," "enlisted men," "enlisted persons" defined—Convictions and punishments. Whenever used in this title, the word "officer" shall be understood to designate commissioned and warrant officers, and the words "enlisted men" or "enlisted persons" shall be understood to designate members of the organized militia of Washington other than commissioned or warrant officers. The convictions and punishments mentioned unless otherwise specifically designated, shall be understood to be respectively convictions and punishments by military courts. [1989 c 19 § 2; 1943 c 130 § 80; Rem. Supp. 1943 § 8603-80. Prior: 1917 c 107 § 60.]

38.04.030 Composition of the militia. The militia of the state of Washington shall consist of all able bodied citizens of the United States and all other able bodied persons who have declared their intention to become citizens of the United States, residing within this state, who shall be more than eighteen years of age, and shall include all persons who are members of the national guard and the state guard, and said militia shall be divided into two classes, the organized militia and the unorganized militia. [1989 c 19 § 3; 1973 1st ex.s. c 154 § 55; 1963 c 74 § 1; 1943 c 130 § 2; Rem. Supp. 1943 § 8603-2. Prior: 1917 c 107 § 1; 1909 c 134 § 2; 1895 c 108 § 2.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Militia—Who liable to military duty: State Constitution Art. 10 § 1.

38.04.040 Composition of organized militia. The organized militia of Washington shall consist of the commissioned officers, warrant officers, enlisted persons, organizations, staffs, corps, and departments of the regularly commissioned, warranted and enlisted militia of the state, organized and maintained pursuant to law. Its numerical strength, composition, distribution, organization, arms, uniforms, equipment, training and discipline shall be prescribed by the governor in conformity with, and subject to the limitations imposed by the laws and regulations of the United States and the laws of this state: PROVIDED, HOWEVER, That the minimum enlisted strength of the organized militia of this state shall never be less than two thousand. The organized militia may include persons residing outside the state of Washington. [1989 c 19 § 4; 1943 c 130 § 4; Rem. Supp. 1943 § 8603-4. Prior: 1917 c 107 § 3. Cf. 1909 c 108 § 10, part; 1895 c 108 § 10, part.]

Chapter 38.08

POWERS AND DUTIES OF GOVERNOR

Sections

- 38.08.010 Conformance with federal laws.
- 38.08.020 Governor as commander-in-chief—Adjutant general executive head.
- 38.08.030 Proclamation of complete or limited martial law.
- 38.08.040 Governor may order out organized militia.
- 38.08.050 Governor may order out unorganized militia.
- 38.08.060 Governor's decision final.
- 38.08.070 Personal staff for governor.
- 38.08.090 Governor to promulgate rules.
- 38.08.100 Compacts with other states for guarding boundaries.
- 38.08.500 National guard mutual assistance counter-drug activities compact.

Commander-in-chief: State Constitution Art. 3 § 8.

Commander-in-chief may order enrollment: RCW 38.44.010.

Militia—Organization—Discipline—Officers—Power to call out: State Constitution Art. 10 § 2.

38.08.010 Conformance with federal laws. The governor shall cause the organized militia of this state at all times to conform to all federal laws and regulations as are now or may hereafter from time to time become operative and applicable, notwithstanding anything in the laws of this state to the contrary. Except as and when otherwise specifically provided by federal laws, the organized militia of Washington, or any part thereof, shall be subject to call for United States service at such times, in such manner, and in such numbers as may from time to time be prescribed by the United States.

In conformity with the provisions of federal statutes, officers and enlisted persons of the organized militia called or drafted into federal service by order or proclamation of the president of the United States, shall upon release from federal service revert to their former status, grade and rank, as members of the organized militia of Washington, and shall continue to serve in the organized militia of Washington until separated therefrom in the manner provided by law. [1989 c 19 § 5; 1943 c 130 § 5; Rem. Supp. 1943 § 8603-5. Prior: 1921 c 75 § 1; 1917 c 107 § 4; 1909 c 134 § 93; 1895 c 108 § 170.]

38.08.020 Governor as commander-in-chief—Adjutant general executive head. The militia of the state not in the service of the United States shall be governed and its affairs administered pursuant to law, by the governor, as commander-in-chief, through the adjutant general's department, of which the adjutant general shall be the executive head. [1961 c 210 § 1; 1943 c 130 § 3; Rem. Supp. 1943 § 8603-3. Prior: 1917 c 107 § 2; 1909 c 134 §§ 13, 14; 1895 c 108 § 13.]

Governor commander-in-chief: State Constitution Art. 3 § 8.

38.08.030 Proclamation of complete or limited martial law. The governor may by proclamation declare the county or city in which troops are serving, or any specific portion thereof, to be under either complete or limited martial law to the extent, in his or her opinion, that the reestablishment or maintenance of law and order may be promoted.

"Complete martial law" is the subordination of all civil authority to the military;

"Limited military law" is a partial subordination of civil authority by the setting up of an additional police power vested in the military force which shall have the right to try all persons apprehended by it in such area by a military tribunal or turn such offender over to civil authorities within five days for further action, during which time the writ of habeas corpus shall be suspended in behalf of such person. [1989 c 19 § 6; 1943 c 130 § 8; Rem. Supp. 1943 § 8603-8.]

38.08.040 Governor may order out organized militia. In event of war, insurrection, rebellion, invasion, tumult, riot, mob, or organized body acting together by force with intent to commit a felony or to offer violence to persons or property, or by force and violence to break and resist the laws of this state, or the United States, or in case of the imminent danger of the occurrence of any of said events, or at the lawful request of competent state or local authority in support of enforcement of controlled substance statutes, or whenever responsible civil authorities shall, for any reason, fail to preserve law and order, or protect life or property, or the governor believes that such failure is imminent, or in event of public disaster, the governor shall have power to order the organized militia of Washington, or any part thereof, into active service of the state to execute the laws, and to perform such duty as the governor shall deem proper. [1993 c 263 § 1; 1989 c 19 § 7; 1943 c 130 § 6; Rem. Supp. 1943 § 8603-6. Prior: 1917 c 107 § 7; 1913 c 66 § 2; 1909 c 134 § 15.]

38.08.050 Governor may order out unorganized militia. In event of, or imminent danger of, war, insurrection, rebellion, invasion, tumult, riot, resistance to law or process or breach of the peace, if the governor shall have ordered into active service all of the available forces of the organized militia of Washington and shall consider them insufficient in number to properly accomplish the purpose, he or she may then in addition order out the unorganized militia or such portion thereof as he may deem necessary, and cause them to perform such military duty as the circumstances may require. [1989 c 19 § 8; 1943 c 130 § 9; Rem. Supp. 1943 § 8603-9. Prior: 1917 c 107 § 9; 1909 c 134 § 17; 1903 c 155 § 15; 1895 c 108 § 112.]

38.08.060 Governor's decision final. Whenever any portion of the militia is ordered to duty by the governor, the decision of the governor shall be final, incontrovertible, and unimpeachable.

Whenever any portion of the militia has been ordered out by the governor, it shall be deemed that local law and order and the enforcement thereof has failed, and that the militia shall become an additional police power, retaining its separate entity and operating at all times as a military organization under military command, to cooperate with existing peace forces wherever possible, for the reestablishment of law and order and for the protection of life and property. [1943 c 130 § 7; Rem. Supp. 1943 § 8603-7.]

38.08.070 Personal staff for governor. Whenever the governor shall desire the attendance of a personal staff upon any occasion, he or she shall detail therefor officers from the active list of the organized militia of Washington; the officers detailed shall attend in uniform and shall constitute the personal staff of the governor for that occasion, reverting upon completion of such duty to their regular assignments. [1989 c 19 § 9; 1943 c 130 § 15; Rem. Supp. 1943 § 8603-15. Prior: 1917 c 107 § 6; 1909 c 134 § 14. Cf. 1895 c 108 § 13, part.]

38.08.090 Governor to promulgate rules. The governor, through the adjutant general, shall promulgate in orders such rules and amendments not inconsistent with law as the governor may deem necessary for the organization, maintenance and training of the militia, and the acquisition, use, issue or disposal of military property. The governor's regulatory powers herein with respect to military property shall include reasonable authority to make regulations controlling the use and temporary disposal of military property including real property for civic purposes where consistent with federal law and regulations, in a manner similar to the law pertaining to the use of armories. The adopted regulations shall have the same force and effect as if enacted. [1989 c 19 § 10; 1969 ex.s. c 86 § 1; 1943 c 130 § 92; Rem. Supp. 1943 § 8603-92. Prior: 1917 c 107 § 123; 1909 c 134 § 94; 1895 c 108 § 171.]

Commander-in-chief authorized to make rules for specific armories (special or temporary acts not codified in this title):

- (1) 1907 c 55 § 11, Armories at Seattle, Spokane and Tacoma;
- (2) 1909 c 68 § 10, Armory at Bellingham;
- (3) 1913 c 67 § 9, Armory at North Yakima;
- (4) 1917 c 108 § 9, Armory at Walla Walla;
- (5) 1917 c 109 § 9, Armory at Aberdeen;
- (6) 1917 c 166 § 9, Armory at Everett.

38.08.100 Compacts with other states for guarding boundaries. The governor, with consent of congress, is authorized to enter into compacts and agreements with governors of bordering states concerning guarding and patrol of bridges crossing the common boundaries of said states, and for the patrol of said common boundaries. In any such compact or agreement the governor is authorized to permit militia of any bordering state to enter into areas of this state adjacent to said border, or to send militia of this state into areas of any bordering state adjacent to the common boundary as may be necessary to provide effective protection. [1951 c 253 § 1.]

38.08.500 National guard mutual assistance counter-drug activities compact. (1) The governor, with the consent of congress, is authorized to enter into compacts and agreements for the deployment of the national guard with governors of other states concerning drug interdiction, counter-drug, and demand reduction activities. Article 1, section 10 of the Constitution of the United States permits a state to enter into a compact or agreement with another state, subject to the consent of congress. Congress, through enactment of Title 4 of the U.S.C. Section 112, encourages the states to enter such compacts for cooperative effort and mutual assistance.

(2) The compact language contained in this subsection is intended to deal comprehensively with the supportive relationships between states in utilizing national guard assets in counter-drug activities.

NATIONAL GUARD MUTUAL ASSISTANCE
COUNTER-DRUG ACTIVITIES COMPACT

ARTICLE I
PURPOSE

The purposes of this compact are to:

(a) Provide for mutual assistance and support among the party states in the utilization of the national guard in drug interdiction, counter-drug, and demand reduction activities.

(b) Permit the national guard of this state to enter into mutual assistance and support agreements, on the basis of need, with one or more law enforcement agencies operating within this state, for activities within this state, or with a national guard of one or more other states, whether said activities are within or without this state in order to facilitate and coordinate efficient, cooperative enforcement efforts directed toward drug interdiction, counter-drug activities, and demand reduction.

(c) Permit the national guard of this state to act as a receiving and a responding state as defined within this compact and to ensure the prompt and effective delivery of national guard personnel, assets, and services to agencies or areas that are in need of increased support and presence.

(d) Permit and encourage a high degree of flexibility in the deployment of national guard forces in the interest of efficiency.

(e) Maximize the effectiveness of the national guard in those situations that call for its utilization under this compact.

(f) Provide protection for the rights of national guard personnel when performing duty in other states in counter-drug activities.

(g) Ensure uniformity of state laws in the area of national guard involvement in interstate counter-drug activities by incorporating said uniform laws within the compact.

ARTICLE II
ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any two states. Thereafter, this compact shall become effective as to any other state upon its enactment thereof.

(b) 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 in writing of such withdrawal to the governors of all other party states.

ARTICLE III
MUTUAL ASSISTANCE AND SUPPORT

(a) As used in this article:

(1) "Drug interdiction and counter-drug activities" means the use of national guard personnel, while not in federal service, in any law enforcement support activities that are intended to reduce the supply or use of illegal drugs in the

United States. These activities include, but are not limited to:

(i) Providing information obtained during either the normal course of military training or operations or during counter-drug activities, to federal, state, or local law enforcement officials that may be relevant to a violation of any federal or state law within the jurisdiction of such officials;

(ii) Making available any equipment, including associated supplies or spare parts, base facilities, or research facilities of the national guard to any federal, state, or local civilian law enforcement official for law enforcement purposes, in accordance with other applicable law or regulation;

(iii) Providing available national guard personnel to train federal, state, or local civilian law enforcement in the operation and maintenance of equipment, including equipment made available above, in accordance with other applicable law;

(iv) Providing available national guard personnel to operate and maintain equipment provided to federal, state, or local law enforcement officials pursuant to activities defined and referred to in this compact;

(v) Operation and maintenance of equipment and facilities of the national guard or law enforcement agencies used for the purposes of drug interdiction and counter-drug activities;

(vi) Providing available national guard personnel to operate equipment for the detection, monitoring, and communication of the movement of air, land, and sea traffic, to facilitate communications in connection with law enforcement programs, to provide transportation for civilian law enforcement personnel, and to operate bases of operations for civilian law enforcement personnel;

(vii) Providing available national guard personnel, equipment, and support for administrative, interpretive, analytic, or other purposes;

(viii) Providing available national guard personnel and equipment to aid federal, state, and local officials and agencies otherwise involved in the prosecution or incarceration of individuals processed within the criminal justice system who have been arrested for criminal acts involving the use, distribution, or transportation of controlled substances as defined in 21 U.S.C. Sec. 801 et seq., or otherwise by law, in accordance with other applicable law.

(2) "Demand reduction" means providing available national guard personnel, equipment, support, and coordination to federal, state, local, and civic organizations, institutions and agencies for the purposes of the prevention of drug abuse and the reduction in the demand for illegal drugs.

(3) "Requesting state" means the state whose governor requested assistance in the area of counter-drug activities.

(4) "Responding state" means the state furnishing assistance, or requested to furnish assistance, in the area of counter-drug activities.

(5) "Law enforcement agency" means a lawfully established federal, state, or local public agency that is responsible for the prevention and detection of crime and the enforcement of penal, traffic, regulatory, game, immigration, postal, customs, or controlled substances laws.

(6) "Official" means the appointed, elected, designated, or otherwise duly selected representative of an agency,

institution, or organization authorized to conduct those activities for which support is requested.

(7) "Mutual assistance and support agreement" or "agreement" means an agreement between the national guard of this state and one or more law enforcement agencies or between the national guard of this state and the national guard of one or more other states, consistent with the purposes of this compact.

(8) "Party state" refers to a state that has lawfully enacted this compact.

(9) "State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

(b) Upon the request of a governor of a party state for assistance in the area of interdiction and counter-drug, and demand reduction activities, the governor of a responding state shall have authority under this compact to send without the borders of his or her state and place under the temporary operational control of the appropriate national guard or other military authorities of the requesting state, for the purposes of providing such requested assistance, all or any part of the national guard forces of his or her state as he or she may deem necessary, and the exercise of his or her discretion in this regard shall be conclusive.

(c) The governor of a party state may, within his or her discretion, withhold the national guard forces of his or her state from such use and recall any forces or part or member thereof previously deployed in a requesting state.

(d) The national guard of this state is hereby authorized to engage in interdiction and counter-drug activities and demand reduction.

(e) The adjutant general of this state, in order to further the purposes of this compact, may enter into a mutual assistance and support agreement with one or more law enforcement agencies of this state, including federal law enforcement agencies operating within this state, or with the national guard of one or more other party states to provide personnel, assets, and services in the area of interdiction and counter-drug activities and demand reduction. However, no such agreement may be entered into with a party that is specifically prohibited by law from performing activities that are the subject of the agreement.

(f) The agreement must set forth the powers, rights, and obligations of the parties to the agreement, where applicable, as follows:

(1) Its duration;

(2) The organization, composition, and nature of any separate legal entity created thereby;

(3) The purpose of the agreement;

(4) The manner of financing the agreement and establishing and maintaining its budget;

(5) The method to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(6) Provision for administering the agreement, which may include creation of a joint board responsible for such administration;

(7) The manner of acquiring, holding, and disposing of real and personal property used in this agreement, if necessary;

(8) The minimum standards for national guard personnel implementing the provisions of this agreement;

(9) The minimum insurance required of each party to the agreement, if necessary;

(10) The chain of command or delegation of authority to be followed by national guard personnel acting under the provisions of the agreement;

(11) The duties and authority that the national guard personnel of each party state may exercise; and

(12) Any other necessary and proper matters.

Agreements prepared under the provisions of this section are exempt from any general law pertaining to intergovernmental agreements.

(g) As a condition precedent to an agreement becoming effective under this part, the agreement must be submitted to and receive the approval of the office of the attorney general of Washington. The attorney general of the state of Washington may delegate his or her approval authority to the appropriate attorney for the Washington national guard subject to those conditions which he or she decides are appropriate. The delegation must be in writing and is subject to the following:

(1) The attorney general, or his or her agent as stated above, shall approve an agreement submitted to him or her under this part unless he or she finds that it is not in proper form, does not meet the requirements set forth in this part, or otherwise does not conform to the laws of Washington. If the attorney general disapproves an agreement, he or she shall provide a written explanation to the adjutant general of the Washington national guard; and

(2) If the attorney general, or his or her authorized agent as stated above, does not disapprove an agreement within thirty days after its submission to him or her, it is considered approved by him or her.

(h) Whenever national guard forces of any party state are engaged in the performance of duties, in the area of drug interdiction, counter-drug, and demand reduction activities, pursuant to orders, they shall not be held personally liable for any acts or omissions which occur during the performance of their duty.

ARTICLE IV RESPONSIBILITIES

(a) Nothing in this compact shall be construed as a waiver of any benefits, privileges, immunities, or rights otherwise provided for national guard personnel performing duty pursuant to Title 32 of the United States Code nor shall anything in this compact be construed as a waiver of coverage provided for under the Federal Tort Claims Act. In the event that national guard personnel performing counter-drug activities do not receive rights, benefits, privileges, and immunities otherwise provided for national guard personnel as stated above, the following provisions shall apply:

(1) Whenever national guard forces of any responding state are engaged in another state in carrying out the purposes of this compact, the members thereof so engaged shall have the same powers, duties, rights, privileges, and immunities as members of national guard forces of the requesting state. The requesting state shall save and hold members of the national guard forces of responding states harmless from

civil liability, except as otherwise provided herein, for acts or omissions that occur in the performance of their duty while engaged in carrying out the purposes of this compact, whether responding forces are serving the requesting state within the borders of the responding state or are attached to the requesting state for purposes of operational control.

(2) Subject to the provisions of paragraphs (3), (4), and (5) of this Article, all liability that may arise under the laws of the requesting state or the responding states, on account of or in connection with a request for assistance or support, shall be assumed and borne by the requesting state.

(3) Any responding state rendering aid or assistance pursuant to this compact shall be reimbursed by the requesting state for any loss or damage to, or expense incurred in the operation of, any equipment answering a request for aid, and for the cost of the materials, transportation, and maintenance of national guard personnel and equipment incurred in connection with such request, provided that nothing herein contained shall prevent any responding state from assuming such loss, damage, expense, or other cost.

(4) Unless there is a written agreement to the contrary, each party state shall provide, in the same amounts and manner as if they were on duty within their state, for pay and allowances of the personnel of its national guard units while engaged without the state pursuant to this compact and while going to and returning from such duty pursuant to this compact.

(5) Each party state providing for the payment of compensation and death benefits to injured members and the representatives of deceased members of its national guard forces in case such members sustain injuries or are killed within their own state shall provide for the payment of compensation and death benefits in the same manner and on the same terms in the event such members sustain injury or are killed while rendering assistance or support pursuant to this compact. Such benefits and compensation shall be deemed items of expense reimbursable pursuant to paragraph (3) of this Article.

(b) Officers and enlisted personnel of the national guard performing duties subject to proper orders pursuant to this compact shall be subject to and governed by the provisions of their home state code of military justice whether they are performing duties within or without their home state. In the event that any national guard member commits, or is suspected of committing, a criminal offense while performing duties pursuant to this compact without his or her home state, he or she may be returned immediately to his or her home state and said home state shall be responsible for any disciplinary action to be taken. However, nothing in this section shall abrogate the general criminal jurisdiction of the state in which the offense occurred.

ARTICLE V DELEGATION

Nothing in this compact shall be construed to prevent the governor of a party state from delegating any of his or her responsibilities or authority respecting the national guard, provided that such delegation is otherwise in accordance with law. For purposes of this compact, however, the governor shall not delegate the power to request assistance from another state.

ARTICLE VI LIMITATIONS

Nothing in this compact shall:

(a) Authorize or permit national guard units or personnel to be placed under the operational control of any person not having the national guard rank or status required by law for the command in question.

(b) Deprive a properly convened court of jurisdiction over an offense or a defendant merely because of the fact that the national guard, while performing duties pursuant to this compact, was utilized in achieving an arrest or indictment.

ARTICLE VII CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. 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 the United States or of any state or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. [1993 c 263 § 2.]

Chapter 38.12

MILITIA OFFICERS AND ADVISORY COUNCIL

Sections

- 38.12.010 Adjutant general—Bond.
- 38.12.015 Department organized into separate divisions—Army national guard—Air national guard—Assistant adjutants general.
- 38.12.020 Powers and duties.
- 38.12.030 Adjutant general and assistant adjutants general—How chosen—Annual salaries—Members of judiciary eligible to serve in guard.
- 38.12.060 Officers to be commissioned by the governor.
- 38.12.070 Examining board.
- 38.12.095 Appointment or promotion of commissioned officers to be made by officer promotion board—Exceptions.
- 38.12.105 Criteria and guidelines for promotion of commissioned officers.
- 38.12.115 Officer promotion board—Meetings—Powers and duties.
- 38.12.125 Officer promotion board—Composition.
- 38.12.135 Officer promotion board—Official acts—Approval requirements—Rules.
- 38.12.150 Officer to take oath.
- 38.12.160 Oath, form of.
- 38.12.170 Termination of officers' membership—Review of retention potential.
- 38.12.180 Retirement of officers.
- 38.12.200 Uniform allowance to officers.

Militia—Organization—Discipline—Officers—Power to call out: State Constitution Art. 10 § 2.

38.12.010 Adjutant general—Bond. The governor, with the advice and consent of the senate, shall appoint an adjutant general who shall be chief of staff to the governor,

and may be removed by the governor at will. The adjutant general shall appoint the civilian employees and other personnel of the department and may remove any of them in accordance with applicable law.

The expenses of the adjutant general's department, necessary to the military service, shall be audited, allowed, and paid as other military expenditures.

The adjutant general must execute an official bond running to the state in the penal sum of twenty thousand dollars conditioned for the faithful performance of his or her duties. The bond shall be submitted to the attorney general for approval, and when approved shall be filed in the office of the secretary of state. The cost of the bond shall be paid by the state.

The adjutant general may obtain and pay for, from funds appropriated for military purposes, a surety bond or bonds running to the state covering such officers of the organized militia responsible to the state for money or military property, as may be advisable to insure proper accountability. The bond or bonds shall be approved and filed in the same manner as the adjutant general's bond. [1989 c 19 § 11; 1981 c 338 § 3; 1957 c 250 § 2. Prior: 1943 c 130 § 16, part; 1917 c 107 § 11, part; 1913 c 66 § 4, part; 1909 c 134 § 27, part; 1901 c 78 § 4, part; 1895 c 108 § 38, part; Rem. Supp. 1943 § 8603-16, part.]

38.12.015 Department organized into separate divisions—Army national guard—Air national guard—Assistant adjutants general. The adjutant general's department shall be organized into separate divisions for the Washington army national guard and the Washington air national guard. Each division may have a general officer at its head who will be referred to as the assistant adjutant general for the Washington army national guard and the assistant adjutant general for the Washington air national guard. [1961 c 210 § 2.]

38.12.020 Powers and duties. The adjutant general shall:

(1) Keep rosters of all active, reserve, and retired officers of the militia, and all other records, and papers required to be kept and filed therein, and shall submit to the governor such reports of the operations and conditions of the organized militia as the governor may require.

(2) Cause the military law, and such other military publications as may be necessary for the military service, to be prepared and distributed at the expense of the state, to the departments and units of the organized militia.

(3) Keep just and true accounts of all moneys received and disbursed by him or her.

(4) Attest all commissions issued to military officers of this state.

(5) Make out and transmit all militia reports, returns, and communications prescribed by acts of congress or by direction of the department of defense and the national guard bureau.

(6) Have a seal, and all copies, orders, records, and papers in his or her office, duly certified and authenticated under the seal, shall be evidence in all cases in like manner as if the originals were produced. The seal now used in the office of the adjutant general shall be the seal of his or her

office and shall be delivered by him or her to the successor. All orders issued from his or her office shall be authenticated with the seal.

(7) Make such regulations pertaining to the preparation of reports and returns and to the use, maintenance, care, and preservation of property in possession of the state for military purposes, whether belonging to the state or to the United States, as in his or her opinion the conditions demand.

(8) Attend to the care, preservation, safekeeping, and repairing of the arms, ordinance, accoutrements, equipment, and all other military property belonging to the state, or issued to the state by the United States for military purposes, and keep accurate accounts thereof. Any property of the state military department which, after proper inspection, is found unsuitable or no longer needed for use of the state military forces, shall be disposed of in such manner as the governor shall direct and the proceeds thereof used for replacements in kind or by other needed authorized military supplies, and the adjutant general may execute the necessary instruments of conveyance to effect such sale or disposal.

(9) Issue the military property as the necessity of service requires and make purchases for that purpose. No military property shall be issued or loaned to persons or organizations other than those belonging to the militia, except as permitted by applicable state or federal law.

(10) Keep on file in his office the reports and returns of military units, and all other writings and papers required to be transmitted to and preserved at the general headquarters of the state militia.

(11) Keep all records of volunteers commissioned or enlisted for all wars or insurrections, and of individual claims of citizens for service rendered in these wars or insurrections, and he or she shall also be the custodian of all records, relics, trophies, colors, and histories relating to such wars now in possession of, or which may be acquired by the state.

(12) Establish and maintain as part of his or her office a bureau of records of the services of the organized militia of the state, and upon request furnish a copy thereof or extract therefrom, attested under seal of his or her office, and such attested copy shall be prima facie proof of service, birthplace, and citizenship.

(13) Keep a record of all real property owned or used by the state for military purposes, and in connection therewith he or she shall have sole power to execute all leases to acquire the use of real property by the state for military purposes, or lease it to other agencies for use for authorized activities. The adjutant general shall also have full power to execute and grant easements for rights of way for construction, operation, and maintenance of utility service, water, sewage, and drainage for such realty. [1989 c 19 § 12; 1977 c 75 § 32; 1957 c 250 § 3. Prior: 1943 c 130 § 16, part; 1917 c 107 § 11, part; 1913 c 66 § 4, part; 1909 c 134 § 27, part; 1901 c 78 § 4, part; 1895 c 108 § 38, part; Rem. Supp. 1943 § 8603-16, part.]

38.12.030 Adjutant general and assistant adjutants general—How chosen—Annual salaries—Members of judiciary eligible to serve in guard. Whenever a vacancy has occurred, or is about to occur in the office of the

adjutant general, the governor shall order to active service for that position from the active list of the Washington army national guard or Washington air national guard an officer not below the rank of a field grade officer who has had at least ten years service as an officer on the active list of the Washington army national guard or the Washington air national guard during the fifteen years next prior to such detail. The officer so detailed shall during the continuance of his or her service as the adjutant general hold the rank of a general officer.

Whenever a vacancy has occurred, or is about to occur, in the offices of assistant adjutants general for the Washington army national guard or the Washington air national guard, the adjutant general with the concurrence of the governor may appoint an officer of the army national guard or the air national guard, who has had at least ten years service in the active list of his respective branch during the fifteen years next prior to such detail. The officer so detailed, may during the continuance of his service as assistant adjutant general hold the rank of a general officer.

If, by reason of the call or draft of officers of the Washington army national guard and/or air national guard into federal service, there is no officer of the Washington national guard available for detail as the adjutant general or as an assistant adjutant general who possesses the requisite qualifications, the governor may appoint any officer or former officer of the organized militia of Washington as acting adjutant general or as an acting assistant adjutant general. If the officers on detail as the adjutant general or as assistant adjutants general are appointed, called, or drafted into the military service of the United States by order or proclamation of the president, they shall be granted leaves of absence by the governor, and are entitled, upon release from federal service, to return to their former status as adjutant general or as assistant adjutants general of Washington, and during the period that they are in federal service, the duties of these offices shall be performed by an acting adjutant general and acting assistant adjutants general, appointed by the governor, as provided in this section, who shall receive the same pay provided for the adjutant general and/or assistant adjutants general respectively, during the period of such assignments.

The adjutant general shall receive an annual salary equal to the base pay of a major general in the United States army. The assistant adjutant general for the Washington army national guard and the assistant adjutant general for the Washington air national guard shall each receive an annual salary equal to the base pay of an officer of equivalent grade in the United States army or United States air force but not to exceed that of a brigadier general. So long as a member of the judiciary of the state of Washington is available for judicial work at such times and under such conditions as may be set forth by local rules and custom, that member may serve as an active member of the national guard or air national guard. [1989 c 19 § 13; 1983 c 218 § 1; 1965 ex.s. c 100 § 1; 1961 c 210 § 3; 1943 c 130 § 21; Rem. Supp. 1943 § 8603-21. Prior: 1921 c 75 § 2; 1917 c 107 § 14; 1909 c 134 § 31, part; 1895 c 108 § 42, part.]

38.12.060 Officers to be commissioned by the governor. All commissioned and warrant officers of the

organized militia of Washington shall be appointed and commissioned or warranted by the governor only as hereinafter provided. No person shall be so appointed and commissioned or warranted unless he or she shall be a citizen of the United States and of this state and more than eighteen years of age. Every commissioned and warranted officer shall hold office under his or her commission or warrant until he or she shall have been regularly appointed and commissioned or warranted to another rank or office, or until he or she shall have been regularly retired, discharged, dismissed or placed in the reserve. [1989 c 19 § 14; 1971 ex.s. c 292 § 41; 1943 c 130 § 19; Rem. Supp. 1943 § 8603-19. Prior: 1917 c 107 § 12, part; 1909 c 134 § 31, part; 1895 c 108 § 42, part.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

38.12.070 Examining board. No person shall be appointed and commissioned or warranted to any office in the organized militia of Washington unless he or she shall have been examined and adjudged qualified therefor by an examining board, appointed by the adjutant general, and whose report shall have been approved by the authority appointing the board. The composition, appointment and procedure of examining boards and the nature and scope of examinations shall be as prescribed by the laws or regulations of the United States or those of this state. Whenever a commissioned officer shall have been examined for promotion pursuant to this section and shall have been adjudged not qualified therefor, upon approval by the authority appointing the board of its report to that effect such officer may be honorably discharged, retired or placed in the reserve as the governor shall direct. [1989 c 19 § 15; 1943 c 130 § 20; Rem. Supp. 1943 § 8603-20. Prior: 1917 c 107 § 13; 1909 c 134 § 32; 1895 c 108 § 53.]

38.12.095 Appointment or promotion of commissioned officers to be made by officer promotion board—Exceptions. Whenever a commissioned officer is to be appointed or promoted either to fill a vacancy in the organized militia (Washington army national guard, Washington air national guard and the Washington state guard) or for any other reason, the officer to be appointed or promoted shall be selected by the officer promotion board. This selection in no way will change the powers of the governor under RCW 38.12.060. This section in no way applies to appointments or promotions to adjutant general or assistant adjutant general, to the appointment of officers to the rank of captain, lieutenant, or warrant officer, or to the promotion of second lieutenants, first lieutenants, or warrant officers. [1989 c 19 § 16; 1974 ex.s. c 34 § 1.]

38.12.105 Criteria and guidelines for promotion of commissioned officers. All promotions of commissioned officers in the organized militia will be made on a best-qualified basis. The officer promotion board will select the best-qualified officer for each promotion from among those officers fully qualified for promotion. To be promoted, the selected officer must also meet the requirements of RCW 38.12.070. In no event will seniority be the sole guideline for selecting the officer to be promoted. The officer promotion board will, in determining the best qualified

officer, consider the overall qualifications of an officer and not just the qualifications for one position. [1974 ex.s. c 34 § 2.]

38.12.115 Officer promotion board—Meetings—Powers and duties. The officer promotion board will meet from time to time as directed by the adjutant general. The board will select the best qualified officer for each promotion to be made in the organized militia, and will do any other act pertaining thereto directed by the adjutant general or allowed or directed by statute. [1989 c 19 § 17; 1974 ex.s. c 34 § 3.]

38.12.125 Officer promotion board—Composition. The officer promotion board shall be composed as follows:

(1) For promotions or appointments of army national guard officers, the board will consist of the adjutant general, the assistant adjutant general army, and the five commanders senior in grade and date of rank in that grade in the Washington army national guard. If the board is selecting an officer for promotion to the rank of colonel, any member of the board who is a lieutenant colonel will be automatically disqualified and will not be replaced. If the board is selecting an officer for promotion to the rank of brigadier general, any member of the board who is a lieutenant colonel or who is a colonel will be automatically disqualified and will not be replaced.

(2) For promotions or appointments of air national guard officers, the board will consist of the adjutant general, the assistant adjutant general air, and the five commanders senior in grade and date of rank in that grade in the Washington air national guard. If the board is selecting an officer for promotion to the rank of colonel, any member of the board who is a lieutenant colonel will be automatically disqualified and will not be replaced. If the board is selecting an officer for promotion to the rank of brigadier general, any member of the board who is a lieutenant colonel or who is a colonel will be automatically disqualified and will not be replaced.

(3) For promotions or appointments of state guard officers, the board will consist of the adjutant general, the assistant adjutant general army, and the five officers senior in grade and in date of rank in that grade in the state guard. If the board is selecting an officer for promotion to the rank of colonel, any member of the board who is a lieutenant colonel will be automatically disqualified and will not be replaced. If the board is selecting an officer for promotion to the rank of brigadier general, any member of the board who is a lieutenant colonel or who is a colonel will be automatically disqualified and will not be replaced. [1989 c 19 § 18; 1974 ex.s. c 34 § 4.]

38.12.135 Officer promotion board—Official acts—Approval requirements—Rules. To be an official act of the officer promotion board, an act of that board must be approved by not less than four of the members of the board: PROVIDED, HOWEVER, That if the board consists of less than four officers, the approval of the board shall be unanimous.

An action of an officer promotion board may be an official act of the board without a meeting if all members of the board approve in writing the act in question.

The adjutant general will from time to time fix the rules under which the board will operate. [1974 ex.s. c 34 § 5.]

38.12.150 Officer to take oath. Every officer, duly commissioned or warranted shall within such time as may be provided by law or by regulations, take the oath of office prescribed by law, and give bond, if required. In case of neglect or refusal so to do, the officer shall be considered to have resigned such office and a new appointment may be made as provided by law. [1989 c 19 § 19; 1943 c 130 § 29; Rem. Supp. 1943 § 8603-29. Prior: 1917 c 107 § 26; 1909 c 134 § 36, part; 1895 c 108 § 51.]

38.12.160 Oath, form of. The oath of office for commissioned and warrant officers in the organized militia of Washington shall be substantially as follows: "I, , do solemnly swear that I will support and defend the Constitution of the United States and the Constitution of the state of Washington, against all enemies, foreign or domestic; that I will bear true faith and allegiance to the same; that I will obey the orders of the president of the United States and of the governor of the state of Washington, that I make this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office of in the organized militia of the state of Washington upon which I am about to enter, so help me God." [1943 c 130 § 30; Rem. Supp. 1943 § 8603-30. Prior: 1917 c 107 § 27; 1909 c 134 § 37.]

Subversive activities: Chapter 9.81 RCW.

38.12.170 Termination of officers' membership—Review of retention potential. The governor may terminate the membership of any commissioned or warrant officer of the organized militia of Washington for any of the following reasons:

- (1) Conviction of an infamous crime;
- (2) Absence from his or her command for more than thirty days without proper leave;
- (3) Sentence of dismissal by court martial, duly approved;
- (4) Upon muster out of the organization to which the officer is then assigned;
- (5) Acceptance of the resignation of the officer, but no officer may be discharged or his or her resignation accepted while under arrest or against whom military charges have been preferred, or until he or she has turned over to his or her successor or satisfactorily accounted for all state and federal moneys and military property for which he or she is accountable or responsible;
- (6) Removal of his or her actual residence to such distance from the station of his or her command as to render it impracticable for him or her to perform the duties of his or her office;
- (7) Incompetence or unfitness for military service as determined by the duly approved findings of a board of officers appointed for that purpose by the adjutant general.

The adjutant general shall annually appoint and convene qualitative retention boards to review the military personnel

records of officers who have completed three or more years service in the Washington state guard to determine their retention potential and acceptability for continuation in an active status. In the conduct of the reviews, the regulation issued by the adjutant general to implement this provision shall conform to the extent practicable to that governing the army national guard. [1989 c 19 § 20; 1984 c 198 § 1; 1943 c 130 § 31; 1925 ex.s. c 72 § 1; Rem. Supp. 1943 § 8603-31. Prior: 1917 c 107 § 28; 1909 c 134 § 39; 1895 c 108 § 63.]

38.12.180 Retirement of officers. Commissioned officers of the organized militia of Washington shall be retired by order of the commander-in-chief with the rank respectively held by them at the time of such retirement for the following reasons:

(1) Unfitness for military service by reason of permanent physical disability.

(2) Upon request after at least five years continuous service as an officer in the organized militia of Washington.

Commissioned officers of the state guard shall upon reaching the age of sixty-four years be retired.

Retired officers shall draw no pay or allowance from the state unless recalled to service.

Retired officers are subject, with their consent, to temporary detail on active state service by the commander-in-chief, and while on such duty shall receive the same pay and allowances as officers of like rank on the active list. [1989 c 19 § 21; 1984 c 198 § 2; 1943 c 130 § 33; Rem. Supp. 1943 § 8603-33. Prior: 1909 c 134 § 40; 1895 c 108 § 66.]

38.12.200 Uniform allowance to officers. Every commissioned officer of the organized militia of Washington shall, within sixty days from the date of the order whereby he or she shall have been appointed, provide at the officer's own expense the uniform and equipment prescribed by the governor for his or her rank and assignment.

There shall be audited and may be paid, at the option of the adjutant general, to each properly uniformed and equipped officer of the active list of the organized militia of Washington, not in federal service an initial uniform allowance of one hundred dollars and annually thereafter for each twelve months state service an additional uniform allowance of fifty dollars, subject to such regulations as the commander-in-chief may prescribe to be audited and paid upon presentation of proper voucher. [1991 c 43 § 2; 1989 c 19 § 22; 1982 c 93 § 1; 1943 c 130 § 37; Rem. Supp. 1943 § 8603-37. Prior: 1923 c 49 § 1; 1917 c 107 § 32; 1909 c 134 § 49; 1903 c 155 § 11; 1901 c 78 § 8; 1895 c 108 § 76.]

Chapter 38.14

WASHINGTON STATE GUARD

Sections

38.14.006	Availability and composition of state guard.
38.14.012	Federal military service.
38.14.018	Pay of state guard members.
38.14.024	Equipment and supplies.
38.14.030	Training.

38.14.036 Qualifications for appointment of officers.

38.14.006 Availability and composition of state guard. The Washington state guard will be available to serve, at the call of the governor in the place of the national guard of the state of Washington under the provisions of this title when the national guard is in the service of the United States, or when otherwise ordered to active state service by the governor. The Washington state guard shall consist of commissioned and warrant officers and enlisted persons commissioned, warranted, or enlisted under the provisions of this title. Persons enlisted under RCW 38.16.015 shall be enrolled in accordance with regulations promulgated by the adjutant general. [1989 c 19 § 23.]

38.14.012 Federal military service. No member of the Washington state guard shall by reason of such membership be exempt from federal military service under the laws of the United States. [1989 c 19 § 24.]

38.14.018 Pay of state guard members. Members of the Washington state guard shall serve without pay except when on active state service with the state as defined in RCW 38.04.010, or when serving on inactive duty as defined in RCW 38.04.010 under orders of the governor specifically authorizing pay. When ordered to active state service or when serving on inactive duty in a pay status, members of the Washington state guard will be paid as prescribed for members of the national guard in RCW 38.24.050, except longevity adjustments for pay will be based solely on total service with the Washington state guard. [1989 c 19 § 25.]

38.14.024 Equipment and supplies. The governor may obtain from the federal government such arms and other equipment and supplies as may be available for issue, donation or loan for the use of the Washington state guard. When such property is provided by the federal government, it will be utilized, maintained, and disposed of in accordance with federal requirements and with property rules and regulations promulgated under the provisions of RCW 38.08.090. [1989 c 19 § 26.]

38.14.030 Training. Members of the Washington state guard may participate in such training opportunities as may be available from the federal government and as approved by the adjutant general. Where required as a condition of such participation, the military department may reimburse the federal government for the costs of such training. [1989 c 19 § 27.]

38.14.036 Qualifications for appointment of officers. The adjutant general shall establish by regulation qualifications for appointment of commissioned and warrant officers in the Washington state guard. [1989 c 19 § 28.]

Chapter 38.16
ENLISTMENTS AND RESERVES

Sections

38.16.010	Period of enlistment in national guard.
38.16.015	Period of enlistment in state guard.
38.16.020	Discharge of enlisted persons.
38.16.030	Inactive national guard.
38.16.040	State guard reserve.
38.16.050	Appointment of members of the committee for employer support of the guard and reserve to civil affairs unit.

38.16.010 Period of enlistment in national guard.

The period of enlistment in the Washington national guard shall conform to the laws and regulations of the United States department of defense governing such enlistments including the term of such enlistments and the maximum and minimum age of enlistment. [1989 c 19 § 29; 1943 c 130 § 35; Rem. Supp. 1943 § 8603-35. Prior: 1917 c 107 § 30; 1909 c 134 § 41; 1895 c 108 § 57.]

38.16.015 Period of enlistment in state guard. The period of enlistment in the Washington state guard shall be set by regulation by the adjutant general: PROVIDED, That no original enlistment may be consummated unless the term thereof can be completed before the applicant attains the age of sixty-four. [1989 c 19 § 30.]

38.16.020 Discharge of enlisted persons. An enlisted person discharged from service in the organized militia of Washington shall receive a notice of discharge in writing in such form and classification as is or shall be prescribed by law or regulations, and in time of peace discharges may be given prior to the expiration of terms of enlistment under such regulations as may be prescribed by competent authority. [1989 c 19 § 31; 1943 c 130 § 36; Rem. Supp. 1943 § 8603-36. Prior: 1917 c 107 § 31; 1909 c 134 § 45, part; 1895 c 108 § 67, part.]

38.16.030 Inactive national guard. The inactive national guard of this state shall respectively be organized by the governor in regulations in conformance with the laws, rules and regulations of the United States. It shall consist of such organizations, officers and enlisted men as the governor shall prescribe. No commissioned officer shall be transferred or furloughed to the inactive national guard without the officer's written consent, except as otherwise expressly provided by law. Any officer of the inactive national guard may be restored to the active list by order of the governor, subject to the same examination as in the case of an original appointment to his or her rank, and in such event his or her service in the inactive national guard shall not be counted in computing total length of service for relative seniority. [1991 c 43 § 3; 1989 c 19 § 32; 1943 c 130 § 34; Rem. Supp. 1943 § 8603-34. Prior: 1917 c 107 § 29.]

38.16.040 State guard reserve. In order to afford the utmost protection to the state of Washington and to the lives and property of citizens thereof, in times of emergency or anticipation thereof, the governor, through the state military department may provide for the organization and training of state guard reserve companies in communities not allocated

a federally recognized or authorized state guard unit. [1943 c 130 § 86; Rem. Supp. 1943 § 8603-86.]

38.16.050 Appointment of members of the committee for employer support of the guard and reserve to civil affairs unit. To assist the state of Washington in the event of mobilization of state and federal military forces in the state, and notwithstanding other provisions of the state military law and other regulations governing appointment and promotion of officers and enlisted personnel of the Washington state guard, members of the Washington committee for employer support of the guard and reserve may be appointed to serve in a civil affairs unit of the Washington state guard. The rank shall be determined by the adjutant general. [1988 c 288 § 17.]

Chapter 38.20**ARMORIES AND RIFLE RANGES**

Sections

38.20.010	Regulations governing armories.
38.20.020	City may acquire armory site.
38.20.030	Counties may expend moneys for armory site.
38.20.040	Rental of property, armories, and small arms ranges.
38.20.050	Small arms ranges.

ESTABLISHMENT OF ARMORIES: *The following special or temporary acts relating to the establishment of armories are not codified herein:*

- (1) 1907 c 55, *Armories at Seattle, Spokane and Tacoma;*
- (2) 1909 c 68, *Armory at Bellingham;*
- (3) 1913 c 67, *Armory at North Yakima;*
- (4) 1917 c 108, 1919 c 19, *Armory at Walla Walla;*
- (5) 1917 c 109, 1919 c 20, *Armory at Aberdeen;*
- (6) 1917 c 166, 1919 c 21, *Armory at Everett;*
- (7) 1939 c 152, *Armory at Olympia;*
- (8) 1939 c 215, *Naval and marine corps reserve armory at Seattle;*
- (9) 1941 c 236, *Naval and marine corps reserve armory at Tacoma;*
- (10) 1953 c 277 §§ 1, 2 and 3, *Armory at Spokane.*

Explosives, manufacture, sale or storage: Chapter 70.74 RCW.

Joint armory sites: RCW 36.64.050.

Militia—Public arms: State Constitution Article 10 § 4.

State, county and municipal indebtedness—Powers extended in certain cases: State Constitution Article 8 § 2.

38.20.010 Regulations governing armories. Except as provided in this section, state-owned armories shall be used strictly for military purposes.

(1) One room, together with the necessary furniture, heat, light, and janitor service, may be set aside for the exclusive use of bona fide veterans' organizations subject to the direction of the officer in charge. Members of these veterans' organizations and their auxiliaries shall have access to the room and its use at all times.

(2) A bona fide veterans' organization may use any state armory for athletic and social events without payment of rent whenever the armory is not being used by the organized militia. The adjutant general may require the veterans' organization to pay the cost of heating, lighting, or other miscellaneous expenses incidental to this use.

(3) The adjutant general may, during an emergency, permit transient lodging of service personnel in armories.

(4) The adjutant general may, upon the recommendation of the executive head or governing body of a county, city or town, permit transient lodging of anyone in armories. The

adjutant general may require the county, city or town to pay no more than the actual cost of staffing, heating, lighting and other miscellaneous expenses incidental to this use.

(5) Civilian rifle clubs affiliated with the National Rifle Association of America are permitted to use small arms ranges in the armories at least one night each week under regulations prescribed by the adjutant general.

(6) State-owned armories shall be available, at the discretion of the adjutant general, for use for casual civic purposes, and amateur and professional sports and theatricals upon payment of fixed rental charges and compliance with regulations of the state military department. Children attending primary and high schools have a preferential right to use these armories.

The adjutant general shall prepare a schedule of rental charges, including a cleaning deposit, and utility costs for each state-owned armory which may not be waived except for activities sponsored by the organized militia or activities provided for in subsection (4) of this section. The rental charges derived from armory rentals less the cleaning deposit shall be paid into the state general fund. [1989 c 19 § 33; 1985 c 295 § 1; 1983 c 268 § 1; 1975 1st ex.s. c 121 § 1; 1973 1st ex.s. c 154 § 56; 1963 c 149 § 1; 1949 c 125 § 1; 1947 c 204 § 1; 1943 c 130 § 93; Rem. Supp. 1949 § 8603-93. Prior: 1923 c 49 § 5; 1917 c 8 § 1; 1909 c 134 § 97; 1907 c 55 § 11; 1903 c 115 §§ 19, 20.]

Effective date—1975 1st ex.s. c 121: "The effective date of this act shall be July 1, 1977." [1975 1st ex.s. c 121 § 2.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

SPECIAL ACTS RELATING TO ARMORIES: *The following special or temporary acts relating to particular armories are not codified herein:*

- (1) 1959 c 181; 1961 c 135; 1963 c 146, *Seattle*
- (2) 1967 c 37, *Prosser*
- (3) 1967 c 43, *Centralia*
- (4) 1967 c 44, *Chewelah*
- (5) 1967 c 214, *Stevens County*
- (6) 1967 c 224, *Tacoma and Pierce County*
- (7) 1967 c 226, *Yakima*
- (8) 1969 ex.s. c 22, *Kirkland*.

38.20.020 City may acquire armory site. Any city in the state of Washington in which a unit of the national guard is stationed, or is to be stationed, is hereby authorized and empowered to acquire a site for an armory by gift or purchase, and to construct an armory thereon, and to issue and sell its general obligation bonds for said purposes, within the debt limits prescribed by the Constitution, with full power to sell or lease the same to the state of Washington or to the United States. [1933 ex.s. c 16 § 1; RRS § 8598-1.]

38.20.030 Counties may expend moneys for armory site. Any county of the state of Washington is hereby authorized and empowered to appropriate money for the purchase of an armory site whenever the legislature of this state shall appropriate money for or authorize the construction of an armory therein. [1907 c 55 § 3 1/2; No RRS.]

38.20.040 Rental of property, armories, and small arms ranges. All armories and small arms ranges and all property, real or personal, used by the national guard and not owned by the state of Washington or the United States, shall be leased or rented to the state upon such terms and condi-

tions as shall be approved by the commander-in-chief. [1989 c 19 § 34; 1909 c 134 § 98; RRS § 8599.]

38.20.050 Small arms ranges. Under the direction of the governor, the adjutant general shall, at the expense and in the name of the state, buy or lease, establish, equip, maintain and control such small arms ranges and issue such ammunition, transportation and supplies as may be necessary to provide each unit of the organized militia of Washington with adequate means and opportunity for thorough instruction in small arms practice. [1989 c 19 § 35; 1943 c 130 § 91; Rem. Supp. 1943 § 8603-91. Prior: 1917 c 107 § 120; 1909 c 134 § 92; 1895 c 108 § 168.]

Chapter 38.24

CLAIMS AND COMPENSATION

Sections

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| 38.24.010 | Payment of military claims. |
| 38.24.020 | Audit and payment of awards. |
| 38.24.050 | Pay of officers and enlisted personnel. |
| 38.24.060 | Employment and reemployment rights upon return from militia duty. |

38.24.010 Payment of military claims. All bills, claims and demands for military purposes shall be certified or verified and audited in the manner prescribed by regulations promulgated by the governor and shall be paid by the state treasurer from funds available for that purpose. In all cases where the organized militia, or any part of the organized militia, is called into the service of the state to execute or enforce the laws or in case of war, riot, insurrection, invasion, breach of the peace, public disaster, or the imminent danger of the occurrence of any of these events, warrants for allowed pay and expenses for such services or compensation for injuries or death shall be drawn upon the general fund of the state treasury and paid out of any moneys in said fund not otherwise appropriated. All such warrants shall be the obligation of the state and shall bear interest at the legal rate from the date of their presentation for payment. [1991 c 43 § 4; 1989 c 19 § 36; 1973 c 106 § 14; 1943 c 130 § 42; Rem. Supp. 1943 § 8603-42. Prior: 1917 c 107 § 36; 1909 c 134 § 56, part; 1895 c 108 § 91, part.]

38.24.020 Audit and payment of awards. All compensation shall be payable in monthly installments and shall be audited and paid as any other claim against the military department and shall be payable from the general fund out of any moneys not otherwise appropriated. [1943 c 130 § 41; Rem. Supp. 1943 § 8603-41. Prior: 1917 c 107 § 35; 1909 c 134 § 56, part; 1895 c 108 § 41, part.]

38.24.050 Pay of officers and enlisted personnel. Commissioned officers, warrant officers, and enlisted personnel of the organized militia of Washington, while in active state service or inactive duty, are entitled to and shall receive the same amount of pay and allowances from the state of Washington as provided by federal laws and regulations for commissioned officers, warrant officers, and enlisted personnel of the United States army only if federal

pay and allowances are not authorized. For periods of such active state service, commissioned officers, warrant officers, and enlisted personnel of the organized militia of Washington shall receive either such pay and allowances or an amount equal to one and one-half of the federal minimum wage, whichever is greater.

The value of articles issued to any member and not returned in good order on demand, and legal fines or forfeitures, may be deducted from the member's pay.

If federal pay and allowances are not authorized, all members detailed to serve on any board or commission ordered by the governor, or on any court-martial ordered by proper authority, may, at the discretion of the adjutant general, be paid a sum equal to one day's active state service for each day actually employed on the board or court or engaged in the business thereof, or in traveling to and from the same; and in addition thereto travel expenses in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended when such duty is at a place other than the city or town of his residence.

Necessary transportation, quartermasters' stores, and subsistence for troops when ordered on active state service may be contracted for and paid for as are other military bills. [1989 c 19 § 37; 1984 c 198 § 3; 1975-'76 2nd ex.s. c 34 § 81; 1974 ex.s. c 46 § 1; 1943 c 130 § 43; Rem. Supp. 1943 § 8603-43. Prior: 1925 c 28 § 2, part; 1919 c 137 § 1, part; 1917 c 107 § 37, part; 1915 c 47 § 1, part; 1913 c 66 § 10, part; 1909 c 134 § 157, part; 1907 c 122 § 5, part; 1903 c 155 § 13, part; 1901 c 78 § 11, part; 1895 c 108 § 89, part.]

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

38.24.060 Employment and reemployment rights upon return from militia duty. All members of the organized militia of Washington who are called to active state service or inactive duty shall, upon return from such duty, have those rights accorded under RCW 73.16.031, 73.16.035, 73.16.041, 73.16.051, and 73.16.061. [1989 c 19 § 38; 1984 c 198 § 4; 1974 ex.s. c 46 § 2.]

Chapter 38.32

OFFENSES—PUNISHMENT

Sections

- 38.32.010 Offenses against laws of this state by members on duty status.
- 38.32.020 Offenses under Washington code of military justice.
- 38.32.030 Exemptions while on duty.
- 38.32.070 Member removed from state, request for discharge.
- 38.32.080 Penalty for failure to obey call.
- 38.32.090 Penalty for physician making false certificate.
- 38.32.100 Buying and receiving military property.
- 38.32.120 Authority of commanding officer.
- 38.32.140 Sentence to confinement.

Militia—Organization—Discipline—Officers—Power to call out: State Constitution Art. 10 § 2.

38.32.010 Offenses against laws of this state by members on duty status. Any member of the organized militia on duty status as provided in RCW 38.38.624, or within state armories, committing offenses against the laws of the state, shall be promptly arrested by the military

authorities and turned over to the civil authorities of the county or city in which the offense was committed. [1989 c 19 § 39; 1963 c 220 § 134; 1943 c 130 § 82; Rem. Supp. 1943 § 8603-82.]

38.32.020 Offenses under Washington code of military justice. Offenses under chapter 38.38 RCW committed while on inactive duty or active state service as defined in RCW 38.04.010 may be tried and punished as provided under chapter 38.38 RCW after this duty or service has terminated, and if found guilty the accused shall be punished accordingly. Any member of the organized militia on "inactive duty" or "active state service," as defined in RCW 38.04.010, committing any offense under chapter 38.38 RCW, where the offense charged is also made an offense by the civil law of this state, may, in the discretion of the officer whose duty it is to approve the charge, be turned over to the proper civil authorities for trial.

Any member of the organized militia on "inactive duty" or "active state service," as defined in RCW 38.04.010, committing any offense under chapter 38.38 RCW, may, if such offense is committed upon a military reservation of the United States within this state, be turned over to the civil authorities for trial as provided by federal law. [1989 c 19 § 40; 1963 c 220 § 135; 1943 c 130 § 81; Rem. Supp. 1943 § 8603-81.]

38.32.030 Exemptions while on duty. No person belonging to the military forces of this state shall be arrested on any warrant, except for treason or felony, while going to, remaining at, or returning from any place at which he may be required to attend military duty. Any members of the organized militia parading, or performing any duty according to the law shall have the right of way in any street or highway through which they may pass and while on field duty shall have the right to enter upon, cross or occupy any uninclosed lands, or any inclosed lands where no damage will be caused thereby: PROVIDED, That the carriage of the United States mail and legitimate functions of the police and fire departments shall not be interfered with thereby. [1943 c 130 § 45; Rem. Supp. 1943 § 8603-45. Prior: 1917 c 107 § 40; 1909 c 134 § 66; 1895 c 108 § 103.]

38.32.070 Member removed from state, request for discharge. If any member is known to have removed from the state, and, through ignorance or neglect, has failed to apply for discharge, the discharge may be requested by his or her immediate commanding officer. [1989 c 19 § 41; 1963 c 220 § 136; 1943 c 130 § 84; Rem. Supp. 1943 § 8603-84. Cf. 1917 c 107 § 83.]

38.32.080 Penalty for failure to obey call. Any member of the militia who shall have been ordered out for either state or federal service and who shall refuse or wilfully or negligently fail to report at the time and place and to the officer designated in the order or to the representative or successor of such officer, shall be deemed guilty of desertion, and shall suffer such penalty as a general court martial may direct, unless he or she shall produce a sworn certificate from a licensed physician of good standing that he or she was physically unable to appear at the time and place

designated. Any person chargeable with desertion under this section may be taken by force and compelled to serve. [1989 c 19 § 42; 1943 c 130 § 10; Rem. Supp. 1943 § 8603-10. Prior: 1917 c 107 § 10; 1909 c 134 § 21; 1895 c 108 § 114.]

38.32.090 Penalty for physician making false certificate. Any physician who shall knowingly make and deliver a false certificate of physical disability concerning any member of the militia who shall have been ordered out or summoned for active service shall be guilty of perjury and, upon conviction, as an additional penalty, shall forfeit forever his or her license and right to practice in this state. [1989 c 19 § 43; 1943 c 130 § 11; Rem. Supp. 1943 § 8603-11. Prior: 1909 c 134 § 22.]

38.32.100 Buying and receiving military property. Any person who shall purchase or receive in pawn or pledge any military property of the state or of the United States shall be guilty of a gross misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars or imprisoned for not more than six months or both such fine and imprisonment. [1943 c 130 § 87; Rem. Supp. 1943 § 8603-87. Cf. 1917 c 107 § 68.]

38.32.120 Authority of commanding officer. The commanding officer at any drill, parade, encampment or other duty may place in arrest for the time of such drill, parade, encampment or other duty any person or persons who shall trespass on the camp grounds, parade grounds, rifle range or armory, or in any way or manner interrupt or molest the orderly discharge of duty of those on duty, or who shall disturb or prevent the passage of troops going to or returning from any regularly ordered tour of duty; and may prohibit and prevent the sale or use of all spirituous liquors, wines, ale or beer, or holding of huckster or auction sales, and all gambling therein, and remove disorderly persons beyond the limits of such parade or encampment, or within a distance of two miles therefrom, and the commanding officer shall have full authority to abate as common nuisances all disorderly places, and bar all unauthorized sales within such limits. Any person violating any of the provisions of this section, or any order issued in pursuance thereof, shall be guilty of a misdemeanor, and upon conviction shall be fined not more than one hundred dollars, or imprisoned not more than thirty days, or by both such fine and imprisonment.

No license or renewal thereof shall be issued or granted to any person, firm or corporation for the sale of intoxicating or spirituous liquors within a distance of three hundred feet from any armory used by the state of Washington for military purposes, without the approval of the adjutant general. [1989 c 19 § 44; 1963 c 220 § 137; 1943 c 130 § 52; Rem. Supp. 1943 § 8603-52. Prior: 1937 c 51 § 1; 1909 c 134 § 62; 1895 c 108 § 99.]

38.32.140 Sentence to confinement. All military courts of the organized militia of Washington shall have power to sentence to confinement in lieu of fines authorized to be imposed: PROVIDED, That such sentence of confinement shall not exceed one day for each dollar of fine

authorized. [1943 c 130 § 61; 1917 c 107 § 53; Rem. Supp. 1943 § 8603-61.]

Chapter 38.36 TRIAL PROCEDURE

Sections

38.36.120 Fees and mileage.

38.36.120 Fees and mileage. Fees and mileage allowed for the service of process and for civilian witnesses shall be the same as in civil actions. All expenditures necessary to carry the provisions of chapter 130, Laws of 1943, into effect are hereby authorized to be incurred, and paid out of the appropriations for the maintenance of the organized militia of Washington. [1943 c 130 § 78; Rem. Supp. 1943 § 8603-78. Prior: 1917 c 107 § 59; 1909 c 134 § 90.]

Compensation of jurors: RCW 2.36.150.

Travel expense in lieu of mileage in certain cases: RCW 2.40.030.

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Chapter 38.38

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Reviser's note: Article numbers in this chapter parallel equivalent sections in the federal Uniform Code of Military Justice and do not constitute part of the law.

PART I—GENERAL PROVISIONS

38.38.004 [Art. 1] Definitions. In this chapter, unless the context otherwise requires:

(1) "Organized militia" means the national guard of the state, as defined in section 101(3) of title 32, United States Code, and any other military force organized under the laws of the state of Washington.

(2) "Officer" means commissioned or warrant officer.

(3) "Commissioned officer" includes a commissioned warrant officer.

(4) "Commanding officer" includes only commissioned officers in command of a unit.

(5) "Superior commissioned officer" means a commissioned officer superior in rank or command.

(6) "Enlisted member" means a person in an enlisted grade.

(7) "Grade" means a step or degree, in a graduated scale of office or military rank, that is established and designated as a grade by law or regulation.

(8) "Rank" means the order of precedence among members of the organized militia.

(9) The term "active state service" or "active training duty" shall be construed to be any service on behalf of the state, or at encampments whether ordered by state or federal authority or any other duty requiring the entire time of any organization or person except when called or drafted into the federal service by the president of the United States.

The term "inactive duty" shall include periods of drill and such other training and service not requiring the entire time of the organization or person, as may be required under state or federal laws, regulations, or orders, including travel to and from such duty.

(10) "Military court" means a court-martial or a court of inquiry.

(11) "Military judge" means the presiding officer of a general or special court-martial detailed in accordance with RCW 38.38.256.

(12) "State judge advocate" means the commissioned officer responsible for supervising the administration of the military justice in the organized militia.

(13) "Accuser" means a person who signs and swears to charges, any person who directs that charges nominally be signed and sworn to by another, and any person who has an interest other than an official interest in the prosecution of the accused.

(14) "Military" refers to any or all of the armed forces.

(15) "Convening authority" includes, in addition to the person who convened the court, a commissioned officer commanding for the time being, or a successor in command.

(16) "May" is used in a permissive sense. The words "no person may." mean that no person is required, authorized, or permitted to do the act prescribed.

(17) "Shall" is used in an imperative sense.

(18) "Code" means this chapter.

(19) "A month's pay" or fraction thereof shall be calculated based upon a member's basic pay entitlement as if the member were serving for a thirty-day period. [1989 c 48 § 1; 1963 c 220 § 1.]

Effective date—1963 c 220: "This act shall take effect on July 1, 1963." [1963 c 220 § 140.] For codification of 1963 c 220, see Codification Tables, Volume 0.

38.38.008 [Art. 2] Persons subject to this code. This code applies to all members of the organized militia who are not in federal service. [1989 c 48 § 2; 1963 c 220 § 2.]

38.38.012 [Art. 3] Jurisdiction to try certain personnel. No person who has deserted from the organized militia may be relieved from amenability to the jurisdiction of this code by virtue of a separation from any later period of service. [1989 c 48 § 3; 1989 c 11 § 9; 1963 c 220 § 3.]

Reviser's note: This section was amended by 1989 c 11 § 9 and by 1989 c 48 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

38.38.016 [Art. 4] Dismissal of commissioned officer. (1) If any commissioned officer, dismissed by order of the governor, makes a written application for trial by court-martial, setting forth, under oath, that he or she has been wrongfully dismissed, the governor, as soon as practicable, shall convene a general court-martial to try that officer on the charges on which the officer was dismissed. A court-martial so convened has jurisdiction to try the dismissed officer on those charges, and the officer shall be considered to have waived the right to plead any statute of limitations applicable to any offense with which the officer is charged. The court-martial may, as part of its sentence, adjudge the affirmance of the dismissal, but if the court-martial acquits the accused or if the sentence adjudged, as finally approved or affirmed, does not include dismissal, the chief of staff to the governor or adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issue.

(2) If the governor fails to convene a general court-martial within six months from the presentation of an application for trial under this code, the chief of staff to the governor or adjutant general shall substitute for the dismissal ordered by the governor a form of discharge authorized for administrative issue.

(3) If a discharge is substituted for a dismissal under this code, the governor alone may reappoint the officer to such commissioned grade and with such rank as, in the opinion of the governor, that former officer would have attained had the officer not been dismissed. The reappointment of such a former officer may be made only if a vacancy is available under applicable tables of organization. All time between the dismissal and the reappointment shall be considered as actual service for all purposes.

(4) If an officer is discharged from the organized militia by administrative action or by board proceedings under law, or is dropped from the rolls by order of the governor, the officer has no right to trial under this section. [1989 c 48 § 4; 1963 c 220 § 4.]

38.38.020 [Art. 5] Territorial applicability of the code. (1) This code applies throughout the state. It also applies to all persons otherwise subject to this code while they are serving outside the state, and while they are going to and returning from such service outside the state, in the same manner and to the same extent as if they were serving inside the state.

(2) Courts-martial and courts of inquiry may be convened and held in units of the organized militia while those units are serving outside the state with the same jurisdiction and powers as to persons subject to this code as if the proceedings were held inside the state, and offenses committed outside the state may be tried and punished either inside or outside the state. [1989 c 48 § 5; 1963 c 220 § 5.]

38.38.024 [Art. 6] Judge advocates and legal officers. (1) The governor, on the recommendation of the adjutant general, shall appoint an officer of the organized militia as state judge advocate. To be eligible for appointment, an officer must be a member of the bar of the highest court of the state and must have been a member of the bar of the state for at least five years.

(2) The adjutant general may appoint as many assistant state judge advocates as he or she considers necessary. To be eligible for appointment, assistant state judge advocates must be officers of the organized militia and members of the bar of the highest court of the state.

(3) The state judge advocate or assistants shall make frequent inspections in the field in supervision of the administration of military justice.

(4) Convening authorities shall at all times communicate directly with their staff judge advocates in matters relating to the administration of military justice; and the staff judge advocate of any command is entitled to communicate directly with the staff judge advocate of a superior or subordinate command, or with the state judge advocate.

(5) No person who has acted as member, law officer, trial counsel, assistant trial counsel, defense counsel, assistant defense counsel, or investigating officer, or who has been a witness for either the prosecution or defense, in any case may later act as staff judge advocate to any reviewing authority upon the same case. [1989 c 48 § 6; 1963 c 220 § 6.]

PART II—APPREHENSION AND RESTRAINT

38.38.064 [Art. 7] Apprehension. (1) Apprehension is the taking of a person into custody.

(2) Any person authorized by this code, or by regulations issued under it, to apprehend persons subject to this code, any marshal of a court-martial appointed pursuant to the provisions of this code, and any peace officer authorized to do so by law, may do so upon reasonable belief that an offense has been committed and that the person apprehended committed it.

(3) Commissioned officers, warrant officers, and noncommissioned officers have authority to quell quarrels, frays, and disorders among persons subject to this code and to apprehend persons subject to this code who take part therein. [1989 c 48 § 7; 1963 c 220 § 7.]

38.38.068 [Art. 8] Apprehension of deserters. Any civil officer having authority to apprehend offenders under the laws of the United States or of a state, territory, commonwealth, or possession, or the District of Columbia may summarily apprehend a deserter from the state of Washington organized militia and deliver the offender into the custody of the state of Washington organized militia. If an offender is apprehended outside of the state of Washington, the return to the area must be in accordance with normal extradition procedures or reciprocal agreement. [1989 c 48 § 8; 1963 c 220 § 8.]

38.38.072 [Art. 9] Imposition of restraint. (1) Arrest is the restraint of a person by an order, not imposed as a punishment for an offense, directing the person to remain within certain specified limits. Confinement is the physical restraint of a person.

(2) An enlisted member may be ordered into arrest or confinement by any commissioned officer by an order, oral or written, delivered in person or through other persons subject to this code or through any person authorized by this code to apprehend persons. A commanding officer may

authorize warrant officers or noncommissioned officers to order enlisted members of the officer's command or subject to the officer's authority into arrest or confinement.

(3) A commissioned officer or a warrant officer may be ordered apprehended or into arrest or confinement only by a commanding officer to whose authority the officer is subject, by an order, oral or written, delivered in person or by another commissioned officer. The authority to order such persons apprehended or into arrest or confinement may not be delegated.

(4) No person may be ordered apprehended or into arrest or confinement except for probable cause.

(5) This section does not limit the authority of persons authorized to apprehend offenders to secure the custody of an alleged offender until proper authority may be notified. [1989 c 48 § 9; 1963 c 220 § 9.]

38.38.076 [Art. 10] Restraint of persons charged with offenses. Any person subject to this code charged with an offense under this code shall be ordered into arrest or confinement, as circumstances may require; but when charged only with an offense normally tried by a summary court-martial, such person shall not ordinarily be placed in confinement. When any person subject to this code is placed in arrest or confinement prior to trial, immediate steps shall be taken to inform the person of the specific wrong of which he or she is accused and to try the person or to dismiss the charges and release the person. [1989 c 48 § 10; 1963 c 220 § 10.]

38.38.080 [Art. 10a] Confinement in jails. Persons confined other than in a guard house, whether before, during or after trial by a military court, shall be confined in civil jails, penitentiaries, or prisons designated by the governor or by such person as the governor may authorize to act. [1989 c 48 § 11; 1963 c 220 § 11.]

38.38.084 [Art. 11] Reports and receiving of prisoners. (1) No provost marshal, commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or any other jail, penitentiary, or prison designated under RCW 38.38.080, may refuse to receive or keep any prisoner committed to his or her charge, when the committing person furnishes a statement, signed by the committing person, of the offense charged against the prisoner.

(2) Every commander of a guard, master at arms, warden, keeper, or officer of a city or county jail or of any other jail, penitentiary, or prison designated under RCW 38.38.080, to whose charge a prisoner is committed shall, within twenty-four hours after that commitment or as soon as he or she is relieved from guard, report to the commanding officer of the prisoner the name of the prisoner, the offense charged against the prisoner, and the name of the person who ordered or authorized the commitment. [1989 c 48 § 12; 1963 c 220 § 12.]

38.38.088 [Art. 13] Punishment prohibited before trial. Subject to RCW 38.38.488, no person, while being held for trial or the result of trial, may be subjected to punishment or penalty other than arrest or confinement upon the charges pending against the person, nor shall the arrest

or confinement imposed upon the person be any more rigorous than the circumstances require to insure his or her presence, but the person may be subjected to minor punishment during that period for infractions of discipline. [1989 c 48 § 13; 1963 c 220 § 13.]

38.38.092 [Art. 14] Delivery of offenders to civil authorities. (1) Under such regulations as may be prescribed under this code a person subject to this code who is on active state service or inactive duty who is accused of an offense against civil authority may be delivered, upon request, to the civil authority for trial.

(2) When delivery under this section is made to any civil authority of a person undergoing sentence of a court-martial, the delivery, if followed by conviction in a civil tribunal, interrupts the execution of the sentence of the court-martial, and the offender after having answered to the civil authorities for the offense shall, upon the request of competent military authority, be returned to military custody for the completion of the sentence. [1989 c 48 § 14; 1963 c 220 § 14.]

PART III—NONJUDICIAL PUNISHMENT

38.38.132 [Art. 15] Commanding officer's nonjudicial punishment—Suspension—Appeal. (1) Under such regulations as the governor may prescribe, limitations may be placed on the powers granted by this section with respect to the kind and amount of punishment authorized, the categories of commanding officers and warrant officers exercising command authorized to exercise those powers, the applicability of this section to an accused who demands trial by court-martial, and the kinds of courts-martial to which the case may be referred upon such a demand. However, except in the case of a member attached to or embarked in a vessel, punishment may not be imposed upon any member of the organized militia under this section if the member has, before the imposition of such punishment, demanded trial by court-martial in lieu of such punishment. Under similar regulations, rules may be prescribed with respect to the suspension of punishments authorized hereunder. If authorized by regulations of the governor, a commanding officer exercising general court-martial jurisdiction or an officer of general rank in command may delegate powers under this section to a principal assistant.

(2) Subject to subsection (1) of this section, any commanding officer may, in addition to or in lieu of admonition or reprimand, impose one or more of the following disciplinary punishments for minor offenses without the intervention of a court-martial:

(a) Upon officers of his or her command:

(i) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive duty or drill days;

(ii) If imposed by an officer exercising general court-martial jurisdiction or an officer of general rank in command:

(A) Forfeiture of up to thirty days' pay, but not more than fifteen days' pay per month;

(B) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive drill or duty days;

(C) Detention of up to forty-five days' pay, but not more than fifteen days' pay per month;

(b) Upon other personnel of his or her command:

(i) If imposed upon a person attached to or embarked in a vessel, confinement for not more than three consecutive days;

(ii) Forfeiture of not more than seven days' pay;

(iii) Reduction to the next inferior pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction;

(iv) Extra duties, including fatigue or other duties for not more than fourteen duty or drill days, which need not be consecutive, and for not more than two hours per day, holidays included;

(v) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days;

(vi) Detention of not more than fourteen days' pay;

(vii) If imposed by an officer of the grade of major or above:

(A) The punishment authorized in subsection (2)(b)(i) of this section;

(B) Forfeiture of up to thirty days' pay, but not more than fifteen days' pay per month;

(C) Reduction to the lowest or any intermediate pay grade, if the grade from which demoted is within the promotion authority of the officer imposing the reduction or any officer subordinate to the one who imposes the reduction, but an enlisted member in a pay grade above E-4 may not be reduced more than two pay grades;

(D) Extra duties, including fatigue or other duties, for not more than fourteen drill or duty days, which need not be consecutive, and for not more than two hours per day, holidays included;

(E) Restriction to certain specified limits, with or without suspension from duty, for not more than fourteen consecutive days;

(F) Detention of up to forty-five days' pay, but not more than fifteen days' pay per month.

Detention of pay shall be for a stated period of not more than one year but if the offender's term of service expires earlier, the detention shall terminate upon that expiration. Extra duties and restriction may not be combined to run consecutively in the maximum amount imposable for each. Whenever any such punishments are combined to run consecutively, there must be an apportionment. In addition, forfeiture of pay may not be combined with detention of pay without an apportionment.

(3) An officer in charge may impose upon enlisted members assigned to the unit of which the officer is in charge such of the punishment authorized under subsection (2)(b) of this section as the governor may specifically prescribe by regulation.

(4) The officer who imposes the punishment authorized in subsection (2) of this section, or a successor in command, may, at any time, suspend probationally any part or amount of the unexecuted punishment imposed and may suspend probationally a reduction in grade or a forfeiture imposed

under subsection (2) of this section, whether or not executed. In addition, the officer may, at any time, remit or mitigate any part or amount of the unexecuted punishment imposed and may set aside in whole or in part the punishment, whether executed or unexecuted, and restore all rights, privileges, and property affected. The officer may also mitigate reduction in grade to forfeiture or detention of pay. When mitigating extra duties to restriction, the restriction shall not be longer than the number of hours of extra duty that may have been imposed. When mitigating reduction in grade to forfeiture or detention of pay, the amount of the forfeiture or detention shall not be greater than the amount that could have been imposed initially under this section by the officer who imposed the punishment mitigated.

(5) A person punished under this section who considers the punishment unjust or disproportionate to the offense may, through the proper channel, appeal to the next superior authority. The appeal shall be promptly forwarded and decided, but the person punished may in the meantime be required to undergo the punishment adjudged. The superior authority may exercise the same powers with respect to the punishment imposed as may be exercised under subsection (4) of this section by the officer who imposed the punishment. Before acting on an appeal from a punishment of:

- (a) Forfeiture of more than seven days' pay;
- (b) Reduction of one or more pay grades from the fourth or a higher pay grade;
- (c) Extra duties for more than ten days;
- (d) Restriction for more than ten days; or
- (e) Detention of more than fourteen days' pay;

the authority who is to act on the appeal shall refer the case to a judge advocate for consideration and advice, and may so refer the case upon appeal from any punishment imposed under subsection (2) of this section.

(6) The imposition and enforcement of disciplinary punishment under this section for any act or omission is not a bar to trial by court-martial for a serious crime or offense growing out of the same act or omission, and not properly punishable under this section; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty.

(7) The governor may by regulation prescribe the form of records to be kept of proceedings under this section and may also prescribe that certain categories of those proceedings shall be in writing. [1991 c 43 § 5; 1989 c 48 § 15; 1963 c 220 § 15.]

PART IV—COURTS-MARTIAL JURISDICTION

38.38.172 [Art. 16] Courts-martial of organized militia not in federal service—Composition—Jurisdiction—Powers and proceedings. (1) In the organized militia not in federal service, there are general, special, and summary courts-martial constituted like similar courts of the armed forces of the United States. They have the jurisdiction and powers, except as to punishments, and shall follow the forms and procedures provided for those courts.

(2) The three kinds of courts-martial are:

(a) General courts-martial, consisting of a military judge and not less than five members, or only a military judge, if before the court is assembled the accused, knowing the identity of the military judge and after consultation with defense counsel, requests orally on the record or in writing a court composed only of a military judge and the military judge approves;

(b) Special courts-martial, consisting of not less than three members, or a military judge and not less than three members, or only a military judge, if one has been detailed to the court, and the accused under the same conditions as those prescribed in (a) of this subsection so requests; and

(c) Summary courts-martial, consisting of one commissioned officer. [1989 c 48 § 16; 1963 c 220 § 16.]

38.38.176 [Art. 17] Jurisdiction of courts-martial in general. Each force of the organized militia has court-martial jurisdiction over all persons subject to this code. The exercise of jurisdiction by one force over personnel of another force shall be in accordance with regulations prescribed by the governor. [1989 c 48 § 17; 1963 c 220 § 17.]

38.38.180 [Art. 18] Jurisdiction of general courts-martial. Subject to RCW 38.38.176, general courts martial have jurisdiction to try persons subject to this code for any offense made punishable by this code and may, under such limitations as the governor may prescribe, adjudge any of the following punishments:

- (1) A fine of not more than two hundred dollars;
- (2) Forfeiture of pay and allowances;
- (3) A reprimand;
- (4) Dismissal or dishonorable discharge;
- (5) Reduction of a noncommissioned officer to the ranks; or
- (6) Any combination of these punishments. [1963 c 220 § 18.]

38.38.184 [Art. 19] Jurisdiction of special courts-martial—Dishonorable discharge. Subject to RCW 38.38.176, special courts-martial have jurisdiction to try persons subject to this code for any offense for which they may be punished under this code. A special court-martial has the same powers of punishment as a general court-martial, except that a fine imposed by a special court-martial may not be more than one hundred dollars for a single offense. A dishonorable discharge may not be adjudged unless a complete record of the proceedings and testimony has been made, counsel having the qualifications prescribed under RCW 38.38.260 was detailed to represent the accused, and a military judge was detailed to the trial, except in any case in which a military judge could not be detailed to the trial because of physical conditions or military exigencies. In any such case in which a military judge was not detailed to the trial, the convening authority shall make a detailed written statement, to be appended to the record, stating the reason or reasons a military judge could not be detailed. [1989 c 48 § 18; 1963 c 220 § 19.]

38.38.188 [Art. 20] Jurisdiction of summary courts-martial. (1) Subject to RCW 38.38.176, summary courts-

martial have jurisdiction to try persons subject to this code, except officers for any offense made punishable by this code.

(2) No person with respect to whom summary courts-martial have jurisdiction may be brought to trial before a summary court-martial if the person objects thereto, unless under RCW 38.38.132 the person has been permitted and has elected to refuse punishment under that section. If objection to trial by summary court-martial is made by an accused who has been permitted to refuse punishment under RCW 38.38.132, trial shall be ordered by special or general court-martial, as may be appropriate.

(3) A summary court-martial may sentence to a fine of not more than twenty-five dollars for a single offense, to forfeiture of pay and allowances, and to reduction of a noncommissioned officer to the ranks. [1989 c 48 § 19; 1963 c 220 § 20.]

38.38.192 Sentences of dismissal or dishonorable discharge to be approved by the governor. In the organized militia not in federal service, no sentence of dismissal or dishonorable discharge may be executed until it is approved by the governor. [1963 c 220 § 21.]

38.38.196 Complete record of proceedings and testimony if dishonorable discharge or dismissal adjudged. A dishonorable discharge or dismissal may not be adjudged by any court-martial unless a complete record of the proceedings and testimony before the court has been made. [1989 c 48 § 20; 1963 c 220 § 22.]

38.38.200 Confinement instead of fine. In the organized militia not in federal service, a court-martial may, instead of imposing a fine, sentence to confinement for not more than one day for each dollar of the authorized fine. [1989 c 48 § 21; 1963 c 220 § 23.]

PART V—APPOINTMENT AND COMPOSITION OF COURTS-MARTIAL

38.38.240 [Art. 22] Who may convene general courts-martial. In the organized militia not in federal service, general courts-martial may be convened by the president or by the governor, or by the commanding general of the national guard of the District of Columbia. [1989 c 48 § 22; 1963 c 220 § 24.]

38.38.244 [Art. 23] Special courts-martial of organized militia not in federal service—Who may convene. (1) In the organized militia not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a brigade, regiment, wing, group, detached battalion, separate squadron, or other detached command, may convene special courts-martial. Special courts-martial may also be convened by superior authority. When any such officer is an accuser, the court shall be convened by superior competent authority.

(2) A special court-martial may not try a commissioned officer. [1989 c 48 § 23; 1963 c 220 § 25.]

38.38.248 [Art. 24] Summary courts-martial of organized militia not in federal service—Who may convene. (1) In the organized militia not in federal service, the commanding officer of a garrison, fort, post, camp, air base, auxiliary air base, or other place where troops are on duty, or of a regiment, wing, group, detached battalion, detached squadron, detached company, or other detachment, may convene a summary court-martial consisting of one commissioned officer. The proceedings shall be informal.

(2) When only one commissioned officer is present with a command or detachment the commissioned officer shall be the summary court-martial of that command or detachment and shall hear and determine all summary court-martial cases brought before him or her. Summary courts-martial may, however, be convened in any case by superior competent authority when considered desirable. [1989 c 48 § 24; 1963 c 220 § 26.]

38.38.252 [Art. 25] Who may serve on courts-martial. (1) Any commissioned officer of or on duty with the organized militia is eligible to serve on all courts-martial for the trial of any person who may lawfully be brought before such courts for trial.

(2) Any warrant officer of or on duty with the organized militia is eligible to serve on general and special courts-martial for the trial of any person, other than a commissioned officer, who may lawfully be brought before such courts for trial.

(3)(a) Any enlisted member of the organized militia who is not a member of the same unit as the accused is eligible to serve on general and special courts-martial for the trial of any enlisted member who may lawfully be brought before such courts for trial, but shall serve as a member of a court only if, before the conclusion of a session called by the military judge under RCW 38.38.380(1) prior to trial or, in the absence of such a session, before the court is assembled for the trial of the accused, the accused personally has requested in writing that enlisted members serve on it. After such a request, the accused may not be tried by a general or special court-martial the membership of which does not include enlisted members in a number comprising at least one-third of the total membership of the court, unless eligible members cannot be obtained on account of physical conditions or military exigencies. If such members cannot be obtained, the court may be convened and the trial held without them, but the convening authority shall make a detailed written statement, to be appended to the record, stating why they could not be obtained.

(b) In this section, the word "unit" means any regularly organized body of the organized militia not larger than a company, a squadron, or a body corresponding to one of them.

(4)(a) When it can be avoided, no person subject to this code may be tried by a court-martial any member of which is junior to the person in rank or grade.

(b) When convening a court-martial, the convening authority shall detail as members thereof such members as, in his or her opinion, are best qualified for the duty by reason of age, education, training, experience, length of service, and judicial temperament. No member is eligible to serve as a member of a general or special court-martial when

the member is the accuser or a witness for the prosecution or has acted as investigating officer or as counsel in the same case.

(c) Before a court-martial is assembled for the trial of a case, the convening authority may excuse a member of the court from participating in the case. Under such regulations as the governor may prescribe, the convening authority may delegate his or her authority under this subsection to the staff judge advocate or to any other principal assistant. [1989 c 48 § 25; 1963 c 220 § 27.]

38.38.256 [Art. 26] Military judge of a general or special court-martial. (1) A military judge shall be detailed to each general court-martial. Subject to regulations of the governor, a military judge may be detailed to any special court-martial. The governor shall prescribe regulations providing for the manner in which military judges are detailed for such courts-martial and for the persons who are authorized to detail military judges for such courts-martial. The military judge shall preside over each open session of the court-martial to which he or she has been detailed.

(2) A military judge shall be a commissioned officer of the armed forces who is a member of the bar of a federal court or a member of the bar of the highest court of a state and who is certified to be qualified for duty as a military judge by the state judge advocate.

(3) The military judge of a general court-martial shall be designated by the state judge advocate or a designee for detail in accordance with regulations prescribed under subsection (1) of this section. Unless the court-martial was convened by the governor, neither the convening authority nor any member of the staff shall prepare or review any report concerning the effectiveness, fitness, or efficiency of the military judge so detailed, which relates to performance of duty as a military judge. A commissioned officer who is certified to be qualified for duty as a military judge of a general court-martial may perform such duties only when he or she is assigned and directly responsible to the state judge advocate or designee, and may perform duties of a judicial or nonjudicial nature other than those relating to the primary duty as a military judge of a general court-martial when such duties are assigned by or with the approval of the state judge advocate or designee.

(4) No person is eligible to act as military judge in a case if the person is the accuser or a witness for the prosecution or has acted as investigating officer or a counsel in the same case.

(5) The military judge of a court-martial may not consult with the members of the court except in the presence of the accused, trial counsel, and defense counsel, nor may the military judge vote with the members of the court. [1989 c 48 § 26; 1963 c 220 § 28.]

38.38.260 [Art. 27] Detail of trial counsel and defense counsel. (1)(a) Trial counsel and defense counsel shall be detailed for each general and special court-martial. Assistant trial counsel and assistant and associate defense counsel may be detailed for each general and special court-martial. The governor shall prescribe regulations providing for the manner in which counsel are detailed for such courts-

martial and for the persons who are authorized to detail counsel for such courts-martial.

(b) No person who has acted as investigating officer, military judge, or court member in any case may act later as trial counsel, assistant trial counsel, or, unless expressly requested by the accused, as defense counsel or assistant or associate defense counsel in the same case. No person who has acted for the prosecution may act later in the same case for the defense, nor may any person who has acted for the defense act later in the same case for the prosecution.

(2) Trial counsel or defense counsel detailed for a general court-martial:

(a) Must be a judge advocate who is a graduate of an accredited law school or is a member of the bar of a federal court or of the highest court of a state, or must be a member of the bar of a federal court or of the highest court of a state; and

(b) Must be certified as competent to perform such duties by the state judge advocate.

(3) In the case of a special court-martial:

(a) The accused shall be afforded the opportunity to be represented at the trial by counsel having the qualifications prescribed under subsection (2) of this section unless counsel having such qualifications cannot be obtained on account of physical conditions or military exigencies. If counsel having such qualifications cannot be obtained, the court may be convened and the trial held but the convening authority shall make a detailed written statement, to be appended to the record, stating why counsel with such qualifications could not be obtained;

(b) If the trial counsel is qualified to act as counsel before a general court-martial, the defense counsel detailed by the convening authority must be a person similarly qualified; and

(c) If the trial counsel is a judge advocate or a member of the bar of a federal court or the highest court of a state, the defense counsel detailed by the convening authority must be one of the foregoing. [1991 c 43 § 6; 1989 c 48 § 27; 1963 c 220 § 29.]

38.38.264 [Art. 28] Detail or employment of reporters and interpreters. Under such regulations as the governor may prescribe, the convening authority of a general or special court martial or court of inquiry shall detail or employ qualified court reporters, who shall record the proceedings of and testimony taken before that court. Under like regulations the convening authority of a military court may detail or employ interpreters who shall interpret for the court. [1963 c 220 § 30.]

38.38.268 [Art. 29] Absent and additional members. (1) No member of a general or special court-martial may be absent or excused after the court has been assembled for the trial of the accused unless excused as a result of a challenge, excused by the military judge for physical disability or other good cause, or excused by order of the convening authority for good cause.

(2) Whenever a general court-martial, other than a general court-martial composed of a military judge only, is reduced below five members, the trial may not proceed unless the convening authority details new members suffi-

cient in number to provide not less than five members. The trial may proceed with the new members present after the recorded evidence previously introduced before the members of the court has been read to the court in the presence of the military judge, the accused, and counsel for both sides.

(3) Whenever a special court-martial, other than a special court-martial composed of a military judge only, is reduced below three members, the trial may not proceed unless the convening authority details new members sufficient in number to provide not less than three members. The trial shall proceed with the new members present as if no evidence had previously been introduced at the trial, unless a verbatim record of the evidence previously introduced before the members of the court or a stipulation thereof is read to the court in the presence of the military judge, if any, the accused, and counsel for both sides.

(4) If the military judge of a court-martial composed of a military judge only is unable to proceed with the trial because of physical disability, as a result of a challenge, or for other good cause, the trial shall proceed, subject to any applicable conditions of RCW 38.38.172(2) (a) or (b), after the detail of a new military judge as if no evidence had previously been introduced, unless a verbatim record of the evidence previously introduced or a stipulation thereof is read in court in the presence of the new military judge, the accused, and counsel for both sides. [1989 c 48 § 28; 1963 c 220 § 31.]

PART VI—PRETRIAL PROCEDURE

38.38.308 [Art. 30] Charges and specifications. (1) Charges and specifications shall be signed by a person subject to this code under oath before a person authorized by this code to administer oaths and shall state:

(a) That the signer has personal knowledge of, or has investigated, the matters set forth therein; and

(b) That they are true in fact to the best of his or her knowledge and belief.

(2) Upon the preferring of charges, the proper authority shall take immediate steps to determine what disposition should be made thereof in the interest of justice and discipline, and the person accused shall be informed of the charges against him or her as soon as practicable. [1989 c 48 § 29; 1963 c 220 § 32.]

38.38.312 [Art. 31] Compulsory self-incrimination prohibited. (1) No person subject to this code may compel persons to incriminate themselves or to answer any question the answer to which may tend to incriminate them.

(2) No person subject to this code may interrogate, or request any statement from, an accused or a person suspected of an offense without first informing the person of the nature of the accusation and advising that the person does not have to make any statement regarding the offense of which he or she is accused or suspected and that any statement made by the person may be used as evidence against him or her in a trial by court-martial.

(3) No person subject to this code may compel any person to make a statement or produce evidence before any military tribunal if the statement or evidence is not material to the issue and may tend to degrade the person.

(4) No statement obtained from any person in violation of this section, or through the use of coercion, unlawful influence, or unlawful inducement may be received in evidence against the person in a trial by court-martial. [1989 c 48 § 30; 1963 c 220 § 33.]

38.38.316 [Art. 32] Investigation. (1) No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and a recommendation as to the disposition which should be made of the case in the interest of justice and discipline.

(2) The accused shall be advised of the charges against him or her and of the right to be represented at that investigation by counsel. The accused has a right to be represented at that investigation as provided in RCW 38.38.376 and in regulations prescribed under that section.

At that investigation full opportunity shall be given to the accused to cross-examine witnesses against him or her if they are available and to present anything the person may desire in his or her own behalf, either in defense or mitigation, and the investigating officer shall examine available witnesses requested by the accused. If the charges are forwarded after the investigation, they shall be accompanied by a statement of the substance of the testimony taken on both sides and a copy thereof shall be given to the accused.

(3) If an investigation of the subject matter of an offense has been conducted before the accused is charged with the offense, and if the accused was present at the investigation and afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (2) hereof, no further investigation of that charge is necessary under this section unless it is demanded by the accused after being informed of the charge. A demand for further investigation entitles the accused to recall witnesses for further cross-examination and to offer any new evidence in his or her own behalf.

(4) The requirements of this section are binding on all persons administering this code but failure to follow them does not divest a military court of jurisdiction. [1989 c 48 § 31; 1963 c 220 § 34.]

38.38.320 [Art. 33] Forwarding of charges. When a person is held for trial by general court-martial the commanding officer shall, within eight days after the accused is ordered into arrest or confinement, if practicable, forward the charges, together with the investigation and allied papers, to the governor. If that is not practicable, the officer shall report in writing to the governor the reasons for delay. [1989 c 48 § 32; 1963 c 220 § 35.]

38.38.324 [Art. 34] Advice of state judge advocate and reference for trial. (1) Before directing the trial of any charge by general court-martial, the convening authority shall refer it to the state judge advocate for consideration and advice. The convening authority may not refer a charge to a general court-martial for trial unless he or she has found that the charge alleges an offense under this code, is warranted by evidence indicated in the report of the investiga-

tion under RCW 38.38.316, if there is such a report, and the court-martial would have jurisdiction over the accused and the offense.

(2) The advice of the staff judge advocate under subsection (1) of this section with respect to a specification under a charge shall include a written and signed statement by the staff judge advocate:

(a) Expressing conclusions with respect to each matter set forth in subsection (1) of this section; and

(b) Recommending action that the convening authority take regarding the specification.

If the specification is referred for trial, the recommendation of the state judge advocate shall accompany the specification.

(3) If the charges or specifications are not formally correct or do not conform to the substance of the evidence contained in the report of the investigating officer, formal corrections, and such changes in the charges and specifications as are needed to make them conform to the evidence may be made. [1989 c 48 § 33; 1963 c 220 § 36.]

38.38.328 [Art. 35] Service of charges. The trial counsel to whom court-martial charges are referred for trial shall cause to be served upon the accused a copy of the charges upon which trial is to be had. In time of peace no person may, against his or her objection, be brought to trial or be required to participate by himself or counsel in a session called by a military judge under RCW 38.38.380(1), in a general court-martial within a period of five days after the service of the charges upon him or her, or before a special court-martial within a period of three days after the service of the charges upon him or her. [1989 c 48 § 34; 1963 c 220 § 37.]

PART VII—TRIAL PROCEDURE

38.38.368 [Art. 36] Governor may prescribe rules. The procedure, including modes of proof, in cases before military courts and other military tribunals may be prescribed by the governor by regulations, which shall, so far as the governor considers practicable, apply the principles of law and the rules of evidence generally recognized in the trial of criminal cases in the courts of the state, but which may not be contrary to or inconsistent with this code. [1989 c 48 § 35; 1963 c 220 § 38.]

38.38.372 [Art. 37] Unlawfully influencing action of court. (1) No authority convening a general, special, or summary court-martial nor any other commanding officer, or officer serving on the staff thereof, may censure, reprimand, or admonish the court or any member, military judge, or counsel thereof, with respect to the findings or sentence adjudged by the court, or with respect to any other exercise of its or his or her functions in the conduct of the proceeding. No person subject to this code may attempt to coerce or, by any unauthorized means, influence the action of the court-martial or any other military tribunal or any member thereof, in reaching the findings or sentence in any case, or the action of any convening, approving, or reviewing authority with respect to judicial acts. The foregoing provisions of this section shall not apply with respect to (a)

general instructional or informational courses in military justice if such courses are designed solely for the purpose of instructing members of a command in the substantive and procedural aspects of courts-martial, or (b) to statements and instructions given in open court by the military judge, president of a special court-martial, or counsel.

(2) In the preparation of an effectiveness, fitness, or efficiency report or any other report or document used in whole or in part for the purpose of determining whether a member of the organized militia is qualified to be advanced, in grade, or in determining the assignment or transfer of a member of the organized militia, or in determining whether a member of the organized militia should be retained on active duty, no person subject to this chapter may, in preparing any such report (a) consider or evaluate the performance of duty of any such member of a court-martial, or (b) give a less favorable rating or evaluation of any member of the organized militia because of the zeal with which such member, as counsel, represented any accused before a court-martial. [1989 c 48 § 36; 1963 c 220 § 39.]

38.38.376 [Art. 38] Duties of trial counsel and defense counsel. (1) The trial counsel of a general or special court-martial shall prosecute in the name of the state, and shall, under the direction of the court, prepare the record of the proceedings.

(2) The accused has the right to be represented in his or her defense before a general or special court-martial by civilian counsel if provided by the accused, or by military counsel of his or her own selection if reasonably available as defined in regulations of the governor, or by the defense counsel detailed under RCW 38.38.260. Should the accused have civilian counsel of his or her own selection, the defense counsel, and assistant defense counsel, if any, who were detailed, shall, if the accused so desires, act as associate counsel; otherwise they shall be excused by the military judge or president of a special court-martial.

(3) In every court-martial proceeding, the defense counsel may, in the event of conviction, forward for attachment to the record of proceedings a brief of such matters the defense counsel feels should be considered in behalf of the accused on review, including any objection to the contents of the record which he or she considers appropriate and assist the accused in the submission of any matter under RCW 38.38.536.

(4) An assistant trial counsel of a general court-martial may, under the direction of the trial counsel or when qualified to be a trial counsel as required by RCW 38.38.260, perform any duty imposed by law, regulation, or the custom of the service upon the trial counsel of the court. An assistant trial counsel of a special court-martial may perform any duty of the trial counsel.

(5) An assistant defense counsel of a general or special court-martial may, under the direction of the defense counsel or when qualified to be the defense counsel as required by RCW 38.38.260, perform any duty imposed by law, regulation, or the custom of the service upon counsel for the accused. [1989 c 48 § 37; 1963 c 220 § 40.]

38.38.380 [Art. 39] Sessions. (1) At any time after the service of charges which have been referred for trial to

a court-martial composed of a military judge and members, the military judge may, subject to RCW 38.38.328, call the court into session without the presence of the members for the purpose of:

(a) Hearing and determining motions raising defenses or objections which are capable of determination without trial of the issues raised by a plea of not guilty;

(b) Hearing and ruling upon any matter which may be ruled upon by the military judge under this chapter, whether or not the matter is appropriate for later consideration or decision by the members of the court;

(c) Holding the arraignment and receiving the pleas of the accused; and

(d) Performing any other procedural function which may be performed by the military judge under this chapter or under rules prescribed pursuant to RCW 38.38.368 and which does not require the presence of the members of the court.

These proceedings shall be conducted in the presence of the accused, the defense counsel, and the trial counsel and shall be made a part of the record.

(2) When the members of a court-martial deliberate or vote, only the members may be present. All other proceedings, including any other consultation of the members of the court with counsel or the military judge, shall be made a part of the record and shall be in the presence of the accused, the defense counsel, the trial counsel, and in cases in which a military judge has been detailed to the court, the military judge. [1989 c 48 § 38; 1963 c 220 § 41.]

38.38.384 [Art. 40] Continuances. The military judge or a court-martial without a military judge may, for reasonable cause, grant a continuance to any party for such time and as often as may appear to be just. [1989 c 48 § 39; 1963 c 220 § 42.]

38.38.388 [Art. 41] Challenges. (1) The military judge and members of a general or special court-martial may be challenged by the accused or the trial counsel for cause stated to the court. The military judge or, if none, the court shall determine the relevance and validity of challenges for cause and may not receive a challenge to more than one person at a time. Challenges by the trial counsel shall ordinarily be presented and decided before those by the accused are offered.

(2) Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge may not be challenged except for cause. [1989 c 48 § 40; 1963 c 220 § 43.]

38.38.392 [Art. 42] Oaths. (1) Before performing their respective duties, military judges, members of general and special courts-martial, trial counsel, assistant trial counsel, defense counsel, assistant or associate defense counsel, reporters, and interpreters shall take an oath to perform their duties faithfully. The form of the oath, the time and place of the taking thereof, the manner of recording the same, and whether the oath shall be taken for all cases in which these duties are to be performed or for a particular case, shall be as prescribed in regulations of the governor. These regulations may provide that an oath to perform

faithfully duties as a military judge, trial counsel, assistant trial counsel, defense counsel, or assistant or associate defense counsel may be taken at any time by a judge advocate or other person certified to be qualified or competent for the duty, and if such an oath is taken it need not again be taken at the time the judge advocate, or other person, is detailed to that duty.

(2) Each witness before a court-martial shall be examined on oath. [1989 c 48 § 41; 1963 c 220 § 44.]

38.38.396 [Art. 43] Statute of limitations. (1) A person charged with desertion or absence without leave in time of war, or with aiding the enemy or with mutiny may be tried and punished at any time without limitation.

(2) Except as otherwise provided in this section, a person charged with desertion in time of peace or with the offense punishable under RCW 38.38.784 is not liable to be tried by court-martial if the offense was committed more than three years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command.

(3) Except as otherwise provided in this section, a person charged with any offense is not liable to be tried by court-martial or punished under RCW 38.38.132 if the offense was committed more than two years before the receipt of sworn charges and specifications by an officer exercising summary court-martial jurisdiction over the command or before the imposition of punishment under RCW 38.38.132.

(4) Periods in which the accused was absent from territory in which the state has the authority to apprehend the accused, or in the custody of civil authorities, or in the hands of the enemy, shall be excluded in computing the period of limitation prescribed in this section. [1989 c 48 § 42; 1963 c 220 § 45.]

38.38.400 [Art. 44] Former jeopardy. (1) No person may, without the person's consent, be tried a second time in any military court of the state for the same offense.

(2) No proceeding in which an accused has been found guilty by a court-martial upon any charge or specification is a trial in the sense of this section until the finding of guilty has become final after review of the case has been fully completed.

(3) A proceeding which, after the introduction of evidence but before a finding, is dismissed or terminated by the convening authority or on motion of the prosecution for failure of available evidence or witnesses without any fault of the accused is a trial in the sense of this section. [1989 c 48 § 43; 1963 c 220 § 46.]

38.38.404 [Art. 45] Pleas of the accused. (1) If an accused arraigned before a court-martial makes an irregular pleading, or after a plea of guilty sets up matter inconsistent with the plea, or if it appears that the accused has entered the plea of guilty improvidently or through lack of understanding of its meaning and effect, or if the accused fails or refuses to plead, a plea of not guilty shall be entered in the record, and the court shall proceed as though the accused had pleaded not guilty.

(2) With respect to any other charge or specification to which a plea of guilty has been made by the accused and accepted by the military judge or by a court-martial without a military judge, a finding of guilty of the charge or specification may be entered immediately without vote. This finding shall constitute the finding of the court unless the plea of guilty is withdrawn prior to announcement of the sentence, in which event the proceedings shall continue as though the accused had pleaded not guilty. [1991 c 43 § 7; 1989 c 48 § 44; 1963 c 220 § 47.]

38.38.408 [Art. 46] Opportunity to obtain witnesses and other evidence. (1) The trial counsel, the defense counsel, and the court-martial shall have equal opportunity to obtain witnesses and other evidence in accordance with such regulations as the governor may prescribe.

(2) The president of a special court-martial, military judge, or a summary court officer may:

(a) Issue a warrant for the arrest of any accused person who, having been served with a warrant and a copy of the charges, disobeys a written order by the convening authority to appear before the court;

(b) Issue subpoenas duces tecum and other subpoenas;

(c) Enforce by attachment the attendance of witnesses and the production of books and papers; and

(d) Sentence for refusal to be sworn or to answer, as provided in actions before civil courts of the state.

(3) Process issued in court-martial cases to compel witnesses to appear and testify and to compel the production of other evidence shall run to any part of the state and shall be executed by civil officers as prescribed by the laws of the state. [1989 c 48 § 45; 1963 c 220 § 48.]

38.38.412 [Art. 47] Refusal to appear or testify—Penalty. (1) Any person not subject to this code who:

(a) Has been duly subpoenaed to appear as a witness or to produce books and records before a court-martial, military commission, court of inquiry, or any other military court or board, or before any military or civil officer designated to take a deposition to be read in evidence before such a court;

(b) Has been duly paid or tendered the fees and mileage of a witness at the rates allowed to witnesses attending the superior court of the state; and

(c) Wilfully neglects or refuses to appear, or refuses to qualify as a witness or to testify or to produce any evidence which that person may have been legally subpoenaed to produce; is guilty of an offense against the state.

(2) Any person who commits an offense named in subsection (1) of this section shall be tried before the superior court of this state having jurisdiction and jurisdiction is conferred upon those courts for that purpose. Upon conviction, such a person shall be punished by a fine of not more than five hundred dollars, or imprisonment for not more than six months, or both.

(3) The prosecuting attorney in any such court, upon the certification of the facts by the military court, commission, court of inquiry, or board, shall prosecute any person violating this section. [1989 c 48 § 46; 1963 c 220 § 49.]

38.38.416 Contempts. A military court may punish for contempt any person who uses any menacing word, sign,

or gesture in its presence, or who disturbs its proceedings by any riot or disorder. The punishment may not exceed confinement for thirty days or a fine of one hundred dollars, or both. [1963 c 220 § 50.]

38.38.420 [Art. 49] Depositions. (1) At any time after charges have been signed, as provided in RCW 38.38.308, any party may take oral or written depositions unless a military judge or court-martial without a military judge hearing the case, or if the case is not being heard, an authority competent to convene a court-martial for the trial of those charges forbids it for good cause. If a deposition is to be taken before charges are referred for trial, such an authority may designate commissioned officers to represent the prosecution and the defense and may authorize those officers to take the deposition of any witness.

(2) The party at whose instance a deposition is to be taken shall give to every other party reasonable written notice of the time and place for taking the deposition.

(3) Depositions may be taken before and authenticated by any military or civil officer authorized by the laws of the state or by the laws of the place where the deposition is taken to administer oaths.

(4) A duly authenticated deposition taken upon reasonable notice to the other parties, so far as otherwise admissible under the rules of evidence, may be read in evidence or, in the case of audiotape, videotape, or similar material, may be played in evidence before any court-martial or in any proceeding before a court of inquiry, if it appears:

(a) That the witness resides or is beyond the state in which the court-martial or court of inquiry is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing;

(b) That the witness by reason of death, age, sickness, bodily infirmity, imprisonment, military necessity, nonamenability to process, or other reasonable cause, is unable or refuses to appear and testify in person at the place of trial or hearing; or

(c) That the present whereabouts of the witness is unknown. [1989 c 48 § 47; 1963 c 220 § 51.]

38.38.424 [Art. 50] Admissibility of records of courts of inquiry. (1) In any case not extending to the dismissal of a commissioned officer, the sworn testimony, contained in the duly authenticated record of proceedings of a court of inquiry, of a person whose oral testimony cannot be obtained, may, if otherwise admissible under the rules of evidence, be read in evidence by any party before a court martial if the accused was a party before the court of inquiry and if the same issue was involved or if the accused consents to the introduction of such evidence.

(2) Such testimony may be read in evidence only by the defense in cases extending to the dismissal of a commissioned officer.

(3) Such testimony may also be read in evidence before a court of inquiry or a military board. [1963 c 220 § 52.]

38.38.428 [Art. 51] Voting, rulings, instructions. (1) Voting by members of a general or special court-martial on the findings and on the sentence, and by members of a court-martial without a military judge upon questions of

challenge, shall be by secret written ballot. The junior member of the court shall count the votes. The count shall be checked by the president, who shall forthwith announce the result of the ballot to the members of the court.

(2) The military judge and, except for questions of challenge, the president of a court-martial without a military judge shall rule upon all questions of law and all interlocutory questions arising during the proceedings. Any such ruling made by the military judge upon any question of law or any interlocutory question other than the factual issue of mental responsibility of the accused, or by the president of a court-martial without a military judge upon any question of law other than a motion for a finding of not guilty, is final and constitutes the ruling of the court. However, the military judge or the president of a court-martial without a military judge may change a ruling at any time during the trial. Unless the ruling is final, if any member objects thereto, the court shall be cleared and closed and the question decided by a vote as provided in RCW 38.38.432, beginning with the junior in rank.

(3) Before a vote is taken on the findings, the military judge or the president of a court-martial without a military judge shall, in the presence of the accused and counsel, instruct the members of the court as to the elements of the offense and charge them:

(a) That the accused must be presumed to be innocent until guilt is established by legal and competent evidence beyond reasonable doubt;

(b) That in the case being considered, if there is reasonable doubt as to the guilt of the accused, the doubt must be resolved in favor of the accused and the accused must be acquitted;

(c) That, if there is a reasonable doubt as to the degree of guilt, the finding must be in a lower degree to which there is no reasonable doubt; and

(d) That the burden of proof to establish the guilt of the accused beyond reasonable doubt is upon the state.

(4) Subsections (1), (2), and (3) of this section do not apply to a court-martial composed of a military judge only. The military judge of such a court-martial shall determine all questions of law and fact arising during the proceedings and, if the accused is convicted, adjudge an appropriate sentence. The military judge of such a court-martial shall make a general finding and shall in addition on request find the facts specially. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of fact appear therein. [1989 c 48 § 48; 1963 c 220 § 53.]

38.38.432 [Art. 52] Number of votes required. (1) No person may be convicted of an offense, except as provided in RCW 38.38.404(2) or by the concurrence of two-thirds of the members present at the time the vote is taken.

(2) All sentences shall be determined by the concurrence of two-thirds of the members present at the time that the vote is taken.

(3) All other questions to be decided by the members of a general or special court-martial shall be determined by a majority vote, but a determination to reconsider a finding of guilty, or to reconsider a sentence with a view towards decreasing it, may be made by any lesser vote which

indicates that the reconsideration is not opposed by the number of votes required for that finding or sentence. A tie vote on a challenge disqualifies the member challenged. A tie vote on a motion for a finding of not guilty or on a motion relating to the question of the accused's sanity is a determination against the accused. A tie vote on any other question is a determination in favor of the accused. [1989 c 48 § 49; 1963 c 220 § 54.]

38.38.436 [Art. 53] Court to announce action. A court martial shall announce its findings and sentence to the parties as soon as determined. [1963 c 220 § 55.]

38.38.440 [Art. 54] Record of trial. (1) Each general court-martial shall keep a separate record of the proceedings in each case brought before it, and the record shall be authenticated by the signature of the military judge. If the record cannot be authenticated by the military judge by reason of death, disability, or absence, it shall be authenticated by the signature of the trial counsel or by that of a member if the trial counsel is unable to authenticate it by reason of death, disability, or absence. In a court-martial consisting of only a military judge, the record shall be authenticated by the court reporter under the same conditions which would impose such a duty on a member under this subsection.

(2) Each special and summary court-martial shall keep a separate record of the proceedings in each case, and the record shall be authenticated in the manner required by such regulations as the governor may prescribe.

(3)(a) A complete record of the proceedings and testimony shall be prepared:

(i) In each general court-martial case in which the sentence adjudged includes a dismissal, a discharge, or, if the sentence adjudged does not include a discharge, any other punishment which exceeds that which may otherwise be adjudged by a special court-martial; and

(ii) In each special court-martial case in which the sentence adjudged includes a dishonorable discharge.

(b) In all other court-martial cases, the record shall contain such matters as may be prescribed by regulations of the governor.

(4) A copy of the record of the proceedings of each general and special court-martial shall be given to the accused as soon as it is authenticated. [1989 c 48 § 50; 1963 c 220 § 56.]

PART VIII—SENTENCES

38.38.480 [Art. 55] Cruel and unusual punishments prohibited. Punishment by flogging, or by branding, marking or tattooing on the body, or any other cruel or unusual punishment, may not be adjudged by any court martial or inflicted upon any person subject to this code. The use of irons, single or double, except for the purpose of safe custody, is prohibited. [1963 c 220 § 57.]

38.38.484 [Art. 56] Maximum limits—Reduction in pay grade. (1) The punishment which a court-martial may direct for an offense may not exceed limits prescribed by this code.

(2) Unless otherwise provided in regulations to be prescribed by the governor, a court-martial sentence of an enlisted member in a pay grade above E-1, as approved by the convening authority, that includes a dishonorable discharge reduces that member to pay grade E-1, effective on the date of that approval.

(3) If the sentence of a member who is reduced in pay grade under subsection (2) of this section is set aside or disapproved, or, as finally approved, does not include any punishment named in subsection (2) of this section, the rights and privileges of which the member was deprived because of that reduction shall be restored and the member is entitled to the pay and allowances to which the member would have been entitled for the period the reduction was in effect, had he or she not been so reduced. [1989 c 48 § 51; 1963 c 220 § 58.]

38.38.488 [Art. 57] Effective date of sentences. (1) No forfeiture may extend to any pay or allowances accrued before the date on which the sentence is approved by the person acting under RCW 38.38.536.

(2) Any period of confinement included in a sentence of a court-martial begins to run from the date the sentence is ordered to be executed by the convening authority, but periods during which the sentence to confinement is suspended or deferred shall be excluded in computing the service of the term of confinement. Regulations prescribed by the governor may provide that sentences of confinement may not be executed until approved by designated officers.

(3) All other sentences of courts-martial are effective on the date ordered executed.

(4) On application by an accused who is under sentence to confinement that has not been ordered executed, the convening authority or, if the accused is no longer under his or her jurisdiction, the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned, may, in his or her sole discretion, defer service of the sentence to confinement. The deferment shall terminate when the sentence is ordered executed. The deferment may be rescinded at any time by the officer who granted it or, if the accused is no longer under his or her jurisdiction, by the officer exercising general court-martial jurisdiction over the command to which the accused is currently assigned. [1989 c 48 § 52; 1963 c 220 § 59.]

38.38.492 [Art. 58] Execution of confinement. (1) A sentence of confinement adjudged by a military court, whether or not the sentence includes discharge or dismissal, and whether or not the discharge or dismissal has been executed, may be carried into execution by confinement in any place of confinement under the control of any of the forces of the organized militia or in any jail, penitentiary, or prison designated for that purpose. Persons so confined in a jail, penitentiary, or prison are subject to the same discipline and treatment as persons confined or committed to the jail, penitentiary, or prison by the courts of the state or of any political subdivision thereof.

(2) The omission of the words "hard labor" from any sentence or punishment of a court-martial adjudging confinement does not deprive the authority executing that sentence

or punishment of the power to require hard labor as a part of the punishment.

(3) The keepers, officers, and wardens of city or county jails and of other jails, penitentiaries, or prisons designated by the governor, or by such person as the governor may authorize to act under RCW 38.38.080, shall receive persons ordered into confinement before trial and persons committed to confinement by a military court and shall confine them according to law. No such keeper, officer, or warden may require payment of any fee or charge for so receiving or confining a person. [1989 c 48 § 53; 1963 c 220 § 60.]

PART IX—REVIEW OF COURTS-MARTIAL

38.38.532 Execution of sentence—Suspension of sentence. Except as provided in RCW 38.38.196 and 38.38.556, a court-martial sentence, unless suspended, may be ordered executed by the convening authority when approved by him or her. The convening authority shall approve the sentence or such part, amount, or commuted form of the sentence as he or she sees fit, and may suspend the execution of the sentence as approved by him or her. [1989 c 48 § 54; 1963 c 220 § 61.]

38.38.536 Initial action on the record. After a trial by court martial the record shall be forwarded to the convening authority, as reviewing authority, and action thereon may be taken by the person who convened the court, a commissioned officer commanding for the time being, a successor in command, or by the governor. [1963 c 220 § 62.]

38.38.540 [Art. 60] Initial action on the record—General court-martial records. The convening authority shall refer the record of each general court-martial to the staff judge advocate, who shall submit a written opinion thereon to the convening authority. If the final action of the court has resulted in an acquittal of all charges and specifications, the opinion shall be limited to questions of jurisdiction. [1989 c 48 § 55; 1963 c 220 § 63.]

38.38.544 [Art. 61] Reconsideration and revision. (1) If a specification before a court martial has been dismissed on motion and the ruling does not amount to a finding of not guilty, the convening authority may return the record to the court for reconsideration of the ruling and any further appropriate action.

(2) Where there is an apparent error or omission in the record or where the record shows improper or inconsistent action by a court martial with respect to a finding or sentence which can be rectified without material prejudice to the substantial rights of the accused, the convening authority may return the record to the court for appropriate action. In no case, however, may the record be returned:

(a) For reconsideration of a finding of not guilty, or a ruling which amounts to a finding of not guilty;

(b) For reconsideration of a finding of not guilty of any charge, unless the record shows a finding of guilty under a specification laid under that charge, which sufficiently alleges a violation of some section of this code; or

(c) For increasing the severity of the sentence unless the sentence prescribed for the offense is mandatory. [1963 c 220 § 64.]

38.38.548 [Art. 62] Rehearings. (1) If the convening authority disapproves the findings and sentence of a court martial he may, except where there is lack of sufficient evidence in the record to support the findings, order a rehearing. In such a case he shall state the reasons for disapproval. If he disapproves the findings and sentence and does not order a rehearing, he shall dismiss the charges.

(2) Each rehearing shall take place before a court martial composed of members not members of the court martial which first heard the case. Upon a rehearing the accused may not be tried for any offense of which he was found not guilty by the first court martial, and no sentence in excess of or more severe than the original sentence may be imposed, unless the sentence is based upon a finding of guilty of an offense not considered upon the merits in the original proceedings, or unless the sentence prescribed for the offense is mandatory. [1963 c 220 § 65.]

38.38.552 [Art. 63] Approval by the convening authority. In acting on the findings and sentence of a court martial, the convening authority may approve only such findings of guilty, and the sentence or such part or amount of the sentence, as he finds correct in law and fact and as he in his discretion determines should be approved. Unless he indicates otherwise, approval of the sentence is approval of the findings and sentence. [1963 c 220 § 66.]

38.38.556 [Art. 64] Review of records—Disposition.

(1) If the convening authority is the governor, the governor's action on the review of any record of trial is final.

(2) In all other cases not covered by subsection (1), if the sentence of a special court-martial as approved by the convening authority includes a dishonorable discharge, whether or not suspended, the entire record shall be sent to the appropriate staff judge advocate of the state force concerned to be reviewed in the same manner as a record of trial by general court-martial. The record and the opinion of the staff judge advocate shall then be sent to the state judge advocate for review.

(3) All other special and summary court-martial records shall be sent to the judge advocate of the appropriate force of the organized militia and shall be acted upon, transmitted, and disposed of as may be prescribed by regulations of the governor.

(4) The state judge advocate shall review the record of trial in each case sent for review as provided under subsection (2) of this section. If the final action of the court-martial has resulted in an acquittal of all charges and specifications, the opinion of the state judge advocate is limited to questions of jurisdiction.

(5) The state judge advocate shall take final action in any case reviewable by the state judge advocate.

(6) In a case reviewable by the state judge advocate under this section, the state judge advocate may act only with respect to the findings and sentence as approved by the convening authority. The state judge advocate may affirm only such findings of guilty, and the sentence or such part or

amount of the sentence, as the state judge advocate finds correct in law and fact and determines, on the basis of the entire record, should be approved. In considering the record, the state judge advocate may weigh the evidence, judge the credibility of witnesses, and determine controverted questions of fact, recognizing that the trial court saw and heard the witnesses. If the state judge advocate sets aside the findings and sentence, the state judge advocate may, except where the setting aside is based on lack of sufficient evidence in the record to support the findings, order a rehearing. If the state judge advocate sets aside the findings and sentence and does not order a rehearing, he shall order that the charges be dismissed.

(7) In a case reviewable by the state judge advocate under this section, the state judge advocate shall instruct the convening authority to act in accordance with the state judge advocate's decision on the review. If the state judge advocate has ordered a rehearing but the convening authority finds a rehearing impracticable, the state judge advocate may dismiss the charges.

(8) The state judge advocate may order one or more boards of review each composed of not less than three commissioned officers of the organized militia, each of whom must be a member of the bar of the highest court of the state. Each board of review shall review the record of any trial by special court-martial, including a sentence to a dishonorable discharge, referred to it by the state judge advocate. Boards of review have the same authority on review as the state judge advocate has under this section. [1989 c 48 § 56; 1963 c 220 § 67.]

38.38.560 [Art. 65] Error of law—Lesser included offense. (1) A finding or sentence of a court martial may not be held incorrect on the ground of an error of law unless the error materially prejudices the substantial rights of the accused.

(2) Any reviewing authority with the power to approve or affirm a finding of guilty may approve or affirm so much of the finding as includes a lesser included offense. [1963 c 220 § 68.]

38.38.564 [Art. 66] Review counsel. (1) Upon the final review of a sentence of a general court-martial, the accused has the right to be represented by counsel before the reviewing authority, before the staff judge advocate, and before the state judge advocate.

(2) Upon the request of an accused entitled to be so represented, the state judge advocate shall appoint a lawyer who is a member of the organized militia and who has the qualifications prescribed in RCW 38.38.260, if available, to represent the accused before the reviewing authority, before the staff judge advocate, and before the state judge advocate, in the review of cases specified in subsection (1) of this section.

(3) If provided by the accused, an accused entitled to be so represented may be represented by civilian counsel before the reviewing authority, before the staff judge advocate, and before the state judge advocate. [1991 c 43 § 8; 1989 c 48 § 57; 1963 c 220 § 69.]

38.38.568 [Art. 67] Vacation of suspension. (1) Before the vacation of the suspension of a special court-martial sentence, or of any general court-martial sentence, the officer having special court-martial jurisdiction over the probationer shall hold a hearing on the alleged violation of probation. The probationer shall be represented at the hearing by counsel if the probationer so desires.

(2) The record of the hearing and the recommendation of the officer having special court-martial jurisdiction shall be sent for action to the governor in cases involving a general court-martial sentence and to the commanding officer of the force of the organized militia of which the probationer is a member in all other cases covered by subsection (1) of this section. If the governor or commanding officer vacates the suspension, any unexecuted part of the sentence except a dismissal shall be executed.

(3) The suspension of any other sentence may be vacated by any authority competent to convene, for the command in which the accused is serving or assigned, a court of the kind that imposed the sentence. [1989 c 48 § 58; 1963 c 220 § 70.]

38.38.572 [Art. 68] Petition for a new trial. At any time within two years after approval by the convening authority of a court-martial sentence which extends to dismissal or dishonorable discharge, the accused may petition the governor for a new trial on ground of newly discovered evidence or fraud on the court-martial. [1989 c 48 § 59; 1963 c 220 § 71.]

38.38.576 [Art. 69] Remission and suspension. (1) A convening authority may remit or suspend any part or amount of the unexecuted part of any sentence, including all uncollected forfeitures.

(2) The governor may, for good cause, substitute an administrative form of discharge for a discharge or dismissal executed in accordance with the sentence of a court martial. [1963 c 220 § 72.]

38.38.580 [Art. 70] Restoration. (1) Under such regulations as the governor may prescribe, all rights, privileges, and property affected by an executed part of a court-martial sentence which has been set aside or disapproved, except an executed dismissal or discharge, shall be restored unless a new trial or rehearing is ordered and such executed part is included in a sentence imposed upon a new trial or rehearing.

(2) If a previously executed sentence of dishonorable discharge is not imposed on a new trial, the governor shall substitute therefor a form of discharge authorized for administrative issuance unless the accused is to serve out the remainder of his enlistment.

(3) If a previously executed sentence of dismissal is not imposed on a new trial, the governor shall substitute therefor a form of discharge authorized for administrative issue, and the commissioned officer dismissed by that sentence may be reappointed by the governor alone to such commissioned grade and with such rank as in the opinion of the governor that former officer would have attained had he not been dismissed. The reappointment of such a former officer may be made if a position vacancy is available under applicable

tables of organization. All time between the dismissal and reappointment shall be considered as service for all purposes. [1989 c 48 § 60; 1963 c 220 § 73.]

38.38.584 [Art. 71] Finality of proceedings, findings and sentences. The proceedings, findings and sentences of courts martial as reviewed and approved, as required by this code, and all dismissals and discharges carried into execution under sentences by courts martial following review and approval, as required by this code, are final and conclusive. Orders publishing the proceedings of courts martial and all action taken pursuant to those proceedings are binding upon all departments, courts, agencies, and officers of the state, subject only to action upon a petition for a new trial as provided in RCW 38.38.572. [1963 c 220 § 74.]

PART X—PUNITIVE ARTICLES

38.38.624 [Art. 72] Persons to be tried or punished. No person may be tried or punished for any offense provided for in RCW 38.38.628 through 38.38.800, unless it was committed while he was in a duty status. [1963 c 220 § 75.]

38.38.628 [Art. 73] Principals. Any person subject to this code who:

(1) Commits an offense punishable by this code, or aids, abets, counsels, commands, or procures its commission; or

(2) Causes an act to be done which if directly performed by him would be punishable by this code; is a principal. [1963 c 220 § 76.]

38.38.632 [Art. 74] Accessory after the fact. Any person subject to this code who, knowing that an offense punishable by this code has been committed, receives, comforts, or assists the offender in order to hinder or prevent his apprehension, trial, or punishment shall be punished as a court martial may direct. [1963 c 220 § 77.]

38.38.636 [Art. 75] Conviction of lesser included offense. An accused may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein. [1963 c 220 § 78.]

38.38.640 [Art. 76] Attempts. (1) An act, done with specific intent to commit an offense under this code, amounting to more than mere preparation and tending, even though failing to effect its commission, is an attempt to commit that offense.

(2) Any person subject to this code who attempts to commit any offense punishable by this code shall be punished as a court martial may direct, unless otherwise specifically prescribed.

(3) Any person subject to this code may be convicted of an attempt to commit an offense although it appears on the trial that the offense was consummated. [1963 c 220 § 79.]

38.38.644 [Art. 77] Conspiracy. Any person subject to this code who conspires with any other person to commit an offense under this code shall, if one or more of the

conspirators does an act to effect the object of the conspiracy, be punished as a court martial may direct. [1963 c 220 § 80.]

38.38.648 [Art. 78] Solicitation. (1) Any person subject to this code who solicits or advises another or others to desert in violation of RCW 38.38.660 or mutiny in violation of RCW 38.38.696 shall, if the offense solicited or advised is attempted or committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed or attempted, he shall be punished as a court martial may direct.

(2) Any person subject to this code who solicits or advises another or others to commit an act of misbehavior before the enemy in violation of RCW 38.38.716 or sedition in violation of RCW 38.38.696 shall, if the offense solicited or advised is committed, be punished with the punishment provided for the commission of the offense, but, if the offense solicited or advised is not committed, he shall be punished as a court martial may direct. [1963 c 220 § 81.]

38.38.652 [Art. 79] Fraudulent enlistment, appointment, or separation. Any person who:

(1) Procures his or her own enlistment or appointment in the organized militia by knowingly false representation or deliberate concealment as to qualifications for that enlistment or appointment and receives pay or allowances thereunder; or

(2) Procures his or her own separation from the organized militia by knowingly false representation or deliberate concealment as to eligibility for that separation; shall be punished as a court-martial may direct. [1989 c 48 § 61; 1963 c 220 § 82.]

38.38.656 [Art. 80] Unlawful enlistment, appointment, or separation. Any person subject to this code who effects an enlistment or appointment in or a separation from the organized militia of any person who is known to the person to be ineligible for that enlistment, appointment, or separation because it is prohibited by law, regulation, or order shall be punished as a court-martial may direct. [1989 c 48 § 62; 1963 c 220 § 83.]

38.38.660 [Art. 81] Desertion. (1) Any member of the organized militia who:

(a) Without authority goes or remains absent from the member's unit, organization, or place of duty with intent to remain away therefrom permanently;

(b) Quits the member's unit, organization or place of duty with intent to avoid hazardous duty or to shirk important service; or

(c) Without being regularly separated from one of the organized militia enlists or accepts an appointment in the same or another one of the organized militia, or in one of the armed forces of the United States, without fully disclosing the fact that he or she has not been regularly separated; is guilty of desertion.

(2) Any commissioned officer of the organized militia who, after tender of a resignation and before notice of its

acceptance, quits his or her post or proper duties without leave and with intent to remain away therefrom permanently is guilty of desertion.

(3) Any person found guilty of desertion or attempt to desert shall be punished as a court-martial may direct. [1989 c 48 § 63; 1963 c 220 § 84.]

38.38.664 [Art. 82] Absence without leave. Any person subject to this code who, without authority:

(1) Fails to go to his appointed place of duty at the time prescribed;

(2) Goes from that place; or

(3) Absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed;

shall be punished as a court martial may direct. [1963 c 220 § 85.]

38.38.668 [Art. 83] Missing movement. Any person subject to this code who through neglect or design misses the movement of a ship, aircraft, or unit with which he is required in the course of duty to move shall be punished as a court martial may direct. [1963 c 220 § 86.]

38.38.672 [Art. 84] Contempt towards officials.

Any person subject to this code who uses contemptuous words against the president, the governor, or the governor of any other state, territory, commonwealth, or possession in which that person may be serving, shall be punished as a court martial may direct. [1963 c 220 § 87.]

38.38.676 [Art. 85] Disrespect towards superior commissioned officer. Any person subject to this code who behaves with disrespect towards his superior commissioned officer shall be punished as a court martial may direct. [1963 c 220 § 88.]

38.38.680 [Art. 86] Assaulting or wilfully disobeying superior commissioned officer. Any person subject to this code who:

(1) Strikes his superior commissioned officer or draws or lifts up any weapon or offers any violence against him while he is in the execution of his office; or

(2) Wilfully disobeys a lawful command of his superior commissioned officer; shall be punished as a court martial may direct. [1963 c 220 § 89.]

38.38.684 Insubordinate conduct toward warrant officer or noncommissioned officer. Any warrant officer or enlisted member who:

(1) Strikes or assaults a warrant officer or noncommissioned officer while that officer is in the execution of the officer's office;

(2) Wilfully disobeys the lawful order of a warrant officer or noncommissioned officer; or

(3) Treats with contempt or is disrespectful in language or deportment toward a warrant officer or noncommissioned officer while that officer is in the execution of the officer's office;

shall be punished as a court-martial may direct. [1989 c 48 § 64; 1963 c 220 § 90.]

38.38.688 [Art. 88] Failure to obey order or regulation. Any person subject to this code who:

(1) Violates or fails to obey any lawful general order or regulation;

(2) Having knowledge of any other lawful order issued by a member of the organized militia which it is the person's duty to obey, fails to obey the order; or

(3) Is derelict in the performance of the person's duties; shall be punished as a court-martial may direct. [1989 c 48 § 65; 1963 c 220 § 91.]

38.38.692 [Art. 89] Cruelty and maltreatment. Any person subject to this code who is guilty of cruelty toward, or oppression or maltreatment of, any person subject to his orders shall be punished as a court martial may direct. [1963 c 220 § 92.]

38.38.696 [Art. 90] Mutiny or sedition. (1) Any person subject to this code who:

(a) With intent to usurp or override lawful military authority refuses, in concert with any other person, to obey orders or otherwise do his duty or creates any violence or disturbance is guilty of mutiny;

(b) With intent to cause the overthrow or destruction of lawful civil authority, creates, in concert with any other person, revolt, violence, or other disturbance against that authority is guilty of sedition;

(c) Fails to do his utmost to prevent and suppress a mutiny or sedition being committed in his presence, or fails to take all reasonable means to inform his superior commissioned officer or commanding officer of a mutiny or sedition which he knows or has reason to believe is taking place, is guilty of a failure to suppress or report a mutiny or sedition.

(2) A person who is found guilty of attempted mutiny, mutiny, sedition, or failure to suppress or report a mutiny or sedition shall be punished as a court martial may direct. [1963 c 220 § 93.]

38.38.700 [Art. 91] Resistance, breach of arrest, and escape. Any person subject to this code who resists apprehension or breaks arrest or who escapes from physical restraint lawfully imposed shall be punished as a court martial may direct. [1963 c 220 § 94.]

38.38.704 [Art. 92] Releasing prisoner without proper authority. Any person subject to this code who, without proper authority, releases any prisoner committed to his charge, or who through neglect or design suffers any such prisoner to escape, shall be punished as a court martial may direct, whether or not the prisoner was committed in strict compliance with law. [1963 c 220 § 95.]

38.38.708 [Art. 93] Unlawful detention of another. Any person subject to this code who, except as provided by law or regulation, apprehends, arrests, or confines any person shall be punished as a court martial may direct. [1963 c 220 § 96.]

38.38.712 [Art. 94] Noncompliance with procedural rules. Any person subject to this code who:

(1) Is responsible for unnecessary delay in the disposition of any case of a person accused of an offense under this code; or

(2) Knowingly and intentionally fails to enforce or comply with any provision of this code regulating the proceedings before, during, or after trial of an accused; shall be punished as a court martial may direct. [1963 c 220 § 97.]

38.38.716 [Art. 95] Misbehavior before the enemy. Any person subject to this code who before or in the presence of the enemy:

(1) Runs away;

(2) Shamefully abandons, surrenders, or delivers up any command, unit, place, or military property which it is the person's duty to defend;

(3) Through disobedience, neglect, or intentional misconduct endangers the safety of any such command, unit, place, or military property;

(4) Casts away arms or ammunition;

(5) Is guilty of cowardly conduct;

(6) Quits a place of duty to plunder or pillage;

(7) Causes false alarms in any command, unit, or place under control of the armed forces of the United States or the organized militia;

(8) Wilfully fails to do his or her utmost to encounter, engage, capture, or destroy any enemy troops, combatants, vessels, aircraft, or any other thing, which it is the person's duty so to encounter, engage, capture, or destroy; or

(9) Does not afford all practicable relief and assistance to any troops, combatants, vessels, or aircraft of the armed forces belonging to the United States or their allies, to the state, or to any other state, when engaged in battle; shall be punished as a court-martial may direct. [1989 c 48 § 66; 1963 c 220 § 98.]

38.38.720 [Art. 96] Subordinate compelling surrender. Any person subject to this code who compels or attempts to compel the commander of any of the organized militia of the state, or of any other state, to give it up to an enemy or to abandon it, or who strikes the colors or flag to an enemy without proper authority, shall be punished as a court-martial may direct. [1989 c 48 § 67; 1963 c 220 § 99.]

38.38.724 [Art. 97] Improper use of countersign. Any person subject to this code who in time of war discloses the parole or countersign to any person not entitled to receive it, or who gives to another who is entitled to receive and use the parole or countersign a different parole or countersign from that which, to his knowledge, he was authorized and required to give, shall be punished as a court martial may direct. [1963 c 220 § 100.]

38.38.728 [Art. 98] Forcing a safeguard. Any person subject to this code who forces a safeguard shall be punished as a court martial may direct. [1963 c 220 § 101.]

38.38.732 [Art. 99] Captured or abandoned property. (1) All persons subject to this code shall secure all public property taken from the enemy for the service of the United States, and shall give notice and turn over to the proper authority without delay all captured or abandoned property in their possession, custody, or control.

(2) Any person subject to this code who:

(a) Fails to carry out the duties prescribed in subsection (1) hereof;

(b) Buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he receives or expects any profit, benefit, or advantage to himself or another directly or indirectly connected with himself; or

(c) Engages in looting or pillaging; shall be punished as a court martial may direct. [1963 c 220 § 102.]

38.38.736 [Art. 100] Aiding the enemy. Any person subject to this code who:

(1) Aids, or attempts to aid, the enemy with arms, ammunition, supplies, money, or other things; or

(2) Without proper authority, knowingly harbors or protects or gives intelligence to, or communicates or corresponds with or holds any intercourse with the enemy, either directly or indirectly; shall be punished as a court martial may direct. [1963 c 220 § 103.]

38.38.740 [Art. 101] Misconduct of a prisoner. Any person subject to this code who, while in the hands of the enemy in time of war:

(1) For the purpose of securing favorable treatment by his captors acts without proper authority in a manner contrary to law, custom, or regulation, to the detriment of others of whatever nationality held by the enemy as civilian or military prisoners; or

(2) While in a position of authority over such persons maltreats them without justifiable cause; shall be punished as a court martial may direct. [1963 c 220 § 104.]

38.38.744 [Art. 102] False official statements. Any person subject to this code who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing it to be false, or makes any other false official statement knowing it to be false, shall be punished as a court martial may direct. [1963 c 220 § 105.]

38.38.748 [Art. 103] Military property—Loss, damage, destruction, or wrongful disposition. Any person subject to this code who, without proper authority:

(1) Sells or otherwise disposes of;

(2) Wilfully or through neglect damages, destroys, or loses; or

(3) Wilfully or through neglect suffers to be damaged, destroyed, sold or wrongfully disposed of; any military property of the United States or of the state shall be punished as a court martial may direct. [1963 c 220 § 106.]

38.38.752 [Art. 104] Property other than military property—Waste, spoilage, or destruction. Any person subject to this code who, while in a duty status, wilfully or recklessly wastes, spoils, or otherwise wilfully and wrongfully destroys or damages any property other than military property of the United States or of the state shall be punished as a court martial may direct. [1963 c 220 § 107.]

38.38.756 [Art. 105] Improper hazarding of vessel. (1) Any person subject to this code who wilfully and wrongfully hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the organized militia shall be punished as a court-martial may direct.

(2) Any person subject to this code who negligently hazards or suffers to be hazarded any vessel of the armed forces of the United States or of the organized militia shall be punished as a court-martial may direct. [1989 c 48 § 68; 1963 c 220 § 108.]

38.38.760 [Art. 106] Drunken or reckless driving. Any person subject to this code who operates any vehicle while drunk, or in a reckless or wanton manner, shall be punished as a court martial may direct. [1963 c 220 § 109.]

38.38.764 [Art. 107] Drunk on duty—Sleeping on post—Leaving post before relief. Any person subject to this code who is found drunk on duty or sleeping upon his post, or who leaves his post before he is regularly relieved, shall be punished as a court martial may direct. [1963 c 220 § 110.]

38.38.768 [Art. 108] Dueling. Any person subject to this code who fights or promotes, or is concerned in or connives at fighting a duel, or who, having knowledge of a challenge sent or about to be sent, fails to report the fact promptly to the proper authority, shall be punished as a court martial may direct. [1963 c 220 § 111.]

38.38.772 [Art. 109] Malingering. Any person subject to this code who for the purpose of avoiding work, duty or service in the organized militia:

(1) Feigns illness, physical disablement, mental lapse or derangement; or

(2) Intentionally inflicts self-injury; shall be punished as a court-martial may direct. [1989 c 48 § 69; 1963 c 220 § 112.]

38.38.776 [Art. 110] Riot or breach of peace. Any person subject to this code who causes or participates in any riot or breach of the peace shall be punished as a court martial may direct. [1963 c 220 § 113.]

38.38.780 [Art. 111] Provoking speeches or gestures. Any person subject to this code who uses provoking or reproachful words or gestures toward any other person subject to this code shall be punished as a court martial may direct. [1963 c 220 § 114.]

38.38.784 [Art. 112] Perjury. Any person subject to this code who in a judicial proceeding or in a course of

justice conducted under this code wilfully and corruptly gives, upon a lawful oath or in any form allowed by law to be substituted for an oath, any false testimony material to the issue or matter of inquiry is guilty of perjury and shall be punished as a court martial may direct. [1963 c 220 § 115.]

38.38.788 [Art. 113] Frauds against the government.

Any person subject to this code:

(1) Who, knowing it to be false or fraudulent:

(a) Makes any claim against the United States, the state, or any officer thereof; or

(b) Presents to any person in the civil or military service thereof, for approval or payment any claim against the United States, the state, or any officer thereof;

(2) Who, for the purpose of obtaining the approval, allowance, or payment of any claim against the United States, the state, or any officer thereof:

(a) Makes or uses any writing or other paper knowing it to contain any false or fraudulent statements;

(b) Makes any oath to any fact or to any writing or other paper knowing the oath to be false; or

(c) Forges or counterfeits any signature upon any writing or other paper, or uses any such signature knowing it to be forged or counterfeited;

(3) Who, having charge, possession, custody, or control of any money, or other property of the United States or the state, furnished or intended for the armed forces of the United States or the organized militia, knowingly delivers to any person having authority to receive it, any amount thereof less than that for which the person receives a certificate or receipt; or

(4) Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States or the state, furnished or intended for the armed forces of the United States or the organized militia, makes or delivers to any person such writing without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States or the state; shall, upon conviction, be punished as a court-martial may direct. [1989 c 48 § 70; 1963 c 220 § 116.]

38.38.792 [Art. 114] Larceny and wrongful appropriation. (1) Any person subject to this code who wrongfully takes, obtains, or withholds, by any means, from the possession of the owner or of any other person any money, personal property, or article of value of any kind:

(a) With intent permanently to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, steals that property and is guilty of larceny; or

(b) With intent temporarily to deprive or defraud another person of the use and benefit of property or to appropriate it to his own use or the use of any person other than the owner, is guilty of wrongful appropriation.

(2) Any person found guilty of larceny or wrongful appropriation shall be punished as a court martial may direct. [1963 c 220 § 117.]

38.38.796 [Art. 115] Conduct unbecoming an officer and a gentleman. Any commissioned officer who is

convicted of conduct unbecoming an officer and a gentleman shall be punished as a court martial may direct. [1963 c 220 § 118.]

38.38.800 [Art. 116] General article. Though not specifically mentioned in this code, all disorders and neglects to the prejudice of good order and discipline in the organized militia, of which persons subject to this code may be guilty, shall be taken cognizance of by a general, special or summary court-martial, according to the nature and degree of the offense, and shall be punished at the discretion of that court. However, cognizance may not be taken of, and jurisdiction may not be extended to, the crimes of murder, manslaughter, rape, robbery, maiming, sodomy, arson, extortion, assault, burglary, or housebreaking, jurisdiction of which is reserved to civil courts. [1989 c 48 § 71; 1963 c 220 § 119.]

PART XI—MISCELLANEOUS PROVISIONS

38.38.840 [Art. 117] Courts of inquiry. (1) Courts of inquiry to investigate any matter may be convened by the governor or by any other person designated by the governor for that purpose, whether or not the persons involved have requested such an inquiry: PROVIDED, That upon the request of the officer involved such an inquiry shall be instituted as hereinabove set forth.

(2) A court of inquiry consists of three or more commissioned officers. For each court of inquiry the convening authority shall also appoint counsel for the court.

(3) Any person subject to this code whose conduct is subject to inquiry shall be designated as a party. Any person subject to this code or employed in the state military department, who has a direct interest in the subject of inquiry has the right to be designated as a party upon request to the court. Any person designated as a party shall be given due notice and has the right to be present, to be represented by counsel, to cross-examine witnesses, and to introduce evidence.

(4) Members of a court of inquiry may be challenged by a party, but only for cause stated to the court.

(5) The members, counsel, the reporter, and interpreters of courts of inquiry shall take an oath or affirmation to faithfully perform their duties.

(6) Witnesses may be summoned to appear and testify and be examined before courts of inquiry, as provided for courts-martial.

(7) Courts of inquiry shall make findings of fact but may not express opinions or make recommendations unless required to do so by the convening authority.

(8) Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signatures of the president and counsel for the court and forwarded to the convening authority. If the record cannot be authenticated by the president, it shall be signed by a member in lieu of the president. If the record cannot be authenticated by the counsel for the court, it shall be signed by a member in lieu of the counsel. [1989 c 48 § 72; 1963 c 220 § 120.]

38.38.844 [Art. 118] Authority to administer oaths. (1) The following members of the organized militia may administer oaths for the purposes of military administration,

including military justice, and affidavits may be taken for those purposes before persons having the general powers of a notary public:

- (a) The state judge advocate and all assistant state judge advocates;
- (b) All law specialists;
- (c) All summary courts-martial;
- (d) All adjutants, assistant adjutants, acting adjutants, and personnel adjutants;
- (e) The military judge, president, trial counsel, and assistant trial counsel for all general and special courts-martial;
- (f) The president and the counsel for the court of any court of inquiry;
- (g) All officers designated to take a deposition;
- (h) All persons detailed to conduct an investigation; and
- (i) All other persons designated by regulations of the governor.

(2) Officers of the organized militia may not be authorized to administer oaths as provided in this section unless they are on active state service or inactive duty for training in or with those forces under orders of the governor as prescribed in this code.

(3) The signature without seal of any such person, together with the title of the person's office, is prima facie evidence of the person's authority. [1989 c 48 § 73; 1963 c 220 § 121.]

38.38.848 [Art. 119] Sections to be explained. RCW 38.38.008, 38.38.012, 38.38.064 through 38.38.132, 38.38.252, 38.38.260, 38.38.372, 38.38.480, 38.38.624 through 38.38.792, and 38.38.848 through 38.38.860 shall be carefully explained to every enlisted member at the time of the member's enlistment or transfer or induction into, or at the time of the member's order to duty in or with any of the organized militia or within thirty days thereafter. They shall also be explained annually to each unit of the organized militia. A complete text of this code and of the regulations prescribed by the governor thereunder shall be made available to any member of the organized militia, upon request, for personal examination. [1989 c 48 § 74; 1963 c 220 § 122.]

38.38.852 [Art. 120] Complaints of wrongs. Members of the organized militia who believe themselves wronged by their commanding officer, and who, upon due application to that commanding officer, are refused redress, may complain to any superior commissioned officer, who shall forward the complaint to the governor or adjutant general. The governor or adjutant general shall examine the complaint and take proper measures for redressing the wrong complained of. [1989 c 48 § 75; 1963 c 220 § 123.]

38.38.856 [Art. 121] Redress of injuries to property. (1) Whenever complaint is made to any commanding officer that wilful damage has been done to the property of any person or that the person's property has been wrongfully taken by members of the organized militia, the commanding officer may, subject to such regulations as the governor may prescribe, convene a board to investigate the complaint. The board shall consist of from one to three commissioned

officers and, for the purpose of that investigation, it has power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by the board is subject to the approval of the commanding officer, and in the amount approved by the commanding officer shall be charged against the pay of the offenders. The order of the commanding officer directing charges herein authorized is conclusive, except as provided in subsection (3) of this section, on any disbursing officer for the payment by the disbursing officer to the injured parties of the damages so assessed and approved.

(2) If the offenders cannot be ascertained, but the organization or detachment to which they belong is known, charges totaling the amount of damages assessed and approved may be paid to the injured parties from the military funds of the units of the organized militia to which the offenders belonged.

(3) Any person subject to this code who is accused of causing wilful damage to property has the right to be represented by counsel, to summon witnesses in the person's behalf, and to cross-examine those appearing against him or her. The person has the right of appeal to the next higher commander. [1989 c 48 § 76; 1963 c 220 § 124.]

38.38.860 [Art. 122] Execution of process and sentence. In the organized militia not in federal service, the processes and sentences of its courts-martial shall be executed by the civil officers prescribed by the laws of the state. [1989 c 48 § 77; 1963 c 220 § 125.]

38.38.864 [Art. 123] Process of military courts. (1) Military courts may issue any process or mandate necessary to carry into effect their powers. Such a court may issue subpoenae and subpoenae duces tecum and enforce by attachment attendance of witnesses and production of books and records, when it is sitting within the state and the witnesses, books and records sought are also so located.

(2) Process and mandates may be issued by summary courts-martial, or the military judge of other military courts and may be directed to and may be executed by the marshals of the military court or any peace officer and shall be in such form as may be prescribed by regulations issued under this code.

(3) All officers to whom process or mandates may be so directed shall execute them and make return of their acts thereunder according to the requirements of those documents. Except as otherwise specifically provided in this code, no such officer may demand or require payment of any fee or charge for receiving, executing, or returning such a process or mandate or for any service in connection therewith. [1989 c 48 § 78; 1963 c 220 § 126.]

38.38.868 [Art. 124] Payment of fines and disposition thereof. Fines imposed by a military court may be paid to it or to an officer executing its process. The amount of such a fine may be noted upon any state roll or account for pay of the delinquent and deducted from any pay or allowance due or thereafter to become due the person, until the fine is liquidated. Any sum so deducted shall be turned in

to the military court which imposed the fine. Notwithstanding any other law, the officer collecting a fine or penalty imposed by a military court upon an officer or enlisted person shall pay it within thirty days to the state treasurer. Such a fine becomes a part of, is credited to, and may be spent from, the military fund of the organization or detachment to which the officer or enlisted person who paid the fine belonged. The treasurer of the state shall then report the amount thereof designating the organization or detachment to which it belongs, to the adjutant general of the state, and shall pay it over to the organization or detachment on request of its commanding officer. [1989 c 48 § 79; 1963 c 220 § 127.]

38.38.872 [Art. 125] Immunity for action of military courts. No accused may bring an action or proceeding against the convening authority or a member of a military court or officer or person acting under its authority or reviewing its proceedings because of the approval, imposition, or execution of any sentence or the imposition or collection of a fine or penalty, or the execution of any process or mandate of a military court. [1963 c 220 § 128.]

38.38.876 [Art. 126] Presumption of jurisdiction. The jurisdiction of the military courts and boards established by this code shall be presumed and the burden of proof rests on any person seeking to oust those courts or boards of jurisdiction in any action or proceeding. [1963 c 220 § 129.]

38.38.880 [Art. 127] Delegation of authority by the governor. The governor may delegate any authority vested in him under this code, and may provide for the subdelegation of any such authority, except the power given him by RCW 38.38.192 and 38.38.240. [1963 c 220 § 130.]

38.38.884 [Art. 128] Uniformity of interpretation. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and, so far as practical, to make that law uniform with the law of the United States. [1963 c 220 § 131.]

38.38.888 [Art. 129] Short title. This chapter may be cited as the "Washington code of military justice." [1963 c 220 § 132.]

Chapter 38.40

MISCELLANEOUS PROVISIONS

Sections

38.40.010	Liability of officers and enlisted persons on duty.
38.40.020	Not liable for exercise of judgment.
38.40.025	Liability of state for federal activities.
38.40.030	Compensation for death or disability.
38.40.040	Interference with employment—Penalty.
38.40.050	Discharge from employment—Penalty.
38.40.060	Military leaves for public employees.
38.40.100	Notice for duty.
38.40.110	Employment or membership in other organizations— Discrimination prohibited—Penalty—Civil cause of action.
38.40.120	Authorized military organizations.

(1998 Ed.)

38.40.130 Corporations may be formed.

38.40.150 Property to remain public property.

Acknowledgments and powers of attorney: Chapter 73.20 RCW.

Acquisitions of lands for permanent military installations: Chapter 37.16 RCW.

Common carriers—Special exceptions on carriage of property, government freight, etc.: RCW 81.28.080.

Eminent domain

condemnation for military purposes: RCW 8.04.170, 8.04.180.

notice where military land is involved: RCW 8.28.030.

Evidence

proof of missing in action, capture by enemy, etc.: RCW 5.40.030.

written finding of presumed death as prima facie evidence: RCW 5.40.020.

Federal areas and jurisdiction: Title 37 RCW.

Gas bombs: RCW 70.74.310.

Joint armory sites: RCW 36.64.050.

Juries—Persons exempt: RCW 2.36.080.

Mental illness hospitalization

authority over patient—Federal agencies, private establishments: RCW 71.02.490.

commitment to veterans administration or other federal agency—General provision: RCW 73.36.165.

Militia

privilege from arrest: State Constitution Art. 10 § 5.

soldiers' home: State Constitution Art. 10 § 3.

Personal exemptions—Pension money exempt: RCW 6.15.020.

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

Soldiers' and veterans' homes: Chapter 72.36 RCW.

Statute of limitations tolled—As to person in military service of United States: RCW 4.16.220.

Tide and shore land grants to United States: RCW 79.94.410 through 79.94.440.

Unlawful firearms—Exception: RCW 9.41.190.

Veterans and veterans' affairs: Title 73 RCW.

Veterans' rehabilitation council: Chapter 43.61 RCW.

Voter, when privileged from military duty: State Constitution Art. 6 § 5.

38.40.010 Liability of officers and enlisted persons on duty. Members of the militia ordered into active service of the state by any proper authority shall not be liable civilly or criminally for any act or acts done by them while on such duty nor shall any action lie against any officer or enlisted person for any acts done by the officer or enlisted person in line of duty by virtue of any order which may thereafter be held invalid by any civil court. When a suit or proceeding shall be commenced in any court by any person against any officer or enlisted person of the militia for any act done by such officer or enlisted person in his or her official capacity or in the discharge of any duty, or against any person acting under the authority or order of such officer or by virtue of any warrant issued pursuant to law, the defendant may require the person prosecuting or instituting the proceeding to give security for the payment of all costs that may be awarded to the defendant, and the defendant in all cases may make a general denial and, under such general denial, give all other or any special defense matter in evidence. In case the plaintiff shall be nonsuited or the verdict or judgment be in favor of the defendant, treble costs shall be assessed against the plaintiff. The defendant in such action shall be defended by the attorney general at the expense of the state, but private counsel may also be employed by the defendant. The venue of all such actions shall be Thurston county and the state of Washington shall be in all cases a necessary

party defendant. [1989 c 19 § 45; 1943 c 130 § 13; Rem. Supp. 1943 § 8603-13. Cf. 1909 c 134 § 25, part; 1895 c 108 § 173, part.]

38.40.020 Not liable for exercise of judgment. The commanding officer of any of the military forces of the state of Washington engaged under the order of proper authority in the suppression of insurrection, the dispersion of a mob, the protection of life or property, or the enforcement of the laws, shall exercise discretion as to the propriety of the means to be used in controlling or dispersing of any mob or other unlawful assembly and, if he or she exercises his or her honest judgment thereon, he or she shall not be liable in either a civil or criminal action for any act done in line of duty. [1989 c 19 § 46; 1943 c 130 § 14; Rem. Supp. 1943 § 8603-14. Cf. 1909 c 134 § 25, part; 1895 c 108 § 173, part.]

38.40.025 Liability of state for federal activities. Neither the state of Washington, its officers, employees, or agents, nor any member of the militia may be held liable in any civil action for damages arising out of any of the activities of the military forces of the state of Washington while engaged in activities during which the officers, employees, agents, or members are considered employees of the federal government under the federal tort claims act, 26 U.S.C. Sec. 2671 et seq. [1987 c 26 § 2.]

Legislative declaration—1987 c 26: "The legislature recognizes that Congress has established comprehensive administrative programs to compensate members of the military forces for injuries they may incur while performing training for national defense." [1987 c 26 § 1.]

Severability—1987 c 26: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 26 § 3.]

38.40.030 Compensation for death or disability. If any member of the organized militia is injured, incapacitated, or otherwise disabled while in active state service or inactive duty as a member of the organized militia, he or she shall receive from the state of Washington just and reasonable relief in the amount to be determined as provided in this section, including necessary medical care. If the member dies from disease contracted or injury received or is killed while in active state service or inactive duty under order of the governor, then the dependents of the deceased shall receive such compensation as may be allowed as provided in this section. If the United States or any agent thereof, in accordance with any federal statute or regulation, furnishes monetary assistance, benefits, or other temporary or permanent relief to militia members or to their dependents for injuries arising out of and occurring in the course of their activities as militia members, but not including Social Security benefits, then the amount of compensation which any militia member or his or her dependents are otherwise entitled to receive from the state of Washington as provided in this section shall be reduced by the amount of monetary assistance, benefits, or other temporary or permanent relief the militia member or his or her dependents have received and will receive from the United States or any agent thereof as a result of his or her injury. All claims arising under this section shall be inquired into by a board of three officers, at

least one being a medical officer, to be appointed by the adjutant general. The board has the same power to take evidence, administer oaths, issue subpoenas, compel witnesses to attend and testify and produce books and papers, and punish their failure to do so as is possessed by a general court martial. The amount of compensation or benefits payable shall conform as nearly as possible to the general schedule of payments and awards provided under the workers' compensation law in effect in the state of Washington at the time the disability or death occurred. The findings of the board shall be reviewed by the adjutant general and submitted to the governor for final approval. The reviewing officer or the governor may return the proceedings for revision or for the taking of further testimony. The action of the board when finally approved by the governor is final and conclusive and constitutes the fixed award for the injury or loss and is a debt of the state of Washington. [1989 c 19 § 47; 1987 c 185 § 5; 1984 c 198 § 5; 1943 c 130 § 40; Rem. Supp. 1943 § 8603-40. Prior: 1923 c 49 § 3; 1917 c 107 § 38; 1909 c 134 § 60; 1895 c 108 § 92.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Workers' compensation: Title 51 RCW.

38.40.040 Interference with employment—Penalty. A person, who either alone, or with another, wilfully deprives a member of the organized militia of Washington of his or her employment or prevents such member being employed, or obstructs or annoys said member or his or her employer in their trade, business or employment, because he or she is such member, or dissuades any person from enlisting in said organized militia by threat or injury to him or her in their employment, trade or business, in case he or she shall so enlist, shall be guilty of a gross misdemeanor and on conviction thereof shall be fined in a sum not exceeding five hundred dollars, or imprisonment in the county jail not more than six months, or by both such fine and imprisonment. [1989 c 19 § 48; 1943 c 130 § 46; Rem. Supp. 1943 § 8603-46. Prior: 1917 c 107 § 41; 1909 c 134 § 67; 1895 c 108 § 104, part.]

38.40.050 Discharge from employment—Penalty. No member of the organized militia of Washington shall be discharged by his or her employer by reason of the performance of any military duties upon which he or she may be ordered. When any member of the organized militia of Washington is ordered upon active state service or inactive duty which takes the member from his or her employment the member may apply upon the termination of such duty to be restored to his or her position and employment, and if the tour of duty shall have continued for a period not longer than three months, any employer or the officer or manager of any firm or corporation having authority to reemploy such member and failing to do so shall be guilty of a gross misdemeanor, and on conviction thereof shall be fined in any sum not exceeding five hundred dollars, or imprisonment in the county jail for a period not exceeding six months, or by both such fine and imprisonment. [1989 c 19 § 49; 1943 c 130 § 48; Rem. Supp. 1943 § 8603-48. Prior: 1917 c 107 § 43; 1909 c 134 § 69; 1895 c 108 § 104, part.]

38.40.060 Military leaves for public employees.

Every officer and employee of the state or of any county, city, or other political subdivision thereof who is a member of the Washington national guard or of the army, navy, air force, coast guard, or marine corps reserve of the United States, or of any organized reserve or armed forces of the United States shall be entitled to and shall be granted military leave of absence from such employment for a period not exceeding fifteen days during each calendar year. Such leave shall be granted in order that the person may report for active duty, when called, or take part in active training duty in such manner and at such time as he or she may be ordered to active duty or active training duty. Such military leave of absence shall be in addition to any vacation or sick leave to which the officer or employee might otherwise be entitled, and shall not involve any loss of efficiency rating, privileges, or pay. During the period of military leave, the officer or employee shall receive from the state, or the county, city, or other political subdivision, his or her normal pay. [1991 c 25 § 1; 1989 c 19 § 50; 1957 c 236 § 1; 1939 c 113 § 1.]

Application—1991 c 25: "This act applies to all public employees and officers who reported for active duty or active training duty, under RCW 38.40.060, on or after August 2, 1990." [1991 c 25 § 2.]

38.40.100 Notice for duty.

Orders for duty may be oral or written. Officers and enlisted persons may be warned for duty as follows: Either by stating the substance of the order, or by reading the order to the person warned, or by delivering a copy of such order to such person, or by leaving a copy of such order at his or her last known place of abode or business, with some person of suitable age and discretion, or by sending a copy of such order or notice containing the substance thereof, to such person by mail, directed to his or her last known place of abode or business. Orders may be transmitted by telegraph or telephone. Such warning may be given by any officer or authorized enlisted person. The officer or enlisted person giving such warning shall, when required, make a return thereof, containing the names of persons warned and the time, place and manner of warning. Such returns shall be verified on oath and shall be prima facie evidence, on the trial of any person returned as a delinquent, of the facts therein stated. [1989 c 19 § 51; 1943 c 130 § 53; Rem. Supp. 1943 § 8603-53. Prior: 1909 c 134 § 65; 1895 c 108 § 102.]

38.40.110 Employment or membership in other organizations—Discrimination prohibited—Penalty—Civil cause of action. No club, society, association, corporation, employer, or organization shall by any constitution, rule, bylaws, resolution, vote or regulation, or otherwise, discriminate against or refuse to hire, employ, or reemploy any member of the organized militia of Washington because of his or her membership in said organized militia. Any person or persons, club, society, association, employer, corporation, or organization, violating or aiding, abetting, or assisting in the violation of any provision of this section shall be guilty of a misdemeanor and on conviction thereof shall be fined in any sum not exceeding one hundred dollars and in addition thereto shall forfeit the right to do business for a period of thirty days. Any person who has been discriminated against in violation of this section shall have a civil cause

of action for damages. [1991 c 43 § 9; 1989 c 19 § 52; 1943 c 130 § 47; Rem. Supp. 1943 § 8603-47. Prior: 1917 c 107 § 42; 1909 c 134 § 68.]

38.40.120 Authorized military organizations. No organized body other than the recognized militia organizations of this state, armed forces of the United States, students of educational institutions where military science is a prescribed part of the course of instruction or bona fide veterans organizations shall associate themselves together as a military company or organize or parade in public with firearms: PROVIDED, That nothing herein shall be construed to prevent authorized parades by the organized militia of another state or armed forces of foreign countries. Any person participating in any such unauthorized organization shall be guilty of a misdemeanor. [1989 c 19 § 53; 1943 c 130 § 54; Rem. Supp. 1943 § 8603-54. Prior: 1909 c 249 § 294; 1903 c 135 § 1.]

38.40.130 Corporations may be formed. The officers, or the officers and enlisted persons of any regiment, battalion, company or similar unit of the organized militia of Washington, or the officers and enlisted persons of any two or more companies or similar units of the organized militia of the state of Washington, located at the same station, are hereby authorized to organize themselves into a corporation for social purposes and for the purpose of holding, acquiring and disposing of such property, real and personal, as such military organizations may possess or acquire. Such corporations shall not be required to pay any filing or license fee to the state.

The dissolution or disbandment of any such unit as a military organization shall not in itself terminate the existence of the corporation, but the existence of the same may continue for the period limited in its articles of incorporation for the benefit of such corporation.

Upon the dissolution or disbandment of any such unit which shall not have incorporated, and which shall at the time of such dissolution or disbandment possess any funds or property, the title to such funds or property shall immediately vest in the state of Washington, and the adjutant general shall take possession thereof and dispose of the same to the best interest of the organized militia of Washington. [1989 c 19 § 54; 1943 c 130 § 49; Rem. Supp. 1943 § 8603-49. Prior: 1923 c 49 § 4; 1917 c 107 § 44; 1915 c 19 § 1; 1909 c 134 § 71; 1895 c 108 §§ 123, 124.]

38.40.150 Property to remain public property. All property issued to organizations and members of the organized militia of Washington shall be and remain public property. [1943 c 130 § 38; Rem. Supp. 1943 § 8603-38. Prior: 1917 c 107 § 33; 1909 c 134 § 51; 1895 c 108 § 78.]

Chapter 38.44**ENROLLMENT OF PERSONS**

Sections

38.44.010	Commander-in-chief may order enrollment.
38.44.020	Notice of enrollment.
38.44.030	Exemptions.
38.44.040	Penalties for dereliction or false certificate.

38.44.050 Compensation of enrolling officer.
 38.44.060 Examination of records.

Militia—Exemption from military duty: State Constitution Art. 10 § 6.

38.44.010 Commander-in-chief may order enrollment. Whenever the commander-in-chief shall deem it necessary, in event of, or imminent danger of war, insurrection, rebellion, invasion, tumult, riot, resistance to law or process, breach of the peace, public disaster, or the imminent occurrence of any of these events, the commander-in-chief may order an enrollment by counties of all persons subject to military duty, designating the county assessor or some other person for each county to act as county enrolling officer. Each county enrolling officer may appoint such assistant or assistants as may be authorized by the commander-in-chief. In each county the enrollment shall include every sane able bodied inhabitant not under sentence for a felony, who is more than eighteen and less than forty-five years of age. The enrollment shall be made in triplicate and shall state the name, residence, age, occupation and previous or existing military or naval service of each person enrolled. When complete the rolls shall be verified under oath by the enrolling officer, who shall immediately thereupon file one copy with the adjutant general of the state and another with the county auditor, retaining the third copy for himself or herself. [1989 c 19 § 55; 1973 1st ex.s. c 154 § 57; 1909 c 134 § 4; 1895 c 108 § 4; RRS § 8456.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

38.44.020 Notice of enrollment. Persons making an enrollment under this chapter shall, at the time of making same, serve a notice of such enrollment upon each person enrolled, by delivering such notice to the enrollee personally or by leaving it with some person of suitable age and discretion at his or her place of business or residence, or by mailing such notice to him or her at the enrollee's last known place of residence, and shall make a return under oath of such service to accompany the copy of the enrollment filed with the adjutant general. The return shall be prima facie evidence of the facts therein. [1991 c 43 § 10; 1989 c 19 § 56; 1909 c 134 § 5; 1895 c 108 § 5; RRS § 8457.]

38.44.030 Exemptions. Whenever an enrollment shall have been ordered under this chapter, the commanding officers of existing organizations of militia, and the chiefs of all police and fire departments shall make and deliver to the enrolling officer of the county in which such organization and departments are stationed, verified lists in triplicate of the members of their respective commands and departments, and the enrolling officer shall mark "Exempt" opposite the names of all persons so listed, attaching one copy of each such list to each copy of the enrollment. The enrolling officer shall also mark "Exempt" opposite the names of all federal, state and county officers. All other persons claiming exemption must within fifteen days after service upon them of the notice of enrollment make a written verified claim in duplicate of such exemption and file the same in the office of the county auditor, who shall within five days thereafter forward one copy thereof with remarks and recommendations

to the adjutant general. Upon the expiration of the time within which any claim of exemption may be filed and received by the adjutant general, the latter shall notify the county auditor of the decision in each case where exemption has been claimed, and the county auditor shall write upon the roll opposite the name of each person whose claim of exemption has been allowed by the adjutant general, the word "Exempt." All those on the roll not marked "Exempt" shall be subject to military duty. [1991 c 43 § 11; 1989 c 19 § 57; 1909 c 134 § 6; 1895 c 108 § 6, part; RRS § 8458.]

38.44.040 Penalties for dereliction or false certificate. If any officer or person, who becomes charged under this chapter with any duty relating to an enrollment of persons subject to military duty, refuses or neglects to perform the same within the time and substantially in the manner required by law, or if he or she shall knowingly make any false certificate, or if, when acting as county or assistant enrolling officer, he or she shall knowingly or willfully omit from the roll any person required by this chapter to be enrolled he or she shall thereby forfeit not less than one hundred nor more than five hundred dollars, to be sued for in the name of the state of Washington by the prosecuting attorney of the county in which such offense shall occur, the amount of the penalty to be determined by the court, and, when recovered, to be paid into the general fund of the state. [1991 c 43 § 12; 1989 c 19 § 58; 1909 c 134 § 7; RRS § 8459.]

38.44.050 Compensation of enrolling officer. Each county enrolling officer shall be allowed the sum of five cents per name enrolled and served with notice of enrollment by the enrolling officer or assistants, to be audited and paid as other military bills out of any moneys in the general fund appropriated to the military department, and from such allowance the enrolling officer must pay the assistant or assistants. [1991 c 43 § 13; 1989 c 19 § 59; 1909 c 134 § 8; RRS § 8460.]

38.44.060 Examination of records. All civil officers in each county, city and town shall allow persons authorized under this chapter to make enrollments, at all proper times, to examine their records and take copies thereof or information therefrom. It shall be the duty of every person, under the penalties provided in RCW 38.44.040, upon application of any person legally authorized to make an enrollment, truthfully to state all of the facts within his or her knowledge concerning any individual of whom the enroller shall make inquiry. In event of a violation of this section the enroller shall report the facts to the prosecuting attorney, who shall at once proceed to enforce the penalty. [1991 c 43 § 14; 1989 c 19 § 60; 1909 c 134 § 9; 1895 c 108 § 6, part; RRS § 8461.]

Chapter 38.48

STATE AND NATIONAL DEFENSE

Sections

38.48.050 Acceptance of national defense facilities act.

Reviser's note: The following acts, which appear to have been of limited duration, are omitted from RCW:

(1) 1941 c 200, 1943 c 191; RRS §§ 8607-7 through 8607-15; Act in aid of national defense;

(2) 1943 c 93; Authorizing sale or lease of tools and equipment to federal agencies;

(3) 1943 c 200; Washington state war council; and

(4) 1945 c 211; Army drill pay for active state guard.

38.48.050 Acceptance of national defense facilities act. The legislature hereby expresses its intention to secure to this state the benefits of the act of congress entitled the "National Defense Facilities Act" (10 U.S.C. Sec. 2231, et seq., as amended), and the state military department shall be charged with the duty to cooperate with any official or agency of the United States having powers or duties under the provisions of the said act of congress for the acquisition, construction, expansion, rehabilitation or conversion of facilities necessary for the administration and training of units of the state military department and reserve components of the armed forces of the United States. The provisions of the said act of congress are hereby accepted by this state and this state will observe and comply with the requirements thereof. [1989 c 19 § 61; 1953 c 181 § 1; 1953 c 277 § 4.]

Chapter 38.52

EMERGENCY MANAGEMENT

Sections

38.52.005 State military department to administer emergency management program—Local organizations authorized to change name.

38.52.010 Definitions.

38.52.020 Declaration of policy and purpose.

38.52.030 Director—Comprehensive emergency management plan—State-wide enhanced 911 emergency communications network—State coordinator of search and rescue operations—State program for emergency assistance—State coordinator for radioactive and hazardous waste emergency response programs.

38.52.037 Comprehensive state mine rescue plan—Submittal to legislature

38.52.040 Emergency management council—Members—Ad hoc committees—Function as state emergency response commission—Rules review.

38.52.050 Governor's general powers and duties.

38.52.070 Local organizations and joint local organizations authorized—Establishment, operation—Emergency powers, procedures.

38.52.080 Outside aid—Rights and liabilities—Claims.

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38.52.170 Plan for federal area.

38.52.180 Liability for property damage, bodily injury, death—Immunity—Assumption by state—Indemnification.

38.52.190 Compensation for injury or death—Chapter exclusive.

38.52.195 Exemption from liability while providing construction, equipment or work.

38.52.1951 Application of exemption from liability for architects and engineers.

38.52.198 Emergency care, rescue, assistance, or recovery services in mine rescue or recovery work—Immunity from liability.

38.52.200 Liability for compensation is in lieu of other liability—Exception.

38.52.205 Claims arising from emergency management related activities—Filing—Contents.

38.52.207 Claims arising from emergency management related activities—Filing—Consideration, adjustment, settlement, etc., by director—Effect.

38.52.210 Compensation boards—Established.

38.52.220 Compensation boards—Meetings—Claims not necessitating board meeting.

38.52.230 Compensation boards—Attendance of witnesses, oaths, rules—Members uncompensated.

38.52.240 Compensation boards—Duties as to compensation applications.

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38.52.260 When compensation furnished.

38.52.270 Minors entitled to benefits.

38.52.280 Compensation and benefits limited by appropriation.

38.52.290 Applicability of workers' compensation law.

38.52.300 Right of action against third party.

38.52.310 Coverage, classification, registration, of workers.

38.52.320 Schedule of payments.

38.52.330 Expenditures authorized—Claims, payment and disposition—Appeals.

38.52.340 Benefits under other compensation plans.

38.52.350 Benefits furnished under federal law—Reduction of state benefits.

38.52.360 Medical, surgical or hospital treatment.

38.52.370 Medical, surgical or hospital treatment—Reimbursement.

38.52.380 State compensation denied if payment prevents federal benefits.

38.52.390 Contracts or work on cost basis for emergency management activities.

38.52.400 Search and rescue activities—Powers and duties of local officials.

38.52.410 Search and rescue activities—Distribution of funds for compensation and reimbursement of volunteers.

38.52.420 Model contingency plan for pollution control facilities and hazardous waste management.

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38.52.550 Emergency communications systems and information—Immunity from civil liability.

38.52.560 Automatic number identification—Wireless two-way telecommunications service.

38.52.900 Short title.

38.52.920 Repeal and saving.

38.52.930 Transfer of powers, duties, and functions to state military department.

Hazardous materials incidents, handling and liability: RCW 70.136.010 through 70.136.070.

38.52.005 State military department to administer emergency management program—Local organizations authorized to change name. The department shall adminis-

ter the comprehensive emergency management program of the state of Washington as provided for in this chapter. All local organizations, organized and performing emergency management functions pursuant to RCW 38.52.070, may change their name and be called the department/division of emergency management. [1995 c 391 § 1; 1986 c 266 § 22; 1984 c 38 § 1; 1972 ex.s. c 6 § 1.]

Effective date—1995 c 391: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 391 § 18.]

Transfer of powers and duties of department of emergency management and office of archaeology and historic preservation—Construction of statutory references: "The department of emergency management and the office of archaeology and historic preservation are hereby abolished and their powers, duties, and functions are hereby transferred to the department of community development. All references to the director of emergency management or the department of emergency management and the office of archaeology and historic preservation in the Revised Code of Washington shall be construed to mean the director or department of community development." [1986 c 266 § 1.]

Severability—1986 c 266: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 266 § 138.]

38.52.010 Definitions. As used in this chapter:

(1) "Emergency management" or "comprehensive emergency management" means the preparation for and the carrying out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for, respond to, and recover from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards, whether natural, technological, or human caused, and to provide support for search and rescue operations for persons and property in distress. However, "emergency management" or "comprehensive emergency management" does not mean preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

(2) "Local organization for emergency services or management" means an organization created in accordance with the provisions of this chapter by state or local authority to perform local emergency management functions.

(3) "Political subdivision" means any county, city or town.

(4) "Emergency worker" means any person, including but not limited to an architect registered under chapter 18.08 RCW or a professional engineer registered under chapter 18.43 RCW, who is registered with a local emergency management organization or the department and holds an identification card issued by the local emergency management director or the department for the purpose of engaging in authorized emergency management activities or is an employee of the state of Washington or any political subdivision thereof who is called upon to perform emergency management activities.

(5) "Injury" as used in this chapter shall mean and include accidental injuries and/or occupational diseases arising out of emergency management activities.

(6)(a) "Emergency or disaster" as used in all sections of this chapter except RCW 38.52.430 shall mean an event or set of circumstances which: (I) Demands immediate action to preserve public health, protect life, protect public property,

or to provide relief to any stricken community overtaken by such occurrences, or (ii) reaches such a dimension or degree of destructiveness as to warrant the governor declaring a state of emergency pursuant to RCW 43.06.010.

(b) "Emergency" as used in RCW 38.52.430 means an incident that requires a normal police, coroner, fire, rescue, emergency medical services, or utility response as a result of a violation of one of the statutes enumerated in RCW 38.52.430.

(7) "Search and rescue" means the acts of searching for, rescuing, or recovering by means of ground, marine, or air activity any person who becomes lost, injured, or is killed while outdoors or as a result of a natural, technological, or human caused disaster, including instances involving searches for downed aircraft when ground personnel are used. Nothing in this section shall affect appropriate activity by the department of transportation under chapter 47.68 RCW.

(8) "Executive head" and "executive heads" means the county executive in those charter counties with an elective office of county executive, however designated, and, in the case of other counties, the county legislative authority. In the case of cities and towns, it means the mayor in those cities and towns with mayor-council or commission forms of government, where the mayor is directly elected, and it means the city manager in those cities and towns with council manager forms of government. Cities and towns may also designate an executive head for the purposes of this chapter by ordinance.

(9) "Director" means the adjutant general.

(10) "Local director" means the director of a local organization of emergency management or emergency services.

(11) "Department" means the state military department.

(12) "Emergency response" as used in RCW 38.52.430 means a public agency's use of emergency services during an emergency or disaster as defined in subsection (6)(b) of this section.

(13) "Expense of an emergency response" as used in RCW 38.52.430 means reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident, but shall only include those costs directly arising from the response to the particular incident. Reasonable costs shall include the costs of providing police, coroner, fire fighting, rescue, emergency medical services, or utility response at the scene of the incident, as well as the salaries of the personnel responding to the incident.

(14) "Public agency" means the state, and a city, county, municipal corporation, district, town, or public authority located, in whole or in part, within this state which provides or may provide fire fighting, police, ambulance, medical, or other emergency services.

(15) "Incident command system" means: (a) An all-hazards, on-scene functional management system that establishes common standards in organization, terminology, and procedures; provides a means (unified command) for the establishment of a common set of incident objectives and strategies during multiagency/multijurisdiction operations while maintaining individual agency/jurisdiction authority, responsibility, and accountability; and is a component of the national interagency incident management system; or (b) an equivalent and compatible all-hazards, on-scene functional

management system. [1997 c 49 § 1; 1995 c 391 § 2. Prior: 1993 c 251 § 5; 1993 c 206 § 1; 1986 c 266 § 23; 1984 c 38 § 2; 1979 ex.s. c 268 § 1; 1975 1st ex.s. c 113 § 1; 1974 ex.s. c 171 § 4; 1967 c 203 § 1; 1953 c 223 § 2; 1951 c 178 § 3.]

Effective date—1995 c 391: See note following RCW 38.52.005.

Finding—Intent—1993 c 251: See note following RCW 38.52.430

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.020 Declaration of policy and purpose. (1) Because of the existing and increasing possibility of the occurrence of disasters of unprecedented size and destructiveness as defined in RCW 38.52.010(6), and in order to insure that preparations of this state will be adequate to deal with such disasters, to insure the administration of state and federal programs providing disaster relief to individuals, and further to insure adequate support for search and rescue operations, and generally to protect the public peace, health, and safety, and to preserve the lives and property of the people of the state, it is hereby found and declared to be necessary:

(a) To provide for emergency management by the state, and to authorize the creation of local organizations for emergency management in the political subdivisions of the state;

(b) To confer upon the governor and upon the executive heads of the political subdivisions of the state the emergency powers provided herein;

(c) To provide for the rendering of mutual aid among the political subdivisions of the state and with other states and to cooperate with the federal government with respect to the carrying out of emergency management functions;

(d) To provide a means of compensating emergency management workers who may suffer any injury, as herein defined, or death; who suffer economic harm including personal property damage or loss; or who incur expenses for transportation, telephone or other methods of communication, and the use of personal supplies as a result of participation in emergency management activities; and

(e) To provide programs, with intergovernmental cooperation, to educate and train the public to be prepared for emergencies.

(2) It is further declared to be the purpose of this chapter and the policy of the state that all emergency management functions of this state and its political subdivisions be coordinated to the maximum extent with the comparable functions of the federal government including its various departments and agencies of other states and localities, and of private agencies of every type, to the end that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any disaster that may occur. [1986 c 266 § 24; 1984 c 38 § 3; 1979 ex.s. c 268 § 2; 1975 1st ex.s. c 113 § 2; 1974 ex.s. c 171 § 5; 1967 c 203 § 2; 1953 c 223 § 1; 1951 c 178 § 2.]

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.030 Director—Comprehensive emergency management plan—State-wide enhanced 911 emergency communications network—State coordinator of search and rescue operations—State program for emergency

assistance—State coordinator for radioactive and hazardous waste emergency response programs. (1) The director may employ such personnel and may make such expenditures within the appropriation therefor, or from other funds made available for purposes of emergency management, as may be necessary to carry out the purposes of this chapter.

(2) The director, subject to the direction and control of the governor, shall be responsible to the governor for carrying out the program for emergency management of this state. The director shall coordinate the activities of all organizations for emergency management within the state, and shall maintain liaison with and cooperate with emergency management agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this chapter, as may be prescribed by the governor.

(3) The director shall develop and maintain a comprehensive, all-hazard emergency plan for the state which shall include an analysis of the natural, technological, or human caused hazards which could affect the state of Washington, and shall include the procedures to be used during emergencies for coordinating local resources, as necessary, and the resources of all state agencies, departments, commissions, and boards. The comprehensive emergency management plan shall direct the department in times of state emergency to administer and manage the state's emergency operations center. This will include representation from all appropriate state agencies and be available as a single point of contact for the authorizing of state resources or actions, including emergency permits. The comprehensive emergency management plan must specify the use of the incident command system for multiagency/multijurisdiction operations. The comprehensive, all-hazard emergency plan authorized under this subsection may not include preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack. This plan shall be known as the comprehensive emergency management plan.

(4) In accordance with the comprehensive emergency management plans and the programs for the emergency management of this state, the director shall procure supplies and equipment, institute training programs and public information programs, and shall take all other preparatory steps, including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need.

(5) The director shall make such studies and surveys of the industries, resources, and facilities in this state as may be necessary to ascertain the capabilities of the state for emergency management, and shall plan for the most efficient emergency use thereof.

(6) The emergency management council shall advise the director on all aspects of the communications and warning systems and facilities operated or controlled under the provisions of this chapter.

(7) The director, through the state enhanced 911 coordinator, shall coordinate and facilitate implementation and operation of a state-wide enhanced 911 emergency communications network.

(8) The director shall appoint a state coordinator of search and rescue operations to coordinate those state resources, services and facilities (other than those for which

the state director of aeronautics is directly responsible) requested by political subdivisions in support of search and rescue operations, and on request to maintain liaison with and coordinate the resources, services, and facilities of political subdivisions when more than one political subdivision is engaged in joint search and rescue operations.

(9) The director, subject to the direction and control of the governor, shall prepare and administer a state program for emergency assistance to individuals within the state who are victims of a natural, technological, or human caused disaster, as defined by RCW 38.52.010(6). Such program may be integrated into and coordinated with disaster assistance plans and programs of the federal government which provide to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of assistance to individuals affected by a disaster. Further, such program may include, but shall not be limited to, grants, loans, or gifts of services, equipment, supplies, materials, or funds of the state, or any political subdivision thereof, to individuals who, as a result of a disaster, are in need of assistance and who meet standards of eligibility for disaster assistance established by the department of social and health services: **PROVIDED, HOWEVER, That nothing herein shall be construed in any manner inconsistent with the provisions of Article VIII, section 5 or section 7 of the Washington state Constitution.**

(10) The director shall appoint a state coordinator for radioactive and hazardous waste emergency response programs. The coordinator shall consult with the state radiation control officer in matters relating to radioactive materials. The duties of the state coordinator for radioactive and hazardous waste emergency response programs shall include:

(a) Assessing the current needs and capabilities of state and local radioactive and hazardous waste emergency response teams on an ongoing basis;

(b) Coordinating training programs for state and local officials for the purpose of updating skills relating to emergency mitigation, preparedness, response, and recovery;

(c) Utilizing appropriate training programs such as those offered by the federal emergency management agency, the department of transportation and the environmental protection agency; and

(d) Undertaking other duties in this area that are deemed appropriate by the director. [1997 c 49 § 2; 1995 c 269 § 1201. Prior: 1991 c 322 § 20; 1991 c 54 § 2; 1986 c 266 § 25; 1984 c 38 § 4; 1975 1st ex.s. c 113 § 3; 1973 1st ex.s. c 154 § 58; 1967 c 203 § 3; 1951 c 178 § 4.]

Effective date—1995 c 269: See note following RCW 9.94A.040.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Findings—Intent—1991 c 322: See note following RCW 86.12.200.

Referral to electorate—1991 c 54: "Sections 1 through 6 and 9 through 16 of this act shall be submitted to the people for their adoption and ratification, or rejection, at the next succeeding general election to be held in this state, in accordance with Article II, section 1 of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof. The ballot title for this act shall be: "Shall enhanced 911 emergency telephone dialing be provided throughout the state and be funded by a tax on telephone lines?" [1991 c 54 § 17.]

Reviser's note: "This act," chapter 54, Laws of 1991, was adopted and ratified by the people at the November 5, 1991, general election (Referendum Bill No. 42).

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Hazardous and radioactive wastes: Chapters 70.98, 70.99, 70.105, 70.136 RCW.

38.52.037 Comprehensive state mine rescue plan—Submittal to legislature. The department shall consult with appropriate local, state, federal, and private sector officials in developing a comprehensive state mine rescue plan. The plan shall identify mine rescue resources, set forth a framework for a coordinated response to mine rescue emergencies, identify shortfalls, and recommend solutions.

The draft of the comprehensive state mine rescue plan and a schedule for submittal of the final plan shall be submitted to the legislature on January 13, 1986. [1986 c 266 § 26; 1985 c 459 § 6.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1985 c 459: See note following RCW 79.01.668.

38.52.040 Emergency management council—Members—Ad hoc committees—Function as state emergency response commission—Rules review. (1) There is hereby created the emergency management council (hereinafter called the council), to consist of not more than seventeen members who shall be appointed by the governor. The membership of the council shall include, but not be limited to, representatives of city and county governments, sheriffs and police chiefs, the Washington state patrol, the military department, the department of ecology, state and local fire chiefs, seismic safety experts, state and local emergency management directors, search and rescue volunteers, medical professions who have expertise in emergency medical care, building officials, and private industry. The representatives of private industry shall include persons knowledgeable in emergency and hazardous materials management. The council members shall elect a chairman from within the council membership. The members of the council shall serve without compensation, but may be reimbursed for their travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(2) The emergency management council shall advise the governor and the director on all matters pertaining to state and local emergency management. The council may appoint such ad hoc committees, subcommittees, and working groups as are required to develop specific recommendations for the improvement of emergency management practices, standards, policies, or procedures. The council shall ensure that the governor receives an annual assessment of state-wide emergency preparedness including, but not limited to, specific progress on hazard mitigation and reduction efforts, implementation of seismic safety improvements, reduction of flood hazards, and coordination of hazardous materials planning and response activities. The council or a subcommittee thereof shall periodically convene in special session and serve during those sessions as the state emergency response commission required by P.L. 99-499, the emergency planning and community right-to-know act. When sitting in session as the state emergency response commission, the council shall confine its deliberations to those items specified in federal statutes and state administrative rules governing

the coordination of hazardous materials policy. The council shall review administrative rules governing state and local emergency management practices and recommend necessary revisions to the director. [1995 c 269 § 1202; 1988 c 81 § 18; 1984 c 38 § 5; 1979 ex.s. c 57 § 8; 1975-'76 2nd ex.s. c 34 § 82; 1974 ex.s. c 171 § 6; 1951 c 178 § 5.]

Effective date—1995 c 269: See note following RCW 9.94A.040.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

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

38.52.050 Governor's general powers and duties.

(1) The governor, through the director, shall have general supervision and control of the emergency management functions in the department, and shall be responsible for the carrying out of the provisions of this chapter, and in the event of disaster beyond local control, may assume direct operational control over all or any part of the emergency management functions within this state.

(2) In performing his or her duties under this chapter, the governor is authorized to cooperate with the federal government, with other states, and with private agencies in all matters pertaining to the emergency management of this state and of the nation.

(3) In performing his or her duties under this chapter and to effect its policy and purpose, the governor is further authorized and empowered:

(a) To make, amend, and rescind the necessary orders, rules, and regulations to carry out the provisions of this chapter within the limits of the authority conferred upon him herein, with due consideration of the plans of the federal government;

(b) On behalf of this state, to enter into mutual aid arrangements with other states and territories, or provinces of the Dominion of Canada and to coordinate mutual aid interlocal agreements between political subdivisions of this state;

(c) To delegate any administrative authority vested in him under this chapter, and to provide for the subdelegation of any such authority;

(d) To appoint, with the advice of local authorities, metropolitan or regional area coordinators, or both, when practicable;

(e) To cooperate with the president and the heads of the armed forces, the emergency management agency of the United States, and other appropriate federal officers and agencies, and with the officers and agencies of other states in matters pertaining to the emergency management of the state and nation. [1997 c 49 § 3; 1986 c 266 § 27; 1984 c 38 § 6; 1974 ex.s. c 171 § 7; 1951 c 178 § 6.]

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.070 Local organizations and joint local organizations authorized—Establishment, operation—Emergency powers, procedures. (1) Each political subdivision of this state is hereby authorized and directed to establish a local organization or to be a member of a joint local organization for emergency management in accordance with the state comprehensive emergency management plan and program: **PROVIDED,** That a political subdivision

proposing such establishment shall submit its plan and program for emergency management to the state director and secure his or her recommendations thereon, and verification of consistency with the state comprehensive emergency management plan, in order that the plan of the local organization for emergency management may be coordinated with the plan and program of the state. Local comprehensive emergency management plans must specify the use of the incident command system for multiagency/multijurisdiction operations. No political subdivision may be required to include in its plan provisions for the emergency evacuation or relocation of residents in anticipation of nuclear attack. If the director's recommendations are adverse to the plan as submitted, and, if the local organization does not agree to the director's recommendations for modification to the proposal, the matter shall be referred to the council for final action. The director may authorize two or more political subdivisions to join in the establishment and operation of a joint local organization for emergency management as circumstances may warrant, in which case each political subdivision shall contribute to the cost of emergency management upon such fair and equitable basis as may be determined upon by the executive heads of the constituent subdivisions. If in any case the executive heads cannot agree upon the proper division of cost the matter shall be referred to the council for arbitration and its decision shall be final. When two or more political subdivisions join in the establishment and operation of a joint local organization for emergency management each shall pay its share of the cost into a special pooled fund to be administered by the treasurer of the most populous subdivision, which fund shall be known as the emergency management fund. Each local organization or joint local organization for emergency management shall have a director who shall be appointed by the executive head of the political subdivision, and who shall have direct responsibility for the organization, administration, and operation of such local organization for emergency management, subject to the direction and control of such executive officer or officers. In the case of a joint local organization for emergency management, the director shall be appointed by the joint action of the executive heads of the constituent political subdivisions. Each local organization or joint local organization for emergency management shall perform emergency management functions within the territorial limits of the political subdivision within which it is organized, and, in addition, shall conduct such functions outside of such territorial limits as may be required pursuant to the provisions of this chapter.

(2) In carrying out the provisions of this chapter each political subdivision, in which any disaster as described in RCW 38.52.020 occurs, shall have the power to enter into contracts and incur obligations necessary to combat such disaster, protecting the health and safety of persons and property, and providing emergency assistance to the victims of such disaster. Each political subdivision is authorized to exercise the powers vested under this section in the light of the exigencies of an extreme emergency situation without regard to time-consuming procedures and formalities prescribed by law (excepting mandatory constitutional requirements), including, but not limited to, budget law limitations, requirements of competitive bidding and publication of notices, provisions pertaining to the performance of

public work, entering into contracts, the incurring of obligations, the employment of temporary workers, the rental of equipment, the purchase of supplies and materials, the levying of taxes, and the appropriation and expenditures of public funds. [1997 c 49 § 4; 1986 c 266 § 28; 1984 c 38 § 7; 1974 ex.s. c 171 § 9; 1951 c 178 § 8.]

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.080 Outside aid—Rights and liabilities—

Claims. (1) Whenever the employees of any political subdivision are rendering outside aid pursuant to the authority contained in RCW 38.52.070 such employees shall have the same powers, duties, rights, privileges, and immunities as if they were performing their duties in the political subdivisions in which they are normally employed.

(2) The political subdivision in which any equipment is used pursuant to this section shall be liable for any loss or damage thereto and shall pay any expense incurred in the operation and maintenance thereof. No claim for such loss, damage, or expense shall be allowed unless, within sixty days after the same is sustained or incurred, an itemized notice of such claim under oath is served by mail or otherwise upon the executive head of such political subdivision where the equipment was used. The term "employee" as used in this section shall mean, and the provisions of this section shall apply with equal effect to, volunteer auxiliary employees, and emergency workers.

(3) The foregoing rights, privileges, and obligations shall also apply in the event such aid is rendered outside the state, provided that payment or reimbursement in such case shall or may be made by the state or political subdivision receiving such aid pursuant to a reciprocal mutual aid agreement or compact with such state or by the federal government. [1984 c 38 § 8; 1974 ex.s. c 171 § 10; 1951 c 178 § 9.]

38.52.091 Mutual aid and interlocal agreements—

Requirements. (1) The director of each local organization for emergency management may, in collaboration with other public and private agencies within this state, develop or cause to be developed mutual aid arrangements for reciprocal emergency management aid and assistance in case of disaster too great to be dealt with unassisted. Such arrangements must be consistent with the state emergency management plan and program, and in time of emergency it is the duty of each local organization for emergency management to render assistance in accordance with the provisions of such mutual aid arrangements. The adjutant general shall maintain and distribute a mutual aid and interlocal agreement handbook.

(2) The adjutant general and the director of each local organization for emergency management may, subject to the approval of the governor, enter into mutual aid arrangements with emergency management agencies or organizations in other states for reciprocal emergency management aid and assistance in case of disaster too great to be dealt with unassisted. All such arrangements must contain the language and provisions in subsection (3) of this section.

(3) Mutual aid and interlocal agreements must include the following:

Purpose

The purpose must state the reason the mutual aid or interlocal agreement or compact is coordinated, the parties to the agreement or compact, and the assistance to be provided.

Authorization

Article I, section 10 of the Constitution of the United States permits a state to enter into an agreement or compact with another state, subject to the consent of Congress. Congress, through enactment of Title 50 U.S.C. Sections 2281(g), 2283 and the Executive Department, by issuance of Executive Orders No. 10186 of December 1, 1950, encourages the states to enter into emergency, disaster and civil defense mutual aid agreements or pacts.

Implementation

The conditions that guide the agreement or compacts may include, but are not limited to:

(a) A statement of which authority or authorities are authorized to request and receive assistance and the conditions that must exist for the request or receipt of assistance.

(b) A statement of how the requests for assistance may be made, what documentation of the request is required, the specifics of any details included in the request, and the required approval for the request.

(c) A statement of the direction and control relationship between the personnel and equipment provided by the jurisdiction to the requester and the requirements of the requester to coordinate the activities of the jurisdiction providing the assets.

(d) A statement of the circumstances by which the assisting jurisdiction may withdraw support from the requester and the method by which this is to be communicated.

General Fiscal Provisions

The terms of reimbursement must be stated defining the relationship between the requesting jurisdiction and the aiding jurisdiction, when reimbursement will be made, and details of the claim for reimbursement. The provisions may include statements that discuss but are not limited to:

(a) A statement of what costs are incurred by the requesting jurisdiction.

(b) A statement of what costs and compensation benefits are made to individuals from the aiding jurisdiction by the requesting jurisdiction.

Privileges and Immunities

The conditions and immunities that are enjoyed by the individuals from the aiding jurisdiction to the requesting jurisdiction must be stated. These provisions may include but are not limited to:

(a) A statement of the privileges and immunities from liability and the law an employee of a supporting jurisdiction enjoys while supporting the requesting jurisdiction.

(b) A statement of the privileges and immunities from liability and the law a volunteer from a supporting jurisdiction enjoys while supporting the requesting jurisdiction.

(c) A statement on the use of the national guard between the requesting and supporting jurisdictions.

(d) A hold harmless agreement between the signatory jurisdictions.

(e) The precedence this agreement takes with existing agreements.

(f) A time line by which information required by the agreement is exchanged and updated annually.

(g) The time in which the agreement becomes effective.

(h) The time and conditions when a signatory may withdraw and render the agreement ineffective. [1997 c 195 § 1.]

38.52.100 Appropriations—Acceptance of funds, services, etc. (1) Each political subdivision shall have the power to make appropriations in the manner provided by law for making appropriations for the ordinary expenses of such political subdivision for the payment of expenses of its local organization for emergency management.

(2) Whenever the federal government or any agency or officer thereof shall offer to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes of emergency management, the state, acting through the governor, or such political subdivision, acting with the consent of the governor and through its executive head, may accept such offer and upon such acceptance the governor of the state or executive head of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(3) Whenever any person, firm, or corporation shall offer to the state or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for the purposes of emergency management, the state, acting through the governor, or such political subdivision, acting through its executive head, may accept such offer and upon such acceptance the governor of the state or executive head of such political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive such services, equipment, supplies, materials, or funds on behalf of the state or such political subdivision, and subject to the terms of the offer. [1984 c 38 § 10; 1974 ex.s. c 171 § 12; 1951 c 178 § 12.]

38.52.105 Disaster response account. The disaster response account is created in the state treasury. Moneys may be placed in the account from legislative appropriations and transfers, federal appropriations, or any other lawful source. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for support of state agency and local government disaster response and recovery efforts. [1997 c 251 § 1.]

Effective date—1997 c 251: "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 [May 5, 1997]." [1997 c 251 § 2.]

38.52.110 Use of existing services and facilities—Impressment of citizenry. (1) In carrying out the provisions of this chapter, the governor and the executive heads

of the political subdivisions of the state are directed to utilize the services, equipment, supplies, and facilities of existing departments, offices, and agencies of the state, political subdivisions, and all other municipal corporations thereof including but not limited to districts and quasi municipal corporations organized under the laws of the state of Washington to the maximum extent practicable, and the officers and personnel of all such departments, offices, and agencies are directed to cooperate with and extend such services and facilities to the governor and to the emergency management organizations of the state upon request notwithstanding any other provision of law.

(2) The governor, the chief executive of counties, cities and towns and the emergency management directors of local political subdivisions appointed in accordance with this chapter, in the event of a disaster, after proclamation by the governor of the existence of such disaster, shall have the power to command the service and equipment of as many citizens as considered necessary in the light of the disaster proclaimed: PROVIDED, That citizens so commandeered shall be entitled during the period of such service to all privileges, benefits and immunities as are provided by this chapter and federal and state emergency management regulations for registered emergency workers. [1984 c 38 § 11; 1974 ex.s. c 171 § 13; 1971 ex.s. c 8 § 1; 1955 c 210 § 1; 1951 c 178 § 13.]

38.52.120 Political activity prohibited. No organization for emergency management established under the authority of this chapter shall participate in any form of political activity, nor shall it be employed directly or indirectly for political purposes. [1984 c 38 § 12; 1974 ex.s. c 171 § 14; 1951 c 178 § 14.]

38.52.140 Status of civil service employee preserved. Any civil service employee of the state of Washington or of any political subdivision thereof while on leave of absence and on duty with any emergency management agency authorized under the provisions of this chapter shall be preserved in his civil service status as to seniority and retirement rights so long as he regularly continues to make the usual contributions incident to the retention of such beneficial rights as if he were not on leave of absence. [1984 c 38 § 13; 1974 ex.s. c 171 § 16; 1951 c 178 § 16.]

38.52.150 Orders, rules, regulations—Enforcement—Availability—Penalty. (1) It shall be the duty of every organization for emergency management established pursuant to this chapter and of the officers thereof to execute and enforce such orders, rules, and regulations as may be made by the governor under authority of this chapter. Each such organization shall have available for inspection at its office all orders, rules, and regulations made by the governor, or under his authority.

(2) Every violation of any rule, regulation or order issued under the authority of this chapter shall constitute a misdemeanor and shall be punishable as such: PROVIDED, That whenever any person shall commit a second offense hereunder the same shall constitute a gross misdemeanor and shall be punishable as such. [1984 c 38 § 14; 1974 ex.s. c 171 § 17; 1951 c 178 § 18.]

38.52.160 Matching funds from political subdivision may be required. The emergency management agency is hereby authorized to require of any political subdivision to which funds are allocated under this chapter for any project, use or activity that such subdivision shall provide matching funds in equal amounts with respect to such project, use or activity. [1984 c 38 § 15; 1974 ex.s. c 171 § 18; 1951 c 178 § 19.]

38.52.170 Plan for federal area. Whenever the director finds that it will be in the interest of the emergency management of this state or of the United States, the director may, with the approval of the governor, agree with the federal government, or any agency thereof carrying on activities within this state, upon a plan of emergency management applicable to a federally owned area, which plan may or may not conform to all of the other provisions of this chapter with the view to integrating federally owned areas into the comprehensive plan and program of the emergency management of this state. Such plan may confer upon persons carrying out such plan any or all of the rights, powers, privileges and immunities granted employees or representatives of the state and/or its political subdivisions by this chapter. The plan of emergency management authorized under this section may not include preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack. [1986 c 266 § 30; 1984 c 38 § 16; 1974 ex.s. c 171 § 19; 1951 c 178 § 20.]

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.180 Liability for property damage, bodily injury, death—Immunity—Assumption by state—Indemnification. (1) There shall be no liability on the part of anyone including any person, partnership, corporation, the state of Washington or any political subdivision thereof who owns or maintains any building or premises which have been designated by a local organization for emergency management as a shelter from destructive operations or attacks by enemies of the United States for any injuries sustained by any person while in or upon said building or premises, as a result of the condition of said building or premises or as a result of any act or omission, or in any way arising from the designation of such premises as a shelter, when such person has entered or gone upon or into said building or premises for the purpose of seeking refuge therein during destructive operations or attacks by enemies of the United States or during tests ordered by lawful authority, except for an act of wilful negligence by such owner or occupant or his servants, agents, or employees.

(2) All legal liability for damage to property or injury or death to persons (except an emergency worker, regularly enrolled and acting as such), caused by acts done, or attempted, under the color of this chapter in a bona fide attempt to comply therewith shall be the obligation of the state of Washington. Suits may be instituted and maintained against the state for the enforcement of such liability, or for the indemnification of persons appointed and regularly enrolled as emergency workers while actually engaged in emergency management duties, or as members of any agency of the state or political subdivision thereof engaged in emergency management activity, or their dependents, for

damage done to their private property, or for any judgment against them for acts done in good faith in compliance with this chapter: PROVIDED, That the foregoing shall not be construed to result in indemnification in any case of wilful misconduct, gross negligence or bad faith on the part of any agent of emergency management: PROVIDED, That should the United States or any agency thereof, in accordance with any federal statute, rule or regulation, provide for the payment of damages to property and/or for death or injury as provided for in this section, then and in that event there shall be no liability or obligation whatsoever upon the part of the state of Washington for any such damage, death, or injury for which the United States government assumes liability.

(3) Any requirement for a license to practice any professional, mechanical or other skill shall not apply to any authorized emergency worker who shall, in the course of performing his duties as such, practice such professional, mechanical or other skill during an emergency described in this chapter.

(4) The provisions of this section shall not affect the right of any person to receive benefits to which he would otherwise be entitled under this chapter, or under the workers' compensation law, or under any pension or retirement law, nor the right of any such person to receive any benefits or compensation under any act of congress. [1987 c 185 § 7; 1984 c 38 § 17; 1974 ex.s. c 171 § 20; 1971 ex.s. c 8 § 2; 1953 c 145 § 1; 1951 c 178 § 11.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

38.52.190 Compensation for injury or death—Chapter exclusive. Except as provided in this chapter, an emergency worker and his dependents shall have no right to receive compensation from the state, from the agency, from the local organization for emergency management with which he is registered, or from the county or city which has empowered the local organization for emergency management to register him and direct his activities, for an injury or death arising out of and occurring in the course of his activities as an emergency worker. [1984 c 38 § 18; 1974 ex.s. c 171 § 21; 1953 c 223 § 3.]

38.52.195 Exemption from liability while providing construction, equipment or work. Notwithstanding any other provision of law, no person, firm, corporation, or other entity acting under the direction or control of the proper authority to provide construction, equipment, or work as provided for in RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220 and 38.52.390 while complying with or attempting to comply with RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220 and 38.52.390 or any rule or regulation promulgated pursuant to the provisions of RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220 and 38.52.390 shall be liable for the death of or any injury to persons or damage to property as a result of any such activity: PROVIDED, That said exemption shall only apply where all of the following conditions occur:

(1) Where, at the time of the incident the worker is performing services as an emergency worker, and is acting within the course of his duties as an emergency worker;

(2) Where, at the time of the injury, loss, or damage, the organization for emergency management which the worker is assisting is an approved organization for emergency management;

(3) Where the injury, loss, or damage is proximately caused by his service either with or without negligence as an emergency worker;

(4) Where the injury, loss, or damage is not caused by the intoxication of the worker; and

(5) Where the injury, loss, or damage is not due to wilful misconduct or gross negligence on the part of a worker. [1984 c 38 § 19; 1974 ex.s. c 171 § 22; 1971 ex.s. c 8 § 7.]

38.52.1951 Application of exemption from liability for architects and engineers. For purposes of the liability of an architect or engineer serving as a volunteer emergency worker, the exemption from liability provided under RCW 38.52.195 extends to all damages, so long as the conditions specified in RCW 38.52.195 (1) through (5) occur. [1993 c 206 § 2.]

38.52.198 Emergency care, rescue, assistance, or recovery services in mine rescue or recovery work—Immunity from liability. No person engaged in mine rescue or recovery work who, in good faith, renders emergency care, rescue, assistance, or recovery services at the scene of any emergency at or in a mine in this state or who employs, sponsors, or represents any person rendering emergency care, rescue, assistance, or recovery services shall be liable for any civil damages as a result of any act or omission by any person in rendering emergency care, rescue, assistance, or recovery service. [1985 c 459 § 9.]

Severability—1985 c 459: See note following RCW 79.01.668.

38.52.200 Liability for compensation is in lieu of other liability—Exception. Liability for the compensation provided by this chapter, as limited by the provisions thereof, is in lieu of any other liability whatsoever to an emergency worker or his dependents or any other person on the part of the state, the agency, the local organization for emergency management with which the emergency worker is registered, and the county or city which has empowered the local organization for emergency management to register him and direct his activities, for injury or death arising out of and in the course of his activities while on duty as an emergency worker: PROVIDED, That nothing in this chapter shall limit or bar the liability of the state or its political subdivisions engaged in proprietary functions as distinguished from governmental functions that may exist by reason of injury or death sustained by an emergency worker. [1984 c 38 § 20; 1974 ex.s. c 171 § 23; 1953 c 223 § 9.]

38.52.205 Claims arising from emergency management related activities—Filing—Contents. All claims against the state for property damages or indemnification therefor arising from emergency management related activities will be presented to and filed with the director of

financial management. Contents of all such claims shall conform to the tort claim filing requirements found in RCW 4.92.100 as now or hereafter amended. [1984 c 38 § 21; 1979 c 151 § 43; 1977 ex.s. c 144 § 6; 1974 ex.s. c 171 § 24; 1971 ex.s. c 8 § 4.]

38.52.207 Claims arising from emergency management related activities—Filing—Consideration, adjustment, settlement, etc., by director—Effect. The director, with the approval of the attorney general, may consider, ascertain, adjust, determine, compromise and settle property loss or damage claims arising out of conduct or circumstances for which the state of Washington would be liable in law for money damages of two thousand dollars or less. The acceptance by the claimant of any such award, compromise, or settlement shall be final and conclusive on the claimant; and upon the state of Washington, unless procured by fraud, and shall constitute a complete release of any claim against the state of Washington. A request for administrative settlement shall not preclude a claimant from filing court action pending administrative determination, or limit the amount recoverable in such a suit, or constitute an admission against interest of either the claimant or the state. [1986 c 266 § 31; 1984 c 38 § 22; 1974 ex.s. c 171 § 25; 1971 ex.s. c 8 § 5.]

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.210 Compensation boards—Established. (1) In each local organization for emergency management established by the legislative authority of the county in accordance with the provisions of RCW 38.52.070, there is hereby created and established a compensation board for the processing of claims as provided in this chapter. The compensation board shall be composed of: (a) The county executive if the county has an elected county executive or, if it does not, one member of the county legislative authority selected by the authority. The executive or the member will serve as the chair of the compensation board; (b) the county director of emergency services; (c) the prosecuting attorney; (d) the emergency services coordinator for medical and health services; and (e) the county auditor who will serve as secretary of the compensation board.

(2) In each local organization for emergency management established by cities and towns in accordance with RCW 38.52.070, there is hereby created and established a compensation board for the processing of claims as provided in this chapter. The compensation board shall be composed of the mayor; the city director of emergency management; one councilmember or commissioner selected by the council or the commission; the city attorney or corporation counsel; and the local coordinator of medical and health services. The councilmember or commissioner so selected shall serve as the chair of the compensation board and the city director of emergency management shall serve as secretary of the board. [1986 c 266 § 32; 1984 c 38 § 23; 1981 c 213 § 6; 1974 ex.s. c 171 § 26; 1953 c 223 § 4.]

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.220 Compensation boards—Meetings—Claims not necessitating board meeting. Said compensation board shall meet on the call of its chairman on a regular monthly

meeting day when there is business to come before it. The chairman shall be required to call a meeting on any monthly meeting day when any claim for compensation under this chapter has been submitted to the board: PROVIDED, That as to claims involving amounts of two thousand dollars or less, the local organization director shall submit recommendations directly to the state without convening a compensation board. [1984 c 38 § 24; 1971 ex.s. c 8 § 3; 1953 c 223 § 5.]

38.52.230 Compensation boards—Attendance of witnesses, oaths, rules—Members uncompensated. The compensation board, in addition to other powers herein granted, shall have the power to compel the attendance of witnesses to testify before it on all matters connected with the operation of this chapter and its chairman or any member of said board may administer oath to such witnesses; to make all necessary rules and regulations for its guidance in conformity with the provisions of this chapter: PROVIDED, HOWEVER, That no compensation or emoluments shall be paid to any member of said board for any duties performed as a member of said compensation board. [1953 c 223 § 6.]

38.52.240 Compensation boards—Duties as to compensation applications. The compensation board shall hear and decide all applications for compensation under this chapter. The board shall submit its recommendations to the director on such forms as he or she may prescribe. In case the decision of the director is different from the recommendation of the compensation board, the matter shall be submitted to the state emergency management council for action. [1986 c 266 § 33; 1984 c 38 § 25; 1974 ex.s. c 171 § 27; 1953 c 223 § 7.]

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.250 Compensation boards—Quorum—Transmittal of minutes, claims—Appeal to department. A majority of the compensation board shall constitute a quorum, and no business shall be transacted when a majority is not present, and no claim shall be allowed when a majority of the board has not voted favorably thereon.

The board shall send a copy of the minutes of all meetings to the department with copies of all material pertaining to each claim submitted and noting the action of the board on each claim. Appeals may be made by the emergency worker from any action by the board within one year by writing to the department. [1986 c 266 § 34; 1984 c 38 § 26; 1974 ex.s. c 171 § 28; 1953 c 223 § 8.]

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.260 When compensation furnished. Compensation shall be furnished to an emergency worker either within or without the state for any injury arising out of and occurring in the course of his activities as an emergency worker, and for the death of any such worker if the injury proximately causes death, in those cases where the following conditions occur:

(1) Where, at the time of the injury the emergency worker is performing services as an emergency worker, and is acting within the course of his duties as an emergency worker.

(2) Where, at the time of the injury the local organization for emergency management with which the emergency worker is registered is an approved local organization for emergency management.

(3) Where the injury is proximately caused by his service as an emergency worker, either with or without negligence.

(4) Where the injury is not caused by the intoxication of the injured emergency worker.

(5) Where the injury is not intentionally self-inflicted. [1984 c 38 § 27; 1974 ex.s. c 171 § 29; 1953 c 223 § 10.]

38.52.270 Minors entitled to benefits. Emergency workers who are minors shall have the same rights as adults for the purpose of receiving benefits under the provisions of this chapter, but this provision shall not prevent the requirements that a guardian be appointed to receive and administer such benefits until the majority of such minor. Work as an emergency worker shall not be deemed as employment or in violation of any of the provisions of chapter 49.12 RCW. [1984 c 38 § 28; 1974 ex.s. c 171 § 30; 1953 c 223 § 11.]

38.52.280 Compensation and benefits limited by appropriation. No compensation or benefits shall be paid or furnished to emergency workers or their dependents pursuant to the provisions of this chapter except from money appropriated for the purpose of this chapter. [1984 c 38 § 29; 1974 ex.s. c 171 § 31; 1953 c 223 § 12.]

38.52.290 Applicability of workers' compensation law. Insofar as not inconsistent with the provisions of this chapter, the maximum amount payable to a claimant shall be not greater than the amount allowable for similar disability under the workers' compensation act, chapter 51.32 RCW as amended by chapter 289, Laws of 1971 ex.sess., and any amendments thereto. "Employee" as used in said title shall include an emergency worker when liability for the furnishing of compensation and benefits exists pursuant to the provisions of this chapter and as limited by the provisions of this chapter. Where liability for compensation and benefits exists, such compensation and benefits shall be provided in accordance with the applicable provisions of said sections of chapter 51.32 RCW and at the maximum rate provided therein, subject, however, to the limitations set forth in this chapter. [1987 c 185 § 8; 1984 c 38 § 30; 1974 ex.s. c 171 § 32; 1971 ex.s. c 289 § 71; 1953 c 223 § 13.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Severability—Effective dates—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

38.52.300 Right of action against third party. If the injury to an emergency worker is due to the negligence or wrong of another not on emergency duty, the injured worker, or if death results from the injury, the surviving spouse, children, parents or dependents, as the case may be, shall elect whether to take under this chapter or seek a remedy against such other, such election to be in advance of any suit under this chapter; and if the surviving spouse takes under this chapter, the cause of action against such other shall be assigned to the department; if the other choice is made, the

compensation under this chapter shall be only the deficiency, if any, between the amount of recovery against such third person actually collected, and the compensation provided or estimated for such case under authority of this chapter: PROVIDED, That the department shall prosecute all claims assigned to it and do any and all things necessary to recover on behalf of the state any and all amounts which an employer or insurance carrier might recover under the provisions of the law. [1986 c 266 § 35; 1984 c 38 § 31; 1973 1st ex.s. c 154 § 59; 1953 c 223 § 14.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

38.52.310 Coverage, classification, registration, of workers. The department shall establish by rule and regulation various classes of emergency workers, the scope of the duties of each class, and the conditions under which said workers shall be deemed to be on duty and covered by the provisions of this chapter. The department shall also adopt rules and regulations prescribing the manner in which emergency workers of each class are to be registered. [1986 c 266 § 36; 1984 c 38 § 32; 1974 ex.s. c 171 § 33; 1953 c 223 § 15.]

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.320 Schedule of payments. The department shall provide each compensation board with the approved maximum schedule of payments for injury or death prescribed in chapter 51.32 RCW: PROVIDED, That nothing in this chapter shall be construed as establishing any liability on the part of the department of labor and industries. [1986 c 266 § 37; 1984 c 38 § 33; 1974 ex.s. c 171 § 34; 1953 c 223 § 16.]

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.330 Expenditures authorized—Claims, payment and disposition—Appeals. The department is authorized to make all expenditures necessary and proper to carry out the provisions of this chapter including payments to claimants for compensation as emergency workers and their dependents; to adjust and dispose of all claims submitted by a local compensation board. When medical treatment is necessary, the department is authorized to make medical and compensation payments on an interim basis. Nothing herein shall be construed to mean that the department or the state emergency management council or its officers or agents shall have the final decision with respect to the compensability of any case or the amount of compensation or benefits due, but any emergency worker or his or her dependents shall have the same right of appeal from any order, decision, or award to the same extent as provided in chapter 51.32 RCW. [1986 c 266 § 38; 1984 c 38 § 34; 1979 ex.s. c 268 § 3; 1974 ex.s. c 171 § 35; 1971 ex.s. c 289 § 72; 1953 c 223 § 17.]

Severability—1986 c 266: See note following RCW 38.52.005.

Severability—Effective dates—1971 ex.s. c 289: See RCW 51.98.060 and 51.98.070.

38.52.340 Benefits under other compensation plans. Nothing in this chapter shall deprive any emergency worker

or his or her dependents of any right to compensation for injury or death sustained in the course of his or her regular employment even though his or her regular work is under direction of emergency management authorities: PROVIDED, That such worker, if he or she is eligible for some other compensation plan, and receives the benefits of such plan shall not also receive any compensation under this chapter. The department shall adopt such rules and regulations as may be necessary to protect the rights of such workers and may enter into agreements with authorities in charge of other compensation plans to insure protection of such workers: PROVIDED, That if the compensation from some other plan is less than would have been available under this chapter, he or she shall be entitled to receive the deficiency between the amount received under such other plan and the amount available under this chapter. [1986 c 266 § 39; 1984 c 38 § 35; 1974 ex.s. c 171 § 36; 1953 c 223 § 18.]

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.350 Benefits furnished under federal law—Reduction of state benefits. Should the United States or any agent thereof, in accordance with any federal statute or rule or regulation, furnish monetary assistance, benefits, or other temporary or permanent relief to emergency workers or to their dependents for injuries arising out of and occurring in the course of their activities as emergency workers, then the amount of compensation which any emergency worker or his dependents are otherwise entitled to receive from the state of Washington as provided herein, shall be reduced by the amount of monetary assistance, benefits, or other temporary or permanent relief the emergency worker or his dependents have received and will receive from the United States or any agent thereof as a result of his injury. [1984 c 38 § 36; 1974 ex.s. c 171 § 37; 1953 c 223 § 19.]

38.52.360 Medical, surgical or hospital treatment. If, in addition to monetary assistance, benefits or other temporary or permanent relief, the United States or any agent thereof furnishes medical, surgical or hospital treatment or any combination thereof to an injured emergency worker, then the emergency worker has no right to receive similar medical, surgical or hospital treatment as provided in this chapter. However, the department may furnish medical, surgical or hospital treatment as part of the compensation provided under the provisions of this chapter. [1986 c 266 § 40; 1984 c 38 § 37; 1974 ex.s. c 171 § 38; 1953 c 223 § 20.]

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.370 Medical, surgical or hospital treatment—Reimbursement. If, in addition to monetary assistance, benefits, or other temporary or permanent relief, the United States or any agent thereof, will reimburse an emergency worker or his or her dependents for medical, surgical or hospital treatment, or any combination thereof, furnished to the injured emergency worker, the emergency worker has no right to receive similar medical, surgical or hospital treatment as provided in this chapter, but the department, may furnish a medical, surgical or hospital treatment as part of the compensation provided under the provisions of this chapter and apply to the United States or its agent for the

reimbursement which will be made to the emergency worker or his or her dependents. As a condition to the furnishing of such medical, surgical or hospital treatment, the department shall require the emergency worker and his dependents to assign to the state of Washington, for the purpose of reimbursing for any medical, surgical or hospital treatment furnished or to be furnished by the state, any claim or right such emergency worker or his or her dependents may have to reimbursement from the United States or any agent thereof. [1986 c 266 § 41; 1984 c 38 § 38; 1974 ex.s. c 171 § 39; 1953 c 223 § 21.]

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.380 State compensation denied if payment prevents federal benefits. If the furnishing of compensation under the provisions of this chapter to an emergency worker or his dependents prevents such emergency worker or his dependents from receiving assistance, benefits or other temporary or permanent relief under the provisions of a federal statute or rule or regulation, then the emergency worker and his dependents shall have no right to, and shall not receive, any compensation from the state of Washington under the provisions of this chapter for any injury for which the United States or any agent thereof will furnish assistance, benefits or other temporary or permanent relief in the absence of the furnishing of compensation by the state of Washington. [1984 c 38 § 39; 1974 ex.s. c 171 § 40; 1953 c 223 § 22.]

38.52.390 Contracts or work on cost basis for emergency management activities. The governor, or upon his or her direction, the director, or any political subdivision of the state, is authorized to contract with any person, firm, corporation, or entity to provide construction or work on a cost basis to be used in emergency management functions or activities as defined in RCW 38.52.010(1) or as hereafter amended, said functions or activities to expressly include natural disasters, as well as all other emergencies of a type contemplated by RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220 and 38.52.390. All funds received for purposes of RCW 38.52.110, 38.52.180, 38.52.195, 38.52.205, 38.52.207, 38.52.220 and 38.52.390, whether appropriated funds, local funds, or from whatever source, may be used to pay for the construction, equipment, or work contracted for under this section. [1986 c 266 § 42; 1984 c 38 § 40; 1971 ex.s. c 8 § 6.]

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.400 Search and rescue activities—Powers and duties of local officials. (1) The chief law enforcement officer of each political subdivision shall be responsible for local search and rescue activities. Operation of search and rescue activities shall be in accordance with state and local operations plans adopted by the elected governing body of each local political subdivision. These state and local plans must specify the use of the incident command system for multiagency/multi-jurisdiction search and rescue operations. The local emergency management director shall notify the department of all search and rescue missions. The local director of emergency management shall work in a coordinating capacity directly supporting all search and rescue

activities in that political subdivision and in registering emergency search and rescue workers for employee status. The chief law enforcement officer of each political subdivision may restrict access to a specific search and rescue area to personnel authorized by him. Access shall be restricted only for the period of time necessary to accomplish the search and rescue mission. No unauthorized person shall interfere with a search and rescue mission.

(2) When search and rescue activities result in the discovery of a deceased person or search and rescue workers assist in the recovery of human remains, the chief law enforcement officer of the political subdivision shall insure compliance with chapter 68.50 RCW. [1997 c 49 § 5; 1986 c 266 § 43; 1984 c 38 § 41; 1979 ex.s. c 268 § 4.]

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.410 Search and rescue activities—Distribution of funds for compensation and reimbursement of volunteers. Funds received by the department specifically for the purposes of compensating search and rescue volunteers shall be distributed by the director to help fund medical and compensation coverage provided by this chapter and provide reimbursement by the state for: (1) Costs involved in extraordinary search and rescue operations such as search and rescue operations lasting over twenty-four hours where food and lodging for workers is necessary; (2) excessive transportation and rescue costs incurred by out-of-county residents which would not be otherwise collectible; and (3) compensation as provided in RCW 38.52.020(1)(d) as now or hereafter amended. [1986 c 266 § 44; 1984 c 38 § 42; 1979 ex.s. c 268 § 5.]

Severability—1986 c 266: See note following RCW 38.52.005.

38.52.420 Model contingency plan for pollution control facilities and hazardous waste management. (1) The department, in consultation with appropriate federal agencies, the departments of natural resources, fish and wildlife, and ecology, representatives of local government, and any other person the director may deem appropriate, shall assist in the development of a model contingency plan, consistent with other plans required for hazardous materials by federal and state law, to serve as a draft plan for local governments which may be incorporated into the state and local emergency management plans.

(2) The model contingency plan shall:

(a) Include specific recommendations for pollution control facilities which are deemed to be most appropriate for the control, collection, storage, treatment, disposal, and recycling of oil and other spilled material and furthering the prevention and mitigation of such pollution;

(b) Include recommendations for the training of local personnel consistent with other training proposed, funded, or required by federal or state laws for hazardous materials;

(c) Suggest cooperative training exercises between the public and private sector consistent with other training proposed, funded, or required by federal or state laws for hazardous materials;

(d) Identify federal and state laws requiring contingency or management plans applicable or related to prevention of pollution, emergency response capabilities, and hazardous waste management, together with a list of funding sources

that local governments may use in development of their specific plans;

(e) Promote formal agreements between the department and local entities for effective spill response; and

(f) Develop policies and procedures for the augmentation of emergency services and agency spill response personnel through the use of volunteers: PROVIDED, That no contingency plan may require the use of volunteers by a responding responsible party without that party's consent. [1997 c 49 § 6; 1995 c 391 § 4; 1994 c 264 § 11; 1988 c 36 § 11; 1987 c 479 § 3.]

Effective date—1995 c 391: See note following RCW 38.52.005.

38.52.430 Emergency response caused by person's intoxication—Recovery of costs from convicted person. A person whose intoxication causes an incident resulting in an appropriate emergency response, and who, in connection with the incident, has been found guilty of or has had their prosecution deferred for (1) driving while under the influence of intoxicating liquor or any drug, RCW 46.61.502; (2) operating an aircraft under the influence of intoxicants or drugs, RCW 47.68.220; (3) use of a vessel while under the influence of alcohol or drugs, *RCW 88.12.100; (4) vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a); or (5) vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), is liable for the expense of an emergency response by a public agency to the incident.

The expense of an emergency response is a charge against the person liable for expenses under this section. The charge constitutes a debt of that person and is collectible by the public agency incurring those costs in the same manner as in the case of an obligation under a contract, expressed or implied.

In no event shall a person's liability under this section for the expense of an emergency response exceed one thousand dollars for a particular incident.

If more than one public agency makes a claim for payment from an individual for an emergency response to a single incident under the provisions of this section, and the sum of the claims exceeds the amount recovered, the division of the amount recovered shall be determined by an interlocal agreement consistent with the requirements of chapter 39.34 RCW. [1993 c 251 § 2.]

***Reviser's note:** RCW 88.12.100 was recodified as RCW 88.12.025 pursuant to 1993 c 244 § 45.

Finding—Intent—1993 c 251: "The legislature finds that a public agency incurs expenses in an emergency response. It is the intent of the legislature to allow a public agency to recover the expenses of an emergency response to an incident involving persons who operate a motor vehicle, boat or vessel, or a civil aircraft while under the influence of an alcoholic beverage or a drug, or the combined influence of an alcoholic beverage and a drug. It is the intent of the legislature that the recovery of expenses of an emergency response under this act shall supplement and shall not supplant other provisions of law relating to the recovery of those expenses." [1993 c 251 § 1.]

38.52.500 State-wide 911 enhanced service—Finding. The legislature finds that a state-wide emergency communications network of enhanced 911 telephone service, which allows an immediate display of a caller's identification and location, would serve to further the safety, health, and welfare of the state's citizens, and would save lives.

The legislature, after reviewing the study outlined in section 1, chapter 260, Laws of 1990, further finds that state-wide implementation of enhanced 911 telephone service is feasible and should be accomplished as soon as practicable. [1991 c 54 § 1.]

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

38.52.510 State-wide 911 enhanced service—Funding by counties. By December 31, 1998, each county, singly or in combination with adjacent counties, shall implement district-wide, county-wide, or multicounty-wide enhanced 911 emergency communications systems so that enhanced 911 is available throughout the state. The county shall provide funding for the enhanced 911 communication system in the county or district in an amount equal to the amount the maximum tax under RCW 82.14B.030(1) would generate in the county or district or the amount necessary to provide full funding of the system in the county or district, whichever is less. The state enhanced 911 coordination office established by RCW 38.52.520 shall assist and facilitate enhanced 911 implementation throughout the state. [1991 c 54 § 3.]

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

38.52.520 State enhanced 911 coordination office. A state enhanced 911 coordination office, headed by the state enhanced 911 coordinator, is established in the emergency management division of the department. Duties of the office shall include:

(1) Coordinating and facilitating the implementation and operation of enhanced 911 emergency communications systems throughout the state;

(2) Seeking advice and assistance from, and providing staff support for, the enhanced 911 advisory committee; and

(3) Recommending to the utilities and transportation commission by August 31st of each year the level of the state enhanced 911 excise tax for the following year. [1991 c 54 § 4.]

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

38.52.525 State enhanced 911 coordination office—Public education materials. The state enhanced 911 coordination office may develop and implement public education materials regarding the capability of specific equipment used as part of a private telecommunications system or in the provision of private shared telecommunications services to forward automatic location identification and automatic number identification. [1995 c 243 § 9.]

Findings—Severability—1995 c 243: See notes following RCW 80.36.555.

38.52.530 Enhanced 911 advisory committee. (Expires December 31, 2000.) The enhanced 911 advisory committee is created to advise and assist the state enhanced 911 coordinator in coordinating and facilitating the implementation and operation of enhanced 911 throughout the state. The director shall appoint members of the committee who represent diverse geographical areas of the state and

include state residents who are members of the national emergency number association, the associated public communications officers Washington chapter, the Washington state fire chiefs association, the Washington association of sheriffs and police chiefs, the Washington state council of fire fighters, the Washington state council of police officers, the Washington ambulance association, the state fire protection policy board, the Washington fire commissioners association, the Washington state patrol, the association of Washington cities, the Washington state association of counties, the utilities and transportation commission or commission staff, and representatives of large and small local exchange telephone companies. This section shall expire December 31, 2000. [1997 c 49 § 7; 1991 c 54 § 5.]

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

38.52.535 State enhanced 911 coordination office and advisory committee—Uniform national standards. The state enhanced 911 coordination office and the enhanced 911 advisory committee may participate in efforts to set uniform national standards for automatic number identification and automatic location identification data transmission for private telecommunications systems and private shared telecommunications services. [1998 c 245 § 32; 1995 c 243 § 10.]

Findings—Severability—1995 c 243: See notes following RCW 80.36.555.

38.52.540 Enhanced 911 account. The enhanced 911 account is created in the state treasury. All receipts from the state enhanced 911 excise tax imposed by RCW 82.14B.030 shall be deposited into the account. Moneys in the account shall be used only to help implement and operate enhanced 911 state-wide. Moneys in the account may be used to provide salary assistance on a temporary basis not to exceed three years to counties with a population of less than seventy-five thousand that need additional resources to cover unfunded costs that can be shown to result from handling 911 calls. Moneys in the account may be used to assist multicounty regions, including ongoing salary assistance for multicounty regions consisting of counties with populations of less than seventy-five thousand. However, funds shall not be distributed to any county that has not imposed the maximum county enhanced 911 taxes allowed under RCW 82.14B.030 (1) and (2). The state enhanced 911 coordinator, with the advice and assistance of the enhanced 911 advisory committee, shall specify by rule the purposes for which moneys may be expended from this account. [1998 c 304 § 14; 1994 c 96 § 7; 1991 c 54 § 6.]

Findings—Effective dates—1998 c 304: See notes following RCW 82.14B.020.

Finding—Intent—Effective dates—1994 c 96: See notes following RCW 82.14B.020.

Referral to electorate—1991 c 54: See note following RCW 38.52.030.

38.52.550 Emergency communications systems and information—Immunity from civil liability. A telecommunications company providing emergency communications systems or services or a business or individual providing data base information to emergency communication system

personnel shall not be liable for civil damages caused by an act or omission of the company, business, or individual in the:

(1) Good faith release of information not in the public record, including unpublished or unlisted subscriber information to emergency service providers responding to calls placed to a 911 or enhanced 911 emergency service; or

(2) Design, development, installation, maintenance, or provision of consolidated 911 or enhanced 911 emergency communication systems or services other than an act or omission constituting gross negligence or wanton or willful misconduct. [1991 c 329 § 7.]

38.52.560 Automatic number identification—Wireless two-way telecommunications service. Any person as defined in RCW 82.04.030 owning, operating, or managing any facilities used to provide wireless two-way telecommunications services for hire, sale, or resale which allow access to 911 emergency services shall provide a system of automatic number identification which allows the 911 operator to automatically identify the number of the caller. [1994 c 96 § 5.]

Finding—Intent—Effective dates—1994 c 96: See notes following RCW 82.14B.020.

38.52.900 Short title. This chapter may be cited as the Washington Emergency Management Act. [1984 c 38 § 43; 1974 ex.s. c 171 § 41; 1951 c 178 § 1.]

38.52.920 Repeal and saving. Chapter 177, Laws of 1941, chapters 6 and 24, Laws of 1943, and chapter 88, Laws of 1949 are repealed: PROVIDED, That this section shall not affect the validity of any order, rule, regulation, contract, or agreement made or promulgated under authority of the repealed acts, which orders, rules, regulations, contracts, or agreements shall remain in force until they may be repealed, amended, or superseded by orders, rules, regulations, contracts, or agreements made or promulgated under this chapter: PROVIDED FURTHER, That this section shall not affect the tenure of any officer, employee, or person serving under authority of any repealed act and such officer, employee, or person shall continue in his position until such time as a successor is appointed or employed under the provisions of this chapter. [1951 c 178 § 17.]

38.52.930 Transfer of powers, duties, and functions to state military department. All powers, duties, and functions of the department of community, trade, and economic development pertaining to emergency management are transferred to the state military department. All references to the director or the department of community development or the department of community, trade, and economic development in the Revised Code of Washington shall be construed to mean the adjutant general or the state military department when referring to the functions transferred in this section. [1995 c 391 § 10.]

Effective date—1995 c 391: See note following RCW 38.52.005.

Chapter 38.54

STATE FIRE SERVICES MOBILIZATION

Sections

- 38.54.010 Definitions.
 38.54.020 Legislative declaration and intent.
 38.54.030 State fire protection policy board—State fire services mobilization plan—State fire resources coordinator.
 38.54.040 Regional fire defense boards—Regional fire service plans—Regions established.
 38.54.050 Development of reimbursement procedures.
 38.54.900 Findings—1992 c 117.

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

(1) "Department" means the military department.

(2) "The adjutant general" means the adjutant general of the military department.

(3) "State fire marshal" means the director of fire protection in the Washington state patrol.

(4) "Fire chief" includes the chief officer of a statutorily authorized fire agency, or the fire chief's authorized representative. Also included are the department of natural resources fire control chief, and the department of natural resources regional managers.

(5) "Jurisdiction" means state, county, city, fire district, or port district fire fighting units, or other units covered by this chapter.

(6) "Mobilization" means that fire fighting resources beyond those available through existing agreements will be requested and, when available, sent in response to an emergency or disaster situation that has exceeded the capabilities of available local resources. During a large scale emergency, mobilization includes the redistribution of regional or state-wide fire fighting resources to either direct emergency incident assignments or to assignment in communities where fire fighting resources are needed.

When mobilization is declared and authorized as provided in this chapter, all fire fighting resources including those of the host fire protection authorities, i.e. incident jurisdiction, shall be deemed as mobilized under this chapter, including those that responded earlier under existing mutual aid or other agreement. All nonhost fire protection authorities providing fire fighting resources in response to a mobilization declaration shall be eligible for expense reimbursement as provided by this chapter from the time of the mobilization declaration.

This chapter shall not reduce or suspend the authority or responsibility of the department of natural resources under chapter 76.04 RCW.

(7) "Mutual aid" means emergency interagency assistance provided without compensation under an agreement between jurisdictions under chapter 39.34 RCW. [1997 c 49 § 8. Prior: 1995 c 391 § 5; 1995 c 369 § 10; 1992 c 117 § 9.]

Effective date—1995 c 391: See note following RCW 38.52.005.

Effective date—1995 c 369: See note following RCW 43.43.930.

38.54.020 Legislative declaration and intent.

Because of the possibility of the occurrence of disastrous fires or other disasters of unprecedented size and destruc-

tiveness, the need to insure that the state is adequately prepared to respond to such a fire or disaster, the need to establish a mechanism and a procedure to provide for reimbursement to fire fighting agencies that respond to help others in time of need or to a host fire district that experiences expenses beyond the resources of the fire district, and generally to protect the public peace, health, safety, lives, and property of the people of Washington, it is hereby declared necessary to:

(1) Provide the policy and organizational structure for large scale mobilization of fire fighting resources in the state through creation of the Washington state fire services mobilization plan;

(2) Confer upon the adjutant general the powers provided herein;

(3) Provide a means for reimbursement to fire jurisdictions that incur expenses when mobilized by the adjutant general under the Washington state fire services mobilization plan; and

(4) Provide for reimbursement of the host fire department or fire protection district when it has: (a) Exhausted all of its resources; and (b) invoked its local mutual aid network and exhausted those resources. Upon implementation of state fire mobilization, the host district resources shall become state fire mobilization resources consistent with the fire mobilization plan.

It is the intent of the legislature that mutual aid and other interlocal agreements providing for enhanced emergency response be encouraged as essential to the public peace, safety, health, and welfare, and for the protection of the lives and property of the people of the state of Washington. If possible, mutual aid agreements should be without stated limitations as to resources available, time, or area. Nothing in this chapter shall be construed or interpreted to limit the eligibility of any nonhost fire protection authority for reimbursement of expenses incurred in providing fire fighting resources for mobilization. [1997 c 49 § 9; 1995 c 391 § 6; 1992 c 117 § 10.]

Effective date—1995 c 391: See note following RCW 38.52.005.

38.54.030 State fire protection policy board—State fire services mobilization plan—State fire resources coordinator. The state fire protection policy board shall review and make recommendations to the adjutant general on the refinement and maintenance of the Washington state fire services mobilization plan, which shall include the procedures to be used during fire and other emergencies for coordinating local, regional, and state fire jurisdiction resources. In carrying out this duty, the fire protection policy board shall consult with and solicit recommendations from representatives of state and local fire and emergency management organizations, regional fire defense boards, and the department of natural resources. The Washington state fire services mobilization plan shall be consistent with, and made part of, the Washington state comprehensive emergency management plan. The adjutant general shall review the fire services mobilization plan as submitted by the fire protection policy board, recommend changes that may be necessary, and approve the fire services mobilization plan for inclusion within the state comprehensive emergency management plan.

It is the responsibility of the adjutant general to mobilize jurisdictions under the Washington state fire services mobilization plan. The state fire marshal shall serve as the state fire resources coordinator when the Washington state fire services mobilization plan is mobilized. [1997 c 49 § 10; 1995 c 269 § 1101; 1992 c 117 § 11.]

Effective date—1995 c 269: See note following RCW 9.94A.040.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

38.54.040 Regional fire defense boards—Regional fire service plans—Regions established. Regions within the state are initially established as follows but may be adjusted as necessary by the state fire marshal:

- (1) Northwest region Whatcom, Skagit, Snohomish, San Juan, and Island counties;
- (2) Northeast region Okanogan, Ferry, Stevens, Pend Oreille, Spokane, and Lincoln counties;
- (3) Olympic region Clallam and Jefferson counties;
- (4) South Puget Sound region Kitsap, Mason, King, and Pierce counties;
- (5) Southeast region - Chelan, Douglas, Kittitas, Grant, Adams, Whitman, Yakima, Klickitat, Benton, Franklin, Walla Walla, Columbia, Garfield, and Asotin counties;
- (6) Central region Grays Harbor, Thurston, Pacific, and Lewis counties; and
- (7) Southwest region Wahkiakum, Cowlitz, Clark, and Skamania counties.

Within each of these regions there is created a regional fire defense board. The regional fire defense boards shall consist of two members from each county in the region. One member from each county shall be appointed by the county fire chiefs' association or, in the event there is no such county association, by the county's legislative authority. Each county's office of emergency management or, in the event there is no such office, the county's legislative authority shall select the second representative to the regional board. The department of natural resources fire control chief shall appoint a representative from each department of natural resources region to serve as a member of the appropriate regional fire defense board. Members of each regional board will select a chairperson and secretary as officers. Members serving on the regional boards do so in a voluntary capacity and are not eligible for reimbursement for meeting-related expenses from the state.

Regional defense boards shall develop regional fire service plans that include provisions for organized fire agencies to respond across municipal, county, or regional boundaries. Each regional plan shall be consistent with the incident command system, the Washington state fire services mobilization plan, and regional response plans already adopted and in use in the state. The regional boards shall work with the relevant local government entities to facilitate development of intergovernmental agreements if any such agreements are required to implement a regional fire service plan. Each regional plan shall be approved by the fire protection policy board before implementation. [1997 c 49 § 11; 1992 c 117 § 12.]

38.54.050 Development of reimbursement procedures. The department in consultation with the office of

financial management shall develop procedures to facilitate reimbursement to jurisdictions from appropriate federal and state funds when jurisdictions are mobilized by the adjutant general under the Washington state fire services mobilization plan. The department shall ensure that these procedures provide reimbursement to the host district in as timely a manner as possible. [1997 c 49 § 12; 1995 c 391 § 7; 1992 c 117 § 13.]

Effective date—1995 c 391: See note following RCW 38.52.005.

38.54.900 Findings—1992 c 117. See note following RCW 35.21.775.

Title 39

PUBLIC CONTRACTS AND INDEBTEDNESS

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Chapter 39.04

PUBLIC WORKS

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- 39.04.260 Private construction performed pursuant to contract for rental, lease, or purchase by state—Must comply with prevailing wage law.
- 39.04.270 Electronic data processing and telecommunications systems—Municipalities—Acquisition method—Competitive negotiation—Findings, intent.
- 39.04.280 Competitive bidding requirements—Exemptions.
- 39.04.900 Rights may not be waived—Construction—1992 c 223.
- 39.04.901 Application—1992 c 223.

Buildings, earthquake standards for construction: Chapter 70.86 RCW.
Counties, class A and first class, competitive bids: RCW 36.32.240 through 36.32.270.

County road equipment and materials: RCW 36.82.100 through 36.82.120.
County roads and bridges—Plans, approval, bids, etc.: Chapter 36.77 RCW.

Liens for labor, materials, taxes on public works: Chapter 60.28 RCW.

Port district contracts: Chapter 53.08 RCW.

Public buildings, provision to be made for aged and handicapped: Chapter 70.92 RCW.

Second class city or town, public contracts: RCW 35.23.352.

State highway construction and maintenance: Chapter 47.28 RCW.

Suppression of competitive bidding on public works, penalty: RCW 9.18.120 through 9.18.150.

Traffic control at work sites: RCW 47.36.200 through 47.36.230.

Workers' compensation law applicable to contracts for public works: RCW 51.12.050, 51.12.070.

39.04.010 Definitions. The term state shall include the state of Washington and all departments, supervisors, commissioners and agencies thereof.

The term municipality shall include every city, county, town, district or other public agency thereof which is authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage

improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts or any such other districts as shall from time to time be authorized by law for the reclamation or development of waste or undeveloped lands.

The term public work shall include all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with the provisions of RCW 39.12.020. The term does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 36.102.060(4) or under development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).

The term contract shall mean a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid. However, a contract which is awarded from a small works roster under the authority of RCW 39.04.150, 35.22.620, 28B.10.355, 35.82.075, and 57.08.050 need not be advertised. [1997 c 220 § 402 (Referendum Bill No. 48, approved June 17, 1997); 1993 c 174 § 1; 1989 c 363 § 5; 1986 c 282 § 1; 1982 c 98 § 1; 1977 ex.s. c 177 § 1; 1923 c 183 § 1; RRS § 10322-1.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Severability—1986 c 282: See RCW 82.18.900.

39.04.015 Adjustment to bid price—Conditions. Notwithstanding the provisions of RCW 39.04.010, a state contracting authority is authorized to negotiate an adjustment to a bid price, based upon agreed changes to the contract plans and specifications, with a low responsive bidder under the following conditions:

(1) All bids for a state public works project involving buildings and any associated building utilities and appendants exceed the available funds, as certified by the appropriate fiscal officer;

(2) The apparent low responsive bid does not exceed the available funds by: (a) Five percent on projects valued under one million dollars; (b) the greater of fifty thousand dollars or two and one-half percent for projects valued between one million dollars and five million dollars; or (c) the greater of one hundred twenty-five thousand dollars or one percent for projects valued over five million dollars; and

(3) The negotiated adjustment will bring the bid price within the amount of available funds. [1989 c 59 § 1.]

39.04.020 Plans and specifications—Estimates—Publication—Emergencies. Whenever the state or any municipality shall determine that any public work is necessary to be done, it shall cause plans, specifications, or both thereof and an estimate of the cost of such work to be made

and filed in the office of the director, supervisor, commissioner, trustee, board, or agency having by law the authority to require such work to be done. The plans, specifications, and estimates of cost shall be approved by the director, supervisor, commissioner, trustee, board, or agency and the original draft or a certified copy filed in such office before further action is taken.

If the state or such municipality shall determine that it is necessary or advisable that such work shall be executed by any means or method other than by contract or by a small works roster process, and it shall appear by such estimate that the probable cost of executing such work will exceed the sum of twenty-five thousand dollars, then the state or such municipality shall at least fifteen days before beginning work cause such estimate, together with a description of the work, to be published at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which such work is to be done. When any emergency shall require the immediate execution of such public work, upon a finding of the existence of such emergency by the authority having power to direct such public work to be done and duly entered of record, publication of description and estimate may be made within seven days after the commencement of the work. [1994 c 243 § 1; 1993 c 379 § 111; 1986 c 282 § 2; 1982 c 98 § 4; 1975 1st ex.s. c 230 § 2; 1967 c 70 § 1; 1923 c 183 § 2; RRS § 10322-2. Formerly RCW 39.04.020 and 39.04.030.]

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Severability—1986 c 282: See RCW 82.18.900.

39.04.040 Work to be executed according to plans—Supplemental plans. Whenever plans and specifications shall have been filed the work to be done shall be executed in accordance with such plans and specifications unless supplemental plans and specifications of the alterations to be made therein shall be made and filed in the office where the original plans and specifications are filed.

In the event that the probable cost of executing such work in accordance with the supplemental plans and specifications shall be increased or decreased from the estimated cost as shown by the original estimate to an amount in excess of ten percent of such estimate, then a supplemental estimate shall be made of the increased or decreased cost of executing the work in accordance with the supplemental plans and specifications and filed in the office where the original estimate is filed. [1923 c 183 § 3; RRS § 10322-3.]

39.04.050 Contents of original estimates. Original estimates shall show in detail the estimated cost of the work; the estimated quantities of each class of work; the estimated unit cost for each class; the estimated total cost for each class; the time limit, allowed for the completion of the work and the estimated dates of commencement and completion. [1986 c 282 § 3; 1923 c 183 § 4; RRS § 10322-4.]

Severability—1986 c 282: See RCW 82.18.900.

39.04.060 Supplemental estimates. Supplemental estimates shall show the estimated increase or decrease in the total quantities of each class, in the unit cost of each class, in the total cost for each class and in the total cost of

the work as shown by the original estimate, together with any change in the time limit and in the estimated dates of commencing and completing the work. [1923 c 183 § 5; RRS § 10322-5.]

39.04.070 Account and record of cost. Whenever the state or any municipality shall execute any public work by any means or method other than by contract or small works roster, it shall cause to be kept and preserved a full, true and accurate account and record of the costs of executing such work in accordance with the budgeting, accounting, and reporting system provisions prescribed by law for the state agency or municipality. [1986 c 282 § 4; 1923 c 183 § 6; RRS § 10322-6.]

Severability—1986 c 282: See RCW 82.18.900.

State auditor to prescribe standard form for costs of public works: RCW 43.09.205.

39.04.080 Certified copy to be filed—Engineers' certificate. A true copy of such account or record, duly certified by the officer or officers having by law authority to direct such work to be done, to be a full, true and accurate account of the costs of executing such work shall be filed in the office where the original plans and specifications are filed within sixty days after the completion of the work.

The engineer or other officer having charge of the execution of such work shall execute a certificate which shall be attached to and filed with such certified copy, certifying that such work was executed in accordance with the plans and specifications on file and the times of commencement and completion of such work. If the work is not in accordance with such plans and specifications he shall set forth the manner and extent of the variance therefrom. [1923 c 183 § 7; RRS § 10322-7.]

39.04.100 Records open to public inspection—Certified copies. All plans, specifications, estimates, and copies of accounts or records and all certificates attached thereto shall, when filed, become public records and shall at all reasonable times be subject to public inspection.

Certified copies of any estimate, account or record shall be furnished by the officer having the custody thereof to any person on demand and the payment of the legal fees for making and certifying the same. [1923 c 183 § 9; RRS § 10322-9.]

39.04.110 Penalty for false entries. Any director, supervisor, officer or employee of the state and any commissioner, trustee, supervisor, officer or employee of any municipality who shall knowingly make any false entry in any account or record required by this chapter or who shall knowingly certify to any false statement in any certificate required by this chapter, shall be guilty of a misdemeanor. [1923 c 183 § 10; RRS § 10322-10.]

Falsifying accounts: RCW 42.20.070.

Misconduct of public officers: Chapter 42.20 RCW.

39.04.120 Change orders due to environmental protection requirements—Costs—Dispute resolution. If the successful bidder must undertake additional work for public construction projects issued by the state of Washing-

ton, its authorities or agencies, or a political subdivision of the state due to the enactment of new environmental protection requirements or the amendment of existing environmental protection statutes, ordinances, or rules occurring after the submission of the successful bid, the awarding agency shall issue a change order setting forth the additional work that must be undertaken, which shall not invalidate the contract. The cost of such a change order to the awarding agency shall be determined in accordance with the provisions of the contract for change orders or, if no such provision is set forth in the contract, then the cost to the awarding agency shall be the contractor's costs for wages, labor costs other than wages, wage taxes, materials, equipment rentals, insurance, and subcontracts attributable to the additional activity plus a reasonable sum for overhead and profit. However, the additional costs to undertake work not specified in the contract documents shall not be approved unless written authorization is given the successful bidder prior to his undertaking such additional activity. In the event of a dispute between the awarding agency and the contractor, dispute resolution procedures may be commenced under the applicable terms of the construction contract, or, if the contract contains no such provision for dispute resolution, the then obtaining rules of the American arbitration association. [1998 c 196 § 1; 1973 1st ex.s. c 62 § 1.]

Severability—1973 1st ex.s. c 62: "If any provision or part of this 1973 act shall be judged to be invalid or unconstitutional, such adjudication shall not affect the validity of any provision or part of this 1973 act not adjudged invalid or unconstitutional." [1973 1st ex.s. c 62 § 4.]

Delay due to litigation, change orders, costs, arbitration, termination:
RCW 60.28.080.

39.04.130 Application of RCW 39.04.120. RCW 39.04.120 shall take effect in ninety days but shall not apply to any contract awarded pursuant to an invitation for bids issued on or before the date it takes effect, or to any persons or bonds in respect of any such contract. [1973 1st ex.s. c 62 § 2.]

Severability—1973 1st ex.s. c 62: See note following RCW 39.04.120.

39.04.133 State capital improvement or construction projects—Use of recycled content products in design or specifications. (1) The state's preferences for the purchase and use of recycled content products shall be included as a factor in the design and development of state capital improvement projects.

(2) Specifications for materials in state construction projects shall include the use of recycled content products and recyclable products whenever practicable.

(3) This section does not apply to contracts entered into by a municipality. [1996 c 198 § 5.]

39.04.135 Demolition projects—Recycling or reuse of materials. Material from demolition projects shall be recycled or reused whenever practicable. [1996 c 198 § 6.]

39.04.140 Contracts affected by increase in price of petroleum products—Termination—Continuation with contracting agency sharing increased costs—Conditions. (1) The legislature finds (a) that the increase in the price of petroleum products resulting from the world wide shortage

of crude oil has created a condition which has rendered performance by contractors of many public works contracts economically impossible and (b) that provision should be made to provide for the orderly termination of such contracts; the deletion of work affected by petroleum prices without the necessity of litigation; or, alternatively at the election of any contracting agency, the continuation of the contract with the agency assuming a share of the increased petroleum costs.

(2) Whenever the state or any municipality shall have awarded any public works contract during the performance of which (a) any legally enforceable private agreement or contractual arrangement between either the contractor or a first tier subcontractor and his suppliers of crude oil, residual fuel oil, refined petroleum products, or asphalt required in order to complete performance of the public works contract are superseded, with resulting increased costs of performance of the public works contract, by force majeure regulations, rules, allocations, or rulings issued by any federal, state, or other agency acting pursuant to any federal or state economic stabilization act, petroleum allocation act, or other legislation authorizing the same; or (b) the cost of petroleum products for which has increased by more than twenty percent over the current market price thereof as the date of contract award, then the contractor may elect to terminate the contract in its entirety or to delete such portions of the work from the contract, and the state or municipality shall pay the contractor for all work performed prior to the date of termination of the contract or deletion of such work. The state or municipality shall also pay the contractor for all acceptable materials ordered by the contractor and delivered on the work site prior to the termination of the contract or deletion of such work by the contractor. Such materials shall be purchased from the contractor by the state or the municipality at the actual cost of such material to the contractor and shall thereupon become the property of the state or municipality. No payment shall be made to the contractor for overhead costs or anticipated profits as to work not performed as a result of deletion of such work or termination of the contract. Amounts retained and accumulated under RCW 60.28.010 shall be held for a period of thirty days following the election of the contractor to terminate the contract in its entirety: PROVIDED, That if the contractor elects to terminate or delete such portions of the work and the state or such municipality finds that it is in the public interest to complete performance on such public works contract then the state or such municipality shall require the contractor to complete performance of the public works contract and the state or such municipality shall modify the provisions of that public works contract to increase the contract price so that the state or municipality shall bear eighty percent of such increased costs over the contractor's estimated cost at the time of contract bid opening and the contractor shall bear the balance thereof. Upon request by the state or municipality the contractor shall make his records available for audit by the state or municipality to verify such increased costs.

(3) This section shall apply only to public works contracts awarded prior to November 1, 1973, and only to work under such contracts which has not been performed on the date the contractor elects to terminate the contract or delete such work from the contract. [1974 ex.s. c 194 § 1.]

Severability—1974 ex.s. c 194: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 194 § 2.]

39.04.150 State agencies authorized to establish small works roster—Procedure for securing quotations—Rules. (1) As used in this section, "agency" means the department of general administration, the department of fish and wildlife, the department of natural resources, the department of transportation, and the state parks and recreation commission.

(2) In addition to any other power or authority that an agency may have, each agency, alone or in concert, may establish a small works roster consisting of all qualified contractors who have requested to be included on the roster.

(3) The small works roster may make distinctions between contractors based on the geographic areas served and the nature of the work the contractor is qualified to perform. At least once every year, the agency shall advertise in a newspaper of general circulation the existence of the small works roster and shall add to the roster those contractors who request to be included on the roster.

(4) Construction, repair, or alteration projects estimated to cost less than one hundred thousand dollars are exempt from the requirement that the contracts be awarded after advertisement and competitive bid as defined by RCW 39.04.010. In lieu of advertisement and competitive bid, each agency alone or in concert shall establish a procedure for securing telephone, electronic, or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsive and responsible bidder. This procedure shall require either that the agency make a good faith effort to request quotations from all contractors on the small works roster who have indicated the capability of performing the kind of public works being contracted or that the agency solicit quotations from at least five contractors in a manner that will equitably distribute the opportunity among contractors willing to perform in the geographic area of the work. The agency shall invite at least one proposal from a certified minority or women-owned contractor, if available, who is otherwise qualified to perform such work. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(5) The breaking down of any public work or improvement into units or accomplishing any public work or improvement by phases for the purpose of avoiding the minimum dollar amount for bidding is contrary to public policy and is prohibited.

(6) The director of general administration shall adopt by rule a procedure to qualify contractors for inclusion on the small works roster. Each agency shall follow the procedure adopted by the director of general administration. No agency shall be required to make available for public inspection or copying under chapter 42.17 RCW financial information required to be provided by the qualification procedure.

(7) An agency may adopt by rule procedures to implement this section which shall not be inconsistent with the procedures adopted by the director of the department of

general administration pursuant to subsection (6) of this section. [1998 c 278 § 11. Prior: 1994 c 264 § 12; 1994 c 243 § 2; 1993 c 379 § 112; 1988 c 36 § 12; 1987 c 218 § 1; 1982 c 98 § 2.]

Effective date—1994 c 243 § 2: "Section 2 of this act shall take effect July 1, 1994." [1994 c 243 § 3.]

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Director of general administration authorized to delegate to other state agencies under RCW 39.04.150: RCW 43.19.450.

39.04.155 Small works roster contract awards process. (1) This section provides a uniform process to award contracts for public works projects by those municipalities that are authorized to use a small works roster in lieu of the requirements for formal sealed bidding. The state statutes governing a specific type of municipality shall establish the maximum dollar thresholds of the contracts that can be awarded under this process, and may include other matters concerning the small works roster process, for the municipality.

(2) Such municipalities may create a single general small works roster, or may create a small works roster for different categories of anticipated work. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. At least twice a year, the municipality shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters.

The governing body of the municipality shall establish a procedure for securing telephone or written quotations from the contractors on the general small works roster, or a specific small works roster for the appropriate category of work, to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 43.19.1911. Such invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This section does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Whenever possible at least five contractors shall be invited to submit bids. Once a contractor has been afforded an opportunity to submit a proposal, that contractor shall not be offered another opportunity until all other appropriate contractors on the small works roster have been afforded an opportunity to submit a proposal on a contract. Proposals may be invited from all appropriate contractors on the small works roster.

A contract awarded from a small works roster under this section need not be advertised.

Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry. [1998 c 278 § 12; 1993 c 198 § 1; 1991 c 363 § 109.]

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

Competitive bids—Contract procedure: RCW 36.32.250.

39.04.160 Contracts subject to requirements established under office of minority and women's business enterprises. All contracts entered into under this chapter by the state on or after September 1, 1983, are subject to the requirements established under chapter 39.19 RCW. [1983 c 120 § 11.]

Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120: See RCW 39.19.910, 39.19.920.

39.04.170 Application of chapter to performance-based contracts for energy equipment. This chapter shall not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW. [1985 c 169 § 5.]

39.04.175 Application of chapter to certain agreements relating to water pollution control, solid waste handling facilities. This chapter does not apply to the selection of persons or entities to construct or develop water pollution control facilities or to provide water pollution control services under RCW 70.150.040 or the selection of persons or entities to construct or develop solid waste handling facilities or to provide solid waste handling services under RCW 35.21.156 or under RCW 36.58.090. [1989 c 399 § 11; 1986 c 244 § 13.]

Severability—1986 c 244: See RCW 70.150.905.

39.04.180 Trench excavations—Safety systems required. On public works projects in which trench excavation will exceed a depth of four feet, any contract therefor shall require adequate safety systems for the trench excavation that meet the requirements of the Washington industrial safety and health act, chapter 49.17 RCW. This requirement shall be included in the cost estimates and bidding forms as a separate item. The costs of trench safety systems shall not be considered as incidental to any other contract item and any attempt to include the trench safety systems as an incidental cost is prohibited. [1988 c 180 § 1.]

39.04.190 Purchase contract process—Other than formal sealed bidding. (1) This section provides a uniform process to award contracts for the purchase of any materials, equipment, supplies, or services by those municipalities that are authorized to use this process in lieu of the requirements for formal sealed bidding. The state statutes governing a specific type of municipality shall establish the maximum dollar thresholds of the contracts that can be awarded under this process, and may include other matters concerning the awarding of contracts for purchases, for the municipality.

(2) At least twice per year, the municipality shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of vendor lists and solicit the names of vendors for the lists. Municipalities shall by resolution establish a procedure for securing telephone or written quotations, or both, from at least three different vendors whenever possible to assure that a competitive price is established and for awarding the contracts for the purchase of any materials, equipment, supplies, or services to the lowest responsible bidder as defined in RCW 43.19.1911. Immediately after the award is made, the bid

quotations obtained shall be recorded, open to public inspection, and shall be available by telephone inquiry. A contract awarded pursuant to this section need not be advertised. [1993 c 198 § 2; 1991 c 363 § 110.]

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

39.04.200 Posting of small works roster or purchase awards. Any municipality that utilizes the small works roster process established in RCW 39.04.155 to award contracts for public works projects, or the uniform process established in RCW 39.04.190 to award contracts for purchases, must post a list of the contracts awarded under RCW 39.04.155 and 39.04.190 at least once every two months. The list shall contain the name of the contractor or vendor awarded the contract, the amount of the contract, a brief description of the type of work performed or items purchased under the contract, and the date it was awarded. The list shall also state the location where the bid quotations for these contracts are available for public inspection. [1993 c 198 § 3; 1991 c 363 § 111.]

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

39.04.210 Correctional facilities construction and repair—Findings. The legislature recognizes that fair and open competition is a basic tenet of public works procurement, that such competition reduces the appearance of and opportunity for favoritism and inspires public confidence that contracts are awarded equitably and economically, and that effective monitoring mechanisms are important means of curbing any improprieties and establishing public confidence in the process by which contractual services are procured. The legislature finds that there will continue to exist a need for additional correctional facilities due to the inadequate capacity of existing correctional facilities to accommodate the predicted growth of offender populations and that it is necessary to provide public works contract options for the effective construction and repair of additional department of corrections facilities. [1994 c 80 § 1; 1991 c 130 § 1.]

Severability—1994 c 80: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 80 § 4.]

Effective date—1994 c 80: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 23, 1994]." [1994 c 80 § 5.]

Severability—1991 c 130: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 130 § 4.]

39.04.220 Correctional facilities construction and repair—Use of general contractor/construction manager method for awarding contracts—Demonstration projects. (1) In addition to currently authorized methods of public works contracting, and in lieu of the requirements of RCW 39.04.010 and 39.04.020 through 39.04.060, capital projects funded for over ten million dollars authorized by the legislature for the department of corrections to construct or repair facilities may be accomplished under contract using the general contractor/construction manager method de-

scribed in this section. In addition, the general contractor/construction manager method may be used for up to two demonstration projects under ten million dollars for the department of corrections. Each demonstration project shall aggregate capital projects authorized by the legislature at a single site to total no less than three million dollars with the approval of the office of financial management. The department of general administration shall present its plan for the aggregation of projects under each demonstration project to the oversight advisory committee established under subsection (2) of this section prior to soliciting proposals for general contractor/construction manager services for the demonstration project.

(2) For the purposes of this section, "general contractor/construction manager" means a firm with which the department of general administration has selected and negotiated a maximum allowable construction cost to be guaranteed by the firm, after competitive selection through a formal advertisement, and competitive bids to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase. The department of general administration shall establish an independent oversight advisory committee with representatives of interest groups with an interest in this subject area, the department of corrections, and the private sector, to review selection and contracting procedures and contracting documents. The oversight advisory committee shall discuss and review the progress of the demonstration projects. The general contractor/construction manager method is limited to projects authorized on or before July 1, 1997.

(3) Contracts for the services of a general contractor/construction manager awarded under the authority of this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. Minority and women enterprise total project goals shall be specified in the bid instructions to the general contractor/construction manager finalists. The director of general administration is authorized to include an incentive clause in any contract awarded under this section for savings of either time or cost or both from that originally negotiated. No incentives granted shall exceed five percent of the maximum allowable construction cost. The director of general administration or his or her designee shall establish a committee to evaluate the proposals considering such factors as: Ability of professional personnel; past performance in negotiated and complex projects; ability to meet time and budget requirements; location; recent, current, and projected work loads of the firm; and the concept of their proposal. After the committee has selected the most qualified finalists, these finalists shall submit sealed bids for the percent fee, which is the percentage amount to be earned by the general contractor/construction manager as overhead and profit, on the estimated maximum allowable construction cost and the fixed amount for the detailed specified general conditions work. The maximum allowable construction cost may be negotiated between the department of general administration and the selected firm after the scope of the project is

adequately determined to establish a guaranteed contract cost for which the general contractor/construction manager will provide a performance and payment bond. The guaranteed contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the percent fee on the negotiated maximum allowable construction cost, and sales tax. If the department of general administration is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the department of general administration determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the department of general administration shall negotiate with the next low bidder and continue until an agreement is reached or the process is terminated. If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the state, the percent fee shall be renegotiated. All subcontract work shall be competitively bid with public bid openings. Specific contract requirements for women and minority enterprise participation shall be specified in each subcontract bid package that exceeds ten percent of the department's estimated project cost. All subcontractors who bid work over two hundred thousand dollars shall post a bid bond and the awarded subcontractor shall provide a performance and payment bond for their contract amount if required by the general contractor/construction manager. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. Bidding on subcontract work by the general contractor/construction manager or its subsidiaries is prohibited. The general contractor/construction manager may negotiate with the low-responsive bidder only in accordance with RCW 39.04.015 or, if unsuccessful in such negotiations, rebid.

(4) If the project is completed for less than the agreed upon maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the state. If the project is completed for more than the agreed upon maximum allowable construction cost, excepting increases due to any contract change orders approved by the state, the additional cost shall be the responsibility of the general contractor/construction manager.

(5) The powers and authority conferred by this section shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained in this section may be construed as limiting any other powers or authority of the department of general administration. However, all actions taken pursuant to the powers and authority granted to the director or the department of general administration under this section may only be taken with the concurrence of the department of corrections. [1996 c 18 § 5; 1994 c 80 § 2; 1991 c 130 § 2.]

Severability—Effective date—1994 c 80: See notes following RCW 39.04.210.

Severability—1991 c 130: See note following RCW 39.04.210.

39.04.230 Correctional facilities construction and repair—Alternative contracting method to remain in force until contracts completed. Methods of public works

contracting authorized by RCW 39.04.210 and 39.04.220 shall remain in full force and effect until completion of projects authorized on or before July 1, 1997. [1994 c 80 § 3; 1991 c 130 § 3.]

Severability—Effective date—1994 c 80: See notes following RCW 39.04.210.

Severability—1991 c 130: See note following RCW 39.04.210.

39.04.240 Public works contracts—Awarding of attorneys' fees. (1) The provisions of RCW 4.84.250 through 4.84.280 shall apply to an action arising out of a public works contract in which the state or a municipality, or other public body that contracts for public works, is a party, except that: (a) The maximum amount of the pleading shall be two hundred fifty thousand dollars; and (b) in applying RCW 4.84.280, the time period for serving offers of settlement on the adverse party shall be the period not less than thirty days and not more than one hundred twenty days after completion of the service and filing of the summons and complaint.

(2) The rights provided for under this section may not be waived by the parties to a public works contract that is entered into on or after June 11, 1992, and a provision in such a contract that provides for waiver of these rights is void as against public policy. However, this subsection shall not be construed as prohibiting the parties from mutually agreeing to a clause in a public works contract that requires submission of a dispute arising under the contract to arbitration. [1992 c 171 § 1.]

39.04.250 Payments received on account of work performed by subcontractor—Disputed amounts—Remedies. (1) When payment is received by a contractor or subcontractor for work performed on a public work, the contractor or subcontractor shall pay to any subcontractor not later than ten days after the receipt of the payment, amounts allowed the contractor on account of the work performed by the subcontractor, to the extent of each subcontractor's interest therein.

(2) In the event of a good faith dispute over all or any portion of the amount due on a payment from the state or a municipality to the prime contractor, or from the prime contractor or subcontractor to a subcontractor, then the state or the municipality, or the prime contractor or subcontractor, may withhold no more than one hundred fifty percent of the disputed amount. Those not a party to a dispute are entitled to full and prompt payment of their portion of a draw, progress payment, final payment, or released retainage.

(3) In addition to all other remedies, any person from whom funds have been withheld in violation of this section shall be entitled to receive from the person wrongfully withholding the funds, for every month and portion thereof that payment including retainage is not made, interest at the highest rate allowed under RCW 19.52.025. In any action for the collection of funds wrongfully withheld, the prevailing party shall be entitled to costs of suit and reasonable attorneys' fees. [1992 c 223 § 5.]

Effective date—1992 c 223: See note following RCW 39.76.011.

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

39.04.260 Private construction performed pursuant to contract for rental, lease, or purchase by state—Must comply with prevailing wage law. Any work, construction, alteration, repair, or improvement, other than ordinary maintenance, that the state or a municipality causes to be performed by a private party through a contract to rent, lease, or purchase at least fifty percent of the project by one or more state agencies or municipalities shall comply with chapter 39.12 RCW. [1993 c 110 § 1.]

Application—1993 c 110: "Section 1 of this act shall not apply to any project for which a call for competitive bids was made before July 25, 1993." [1993 c 110 § 2.]

39.04.270 Electronic data processing and telecommunications systems—Municipalities—Acquisition method—Competitive negotiation—Findings, intent. (1) The legislature finds that the unique aspects of electronic data processing and telecommunications systems and the importance of these systems for effective administration warrant separate acquisition authority for electronic data processing and telecommunication systems. It is the intent of the legislature that municipalities utilize an acquisition method for electronic data processing and telecommunication systems that is both competitive and compatible with the needs of the municipalities.

(2) A municipality may acquire electronic data processing or telecommunication equipment, software, or services through competitive negotiation rather than through competitive bidding.

(3) "Competitive negotiation," for the purposes of this section, shall include, as a minimum, the following requirements:

(a) A request for proposal shall be prepared and submitted to an adequate number of qualified sources, as determined by the municipality in its discretion, to permit reasonable competition consistent with the requirements of the procurement. Notice of the request for the proposal must be published in a newspaper of general circulation in the municipality at least thirteen days before the last date upon which proposals will be received. The request for proposal shall identify significant evaluation factors, including price, and their relative importance.

(b) The municipality shall provide reasonable procedures for technical evaluation of the proposals received, identification of qualified sources, and selection for awarding the contract.

(c) The award shall be made to the qualified bidder whose proposal is most advantageous to the municipality with price and other factors considered. The municipality may reject any and all proposals for good cause and request new proposals. [1996 c 257 § 1.]

39.04.280 Competitive bidding requirements—Exemptions. This section provides uniform exemptions to competitive bidding requirements utilized by municipalities when awarding contracts for public works and contracts for purchases. The statutes governing a specific type of municipality may also include other exemptions from competitive bidding requirements. The purpose of this section is to supplement and not to limit the current powers of any municipality to provide exemptions from competitive bidding requirements.

(1) Competitive bidding requirements may be waived by the governing body of the municipality for:

(a) Purchases that are clearly and legitimately limited to a single source of supply;

(b) Purchases involving special facilities or market conditions;

(c) Purchases in the event of an emergency;

(d) Purchases of insurance or bonds; and

(e) Public works in the event of an emergency.

(2)(a) The waiver of competitive bidding requirements under subsection (1) of this section may be by resolution or by the terms of written policies adopted by the municipality, at the option of the governing body of the municipality. If the governing body elects to waive competitive bidding requirements by the terms of written policies adopted by the municipality, immediately after the award of any contract, the contract and the factual basis for the exception must be recorded and open to public inspection.

If a resolution is adopted by a governing body to waive competitive bidding requirements under (b) of this subsection, the resolution must recite the factual basis for the exception. This subsection (2)(a) does not apply in the event of an emergency.

(b) If an emergency exists, the person or persons designated by the governing body of the municipality to act in the event of an emergency may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the emergency situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract.

(3) For purposes of this section "emergency" means unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken. [1998 c 278 § 1.]

39.04.900 Rights may not be waived—Construction—1992 c 223. (1) The rights provided in chapter 223, Laws of 1992 may not be waived by the parties and a contract provision that provides for waiver of the rights provided in chapter 223, Laws of 1992 is void as against public policy.

(2) Chapter 223, Laws of 1992 is to be liberally construed to provide security for all parties intended to be protected by its provisions. [1992 c 223 § 6.]

Effective date—1992 c 223: See note following RCW 39.76.011.

Application—1992 c 223: See RCW 39.04.901.

39.04.901 Application—1992 c 223. (1) RCW 39.76.011, 60.28.011, 60.28.021, 60.28.051, 39.04.250, and 39.04.900 are applicable to all public works contracts entered into on or after September 1, 1992, relating to the construction of any work of improvement.

(2) RCW 39.76.010, 60.28.010, 60.28.020, and 60.28.050 are applicable to all public works contracts entered

into prior to September 1, 1992, relating to the construction of any work of improvement. [1992 c 223 § 7.]

Effective date—1992 c 223: See note following RCW 39.76.011.

Chapter 39.06

PUBLIC WORKS—REGISTRATION, LICENSING, OF CONTRACTORS

Sections

39.06.010 Contracts with unregistered or unlicensed contractors and with other violators prohibited.

39.06.010 Contracts with unregistered or unlicensed contractors and with other violators prohibited. No agency of the state or any of its political subdivisions may execute a contract:

(1) With any contractor who is not registered or licensed as may be required by the laws of this state other than contractors on highway projects who have been prequalified as required by RCW 47.28.070, with the department of transportation to perform highway construction, reconstruction, or maintenance; or

(2) For two years from the date that a violation is finally determined, with any person or entity who has been determined by the respective administering agency to have violated RCW 50.12.070(1)(b), 51.16.070(1)(b), or 82.32.070(1)(b). During this two-year period, the person or entity may not be permitted to bid, or have a bid considered, on any public works contract. [1997 c 54 § 1; 1984 c 7 § 43; 1967 c 70 § 3.]

Severability—1984 c 7: See note following RCW 47.01.141.

Construction building permits—Cities, towns or counties prohibited from issuing without verification of registration: RCW 18.27.110.

Chapter 39.08

CONTRACTOR'S BOND

Sections

39.08.010 Bond required—Conditions—Retention of contract amount in lieu of bond—Contracts of one hundred thousand dollars or less.

39.08.015 Liability for failure to take bond.

39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorney's fees.

39.08.065 Notice to contractor condition to suit on bond when supplies are furnished to subcontractor.

39.08.080 Liens for labor, materials, taxes, on public works.

39.08.100 Marine vessel construction—Security in lieu of bond.

Public officer requiring bond or insurance from particular insurer, agent or broker, procuring bond or insurance, violations: RCW 48.30.270.

39.08.010 Bond required—Conditions—Retention of contract amount in lieu of bond—Contracts of one hundred thousand dollars or less. Whenever any board, council, commission, trustees, or body acting for the state or any county or municipality or any public body shall contract with any person or corporation to do any work for the state, county, or municipality, or other public body, city, town, or district, such board, council, commission, trustees, or body shall require the person or persons with whom such contract is made to make, execute, and deliver to such board, council, commission, trustees, or body a good and sufficient bond,

with a surety company as surety, conditioned that such person or persons shall faithfully perform all the provisions of such contract and pay all laborers, mechanics, and subcontractors and materialmen, and all persons who supply such person or persons, or subcontractors, with provisions and supplies for the carrying on of such work, which bond in cases of cities and towns shall be filed with the clerk or comptroller thereof, and any person or persons performing such services or furnishing material to any subcontractor shall have the same right under the provisions of such bond as if such work, services or material was furnished to the original contractor: PROVIDED, HOWEVER, That the provisions of RCW 39.08.010 through 39.08.030 shall not apply to any money loaned or advanced to any such contractor, subcontractor or other person in the performance of any such work: PROVIDED FURTHER, That on contracts of twenty-five thousand dollars or less, at the option of the contractor the respective public entity may, in lieu of the bond, retain fifty percent of the contract amount for a period of thirty days after date of final acceptance, or until receipt of all necessary releases from the department of revenue and the department of labor and industries and settlement of any liens filed under chapter 60.28 RCW, whichever is later: PROVIDED FURTHER, That for contracts of one hundred thousand dollars or less, the public entity may accept a full payment and performance bond from an individual surety or sureties: AND PROVIDED FURTHER, That the surety must agree to be bound by the laws of the state of Washington and subjected to the jurisdiction of the state of Washington. [1989 c 145 § 1; 1982 c 98 § 5; 1975 1st ex.s. c 278 § 23; 1967 c 70 § 2; 1915 c 28 § 1; 1909 c 207 § 1; RRS § 1159. Prior: 1897 c 44 § 1; 1888 p 15 § 1.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

Liens for labor, material, taxes on public works—Reserve fund required: RCW 60.28.010.

State highway construction and maintenance, bond and surety requirements: Chapter 47.28 RCW.

39.08.015 Liability for failure to take bond. If any board of county commissioners of any county, or mayor and common council of any incorporated city or town, or tribunal transacting the business of any municipal corporation shall fail to take such bond as herein required, such county, incorporated city or town, or other municipal corporation, shall be liable to the persons mentioned in RCW 39.08.010, to the full extent and for the full amount of all such debts so contracted by such contractor. [1909 c 207 § 2; RRS § 1160. Prior: 1888 p 15 § 2. Formerly RCW 39.08.070.]

39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorney's fees. The bond mentioned in RCW 39.08.010 shall be in an amount equal to the full contract price agreed to be paid for such work or improvement, and shall be to the state of Washington, except as otherwise provided in RCW 39.08.100, and except in cases of cities and towns, in which cases such municipalities may by general ordinance fix and determine the amount of such bond and to whom such bond shall run: PROVIDED, The same shall not be for a less amount than twenty-five percent of the contract price of any such improvement, and may designate that the same shall be payable to such city, and not

to the state of Washington, and all such persons mentioned in RCW 39.08.010 shall have a right of action in his, her, or their own name or names on such bond for work done by such laborers or mechanics, and for materials furnished or provisions and goods supplied and furnished in the prosecution of such work, or the making of such improvements: PROVIDED, That such persons shall not have any right of action on such bond for any sum whatever, unless within thirty days from and after the completion of the contract with an acceptance of the work by the affirmative action of the board, council, commission, trustees, officer, or body acting for the state, county or municipality, or other public body, city, town or district, the laborer, mechanic or subcontractor, or materialman, or person claiming to have supplied materials, provisions or goods for the prosecution of such work, or the making of such improvement, shall present to and file with such board, council, commission, trustees or body acting for the state, county or municipality, or other public body, city, town or district, a notice in writing in substance as follows:

To (here insert the name of the state, county or municipality or other public body, city, town or district):

Notice is hereby given that the undersigned (here insert the name of the laborer, mechanic or subcontractor, or materialman, or person claiming to have furnished labor, materials or provisions for or upon such contract or work) has a claim in the sum of dollars (here insert the amount) against the bond taken from (here insert the name of the principal and surety or sureties upon such bond) for the work of (here insert a brief mention or description of the work concerning which said bond was taken).

(here to be signed)

Such notice shall be signed by the person or corporation making the claim or giving the notice, and said notice, after being presented and filed, shall be a public record open to inspection by any person, and in any suit or action brought against such surety or sureties by any such person or corporation to recover for any of the items hereinbefore specified, the claimant shall be entitled to recover in addition to all other costs, attorney's fees in such sum as the court shall adjudge reasonable: PROVIDED, HOWEVER, That no attorney's fees shall be allowed in any suit or action brought or instituted before the expiration of thirty days following the date of filing of the notice hereinbefore mentioned: PROVIDED FURTHER, That any city may avail itself of the provisions of RCW 39.08.010 through 39.08.030, notwithstanding any charter provisions in conflict herewith: AND PROVIDED FURTHER, That any city or town may impose any other or further conditions and obligations in such bond as may be deemed necessary for its proper protection in the fulfillment of the terms of the contract secured thereby, and not in conflict herewith. [1989 c 58 § 1; 1977 ex.s. c 166 § 4; 1915 c 28 § 2; 1909 c 207 § 3; RRS § 1161. Prior: 1899 c 105 § 1; 1888 p 16 § 3. Formerly RCW 39.08.030 through 39.08.060.]

Severability—1977 ex.s. c 166: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to the other persons or circumstances is not affected." [1977 ex.s. c 166 § 9.]

39.08.065 Notice to contractor condition to suit on bond when supplies are furnished to subcontractor.

Every person, firm or corporation furnishing materials, supplies or provisions to be used in the construction, performance, carrying on, prosecution or doing of any work for the state, or any county, city, town, district, municipality or other public body, shall, not later than ten days after the date of the first delivery of such materials, supplies or provisions to any subcontractor or agent of any person, firm or corporation having a subcontract for the construction, performance, carrying on, prosecution or doing of such work, deliver or mail to the contractor a notice in writing stating in substance and effect that such person, firm or corporation has commenced to deliver materials, supplies or provisions for use thereon, with the name of the subcontractor or agent ordering or to whom the same is furnished and that such contractor and his bond will be held for the payment of the same, and no suit or action shall be maintained in any court against the contractor or his bond to recover for such material, supplies or provisions or any part thereof unless the provisions of this section have been complied with. [1915 c 167 § 1; RRS § 1159-1. Formerly RCW 39.08.020.]

39.08.080 Liens for labor, materials, taxes, on public works. See chapter 60.28 RCW.

39.08.100 Marine vessel construction—Security in lieu of bond. On contracts for construction, maintenance, or repair of a marine vessel, the department of transportation may permit, subject to specified format and conditions, the substitution of one or more of the following alternate forms of security in lieu of all or part of the bond: Certified check, replacement bond, cashier's check, treasury bills, an irrevocable bank letter of credit, assignment of a savings account, or other liquid assets specifically approved by the secretary of transportation. The secretary of transportation shall predetermine and include in the special provisions of the bid package the amount of this alternative form of security or bond, or a combination of the two, on a case-by-case basis, in an amount adequate to protect one hundred percent of the state's exposure to loss. Assets used as an alternative form of security shall not be used to secure the bond. By October 1, 1989, the department shall develop and adopt rules under chapter 34.05 RCW that establish the procedures for determining the state's exposure to loss on contracts for construction, maintenance, or repair of a marine vessel. [1989 c 58 § 2.]

Chapter 39.10**ALTERNATIVE PUBLIC WORKS CONTRACTING PROCEDURES**

Sections

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39.10.010 Finding—Purpose. (*Effective until July 1, 2001.*) The legislature finds that the traditional process of awarding public works contracts in lump sum to the lowest responsible bidder is a fair and objective method of selecting a contractor. However, under certain circumstances, alternative public works contracting procedures may best serve the public interest if such procedures are implemented in an open and fair process based on objective and equitable criteria. The purpose of this chapter is to authorize the use of certain supplemental alternative public works contracting procedures by state agencies and large municipalities under limited circumstances, to prescribe appropriate requirements to ensure that such contracting procedures serve the public interest, and to establish a process for evaluation of such contracting procedures. [1994 c 132 § 1.]

39.10.020 Definitions. (*Effective until July 1, 2001.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Alternative public works contracting procedure" means the design-build and the general contractor/construction manager contracting procedures authorized in RCW 39.10.050 and 39.10.060, respectively.

(2) "Public body" means the state department of general administration; the University of Washington; Washington State University; every city with a population greater than one hundred fifty thousand; every city authorized to use the design-build procedure for a water system demonstration project under RCW 39.10.065(3); every county with a population greater than four hundred fifty thousand; and every port district with a population greater than five hundred thousand.

(3) "Public works project" means any work for a public body within the definition of the term public work in RCW 39.04.010. [1997 c 376 § 1; 1994 c 132 § 2.]

Effective date—1997 c 376: "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 July 1, 1997." [1997 c 376 § 10.]

39.10.030 Public notification and review process. (*Effective until July 1, 2001.*) (1) An alternative public works contracting procedure authorized under this chapter may be used for a specific public works project only after a public body determines that use of the alternative procedure will serve the public interest by providing a substantial fiscal benefit, or that use of the traditional method of awarding contracts in lump sum to the low responsive bidder is not

practical for meeting desired quality standards or delivery schedules.

(2) Whenever a public body determines to use one of the alternative public works contracting procedures authorized under this chapter for a public works project, it shall first ensure adequate public notification and opportunity for public review and comment by implementing the public hearing procedure under (a) of this subsection or the written public comment procedure under (b) of this subsection.

(a) Public hearing procedure:

(i) The public body shall conduct a public hearing to receive public comment on its preliminary determination to use the alternative public works contracting procedure. At least twenty days before the public hearing, the public body shall cause notice of such hearing to be published at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which the public work will be done. The notice shall clearly describe the proposed project and the preliminary determination to use the alternative public works contracting procedure. The notice shall also indicate when, where, and how persons may present their comments on the preliminary determination, and where persons may obtain additional written information describing the project.

(ii) The public body shall summarize in a written statement its reasons for using the alternative public works contracting procedure. This statement, along with other relevant information describing the project, shall be made available upon request to interested parties at least twenty days before the public hearing.

(iii) The public body shall receive and record both written and oral comments concerning the preliminary determination at the public hearing.

(b) Written public comment procedure:

(i) The public body shall establish a thirty-day public comment period to receive public comment on its preliminary determination to use the alternative public works contracting procedure. At least seven days before the beginning of the public comment period, the public body shall cause notice of the public comment period to be published at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which the public work will be done. The notice shall clearly describe the proposed project and the preliminary determination to use the alternative public works contracting procedure. The notice shall also indicate when, where, and how persons may submit their written comments on the preliminary determination, where persons may obtain additional written information describing the project, and the date, time, and location of the public hearing that shall be conducted under (b)(iv) of this subsection if significant adverse written comments are received by the public body.

(ii) The public body shall summarize in a written statement its reasons for using the alternative public works contracting procedure. This statement, along with other relevant information describing the project, shall be made available upon request to interested parties at least seven days before the beginning of the public comment period.

(iii) The public body shall receive written comments concerning the preliminary determination during the public comment period.

(iv) If the public body finds that it has received significant adverse comments relating to the use of the alternative public works contracting procedure, the public body shall conduct a public hearing to receive additional oral and written public comments on its preliminary determination to use the alternative public works contracting procedure. The public hearing shall be held on the date and at the time and location specified in the public notice published under (b)(i) of this subsection. At least seven days before the public hearing, the public body shall provide notice of the hearing to each person who has submitted written comments, and cause a notice of the hearing to be published at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which the public work will be done.

(v) The public body shall receive and record written and oral comments concerning the preliminary determination at the public hearing.

(3) Final determinations to use an alternative public works contracting procedure may be made only by the legislative or governing authority of the public body, or, in the case of state agencies, by the agency director or chief administrative officer. Final determinations shall be accompanied by a concise statement of the principal reasons for overruling any considerations urged against the determination. Final determinations are subject to appeal to superior court within thirty days of the determination, provided that notice of such appeal shall be provided to the public body within seven days of the determination. The court may award reasonable attorneys' fees to the prevailing party.

(4) Following completion of a public works project using one of the alternative public works contracting procedures under this chapter, a report shall be submitted to the legislative or governing authority of the public body reviewing the utilization and performance of the alternative public works contracting procedure. Such report shall be made available to the public. [1997 c 376 § 2; 1994 c 132 § 3.]

Effective date—1997 c 376: See note following RCW 39.10.020.

39.10.040 Baseball stadium project—Alternative procedure may be used. (Effective until July 1, 2001.) An alternative public works contracting procedure authorized in this chapter may be used by a special agency, authority, or other district established by a county for construction of a baseball stadium provided that:

(1) The county is authorized to use the alternative public works contracting procedure under this chapter;

(2) The special agency, authority, or district complies with all the requirements of this chapter related to the alternative public works contracting procedure utilized; and

(3) The county itself complies with RCW 39.10.030 with respect to the baseball stadium project to be undertaken by the special agency, authority, or district. [1994 c 132 § 4.]

39.10.050 Design-build procedure—Which public bodies may use. (Effective until July 1, 2001.) (1) Notwithstanding any other provision of law, and after complying with RCW 39.10.030, the following public bodies may utilize the design-build procedure of public works

contracting for public works projects authorized under this section: The state department of general administration; the University of Washington; Washington State University; every city with a population greater than one hundred fifty thousand; every county with a population greater than four hundred fifty thousand; and every port district with a population greater than five hundred thousand. The authority granted to port districts in this section is in addition to and does not affect existing contracting authority under RCW 53.08.120 and 53.08.130. For the purposes of this section, "design-build procedure" means a contract between a public body and another party in which the party agrees to both design and build the facility, portion of the facility, or other item specified in the contract.

(2) Public bodies authorized under this section may utilize the design-build procedure for public works projects valued over ten million dollars where:

(a) The construction activities or technologies to be used are highly specialized and a design-build approach is critical in developing the construction methodology or implementing the proposed technology;

(b) The project design is repetitive in nature and is an incidental part of the installation or construction; or

(c) Regular interaction with and feedback from facilities users and operators during design is not critical to an effective facility design.

(3) Public bodies authorized under this section may also use the design-build procedure for the following projects that meet the criteria in subsection (2)(b) and (c) of this section:

(a) The construction or erection of preengineered metal buildings or prefabricated modular buildings, regardless of cost; or

(b) The construction of new student housing projects valued over five million dollars.

(4) Contracts for design-build services shall be awarded through a competitive process utilizing public solicitation of proposals for design-build services. The public body shall publish at least once in a legal newspaper of general circulation published in or as near as possible to that part of the county in which the public work will be done, a notice of its request for proposals for design-build services and the availability and location of the request for proposal documents. The request for proposal documents shall include:

(a) A detailed description of the project including programmatic, performance, and technical requirements and specifications, functional and operational elements, minimum and maximum net and gross areas of any building, and, at the discretion of the public body, preliminary engineering and architectural drawings;

(b) The reasons for using the design-build procedure;

(c) A description of the qualifications to be required of the proposer including, but not limited to, submission of the proposer's accident prevention program;

(d) A description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors. Evaluation factors shall include, but not be limited to: Proposal price; ability of professional personnel; past performance on similar projects; ability to meet time and budget requirements; ability to provide a performance and payment bond for the project; recent, current, and projected work loads of the firm; location; and the concept of the proposal;

(e) The form of the contract to be awarded;

(f) The maximum allowable construction cost and minority and women enterprise total project goals;

(g) The amount to be paid to finalists submitting best and final proposals who are not awarded a design-build contract; and

(h) Other information relevant to the project.

(5) The public body shall establish a committee to evaluate the proposals based on the factors, weighting, and process identified in the request for proposals. Based on its evaluation, the public body shall select not fewer than three nor more than five finalists to submit best and final proposals. The public body may, in its sole discretion, reject all proposals. Design-build contracts shall be awarded using the procedures in (a) or (b) of this subsection.

(a) Best and final proposals shall be evaluated and scored based on the factors, weighting, and process identified in the initial request for proposals. The public body may score the proposals using a system that measures the quality and technical merits of the proposal on a unit price basis. Final proposals may not be considered if the proposal cost is greater than the maximum allowable construction cost identified in the initial request for proposals. The public body shall initiate negotiations with the firm submitting the highest scored best and final proposal. If the public body is unable to execute a contract with the firm submitting the highest scored best and final proposal, negotiations with that firm may be suspended or terminated and the public body may proceed to negotiate with the next highest scored firm. Public bodies shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

(b) If the public body determines that all finalists are capable of producing plans and specifications that adequately meet project requirements, the public body may award the contract to the firm that submits the responsive best and final proposal with the lowest price.

(6) The firm awarded the contract shall provide a performance and payment bond for the contracted amount. The public body shall provide appropriate honorarium payments to finalists submitting best and final proposals who are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects. [1997 c 376 § 3; 1994 c 132 § 5.]

Effective date—1997 c 376: See note following RCW 39.10.020.

39.10.060 General contractor/construction manager procedure—Which public bodies may use. (Effective until July 1, 2001.) (1) Notwithstanding any other provision of law, and after complying with RCW 39.10.030, the following public bodies may utilize the general contractor/construction manager procedure of public works contracting for public works projects authorized under subsection (2) of this section: The state department of general administration; the University of Washington; Washington State University; every city with a population greater than one hundred fifty thousand; every county with a population greater than four hundred fifty thousand; and every port district with a population greater than five hundred thousand. For the purposes of this section, "general contractor/construction manager" means

a firm with which a public body has selected and negotiated a maximum allowable construction cost to be guaranteed by the firm, after competitive selection through formal advertisement and competitive bids, to provide services during the design phase that may include life-cycle cost design considerations, value engineering, scheduling, cost estimating, constructability, alternative construction options for cost savings, and sequencing of work, and to act as the construction manager and general contractor during the construction phase.

(2) Public bodies authorized under this section may utilize the general contractor/construction manager procedure for public works projects valued over ten million dollars where:

(a) Implementation of the project involves complex scheduling requirements;

(b) The project involves construction at an existing facility which must continue to operate during construction; or

(c) The involvement of the general contractor/construction manager during the design stage is critical to the success of the project.

(3) Public bodies should select general contractor/construction managers early in the life of public works projects, and in most situations no later than the completion of schematic design.

(4) Contracts for the services of a general contractor/construction manager under this section shall be awarded through a competitive process requiring the public solicitation of proposals for general contractor/construction manager services. The public solicitation of proposals shall include: A description of the project, including programmatic, performance, and technical requirements and specifications when available; the reasons for using the general contractor/construction manager procedure; a description of the qualifications to be required of the proposer, including submission of the proposer's accident prevention program; a description of the process the public body will use to evaluate qualifications and proposals, including evaluation factors and the relative weight of factors; the form of the contract to be awarded; the estimated maximum allowable construction cost; minority and women business enterprise total project goals, where applicable; and the bid instructions to be used by the general contractor/construction manager finalists. Evaluation factors shall include, but not be limited to: Ability of professional personnel, past performance in negotiated and complex projects, and ability to meet time and budget requirements; location; recent, current, and projected work loads of the firm; and the concept of their proposal. A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, these finalists shall submit final proposals, including sealed bids for the percent fee, which is the percentage amount to be earned by the general contractor/construction manager as overhead and profit, on the estimated maximum allowable construction cost and the fixed amount for the detailed specified general conditions work. The public body shall select the firm submitting the highest scored final proposal using the evaluation factors and the relative weight of factors published in the public solicitation of proposals.

(5) The maximum allowable construction cost may be negotiated between the public body and the selected firm after the scope of the project is adequately determined to establish a guaranteed contract cost for which the general contractor/construction manager will provide a performance and payment bond. The guaranteed contract cost includes the fixed amount for the detailed specified general conditions work, the negotiated maximum allowable construction cost, the percent fee on the negotiated maximum allowable construction cost, and sales tax. If the public body is unable to negotiate a satisfactory maximum allowable construction cost with the firm selected that the public body determines to be fair, reasonable, and within the available funds, negotiations with that firm shall be formally terminated and the public body shall negotiate with the next highest scored firm and continue until an agreement is reached or the process is terminated. If the maximum allowable construction cost varies more than fifteen percent from the bid estimated maximum allowable construction cost due to requested and approved changes in the scope by the public body, the percent fee shall be renegotiated.

(6) All subcontract work shall be competitively bid with public bid openings. Subcontract work shall not be issued for bid until the public body has approved, in consultation with the office of minority and women's business enterprises or the equivalent local agency, a plan prepared by the general contractor/construction manager for attaining applicable minority and women business enterprise total project goals that equitably spreads women and minority enterprise opportunities to as many firms in as many bid packages as is practicable. When critical to the successful completion of a subcontractor bid package the owner and general contractor/construction manager may evaluate for bidding eligibility a subcontractor's ability, time, budget, and specification requirements based on the subcontractor's performance of those items on previous projects. Subcontract bid packages shall be awarded to the responsible bidder submitting the low responsive bid. The requirements of RCW 39.30.060 apply to each subcontract bid package. All subcontractors who bid work over three hundred thousand dollars shall post a bid bond and all subcontractors who are awarded a contract over three hundred thousand dollars shall provide a performance and payment bond for their contract amount. All other subcontractors shall provide a performance and payment bond if required by the general contractor/construction manager. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project. Except as provided for under subsection (7) of this section, bidding on subcontract work by the general contractor/construction manager or its subsidiaries is prohibited. The general contractor/construction manager may negotiate with the low-responsive bidder in accordance with RCW 39.10.080 or, if unsuccessful in such negotiations, rebid.

(7) The general contractor/construction manager, or its subsidiaries, may bid on subcontract work on projects valued over twenty million dollars if:

(a) The work within the subcontract bid package is customarily performed by the general contractor/construction manager;

(b) The bid opening is managed by the public body; and

(c) Notification of the general contractor/construction manager's intention to bid is included in the public solicitation of bids for the bid package.

In no event may the value of subcontract work performed by the general contractor/construction manager exceed twenty percent of the negotiated maximum allowable construction cost.

(8) A public body may include an incentive clause in any contract awarded under this section for savings of either time or cost or both from that originally negotiated. No incentives granted may exceed five percent of the maximum allowable construction cost. If the project is completed for less than the agreed upon maximum allowable construction cost, any savings not otherwise negotiated as part of an incentive clause shall accrue to the public body. If the project is completed for more than the agreed upon maximum allowable construction cost, excepting increases due to any contract change orders approved by the public body, the additional cost shall be the responsibility of the general contractor/construction manager. [1997 c 376 § 4; 1996 c 18 § 6; 1994 c 132 § 6.]

Effective date—1997 c 376: See note following RCW 39.10.020.

39.10.065 Demonstration projects—Contract deadline—Transfer of authority to other public body. (Effective until July 1, 2001.) (1) In addition to the projects authorized in RCW 39.10.050 and 39.10.060, public bodies may use the general contractor/construction manager or design-build procedure for demonstration projects valued between three million dollars and ten million dollars as follows:

(a) Three demonstration projects by the department of general administration; and

(b) One demonstration project by each of the public bodies authorized in RCW 39.10.020(2) other than the department of general administration.

(2) Public bodies shall give weight to proposers' experience working on projects valued between three million dollars and ten million dollars in the evaluation process for the selection of a general contractor/construction manager or design-build firm for demonstration projects authorized in subsection (1) of this section.

(3) Cities which supply water to over three hundred fifty thousand people may use the design-build procedure for one water system demonstration project valued over ten million dollars. Use of the design-build procedure shall be deemed to effect compliance with the requirement for competitive bids under RCW 43.155.060.

(4) All contracts authorized under this section must be entered into before July 1, 1999.

(5) In the event that a public body determines not to perform a demonstration project using its authority under this section, it may transfer its authority to another public body. [1997 c 376 § 5.]

Effective date—1997 c 376: See note following RCW 39.10.020.

39.10.070 Project management and contracting requirements. (Effective until July 1, 2001.) (1) A public body utilizing the alternative public works contracting procedures authorized under RCW 39.10.050 and 39.10.060 shall provide for:

(a) The preparation of appropriate, complete, and coordinated design documents consistent with the procedure utilized;

(b) To the extent appropriate, an independent review of the contract documents through value engineering or constructability studies prior to bid or proposal solicitation;

(c) Reasonable budget contingencies totaling not less than five percent of the anticipated contract value;

(d) To the extent appropriate, on-site architectural or engineering representatives during major construction or installation phases;

(e) Employment of staff or consultants with expertise and prior experience in the management of comparable projects; and

(f) Contract documents that include alternative dispute resolution procedures to be attempted prior to the initiation of litigation.

(2) A public body utilizing the alternative public works contracting procedures under RCW 39.10.050 and 39.10.060 may provide incentive payments to contractors for early completion, cost savings, or other goals if such payments are identified in the request for proposals. [1994 c 132 § 7.]

39.10.080 Negotiated adjustments to lowest bid or proposal—When allowed. (Effective until July 1, 2001.) Notwithstanding the provisions of RCW 39.04.015, a public body is authorized to negotiate an adjustment to the lowest bid or proposal price for a public works project awarded under RCW 39.10.050 and 39.10.060 based upon agreed changes to the contract plans and specifications under the following conditions:

(1) All responsive bids or proposal prices exceed the available funds, as certified by an appropriate fiscal officer;

(2) The apparent low-responsive bid or proposal does not exceed the available funds by the greater of one hundred twenty-five thousand dollars or two percent for projects valued over ten million dollars; and

(3) The negotiated adjustment will bring the bid or proposal price within the amount of available funds. [1994 c 132 § 8.]

39.10.090 Construction of chapter—Waiver of other limits and requirements. (Effective until July 1, 2001.) This chapter shall not be construed to affect or modify the existing statutory, regulatory, or charter powers of public bodies except to the extent that a procedure authorized by this chapter is adopted by a public body for a particular public works project. In that event, the normal contracting or procurement limits or requirements of a public body as imposed by statute, ordinance, resolution, or regulation shall be deemed waived or amended only to the extent necessary to accommodate such procedures for a particular public works project. [1994 c 132 § 9.]

39.10.100 Public inspection of certain records—Protection of trade secrets. (Effective until July 1, 2001.) (1) Except as provided in subsection (2) of this section, all proceedings, records, contracts, and other public records relating to alternative public works transactions under this chapter shall be open to the inspection of any interested

person, firm, or corporation in accordance with chapter 42.17 RCW

(2) Trade secrets, as defined in RCW 19.108.010, or other proprietary information submitted by a bidder, offeror, or contractor in connection with an alternative public works transaction under this chapter shall not be subject to chapter 42.17 RCW if the bidder, offeror, or contractor specifically states in writing the reasons why protection is necessary, and identifies the data or materials to be protected. [1994 c 132 § 10.]

39.10.110 Temporary independent oversight committee. (Effective until July 1, 2001.) (1) There is established a temporary independent oversight committee to review the utilization of the alternative public works contracting procedures authorized under this chapter, to evaluate potential future utilization of other alternative contracting procedures, including, but not limited to, contractor prequalification, and, if desired by the committee, to review traditional public works contracting procedures used by state agencies and municipalities. The committee shall also pursue the development of a mentoring program for expansion of the authorities in this chapter to other public bodies. The membership of the committee shall include: Two members of the house of representatives, one from each major caucus, appointed by the speaker of the house of representatives; two members of the senate, one from each major caucus, appointed by the president of the senate; representatives from the appropriate segments of the construction, contracting, subcontracting, and design industries, appointed by the governor; representatives from appropriate labor organizations, appointed by the governor; representatives from public bodies authorized to use the alternative public works contracting procedures under this chapter, appointed by the governor; a representative from the office of minority and women's business enterprises, appointed by the governor; and a representative from the office of financial management, appointed by the governor. The governor shall maintain a balance between representatives from public agencies and the private sector when appointing members to the committee, and shall consider the recommendations of the established organizations representing the construction, contracting, subcontracting, and design industries and organized labor in making the industry and labor appointments.

(2) The committee shall meet beginning after July 1, 1994. A chair or cochair shall be selected from among the committee's membership. Staff support for the committee shall be provided by the agencies and organizations represented on the committee.

(3) Public bodies utilizing the alternative contracting procedures authorized under this chapter shall provide any requested information concerning implementation of projects under this chapter to the committee in a timely manner, excepting any trade secrets or proprietary information.

(4) The committee shall report to the appropriate standing committees of the legislature by December 10, 2000, concerning its findings and recommendations. [1997 c 376 § 6; 1994 c 132 § 11.]

Effective date—1997 c 376: See note following RCW 39.10.020.

39.10.120 Application of chapter. (1) Except as provided in subsections (2) and (3) of this section, the alternative public works contracting procedures authorized under this chapter are limited to public works contracts signed before July 1, 2001. Methods of public works contracting authorized by RCW 39.10.050 and 39.10.060 shall remain in full force and effect until completion of contracts signed before July 1, 2001.

(2) For the purposes of a baseball stadium as defined in RCW 82.14.0485, the design-build contracting procedures under RCW 39.10.050 shall remain in full force and effect until completion of contracts signed before December 31, 1997.

(3) For the purposes of a stadium and exhibition center, as defined in RCW 36.102.010, the design-build contracting procedures under RCW 39.10.050 shall remain in full force and effect until completion of contracts signed before December 31, 2002. [1997 c 376 § 7; 1997 c 220 § 404 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 305; 1994 c 132 § 12.]

Reviser's note: This section was amended by 1997 c 220 § 404 and by 1997 c 376 § 7, 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).

Effective date—1997 c 376: See note following RCW 39.10.020.

Referendum—Other legislation limited—Legislators' personal interest not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

Demonstration projects under RCW 39.10.065 limited to contracts entered into before July 1, 1999: See RCW 39.10.065(4).

39.10.900 Captions not law—1994 c 132. (Effective until July 1, 2001.) Captions as used in this act do not constitute any part of law. [1994 c 132 § 13.]

39.10.901 Severability—1994 c 132. (Effective until July 1, 2001.) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 132 § 14.]

39.10.902 Repealer. (Effective until July 1, 2001.) The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective July 1, 2001:

- (1) RCW 39.10.010 and 1994 c 132 § 1;
- (2) RCW 39.10.020 and 1994 c 132 § 2;
- (3) RCW 39.10.030 and 1994 c 132 § 3;
- (4) RCW 39.10.040 and 1994 c 132 § 4;
- (5) RCW 39.10.050 and 1994 c 132 § 5;
- (6) RCW 39.10.060 and 1994 c 132 § 6;
- (7) RCW 39.10.065 and 1997 c 376 § 5;
- (8) RCW 39.10.070 and 1994 c 132 § 7;
- (9) RCW 39.10.080 and 1994 c 132 § 8;
- (10) RCW 39.10.090 and 1994 c 132 § 9;
- (11) RCW 39.10.100 and 1994 c 132 § 10;
- (12) RCW 39.10.110 and 1994 c 132 § 11;
- (13) RCW 39.10.900 and 1994 c 132 § 13;

(14) RCW 39.10.901 and 1994 c 132 § 14; and
 (15) RCW 39.10.902 and 1994 c 132 § 15. [1997 c 376 § 8; 1995 3rd sp.s. c 1 § 306; 1994 c 132 § 15.]

Effective date—1997 c 376: See note following RCW 39.10.020.

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

Chapter 39.12

PREVAILING WAGES ON PUBLIC WORKS

Sections

- 39.12.010 Definitions.
- 39.12.015 Industrial statistician to make determinations of prevailing rate.
- 39.12.020 Prevailing rate to be paid on public works and under public building service maintenance contracts—Posting of statement of intent.
- 39.12.021 Prevailing rate to be paid on public works—Apprentice workers.
- 39.12.022 Vocationally handicapped—Exemption from RCW 39.12.020—Procedure.
- 39.12.030 Contract specifications must state minimum hourly rate—Stipulation for payment.
- 39.12.040 Statement of intent to pay prevailing wages, affidavit of wages paid—Duty of public agencies to require—Approval—Prerequisite to payment—Alternative procedure.
- 39.12.042 Compliance with RCW 39.12.040—Liability of public agencies to workers, laborers, or mechanics.
- 39.12.050 False statement or failure to file—Penalty—Unpaid wages lien against bond and retainage—Prohibitions on bidding on future contracts—Hearing.
- 39.12.060 Director of labor and industries to arbitrate disputes.
- 39.12.065 Investigation of complaints—Hearing—Remedies—Penalties.
- 39.12.070 Fees authorized for approvals, certifications, and arbitrations.
- 39.12.080 Public works administration account—Created.
- 39.12.900 Severability—1945 c 63.

Enforcement of wage claims: RCW 49.48.040.

Hours of labor on public works: Chapter 49.28 RCW.

Workers' compensation applicable to public works contracts: RCW 51.12.050, 51.12.070.

39.12.010 Definitions. (1) The "prevailing rate of wage", for the intents and purposes of this chapter, shall be the rate of hourly wage, usual benefits, and overtime paid in the locality, as hereinafter defined, to the majority of workers, laborers, or mechanics, in the same trade or occupation. In the event that there is not a majority in the same trade or occupation paid at the same rate, then the average rate of hourly wage and overtime paid to such laborers, workers, or mechanics in the same trade or occupation shall be the prevailing rate. If the wage paid by any contractor or subcontractor to laborers, workers, or mechanics on any public work is based on some period of time other than an hour, the hourly wage for the purposes of this chapter shall be mathematically determined by the number of hours worked in such period of time.

(2) The "locality" for the purposes of this chapter shall be the largest city in the county wherein the physical work is being performed.

(3) The "usual benefits" for the purposes of this chapter shall include the amount of:

(a) The rate of contribution irrevocably made by a contractor or subcontractor to a trustee or to a third person pursuant to a fund, plan, or program; and

(b) The rate of costs to the contractor or subcontractor which may be reasonably anticipated in providing benefits to workers, laborers, and mechanics pursuant to an enforceable commitment to carry out a financially responsible plan or program which was communicated in writing to the workers, laborers, and mechanics affected, for medical or hospital care, pensions on retirement or death, compensation for injuries or illness resulting from occupational activity, or insurance to provide any of the foregoing, for unemployment benefits, life insurance, disability and sickness insurance, or accident insurance, for vacation and holiday pay, for defraying costs of apprenticeship or other similar programs, or for other bona fide fringe benefits, but only where the contractor or subcontractor is not required by other federal, state, or local law to provide any of such benefits.

(4) An "interested party" for the purposes of this chapter shall include a contractor, subcontractor, an employee of a contractor or subcontractor, an organization whose members' wages, benefits, and conditions of employment are affected by this chapter, and the director of labor and industries or the director's designee. [1989 c 12 § 6; 1985 c 15 § 1; 1965 ex.s. c 133 § 1; 1945 c 63 § 3; Rem. Supp. 1945 § 10322-22.]

Severability—1985 c 15: See note following RCW 39.12.065.

39.12.015 Industrial statistician to make determinations of prevailing rate. All determinations of the prevailing rate of wage shall be made by the industrial statistician of the department of labor and industries. [1965 ex.s. c 133 § 2.]

39.12.020 Prevailing rate to be paid on public works and under public building service maintenance contracts—Posting of statement of intent. The hourly wages to be paid to laborers, workers, or mechanics, upon all public works and under all public building service maintenance contracts of the state or any county, municipality or political subdivision created by its laws, shall be not less than the prevailing rate of wage for an hour's work in the same trade or occupation in the locality within the state where such labor is performed. For a contract in excess of ten thousand dollars, a contractor required to pay the prevailing rate of wage shall post in a location readily visible to workers at the job site: **PROVIDED**, That on road construction, sewer line, pipeline, transmission line, street, or alley improvement projects for which no field office is needed or established, a contractor may post the prevailing rate of wage statement at the contractor's local office, gravel crushing, concrete, or asphalt batch plant as long as the contractor provides a copy of the wage statement to any employee on request:

(1) A copy of a statement of intent to pay prevailing wages approved by the industrial statistician of the department of labor and industries under RCW 39.12.040; and

(2) The address and telephone number of the industrial statistician of the department of labor and industries where a complaint or inquiry concerning prevailing wages may be made.

This chapter shall not apply to workers or other persons regularly employed on monthly or per diem salary by the state, or any county, municipality, or political subdivision

created by its laws. [1989 c 12 § 7; 1982 c 130 § 1; 1981 c 46 § 1; 1967 ex.s. c 14 § 1; 1945 c 63 § 1; Rem. Supp. 1945 § 10322-20.]

39.12.021 Prevailing rate to be paid on public works—Apprentice workers. Apprentice workers employed upon public works projects for whom an apprenticeship agreement has been registered and approved with the state apprenticeship council pursuant to chapter 49.04 RCW, must be paid at least the prevailing hourly rate for an apprentice of that trade. Any worker for whom an apprenticeship agreement has not been registered and approved by the state apprenticeship council shall be considered to be a fully qualified journey level worker, and, therefore, shall be paid at the prevailing hourly rate for journey level workers. [1989 c 12 § 8; 1963 c 93 § 1.]

39.12.022 Vocationally handicapped—Exemption from RCW 39.12.020—Procedure. The director of the department of labor and industries, to the extent necessary in order to prevent curtailment of opportunities for employment, shall by regulations provide for the employment of individuals whose earning capacity is impaired by physical or mental deficiency or injury, under special certificates issued by the director, at such wages lower than the prevailing rate applicable under RCW 39.12.020 and for such period as shall be fixed in such certificates. [1972 ex.s. c 91 § 1.]

39.12.030 Contract specifications must state minimum hourly rate—Stipulation for payment. The specifications for every contract for the construction, reconstruction, maintenance or repair of any public work to which the state or any county, municipality, or political subdivision created by its laws is a party, shall contain a provision stating the hourly minimum rate of wage, not less than the prevailing rate of wage, which may be paid to laborers, workers, or mechanics in each trade or occupation required for such public work employed in the performance of the contract either by the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract, and the contract shall contain a stipulation that such laborers, workers, or mechanics shall be paid not less than such specified hourly minimum rate of wage. [1989 c 12 § 9; 1945 c 63 § 2; Rem. Supp. 1945 § 10322-21.]

39.12.040 Statement of intent to pay prevailing wages, affidavit of wages paid—Duty of public agencies to require—Approval—Prerequisite to payment—Alternative procedure. (1) Except as provided in subsection (2) of this section, before payment is made by or on behalf of the state, or any county, municipality, or political subdivision created by its laws, of any sum or sums due on account of a public works contract, it shall be the duty of the officer or person charged with the custody and disbursement of public funds to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer a "Statement of Intent to Pay Prevailing Wages" For a contract in excess of ten thousand dollars, the statement of intent to pay prevailing wages shall include:

- (a) The contractor's registration certificate number; and
- (b) The prevailing rate of wage for each classification of workers entitled to prevailing wages under RCW 39.12.020 and the estimated number of workers in each classification.

Each statement of intent to pay prevailing wages must be approved by the industrial statistician of the department of labor and industries before it is submitted to said officer. Unless otherwise authorized by the department of labor and industries, each voucher claim submitted by a contractor for payment on a project estimate shall state that the prevailing wages have been paid in accordance with the prefiled statement or statements of intent to pay prevailing wages on file with the public agency. Following the final acceptance of a public works project, it shall be the duty of the officer charged with the disbursement of public funds, to require the contractor and each and every subcontractor from the contractor or a subcontractor to submit to such officer an "Affidavit of Wages Paid" before the funds retained according to the provisions of RCW 60.28.010 are released to the contractor. Each affidavit of wages paid must be certified by the industrial statistician of the department of labor and industries before it is submitted to said officer.

(2) As an alternate to the procedures provided for in subsection (1) of this section, for public works projects of two thousand five hundred dollars or less:

(a) An awarding agency may authorize the contractor or subcontractor to submit the statement of intent to pay prevailing wages directly to the officer or person charged with the custody or disbursement of public funds in the awarding agency without approval by the industrial statistician of the department of labor and industries. The awarding agency shall retain such statement of intent to pay prevailing wages for a period of not less than three years.

(b) Upon final acceptance of the public works project, the awarding agency shall require the contractor or subcontractor to submit an affidavit of wages paid. Upon receipt of the affidavit of wages paid, the awarding agency may pay the contractor or subcontractor in full, including funds that would otherwise be retained according to the provisions of RCW 60.28.010. Within thirty days of receipt of the affidavit of wages paid, the awarding agency shall submit the affidavit of wages paid to the industrial statistician of the department of labor and industries for approval.

(c) A statement of intent to pay prevailing wages and an affidavit of wages paid shall be on forms approved by the department of labor and industries.

(d) In the event of a wage claim and a finding for the claimant by the department of labor and industries where the awarding agency has used the alternative process provided for in subsection (2) of this section, the awarding agency shall pay the wages due directly to the claimant. If the contractor or subcontractor did not pay the wages stated in the affidavit of wages paid, the awarding agency may take action at law to seek reimbursement from the contractor or subcontractor of wages paid to the claimant, and may prohibit the contractor or subcontractor from bidding on any public works contract of the awarding agency for up to one year.

(e) Nothing in this section shall be interpreted to allow an awarding agency to subdivide any public works project of more than two thousand five hundred dollars for the purpose

of circumventing the procedures required by RCW 39.12.040(1). [1991 c 15 § 1; 1982 c 130 § 2; 1981 c 46 § 2; 1975-'76 2nd ex.s. c 49 § 1; 1965 ex.s. c 133 § 3; 1945 c 63 § 4; Rem. Supp. 1945 § 10322-23.]

39.12.042 Compliance with RCW 39.12.040—Liability of public agencies to workers, laborers, or mechanics. If any agency of the state, or any county, municipality, or political subdivision created by its laws shall knowingly fail to comply with the provisions of RCW 39.12.040 as now or hereafter amended, such agency of the state, or county, municipality, or political subdivision created by its laws, shall be liable to all workers, laborers, or mechanics to the full extent and for the full amount of wages due, pursuant to the prevailing wage requirements of RCW 39.12.020. [1993 c 404 § 3; 1989 c 12 § 11; 1975-'76 2nd ex.s. c 49 § 2.]

Effective date—1993 c 404: See note following RCW 39.12.070.

39.12.050 False statement or failure to file—Penalty—Unpaid wages lien against bond and retainage—Prohibitions on bidding on future contracts—Hearing. (1) Any contractor or subcontractor who files a false statement or fails to file any statement or record required to be filed under this chapter and the rules adopted under this chapter, shall, after a determination to that effect has been issued by the director after hearing under chapter 34.05 RCW, forfeit as a civil penalty the sum of five hundred dollars for each false filing or failure to file, and shall not be permitted to bid, or have a bid considered, on any public works contract until the penalty has been paid in full to the director. The civil penalty under this subsection shall not apply to a violation determined by the director to be an inadvertent filing or reporting error.

To the extent that a contractor or subcontractor has not paid wages at the rate due pursuant to RCW 39.12.020, and a finding to that effect has been made as provided by this subsection, such unpaid wages shall constitute a lien against the bonds and retainage as provided in RCW 18.27.040, 19.28.120, 39.08.010, and 60.28.010.

(2) If a contractor or subcontractor is found to have violated the provisions of subsection (1) of this section for a second time within a five year period, the contractor or subcontractor shall be subject to the sanctions prescribed in subsection (1) of this section and shall not be allowed to bid on any public works contract for one year. The one year period shall run from the date of notice by the director of the determination of noncompliance. When an appeal is taken from the director's determination, the one year period shall commence from the date of the final determination of the appeal.

The director shall issue his or her findings that a contractor or subcontractor has violated the provisions of this subsection after a hearing held subject to the provisions of chapter 34.05 RCW. [1985 c 15 § 3; 1977 ex.s. c 71 § 1; 1973 c 120 § 1; 1945 c 63 § 5; Rem. Supp. 1945 § 10322-24.]

Severability—1985 c 15: See note following RCW 39.12.065.

39.12.060 Director of labor and industries to arbitrate disputes. Such contract shall contain a further

provision that in case any dispute arises as to what are the prevailing rates of wages for work of a similar nature and such dispute cannot be adjusted by the parties in interest, including labor and management representatives, the matter shall be referred for arbitration to the director of the department of labor and industries of the state and his or her decision therein shall be final and conclusive and binding on all parties involved in the dispute. [1989 c 12 § 10; 1965 ex.s. c 133 § 4; 1945 c 63 § 6; Rem. Supp. 1945 § 10322-25.]

Arbitration: Chapters 7.04 and 49.08 RCW.

39.12.065 Investigation of complaints—Hearing—Remedies—Penalties. (1) Upon complaint by an interested party, the director of labor and industries shall cause an investigation to be made to determine whether there has been compliance with this chapter and the rules adopted hereunder, and if the investigation indicates that a violation may have occurred, a hearing shall be held in accordance with chapter 34.05 RCW. The director shall issue a written determination including his or her findings after the hearing. A judicial appeal from the director's determination may be taken in accordance with chapter 34.05 RCW, with the prevailing party entitled to recover reasonable costs and attorneys fees.

A complaint concerning nonpayment of the prevailing rate of wage shall be filed with the department of labor and industries no later than thirty days from the acceptance date of the public works project. The failure to timely file such a complaint shall not prohibit a claimant from pursuing a private right of action against a contractor or subcontractor for unpaid prevailing wages. The remedy provided by this section is not exclusive and is concurrent with any other remedy provided by law.

(2) To the extent that a contractor or subcontractor has not paid the prevailing rate of wage under a determination issued as provided in subsection (1) of this section, the director shall notify the agency awarding the public works contract of the amount of the violation found, and the awarding agency shall withhold, or in the case of a bond, the director shall proceed against the bond in accordance with the applicable statute to recover, such amount from the following sources in the following order of priority until the total of such amount is withheld:

(a) The retainage or bond in lieu of retainage as provided in RCW 60.28.010;

(b) If the claimant was employed by the contractor or subcontractor on the public works project, the bond filed by the contractor or subcontractor with the department of labor and industries as provided in RCW 18.27.040 and 19.28.120;

(c) A surety bond, or at the contractor's or subcontractor's option an escrow account, running to the director in the amount of the violation found; and

(d) That portion of the progress payments which is properly allocable to the contractor or subcontractor who is found to be in violation of this chapter. Under no circumstances shall any portion of the progress payments be withheld that are properly allocable to a contractor, subcontractor, or supplier, that is not found to be in violation of this chapter.

The amount withheld shall be released to the director to distribute in accordance with the director's determination.

(3) A contractor or subcontractor that is found, in accordance with subsection (1) of this section, to have violated the requirement to pay the prevailing rate of wage shall be subject to a civil penalty of not less than one thousand dollars or an amount equal to twenty percent of the total prevailing wage violation found on the contract, whichever is greater, and shall not be permitted to bid, or have a bid considered, on any public works contract until such civil penalty has been paid in full to the director. If a contractor or subcontractor is found to have participated in a violation of the requirement to pay the prevailing rate of wage for a second time within a five-year period, the contractor or subcontractor shall be subject to the sanctions prescribed in this subsection and as an additional sanction shall not be allowed to bid on any public works contract for two years. If a previous or subsequent violation of a requirement to pay a prevailing rate of wage under federal or other state law is found against the contractor or subcontractor within five years from a violation under this section, the contractor or subcontractor shall not be allowed to bid on any public works contract for two years. A contractor or subcontractor shall not be barred from bidding on any public works contract if the contractor or subcontractor relied upon written information from the department to pay a prevailing rate of wage that is later determined to be in violation of this chapter. The civil penalty and sanctions under this subsection shall not apply to a violation determined by the director to be an inadvertent filing or reporting error. To the extent that a contractor or subcontractor has not paid the prevailing wage rate under a determination issued as provided in subsection (1) of this section, the unpaid wages shall constitute a lien against the bonds and retainage as provided herein and in RCW 18.27.040, 19.28.120, 39.08.010, and 60.28.010. [1994 c 88 § 1; 1985 c 15 § 2.]

Severability—1985 c 15: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 15 § 4.]

39.12.070 Fees authorized for approvals, certifications, and arbitrations. The department of labor and industries may charge fees to awarding agencies on public works for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid. The department may also charge fees to persons or organizations requesting the arbitration of disputes under RCW 39.12.060. The amount of the fees shall be established by rules adopted by the department under the procedures in the administrative procedure act, chapter 34.05 RCW. The fees shall apply to all approvals, certifications, and arbitration requests made after the effective date of the rules. All fees shall be deposited in the public works administration account. On the fifteenth day of the first month of each quarterly period, an amount equalling thirty percent of the revenues received into the public works administration account shall be transferred into the general fund. The department may refuse to arbitrate for contractors, subcontractors, persons, or organizations which have not paid the proper fees. The department may, if necessary,

request the attorney general to take legal action to collect delinquent fees.

The department shall set the fees permitted by this section at a level that generates revenue that is as near as practicable to the amount of the appropriation to administer this chapter, including, but not limited to, the performance of adequate wage surveys, and to investigate and enforce all alleged violations of this chapter, including, but not limited to, incorrect statements of intent to pay prevailing wage, incorrect certificates of affidavits of wages paid, and wage claims, as provided for in this chapter and chapters 49.48 and 49.52 RCW. However, the fees charged for the approval of statements of intent to pay prevailing wages and the certification of affidavits of wages paid shall be no greater than twenty-five dollars. [1993 c 404 § 1; 1982 1st ex.s. c 38 § 1.]

Effective date—1993 c 404: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 404 § 4.]

39.12.080 Public works administration account—Created. The public works administration account is created in the state treasury. The department of labor and industries shall deposit in the account all moneys received from fees collected under RCW 39.12.070. Appropriations from the account, not including moneys transferred to the general fund pursuant to RCW 39.12.070, may be made only for the purposes of administration of this chapter, including, but not limited to, the performance of adequate wage surveys, and for the investigation and enforcement of all alleged violations of this chapter as provided for in this chapter and chapters 49.48 and 49.52 RCW. [1993 c 404 § 2.]

Effective date—1993 c 404: See note following RCW 39.12.070.

39.12.900 Severability—1945 c 63. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision or part thereof not adjudged invalid or unconstitutional. [1945 c 63 § 7.]

Chapter 39.19

OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES

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Minority and women business development office: RCW 43.31.0925.

39.19.010 Intent. The legislature finds that minority and women-owned businesses are significantly under-represented and have been denied equitable competitive opportunities in contracting. It is the intent of this chapter to mitigate societal discrimination and other factors in participating in public works and in providing goods and services and to delineate a policy that an increased level of participation by minority and women-owned and controlled businesses is desirable at all levels of state government. The purpose and intent of this chapter are to provide the maximum practicable opportunity for increased participation by minority and women-owned and controlled businesses in participating in public works and the process by which goods and services are procured by state agencies and educational institutions from the private sector. [1987 c 328 § 1; 1983 c 120 § 1.]

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

(1) "Advisory committee" means the advisory committee on minority and women's business enterprises.

(2) "Broker" means a person that provides a bona fide service, such as professional, technical, consultant, brokerage, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of a contract.

(3) "Director" means the director of the office of minority and women's business enterprises.

(4) "Educational institutions" means the state universities, the regional universities, The Evergreen State College, and the community colleges.

(5) "Goals" means annual overall agency goals, expressed as a percentage of dollar volume, for participation by minority and women-owned and controlled businesses and shall not be construed as a minimum goal for any particular contract or for any particular geographical area. It is the intent of this chapter that such overall agency goals shall be achievable and shall be met on a contract-by-contract or class-of-contract basis.

(6) "Goods and/or services" includes professional services and all other goods and services.

(7) "Office" means the office of minority and women's business enterprises.

(8) "Person" includes one or more individuals, partnerships, associations, organizations, corporations, cooperatives,

legal representatives, trustees and receivers, or any group of persons.

(9) "Procurement" means the purchase, lease, or rental of any goods or services.

(10) "Public works" means all work, construction, highway and ferry construction, alteration, repair, or improvement other than ordinary maintenance, which a state agency or educational institution is authorized or required by law to undertake.

(11) "State agency" includes the state of Washington and all agencies, departments, offices, divisions, boards, commissions, and correctional and other types of institutions. [1996 c 69 § 4; 1987 c 328 § 2; 1983 c 120 § 2.]

Intent—1996 c 69: See note following RCW 39.19.030.

39.19.030 Office of minority and women's business enterprises—Director—Powers and duties. There is hereby created the office of minority and women's business enterprises. The governor shall appoint a director for the office, subject to confirmation by the senate. The director may employ a deputy director and a confidential secretary, both of which shall be exempt under chapter 41.06 RCW, and such staff as are necessary to carry out the purposes of this chapter.

The office shall consult with the minority and women's business enterprises advisory committee to:

(1) Develop, plan, and implement programs to provide an opportunity for participation by qualified minority and women-owned and controlled businesses in public works and the process by which goods and services are procured by state agencies and educational institutions from the private sector;

(2) Develop a comprehensive plan insuring that qualified minority and women-owned and controlled businesses are provided an opportunity to participate in public contracts for public works and goods and services;

(3) Identify barriers to equal participation by qualified minority and women-owned and controlled businesses in all state agency and educational institution contracts;

(4) Establish annual overall goals for participation by qualified minority and women-owned and controlled businesses for each state agency and educational institution to be administered on a contract-by-contract basis or on a class-of-contracts basis;

(5) Develop and maintain a central minority and women's business enterprise certification list for all state agencies and educational institutions. No business is entitled to certification under this chapter unless it meets the definition of small business concern as established by the office. All applications for certification under this chapter shall be sworn under oath;

(6) Develop, implement, and operate a system of monitoring compliance with this chapter;

(7) Adopt rules under chapter 34.05 RCW, the Administrative Procedure Act, governing: (a) Establishment of agency goals; (b) development and maintenance of a central minority and women's business enterprise certification program, including a definition of "small business concern" which shall be consistent with the small business requirements defined under section 3 of the Small Business Act, 15 U.S.C. Sec. 632, and its implementing regulations as guid-

ance; (c) procedures for monitoring and enforcing compliance with goals, regulations, contract provisions, and this chapter; (d) utilization of standard clauses by state agencies and educational institutions, as specified in RCW 39.19.050; and (e) determination of an agency's or educational institution's goal attainment consistent with the limitations of RCW 39.19.075;

(8) Submit an annual report to the governor and the legislature outlining the progress in implementing this chapter;

(9) Investigate complaints of violations of this chapter with the assistance of the involved agency or educational institution; and

(10) Cooperate and act jointly or by division of labor with the United States or other states, and with political subdivisions of the state of Washington and their respective minority, socially and economically disadvantaged and women business enterprise programs to carry out the purposes of this chapter. However, the power which may be exercised by the office under this subsection permits investigation and imposition of sanctions only if the investigation relates to a possible violation of chapter 39.19 RCW, and not to violation of local ordinances, rules, regulations, however denominated, adopted by political subdivisions of the state. [1996 c 69 § 5; 1989 c 175 § 85; 1987 c 328 § 3; 1983 c 120 § 3.]

Intent—1996 c 69: "It is the intent of the legislature to ensure that the counting of the dollar value of an agency's or educational institution's expenditures to certified minority and women's business enterprises meaningfully reflects the actual financial participation of the certified businesses." [1996 c 69 § 3.]

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

39.19.041 Ad hoc advisory committees. The director may establish ad hoc advisory committees, as necessary, to assist in the development of policies to carry out the purposes of this chapter. [1995 c 269 § 1302.]

Effective date—1995 c 269: See note following RCW 9.94A.040.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

39.19.050 Standard clauses required in requests for proposals, advertisements, and bids. The rules adopted under RCW 39.19.030 shall include requirements for standard clauses in requests for proposals, advertisements, bids, or calls for bids, necessary to carry out the purposes of this chapter, which shall include notice of the statutory penalties under RCW 39.19.080 and 39.19.090 for noncompliance. [1983 c 120 § 5.]

39.19.060 Compliance with public works and procurement goals—Plan to maximize opportunity for minority and women-owned businesses. Each state agency and educational institution shall comply with the annual goals established for that agency or institution under this chapter for public works and procuring goods or services. This chapter applies to all public works and procurement by state agencies and educational institutions, including all contracts and other procurement under chapters 28B.10, 39.04, 39.29, 43.19, and 47.28 RCW. Each state agency shall adopt a plan, developed in consultation with the director and the advisory committee, to insure that minority

and women-owned businesses are afforded the maximum practicable opportunity to directly and meaningfully participate in the execution of public contracts for public works and goods and services. The plan shall include specific measures the agency will undertake to increase the participation of certified minority and women-owned businesses. The office shall annually notify the governor, the state auditor, and the joint legislative audit and review committee of all agencies and educational institutions not in compliance with this chapter. [1996 c 288 § 28; 1993 c 512 § 9; 1983 c 120 § 6.]

Short title—Part headings and section captions—Severability—Effective date—1993 c 512: See RCW 43.172.900 through 43.172.903.

Compliance with chapter 39.19 RCW: RCW 28B.10.023, 39.04.160, 39.29.050, 43.19.536, 47.28.030, 47.28.050, 47.28.090.

39.19.070 Compliance with goals—Bidding procedures. It is the intent of this chapter that the goals established under this chapter for participation by minority and women-owned and controlled businesses be achievable. If necessary to accomplish this intent, contracts may be awarded to the next lowest responsible bidder in turn, or all bids may be rejected and new bids obtained, if the lowest responsible bidder does not meet the goals established for a particular contract under this chapter. The dollar value of the total contract used for the calculation of the specific contract goal may be increased or decreased to reflect executed change orders. An apparent low-bidder must be in compliance with the contract provisions required under this chapter as a condition precedent to the granting of a notice of award by any state agency or educational institution. [1994 c 15 § 1; 1987 c 328 § 4; 1983 c 120 § 7.]

39.19.075 Compliance with goals—Valuation of goods or services. For purposes of measuring an agency's or educational institution's goal attainment, any regulations adopted under RCW 39.19.030(7)(e) must provide that if a certified minority and women's business enterprise is a broker of goods or materials required under a contract, the contracting agency or educational institution may count only the dollar value of the fee or commission charged and not the value of goods or materials provided. The contracting agency or educational institution may, at its discretion, fix the dollar value of the fee or commission charged at either the actual dollar value of the fee or commission charged or at a standard percentage of the total value of the brokered goods, which percentage must reflect the fees or commissions generally paid to brokers for providing such services. [1996 c 69 § 6.]

Intent—1996 c 69: See note following RCW 39.19.030.

39.19.080 Prohibited activities—Penalties. (1) A person, firm, corporation, business, union, or other organization shall not:

(a) Prevent or interfere with a contractor's or subcontractor's compliance with this chapter, or any rule adopted under this chapter;

(b) Submit false or fraudulent information to the state concerning compliance with this chapter or any such rule;

(c) Fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining

or attempting to obtain or retain certification as a minority or women's business enterprise for the purpose of this chapter;

(d) Knowingly make a false statement, whether by affidavit, verified statement, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of certification of any entity as a minority or women's business enterprise;

(e) Knowingly obstruct, impede, or attempt to obstruct or impede any state official or employee who is investigating the qualification of a business entity that has requested certification as a minority or women's business enterprise;

(f) Fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain public moneys to which the person is not entitled under this chapter; or

(g) Knowingly make false statements that any entity is or is not certified as a minority or women's business enterprise for purposes of obtaining a contract governed by this chapter.

(2) Any person or entity violating this chapter or any rule adopted under this chapter shall be subject to the penalties in RCW 39.19.090. Nothing in this section prevents the state agency or educational institution from pursuing such procedures or sanctions as are otherwise provided by statute, rule, or contract provision. [1987 c 328 § 5; 1983 c 120 § 8.]

39.19.090 Compliance with chapter or contract—Remedies. If a person, firm, corporation, or business does not comply with any provision of this chapter or with a contract requirement established under this chapter, the state may withhold payment, debar the contractor, suspend, or terminate the contract and subject the contractor to civil penalties of up to ten percent of the amount of the contract or up to five thousand dollars for each violation. The office shall adopt, by rule, criteria for the imposition of penalties under this section. Wilful repeated violations, exceeding a single violation, may disqualify the contractor from further participation in state contracts for a period of up to three years. An apparent low-bidder must be in compliance with the contract provisions required under this chapter as a condition precedent to the granting of a notice of award by any state agency or educational institution.

The office shall follow administrative procedures under chapter 34.05 RCW in determining a violation and imposing penalties under this chapter.

The procedures and sanctions in this section are not exclusive; nothing in this section prevents the state agency or educational institution administering the contracts from pursuing such procedures or sanctions as are otherwise provided by statute, rule, or contract provision. [1987 c 328 § 6; 1983 c 120 § 9.]

39.19.100 Enforcement by attorney general—Injunctive relief. The attorney general may bring an action in the name of the state against any person to restrain and prevent the doing of any act prohibited or declared to be unlawful in this chapter. The attorney general may, in the discretion of the court, recover the costs of the action

including reasonable attorneys' fees and the costs of investigation. [1987 c 328 § 12.]

39.19.110 Enforcement by attorney general—Investigative powers. (1) Whenever the attorney general believes that any person (a) may be in possession, custody, or control of any original or copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording, wherever situated, that the attorney general believes to be relevant to the subject matter of an investigation, the attorney general may require such person to answer written interrogatories or give oral testimony regarding a possible violation of this chapter, or of any provision of a contract as required by this chapter, or (b) may have knowledge of any information that the attorney general believes relevant to the subject matter of such an investigation, the attorney general may, before instituting a civil proceeding thereon, execute in writing and cause to be served upon such a person, a civil investigative demand requiring the person to produce the documentary material and permit inspection and copying, to answer in writing written interrogatories, to give oral testimony, or any combination of demands pertaining to the documentary material or information. Documents and information obtained under this section shall not be admissible in criminal prosecutions.

(2) Each such demand shall:

(a) State the statute, the alleged violation of which is under investigation, and the general subject matter of the investigation;

(b) State with reasonable specificity what documentary material is required, if the demand is for the production of documentary material;

(c) Prescribe a return date governed by the court rules within which the documentary material is to be produced, the answers to written interrogatories are to be made, or a date, time, and place at which oral testimony is to be taken; and

(d) Identify the members of the attorney general's staff to whom such documentary material is to be made available for inspection and copying, to whom answers to written interrogatories are to be made, or who are to conduct the examination for oral testimony.

(3) No such demand may:

(a) Contain any requirement that would be unreasonable or improper if contained in a subpoena duces tecum, a request for answers to written interrogatories, or a notice of deposition upon oral examination issued under the court rules of this state; or

(b) Require the disclosure of any documentary material which would be privileged, or which for any other reason would not be required by a subpoena duces tecum issued by a court of this state.

(4) Service of any such demand may be made by:

(a) Delivering a duly executed copy thereof to the person to be served, or, if that person is not a natural person, to any officer or managing agent of the person to be served;

(b) Delivering a duly executed copy thereof to the principal place of business in this state of the person to be served; or

(c) Mailing by registered or certified mail a duly executed copy thereof addressed to the person to be served at the principal place of business in this state, or, if that person has no place of business in this state, to the person's principal office or place of business.

(5)(a) Documentary material demanded under this section shall be produced for inspection and copying during normal business hours at the principal office or place of business of the person served, or at such other times and places as may be agreed upon by the person served and the attorney general;

(b) Written interrogatories in a demand served under this section shall be answered in the same manner as provided in the civil rules for superior court;

(c) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the same manner as provided in the civil rules for superior court for the taking of depositions. In the course of the deposition, the assistant attorney general conducting the examination may exclude all persons other than the person being examined, the person's counsel, and the officer before whom the testimony is to be taken from the place where the examination is held;

(d) Any person compelled to appear pursuant to a demand for oral testimony under this section may be accompanied by counsel;

(e) The oral testimony of any person obtained pursuant to a demand served under this section shall be taken in the county within which the person resides, is found, or transacts business, or in such other place as may be agreed upon between the person served and the attorney general.

(6) No documentary material, answers to written interrogatories, or transcripts of oral testimony produced pursuant to a demand, or copies thereof, may, unless otherwise ordered by a superior court for good cause shown, be produced for inspection or copying by, nor may the contents thereof be disclosed to, anyone other than an authorized employee or agent of the attorney general, without the consent of the person who produced such material, answered written interrogatories, or gave oral testimony: PROVIDED, That under such reasonable terms and conditions as the attorney general shall prescribe, the copies of such documentary material, answers to written interrogatories, or transcripts of oral testimony shall be available for inspection and copying by the person who produced the material, answered written interrogatories, or gave oral testimony, or any duly authorized representative of that person. The attorney general or any assistant attorney general may use such copies of documentary material, answers to written interrogatories, or transcripts of oral testimony as he or she determines necessary to enforce this chapter, including presentation before any court: PROVIDED FURTHER, That any such material, answers to written interrogatories, or transcripts of oral testimony that contain material designated by the declarant to be trade secrets shall not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing the material, answers to written interrogatories, or oral testimony.

(7) At any time before the return date specified in the demand, or within twenty days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside a demand issued

pursuant to subsection (1) of this section, stating good cause, may be filed in the superior court for Thurston county, or in any other county where the parties reside or are found. A petition, by the person on whom the demand is served, stating good cause, to require the attorney general or any person to perform any duty imposed by this section, and all other petitions in connection with a demand, may be filed in the superior court for Thurston county, or in the county where the parties reside. The court shall have jurisdiction to impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions.

(8) Whenever any person fails to comply with any civil investigative demand for documentary material, answers to written interrogatories, or oral testimony duly served upon that person under this section, or whenever satisfactory copying or reproduction of any such material cannot be done and the person refuses to surrender such material, the attorney general may file, in the trial court of general jurisdiction in the county in which the person resides, is found, or transacts business, and serve upon that person a petition for an order of the court for the enforcement of this section, except that if such person transacts business in more than one county, the petition shall be filed in the county in which the person maintains his or her principal place of business or in such other county as may be agreed upon by the parties to the petition. Whenever any petition is filed under this section in the trial court of general jurisdiction in any county, the court shall have jurisdiction to hear and determine the matter so presented and to enter such order or orders as may be required to carry into effect this section, and may impose such sanctions as are provided for in the civil rules for superior court with respect to discovery motions. [1987 c 328 § 13.]

39.19.120 Certification of business enterprises. The office shall be the sole authority to perform certification of minority business enterprises, socially and economically disadvantaged business enterprises, and women's business enterprises throughout the state of Washington. Certification by the state office will allow these firms to participate in programs for these enterprises administered by the state of Washington, any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington.

This state-wide certification process will prevent duplication of effort, achieve efficiency, and permit local jurisdictions to further develop, implement, and/or enhance comprehensive systems of monitoring and compliance for contracts issued by their agencies. [1987 c 328 § 7.]

39.19.140 Implementation of state-wide certification. Implementation of state-wide certification shall be effective January 1, 1988, following consultation by the office with appropriate state and local officials who currently administer similar certification programs. Any business having been certified under any of the programs identified pursuant to *RCW 39.19.130 as a minority and women's business enterprise shall be deemed certified by the office as of January 1, 1988. [1987 c 328 § 9.]

*Reviser's note: RCW 39.19.130 expired June 30, 1991.

39.19.150 Local government may petition for reconsideration of business certification. (1) Any city, county, town, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation having reason to believe that a particular minority and women's business enterprise should not have been certified under RCW 39.19.140 may petition the office for reconsideration. The basis for the petition may be one or more of the following:

(a) The office's rules or regulations were improperly applied; or

(b) Material facts relating to the minority and women's business enterprise's certification application to the office are untrue.

(2) The petitioner shall carry the burden of persuasion. The affected minority or women's business enterprise shall receive notice of the petition and an opportunity to respond.

(3) After reviewing the information presented in support of and in opposition to the petition, the office shall issue a written decision, granting or denying the petition. If the office grants the petition, it may revoke, suspend, or refuse to renew the certification or impose sanctions under this chapter as appropriate.

(4) The office's decision on a petition is administratively final and the rights of appeal set out in the office regulations shall apply. A certification shall remain in effect while a petition is pending. [1987 c 328 § 10.]

39.19.160 Local government responsible for monitoring compliance. Any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington utilizing the certification by the office retains the responsibility for monitoring compliance with the programs under its jurisdiction. The office shall not be responsible for enforcement of local ordinances, rules, or regulations, however titled. [1987 c 328 § 11.]

39.19.170 Prequalification of minority and women-owned businesses—Waiver of performance bond. (1) State agencies shall not require a performance bond for any public works project that does not exceed twenty-five thousand dollars awarded to a prequalified and certified minority or woman-owned business that has been prequalified as provided under subsection (2) of this section.

(2) A limited prequalification questionnaire shall be required assuring:

(a) That the bidder has adequate financial resources or the ability to secure such resources;

(b) That the bidder can meet the performance schedule;

(c) That the bidder is experienced in the type of work to be performed; and

(d) That all equipment to be used is adequate and functioning and that all equipment operators are qualified to operate such equipment. [1993 c 512 § 10.]

Short title—Part headings and section captions—Severability—Effective date—1993 c 512: See RCW 43.172.900 through 43.172.903.

39.19.200 Minority and women's business enterprises account—Created. The minority and women's business enterprises account is created in the custody of the state

treasurer. All receipts from RCW 39.19.210, 39.19.220, and 39.19.230 shall be deposited in the account. Expenditures from the account may be used only for the purposes defraying all or part of the costs of the office in administering this chapter. Only the director or the director's designee may authorize expenditures from the account. Moneys in the account may be spent only after appropriation. [1993 c 195 § 1.]

Effective date of 1993 c 195—1993 sp.s. c 24: "Chapter 195, Laws of 1993 is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 sp.s. c 24 § 930.]

39.19.210 Businesses using the office—Fees. The office may charge a reasonable fee or other appropriate charge, to be set by rule adopted by the office under chapter 34.05 RCW, to a business using the services of the office. [1993 c 195 § 2.]

Effective date of 1993 c 195—1993 sp.s. c 24: See note following RCW 39.19.200.

39.19.220 Political subdivisions—Fees. The office may charge to a political subdivision in this state a reasonable fee or other appropriate charge, to be set by rule adopted by the office under chapter 34.05 RCW, prorated on the relative benefit to the political subdivision, for the certification under this chapter of a business. [1993 c 195 § 3.]

Effective date of 1993 c 195—1993 sp.s. c 24: See note following RCW 39.19.200.

39.19.230 State agencies and educational institutions—Fees. The office may charge to a state agency and educational institutions, as both are defined in RCW 39.19.020, a reasonable fee or other appropriate charge, to be set by rule adopted by the office under chapter 34.05 RCW, based upon the state agency's or educational institution's expenditure level of funds subject to the office. [1993 c 195 § 4.]

Effective date of 1993 c 195—1993 sp.s. c 24: See note following RCW 39.19.200.

39.19.910 Effective date—Applicability—1983 c 120. (1) This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983.

(2) Contracts entered into before September 1, 1983, are not subject to this act. [1983 c 120 § 21.]

39.19.920 Severability—Conflict with federal requirements—1983 c 120. (1) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

(2) If any part of this chapter is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination

shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. The rules under this chapter shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1983 c 120 § 18.]

39.19.921 Severability—1987 c 328. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 328 § 17.]

Chapter 39.23

PURCHASE OF PRODUCTS AND SERVICES OF SHELTERED WORKSHOPS, DSHS PROGRAMS

Sections

- 39.23.005 Declaration of intent.
39.23.010 Definitions.
39.23.020 Products and/or services, purchase of—Authorization—Determining fair market price.

39.23.005 Declaration of intent. It is the intent of the legislature to encourage municipalities to purchase products and/or services manufactured or provided by sheltered workshops and programs of the department of social and health services which operate facilities serving the handicapped and disadvantaged. [1975 c 20 § 1.]

39.23.010 Definitions. As used in RCW 39.23.005 and 39.23.020 the term "sheltered workshops" shall have the meaning ascribed to it by RCW 82.04.385 and "programs of the department of social and health services" shall mean the group training homes and day training centers defined in *RCW 72.33.800 and "municipality" shall have the meaning ascribed to it by RCW 39.04.010. [1975 c 20 § 2.]

*Reviser's note: RCW 72.33.800 was repealed by 1988 c 176 § 1007. See Title 71A RCW.

39.23.020 Products and/or services, purchase of—Authorization—Determining fair market price. Municipalities are hereby authorized to purchase products and/or services manufactured or provided by sheltered workshops and programs of the department of social and health services. Such purchases shall be at the fair market price of such products and services as determined by a municipality. To determine the fair market price a municipality shall use the last comparable bid on the products and/or services or in the alternative the last price paid for the products and/or services. The increased cost of labor, materials, and other documented costs since the last comparable bid or the last price paid are additional cost factors which shall be considered in determining fair market price. Upon the establishment of the fair market price as provided for in this section a municipality is hereby empowered to negotiate directly with sheltered workshops or officials in charge of the programs of the department of social and health services for the purchase of the products or services. [1977 ex.s. c 10 § 1; 1975 c 20 § 3.]

Chapter 39.24

PUBLIC PURCHASE PREFERENCES

Sections

- 39.24.050 Purchase of paper products meeting certain specifications required.

Powers and duties of division of purchasing: RCW 43.19.190.

Purchase of correctional industries produced products: Chapter 72.60 RCW.

Reciprocity in bidding: RCW 43.19.704.

39.24.050 Purchase of paper products meeting certain specifications required. A governmental unit shall, to the maximum extent economically feasible, purchase paper products which meet the specifications established by the department of general administration under RCW 43.19.538. [1982 c 61 § 3.]

Chapter 39.28

EMERGENCY PUBLIC WORKS

Sections

- 39.28.010 Definitions.
39.28.020 Powers conferred.
39.28.030 Construction of act.
39.28.040 Loans and grants to finance preliminary public works expenditures.

39.28.010 Definitions. The following terms wherever used or referred to in RCW 39.28.010 through 39.28.030 shall have the following meaning unless a different meaning appears from the context.

(1) The term "municipality" shall mean the state, a county, city, town, district or other municipal corporation or political subdivision;

(2) The term "governing body" shall mean the body, a board charged with the governing of the municipality;

(3) The term "law" shall mean any act or statute, general, special or local, of this state, including, without being limited to, the charter of any municipality;

(4) The term "bonds" shall mean bonds, interim receipts, certificates, or other obligations of a municipality issued or to be issued by its governing body for the purpose of financing or aiding in the financing of any work, undertaking or project for which a loan or grant, or both, has heretofore been made or may hereafter be made by any federal agency;

(5) The term "Recovery Act" shall mean any acts of the congress of the United States of America to reduce and relieve unemployment or to provide for the construction of public works;

(6) The term "federal agency" shall include the United States of America, the president of the United States of America, and any agency or instrumentality of the United States of America, which has heretofore been or hereafter may be designated, created or authorized to make loans or grants;

(7) The term "public works project" shall mean any work, project, or undertaking which any municipality, is authorized or required by law to undertake or any lawful purpose for which any municipality is authorized or required by law to make an appropriation;

(8) The term "contract" or "agreement" between a federal agency and a municipality shall include contracts and agreements in the customary form and shall also be deemed to include an allotment of funds, resolution, unilateral promise, or commitment by a federal agency by which it shall undertake to make a loan or grant, or both, upon the performance of specified conditions or compliance with rules and regulations theretofore or thereafter promulgated, prescribed or published by a federal agency. In the case of such an allotment of funds, resolution, unilateral promise, or commitment by a federal agency, the terms, conditions and restrictions therein set forth and the rules and regulations theretofore or thereafter promulgated, prescribed or published shall, for the purpose of RCW 39.28.010 through 39.28.030, be deemed to constitute covenants of such a contract which shall be performed by the municipality, if the municipality accepts any money from such federal agency. [1971 c 76 § 4; 1937 c 107 § 2; RRS § 10322A-8. Prior: 1935 c 107 § 2; RRS § 10322A-2.]

Short title: "This act may be cited as 'The Municipal Emergency Procedure Act (Revision of 1937)':" [1937 c 107 § 1; RRS § 10322A-7. Prior: 1935 c 107 § 1; RRS § 10322A-1.]

Severability—1937 c 107: "If any provision of this act, or the application thereof to any person, body, or circumstances shall be held invalid, the remainder of the act and the application of each provision to persons, bodies, or circumstances other than those as to which it shall have been held invalid shall not be affected thereby." [1937 c 107 § 5; RRS § 10322A-11. Prior: 1935 c 107 § 5; RRS § 10322A-5.]

39.28.020 Powers conferred. Every municipality shall have power and is hereby authorized:

(1) To accept from any federal agency grants for or in aid of the construction of any public works project;

(2) To make contracts and execute instruments containing such terms, provisions, and conditions as in the discretion of the governing body of the municipality may be necessary, proper or advisable for the purpose of obtaining grants or loans, or both, from any federal agency pursuant to or by virtue of the Recovery Act; to make all other contracts and execute all other instruments necessary, proper or advisable in or for the furtherance of any public works project and to carry out and perform the terms and conditions of all such contracts or instruments;

(3) To subscribe to and comply with the Recovery Act and any rules and regulations made by any federal agency with regard to any grants or loans, or both, from any federal agency;

(4) To perform any acts authorized under RCW 39.28.010 through 39.28.030 through or by means of its own officers, agents and employees, or by contracts with corporations, firms or individuals;

(5) To award any contract for the construction of any public works project or part thereof upon any day at least fifteen days after one publication of a notice requesting bids upon such contract in a newspaper of general circulation in the municipality: PROVIDED, That in any case where publication of notice may be made in a shorter period of time under the provisions of existing statute or charter, such statute or charter shall govern;

(6) To sell bonds at private sale to any federal agency without any public advertisement;

(7) To issue interim receipts, certificates or other temporary obligations, in such form and containing such

terms, conditions and provisions as the governing body of the municipality issuing the same may determine, pending the preparation or execution of definite bonds for the purpose of financing the construction of a public works project;

(8) To issue bonds bearing the signatures of officers in office on the date of signing such bonds, notwithstanding that before delivery thereof any or all the persons whose signatures appear thereon shall have ceased to be the officers of the municipality issuing the same;

(9) To include in the cost of a public works project which may be financed by the issuance of bonds: (a) Engineering, inspection, accounting, fiscal and legal expenses; (b) the cost of issuance of the bonds, including engraving, printing, advertising, and other similar expenses; (c) any interest costs during the period of construction of such public works project and for six months thereafter on money borrowed or estimated to be borrowed;

(10) To stipulate in any contract for the construction of any public works project or part thereof the maximum hours that any laborer, worker, or mechanic should be permitted or required to work in any one calendar day or calendar week or calendar month, and the minimum wages to be paid to laborers, workers, or mechanics in connection with any public works project: PROVIDED, That no such stipulation shall provide for hours in excess of or for wages less than may now or hereafter be required by any other law;

(11) To exercise any power conferred by RCW 39.28.010 through 39.28.030 for the purpose of obtaining grants or loans, or both, from any federal agency pursuant to or by virtue of the Recovery Act, independently or in conjunction with any other power or powers conferred by RCW 39.28.010 through 39.28.030 or heretofore or hereafter conferred by any other law;

(12) To do all acts and things necessary or convenient to carry out the powers expressly given in RCW 39.28.010 through 39.28.030. [1989 c 12 § 12; 1937 c 107 § 3; RRS § 10322A-9. Prior: 1935 c 107 § 3; RRS § 10322A-3.]

Short title—Severability—1937 c 107: See notes following RCW 39.28.010.

39.28.030 Construction of act. The powers conferred by RCW 39.28.010 through 39.28.030 shall be in addition and supplemental to and not in substitution for the powers now or hereafter conferred upon any municipality by any other law. RCW 39.28.010 through 39.28.030 is intended to aid in relieving the existing emergency by simplifying the procedure for the construction and financing of public works projects. RCW 39.28.010 through 39.28.030 is remedial in nature and the powers hereby granted shall be liberally construed. Nothing in RCW 39.28.010 through 39.28.030 shall be construed to authorize the issuance of bonds for any purpose by any municipality not authorized to issue bonds for such purpose under any other law heretofore or hereafter enacted, nor to dispense with the approval by a state department, board, officer or commission of a public works project where such approval is necessary under provisions of existing law: PROVIDED, That any port district which is now indebted in an amount equal to or in excess of the indebtedness which may be contracted without a vote of the electors of the district is hereby authorized, for the purposes of RCW 39.28.010 through 39.28.030, through its governing

body, to contract a further indebtedness and borrow money for port purposes and issue general bonds therefor, as in RCW 39.28.010 through 39.28.030 provided, in an additional amount not exceeding three-sixteenths of one percent of the value of the taxable property in the district, as the term "value of the taxable property" is defined in RCW 39.36.015, without the assent of the voters of the district: PROVIDED, FURTHER, That such additional indebtedness together with the existing indebtedness of such port district shall not exceed the total indebtedness permitted to be incurred by such port district under existing laws. [1970 ex.s. c 42 § 25; 1937 c 107 § 4; RRS § 10322A-10. Prior: 1935 c 107 § 4; RRS § 10322A-4.]

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

Short title—Severability—1937 c 107: See notes following RCW 39.28.010.

39.28.040 Loans and grants to finance preliminary public works expenditures. The state of Washington, its various counties, municipal corporations, quasi municipal corporations, cities, towns, villages and all other political subdivisions of the state are hereby authorized to accept from the federal government all loans, advances, grants in aid, or donations that may be made available by any federal agency for the purpose of financing the cost of architectural, engineering, and economic investigations and studies, surveys, designs, plans, working drawings, specifications, procedures, and other acts preliminary to the construction of public works. [1971 c 76 § 5; 1945 c 106 § 1; Rem. Supp. 1945 § 10322-45.]

Chapter 39.29

PERSONAL SERVICE CONTRACTS

Sections

39.29.003	Intent.
39.29.006	Definitions.
39.29.008	Limitation on personal service contracts.
39.29.011	Competitive solicitation required—Exceptions.
39.29.016	Emergency contracts.
39.29.018	Sole source contracts.
39.29.020	Compliance—Expenditure of funds prohibited—Civil penalty.
39.29.025	Amendments.
39.29.040	Exemption of certain contracts.
39.29.050	Contracts subject to requirements established under office of minority and women's business enterprises.
39.29.055	Contracts—Filing—Public inspection—Review and approval—Effective date.
39.29.065	Office of financial management to establish procedures—Adjustment of dollar thresholds.
39.29.068	Office of financial management to maintain list of contracts—Report to legislature (<i>as amended by 1998 c 101</i>).
39.29.068	Office of financial management to maintain list of contracts (<i>as amended by 1998 c 245</i>).
39.29.075	Summary reports on contracts
39.29.080	Data generated under personal services contracts.
39.29.090	Contracts awarded by institutions of higher education.
39.29.900	Severability—1987 c 414.

39.29.003 Intent. It is the intent of this chapter to establish a policy of open competition for all personal service contracts entered into by state agencies, unless

specifically exempted under this chapter. It is further the intent to provide for legislative and executive review of all personal service contracts, to centralize the location of information about personal service contracts for ease of public review, and ensure proper accounting of personal services expenditures. [1998 c 101 § 1; 1993 c 433 § 1; 1987 c 414 § 1; 1979 ex.s. c 61 § 1.]

39.29.006 Definitions. As used in this chapter:

(1) "Agency" means any state office or activity of the executive and judicial branches of state government, including state agencies, departments, offices, divisions, boards, commissions, and educational, correctional, and other types of institutions.

(2) "Client services" means services provided directly to agency clients including, but not limited to, medical and dental services, employment and training programs, residential care, and subsidized housing.

(3) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria which may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(4) "Consultant" means an independent individual or firm contracting with an agency to perform a service or render an opinion or recommendation according to the consultant's methods and without being subject to the control of the agency except as to the result of the work. The agency monitors progress under the contract and authorizes payment.

(5) "Emergency" means a set of unforeseen circumstances beyond the control of the agency that either:

(a) Present a real, immediate threat to the proper performance of essential functions; or

(b) May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

(6) "Evidence of competition" means documentation demonstrating that the agency has solicited responses from multiple firms in selecting a consultant.

(7) "Personal service" means professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement. This term does not include purchased services as defined under subsection (9) of this section. This term does include client services.

(8) "Personal service contract" means an agreement, or any amendment thereto, with a consultant for the rendering of personal services to the state which is consistent with RCW 41.06.380.

(9) "Purchased services" means services provided by a vendor to accomplish routine, continuing and necessary functions. This term includes, but is not limited to, services acquired under RCW 43.19.190 or 43.105.041 for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; key punch services; and computer time-sharing, contract programming, and analysis.

(10) "Sole source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on either the uniqueness of the service or sole availability at the location required. [1998 c 101 § 2; 1993 c 433 § 2; 1987 c 414 § 2; 1981 c 263 § 1; 1979 ex.s. c 61 § 2.]

39.29.008 Limitation on personal service contracts. Personal services may be procured only to resolve a particular agency problem or issue or to expedite a specific project that is temporary in nature. An agency may procure personal services only if it documents that:

- (1) The service is critical to agency responsibilities or operations, or is mandated or authorized by the legislature;
- (2) Sufficient staffing or expertise is not available within the agency to perform the service; and
- (3) Other qualified public resources are not available to perform the service. [1993 c 433 § 6.]

39.29.011 Competitive solicitation required—Exceptions. All personal service contracts shall be entered into pursuant to competitive solicitation, except for:

- (1) Emergency contracts;
- (2) Sole source contracts;
- (3) Contract amendments;
- (4) Contracts between a consultant and an agency of less than twenty thousand dollars. However, contracts of five thousand dollars or greater but less than twenty thousand dollars shall have documented evidence of competition. Agencies shall not structure contracts to evade these requirements; and
- (5) Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process by the director of the office of financial management when it has been determined that a competitive solicitation process is not appropriate or cost-effective. [1998 c 101 § 3; 1987 c 414 § 3.]

39.29.016 Emergency contracts. Emergency contracts shall be filed with the office of financial management and made available for public inspection within three working days following the commencement of work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to the office of financial management when the contract is filed. [1998 c 101 § 4; 1996 c 288 § 29; 1987 c 414 § 4.]

39.29.018 Sole source contracts. (1) Sole source contracts shall be filed with the office of financial management and made available for public inspection at least ten working days prior to the proposed starting date of the contract. Documented justification for sole source contracts shall be provided to the office of financial management when the contract is filed. For sole source contracts of twenty thousand dollars or more, documented justification shall include evidence that the agency attempted to identify potential consultants by advertising through state-wide or regional newspapers.

(2) The office of financial management shall approve sole source contracts of twenty thousand dollars or more

before any such contract becomes binding and before any services may be performed under the contract. These requirements shall also apply to sole source contracts of less than twenty thousand dollars if the total amount of such contracts between an agency and the same consultant is twenty thousand dollars or more within a fiscal year. Agencies shall ensure that the costs, fees, or rates negotiated in filed sole source contracts of twenty thousand dollars or more are reasonable. [1998 c 101 § 5; 1996 c 288 § 30; 1993 c 433 § 5; 1987 c 414 § 5.]

39.29.020 Compliance—Expenditure of funds prohibited—Civil penalty. No state officer or activity of state government subject to this chapter shall expend any funds for personal service contracts unless the agency has complied with the competitive procurement and other requirements of this chapter. The state officer or employee executing the personal service contracts shall be responsible for compliance with the requirements of this chapter. Failure to comply with the requirements of this chapter shall subject the state officer or employee to a civil penalty in the amount of three hundred dollars. A consultant who knowingly violates this chapter in seeking or performing work under a personal services contract shall be subject to a civil penalty of three hundred dollars or twenty-five percent of the amount of the contract, whichever is greater. The state auditor is responsible for auditing violations of this chapter. The attorney general is responsible for prosecuting violations of this chapter. [1987 c 414 § 6; 1974 ex.s. c 191 § 2.]

39.29.025 Amendments. (1) Substantial changes in either the scope of work specified in the contract or in the scope of work specified in the formal solicitation document must generally be awarded as new contracts. Substantial changes executed by contract amendments must be submitted to the office of financial management, and are subject to approval by the office of financial management.

(2) An amendment or amendments to personal service contracts, if the value of the amendment or amendments, whether singly or cumulatively, exceeds fifty percent of the value of the original contract must be provided to the office of financial management.

(3) The office of financial management shall approve amendments provided to it under this section before the amendments become binding and before services may be performed under the amendments.

(4) The amendments must be filed with the office of financial management and made available for public inspection at least ten working days prior to the proposed starting date of services under the amendments.

(5) The office of financial management shall approve amendments provided to it under this section only if they meet the criteria for approval of the amendments established by the director of the office of financial management. [1998 c 101 § 6; 1996 c 288 § 31; 1993 c 433 § 3.]

39.29.040 Exemption of certain contracts. This chapter does not apply to:

(1) Contracts specifying a fee of less than five thousand dollars if the total of the contracts from that agency with the

contractor within a fiscal year does not exceed five thousand dollars;

(2) Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;

(3) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;

(4) Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;

(5) Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;

(6) Contracts for client services;

(7) Contracts for architectural and engineering services as defined in RCW 39.80.020, which shall be entered into under chapter 39.80 RCW;

(8) Contracts for the employment of expert witnesses for the purposes of litigation; and

(9) Contracts for bank supervision authorized under RCW 30.38.040. [1998 c 101 § 7; 1996 c 2 § 19; 1995 c 80 § 1; 1987 c 414 § 7; 1986 c 33 § 3; 1979 ex.s. c 61 § 4.]

Severability—1996 c 2: See RCW 30.38.900.

39.29.050 Contracts subject to requirements established under office of minority and women's business enterprises. All contracts entered into under this chapter on or after September 1, 1983, are subject to the requirements established under chapter 39.19 RCW. [1983 c 120 § 12.]

Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120: See RCW 39.19.910, 39.19.920.

39.29.055 Contracts—Filing—Public inspection—Review and approval—Effective date. (1) Personal service contracts subject to competitive solicitation shall be (a) filed with the office of financial management and made available for public inspection; and (b) reviewed and approved by the office of financial management when those contracts provide services relating to management consulting, organizational development, marketing, communications, employee training, or employee recruiting.

(2) Personal service contracts subject to competitive solicitation that provide services relating to management consulting, organizational development, marketing, communications, employee training, or employee recruiting shall be made available for public inspection at least ten working days before the proposed starting date of the contract. All other contracts shall be effective no earlier than the date they are filed with the office of financial management. [1998 c 101 § 8; 1996 c 288 § 32; 1993 c 433 § 7.]

39.29.065 Office of financial management to establish procedures—Adjustment of dollar thresholds. To implement this chapter, the director of the office of financial management shall establish procedures for the competitive solicitation and award of personal service contracts, recordkeeping requirements, and procedures for the reporting and filing of contracts. For reporting purposes, the

director may establish categories for grouping of contracts. The procedures required under this section shall also include the criteria for amending personal service contracts. At the beginning of each biennium, the director may, by administrative policy, adjust the dollar thresholds prescribed in RCW 39.29.011, 39.29.018, 39.29.040, and *39.29.068 to levels not to exceed the percentage increase in the implicit price deflator. Adjusted dollar thresholds shall be rounded to the nearest five hundred dollar increment. [1998 c 101 § 9; 1987 c 414 § 8.]

*Reviser's note: The dollar thresholds prescribed in RCW 39.29.068 were amended by 1998 c 101 § 10, and removed by 1998 c 245 § 33.

39.29.068 Office of financial management to maintain list of contracts—Report to legislature (as amended by 1998 c 101). The office of financial management shall maintain a publicly available list of all personal service contracts entered into by state agencies during each fiscal year. The list shall identify the contracting agency, the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis. The office of financial management shall also ensure that state accounting definitions and procedures are consistent with RCW 39.29.006 and permit the reporting of personal services expenditures by agency and by type of service. Designations of type of services shall include, but not be limited to, management and organizational services, legal and expert witness services, financial services, computer and information services, social or technical research, marketing, communications, and employee training or recruiting services. The office of financial management shall report annually to the fiscal committees of the senate and house of representatives on sole source contracts filed under this chapter. The report shall describe: (1) The number and aggregate value of contracts for each category established in this section; (2) the number and aggregate value of contracts of ~~((two))~~ five thousand ~~((five hundred))~~ dollars or greater but less than ~~((ten))~~ twenty thousand dollars; (3) the number and aggregate value of contracts of ~~((ten))~~ twenty thousand dollars or greater; (4) the justification provided by agencies for the use of sole source contracts; and (5) any trends in the use of sole source contracts. [1998 c 101 § 10; 1993 c 433 § 8.]

39.29.068 Office of financial management to maintain list of contracts (as amended by 1998 c 245). The office of financial management shall maintain a publicly available list of all personal service contracts entered into by state agencies during each fiscal year. The list shall identify the contracting agency, the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding source, any modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis. The office of financial management shall also ensure that state accounting definitions and procedures are consistent with RCW 39.29.006 and permit the reporting of personal services expenditures by agency and by type of service. Designations of type of services shall include, but not be limited to, management and organizational services, legal and expert witness services, financial services, computer and information services, social or technical research, marketing, communications, and employee training or recruiting services. ~~((The office of financial management shall report annually to the fiscal committees of the senate and house of representatives on sole source contracts filed under this chapter. The report shall describe: (1) The number and aggregate value of contracts for each category established in this section; (2) the number and aggregate value of contracts of two thousand five hundred dollars or greater but less than ten thousand dollars; (3) the number and aggregate value of contracts of ten thousand dollars or greater; (4) the justification provided by agencies for the use of sole source contracts; and (5) any trends in the use of sole source contracts.))~~ [1998 c 245 § 33; 1993 c 433 § 8.]

Reviser's note: RCW 39.29.068 was amended twice during the 1998 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.

39.29.075 Summary reports on contracts. As requested by the legislative auditor, the office of financial

management shall provide information on contracts filed under this chapter for use in preparation of summary reports on personal services contracts. [1987 c 414 § 9.]

39.29.080 Data generated under personal services contracts. A state agency may not enter into a personal services contract with a consultant under which the consultant could charge additional costs to the agency, the joint legislative audit and review committee, or the state auditor for access to data generated under the contract. A consultant under such contract shall provide access to data generated under the contract to the contracting agency, the joint legislative audit and review committee, and the state auditor. For purposes of this section, "data" includes all information that supports the findings, conclusions, and recommendations of the consultant's reports, including computer models and the methodology for those models. [1997 c 373 § 1.]

39.29.090 Contracts awarded by institutions of higher education. Personal service contracts awarded by institutions of higher education from nonstate funds do not have to be filed in advance and approved by the office of financial management. Any such contract is subject to all other requirements of this chapter, including the requirements under *RCW 39.29.068 for annual reporting of personal service contracts to the office of financial management. [1998 c 101 § 11.]

*Reviser's note: Annual reporting requirements under RCW 39.29.068 were amended by 1998 c 101 § 10, and removed by 1998 c 245 § 33.

39.29.900 Severability—1987 c 414. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 414 § 13.]

Chapter 39.30

**CONTRACTS—INDEBTEDNESS LIMITATIONS—
COMPETITIVE BIDDING VIOLATIONS**

Sections

- 39.30.010 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when.
- 39.30.020 Contracts requiring competitive bidding—Violations by municipal officer—Penalties.
- 39.30.040 Purchases—Competitive bidding—Local governments may consider tax revenues—Purchase of recycled or reused materials or products.
- 39.30.045 Purchase at auctions.
- 39.30.050 Contracts to require use of paper products meeting certain specifications.
- 39.30.060 Bids on public works—Subcontractors must be identified—When.
- 39.30.070 Exceptions—Contracts or development agreements related to stadium and exhibition center.

39.30.010 Executory conditional sales contracts for purchase of property—Limit on indebtedness—Election, when. Any city or town or metropolitan park district or county or library district may execute an executory conditional sales contract with a county or counties, the state or any of its political subdivisions, the government of the

United States, or any private party for the purchase of any real or personal property, or property rights in connection with the exercise of any powers or duties which they now or hereafter are authorized to exercise, if the entire amount of the purchase price specified in such contract does not result in a total indebtedness in excess of three-fourths of one percent of the value of the taxable property in such library district or the maximum amount of nonvoter-approved indebtedness authorized in such county, city, town, or metropolitan park district. If such a proposed contract would result in a total indebtedness in excess of this amount, a proposition in regard to whether or not such a contract may be executed shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are submitted to the voters. Any city or town or metropolitan park district or county or library district may jointly execute contracts authorized by this section, if the entire amount of the purchase price does not result in a joint total indebtedness in excess of the nonvoter-approved indebtedness limitation of any city, town, metropolitan park district, county, or library district that participates in the jointly executed contract. The term "value of the taxable property" shall have the meaning set forth in RCW 39.36.015. [1997 c 361 § 2; 1970 ex.s. c 42 § 26; 1963 c 92 § 1; 1961 c 158 § 1.]

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

39.30.020 Contracts requiring competitive bidding—Violations by municipal officer—Penalties. In addition to any other remedies or penalties contained in any law, municipal charter, ordinance, resolution or other enactment, any municipal officer by or through whom or under whose supervision, in whole or in part, any contract is made in wilful and intentional violation of any law, municipal charter, ordinance, resolution or other enactment requiring competitive bidding upon such contract shall be held liable to a civil penalty of not less than three hundred dollars and may be held liable, jointly and severally with any other such municipal officer, for all consequential damages to the municipal corporation. If, as a result of a criminal action, the violation is found to have been intentional, the municipal officer shall immediately forfeit his office. For purposes of this section, "municipal officer" shall mean an "officer" or "municipal officer" as those terms are defined in RCW 42.23.020(2). [1974 ex.s. c 74 § 1.]

Contracts by cities or towns, bidding requirements: RCW 35.23.352.

39.30.040 Purchases—Competitive bidding—Local governments may consider tax revenues—Purchase of recycled or reused materials or products. (1) Whenever a unit of local government is required to make purchases from the lowest bidder or from the supplier offering the lowest price for the items desired to be purchased, the unit of local government may, at its option when awarding a purchase contract, take into consideration tax revenue it would receive from purchasing the supplies, materials, or equipment from a supplier located within its boundaries. The unit of local government must award the purchase contract to the lowest bidder after such tax revenue has been considered. However, any local government may allow for

preferential purchase of products made from recycled materials or products that may be recycled or reused. The tax revenues which units of local government may consider include sales taxes that the unit of local government imposes upon the sale of such supplies, materials, or equipment from the supplier to the unit of local government, and business and occupation taxes that the unit of local government imposes upon the supplier that are measured by the gross receipts of the supplier from such sale. Any unit of local government which considers tax revenues it would receive from the imposition of taxes upon a supplier located within its boundaries, shall also consider tax revenues it would receive from taxes it imposes upon a supplier located outside its boundaries.

(2) As used in this section, the term "unit of local government" means any county, city, town, metropolitan municipal corporation, public transit benefit area, county transportation authority, or other municipal or quasi-municipal corporation authorized to impose sales and use taxes or business and occupation taxes. [1989 c 431 § 58; 1985 c 72 § 1.]

Severability—1989 c 431: See RCW 70.95.901.

39.30.045 Purchase at auctions. Any municipality, as defined in RCW 39.04.010, may purchase any supplies, equipment, or materials at auctions conducted by the government of the United States or any agency thereof, any agency of the state of Washington, any municipality or other government agency, or any private party without being subject to public bidding requirements if the items can be obtained at a competitive price. [1993 c 198 § 4; 1991 c 363 § 112.]

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

39.30.050 Contracts to require use of paper products meeting certain specifications. Any contract by a governmental unit shall require the use of paper products to the maximum extent economically feasible that meet the specifications established by the department of general administration under RCW 43.19.538. [1982 c 61 § 4.]

39.30.060 Bids on public works—Subcontractors must be identified—When. Every invitation to bid on a contract that is expected to cost in excess of one hundred thousand dollars for the construction, alteration, or repair of any public building or public work of the state or a state agency or municipality as defined under RCW 39.04.010, an institution of higher education as defined under RCW 28B.10.016, or a school district shall require each bidder to submit as part of the bid, or within one hour after the published bid submittal time, the names of the subcontractors whose subcontract amount is more than ten percent of the bid price with whom the bidder, if awarded the contract, will subcontract for performance of the work designated on the list to be submitted with the bid. Failure to name such subcontractors shall render the bidder's bid nonresponsive and, therefore, void. [1995 c 94 § 1; 1994 c 91 § 1; 1993 c 378 § 1.]

Application—1994 c 91: "This act applies prospectively only and not retroactively. It applies only to invitations to bid issued on or after June 9, 1994." [1994 c 91 § 2.]

Application—1993 c 378: "This act applies prospectively only and not retroactively. It applies only to invitations to bid issued on or after July 25, 1993." [1993 c 378 § 2.]

39.30.070 Exceptions—Contracts or development agreements related to stadium and exhibition center. This chapter does not apply to contracts entered into under RCW 36.102.060(4) or development agreements entered into under RCW 36.102.060(7). [1997 c 220 § 403 (Referendum Bill No. 48, approved June 17, 1997).]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Chapter 39.32

PURCHASE OF FEDERAL PROPERTY

Sections

- 39.32.010 Definitions.
- 39.32.020 Acquisition of surplus property authorized.
- 39.32.030 "Surplus property purchase revolving fund" created.
- 39.32.035 Administration and use of revolving fund—Director's authority to lease and acquire surplus property.
- 39.32.040 Procedure to purchase—Requisitions—Price at which sold—Disposition of proceeds—Duties of governor.
- 39.32.050 Deposit of revolving fund—Bond or collateral.
- 39.32.060 Rules and regulations.
- 39.32.070 Purchase of property from federal government authorized—Authority to contract—Bidding—Payment.
- 39.32.080 Purchase of property from federal government authorized—Inconsistent provisions suspended.
- 39.32.090 Purchases by political subdivisions from or through United States authorized.

Authority of counties to receive and distribute federal surplus commodities to needy: RCW 36.39.040.

State purchasing and material control director: RCW 43.19.190.

Public assistance recipients, certification of to receive federal surplus commodities: RCW 74.04.340 through 74.04.360.

39.32.010 Definitions. For the purposes of RCW 39.32.010 through 39.32.060:

The term "eligible donee" means any public agency carrying out or promoting for the residents of a given political area one or more public purposes, such as conservation, economic development, education, parks and recreation, public health, and public safety; or nonprofit educational or public health institutions or organizations, such as medical institutions, hospitals, clinics, health centers, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, child care centers, radio and television stations licensed by the federal communications commission as educational radio or educational television stations, museums attended by the public, and public libraries serving all residents of a community, district, state, or region, and which are exempt from taxation under Section 501 of the Internal Revenue Code of 1954, for purposes of education or public health, including research for any such purpose.

The term "public agency" means the state or any subdivision thereof, including any unit of local government, economic development district, emergency services organization, or any instrumentality created by compact or other agreement between the state and a political subdivision, or any Indian tribe, band, group, or community located on a state reservation.

The term "surplus property" means any property, title to which is in the federal, state, or local government or any department or agency thereof, and which property is to be disposed of as surplus under any act of congress or the legislature or local statute, heretofore or hereafter enacted providing for such disposition. [1995 c 137 § 2; 1977 ex.s. c 135 § 1; 1967 ex.s. c 70 § 1; 1945 c 205 § 1; Rem. Supp. 1945 § 10322-60.]

39.32.020 Acquisition of surplus property authorized. The director of general administration is hereby authorized to purchase, lease or otherwise acquire from federal, state, or local government or any surplus property disposal agency thereof surplus property to be used in accordance with the provisions of this chapter. [1995 c 137 § 3; 1977 ex.s. c 135 § 2; 1967 ex.s. c 70 § 2; 1945 c 205 § 2; Rem. Supp. 1945 § 10322-61.]

Authority of superintendent of public instruction to acquire federal surplus or donated food commodities for school district hot lunch program: Chapter 28A.235 RCW.

39.32.030 "Surplus property purchase revolving fund" created. (*Effective until July 1, 1999.*) There is created in the department of general administration a revolving fund to be designated the surplus property purchase revolving fund, and there is hereby appropriated to said revolving fund from the general fund for the fiscal biennium ending March 31, 1947, the sum of five million dollars or so much thereof as shall be necessary. The director shall have power, with the approval of the governor, to transfer so much of this appropriation to the revolving fund from time to time as he may deem necessary to maintain said fund in a condition adequate to carry out the purposes of RCW 39.32.010 through 39.32.060. [1967 ex.s. c 70 § 3; 1945 c 205 § 3; Rem. Supp. 1945 § 10322-62. FORMER PART OF SECTION: 1945 c 205 § 4 now codified as RCW 39.32.035.]

39.32.035 Administration and use of revolving fund—Director's authority to lease and acquire surplus property. (*Effective until July 1, 1999.*) The surplus property purchase revolving fund shall be administered by the director of general administration and be used for the purchase, lease or other acquisition from time to time of surplus property from any federal, state, or local government surplus property disposal agency. The director may purchase, lease or acquire such surplus property on the requisition of an eligible donee and without such requisition at such time or times as he deems it advantageous to do so; and in either case he shall be responsible for the care and custody of the property purchased so long as it remains in his possession. [1995 c 137 § 4; 1977 ex.s. c 135 § 3; 1967 ex.s. c 70 § 4; 1945 c 205 § 4; Rem. Supp. 1945 § 10322-63. Formerly RCW 39.32.030, part.]

39.32.035 Administration and use of general administration services account—Director's authority to lease and acquire surplus property. (*Effective July 1, 1999.*) The general administration services account shall be administered by the director of general administration and be used for the purchase, lease or other acquisition from time to time of surplus property from any federal, state, or local government surplus property disposal agency. The director may purchase, lease or acquire such surplus property on the requisition of an eligible donee and without such requisition at such time or times as he or she deems it advantageous to do so; and in either case he or she shall be responsible for the care and custody of the property purchased so long as it remains in his or her possession. [1998 c 105 § 3; 1995 c 137 § 4; 1977 ex.s. c 135 § 3; 1967 ex.s. c 70 § 4; 1945 c 205 § 4; Rem. Supp. 1945 § 10322-63. Formerly RCW 39.32.030, part.]

Effective date—1998 c 105: See note following RCW 43.19.025.

39.32.040 Procedure to purchase—Requisitions—Price at which sold—Disposition of proceeds—Duties of governor. (*Effective until July 1, 1999.*) In purchasing federal surplus property on requisition for any eligible donee the director may advance the purchase price thereof from the surplus property purchase revolving fund, and he shall then in due course bill the proper eligible donee for the amount paid by him for the property plus a reasonable amount to cover the expense incurred by him in connection with the transaction. In purchasing surplus property without requisition, the director shall be deemed to take title outright and he shall then be authorized to resell from time to time any or all of such property to such eligible donees as desire to avail themselves of the privilege of purchasing. All moneys received in payment for surplus property from eligible donees shall be deposited by the director in the surplus property purchase revolving fund. The director shall sell federal surplus property to eligible donees at a price sufficient only to reimburse the surplus property purchase revolving fund for the cost of the property to the fund, plus a reasonable amount to cover expenses incurred in connection with the transaction. Where surplus property is transferred to an eligible donee without cost to the transferee, the director may impose a reasonable charge to cover expenses incurred in connection with the transaction. The governor, through the director of general administration, shall administer the surplus property program in the state and shall perform or supervise all those functions with respect to the program, its agencies and instrumentalities. [1995 c 137 § 5; 1977 ex.s. c 135 § 4; 1967 ex.s. c 70 § 5; 1945 c 205 § 5; Rem. Supp. 1945 § 10322-64.]

39.32.040 Procedure to purchase—Requisitions—Price at which sold—Disposition of proceeds—Duties of governor. (*Effective July 1, 1999.*) In purchasing federal surplus property on requisition for any eligible donee the director may advance the purchase price thereof from the general administration services account, and he or she shall then in due course bill the proper eligible donee for the amount paid by him or her for the property plus a reasonable amount to cover the expense incurred by him or her in connection with the transaction. In purchasing surplus

property without requisition, the director shall be deemed to take title outright and he or she shall then be authorized to resell from time to time any or all of such property to such eligible donees as desire to avail themselves of the privilege of purchasing. All moneys received in payment for surplus property from eligible donees shall be deposited by the director in the general administration services account. The director shall sell federal surplus property to eligible donees at a price sufficient only to reimburse the general administration services account for the cost of the property to the account, plus a reasonable amount to cover expenses incurred in connection with the transaction. Where surplus property is transferred to an eligible donee without cost to the transferee, the director may impose a reasonable charge to cover expenses incurred in connection with the transaction. The governor, through the director of general administration, shall administer the surplus property program in the state and shall perform or supervise all those functions with respect to the program, its agencies and instrumentalities. [1998 c 105 § 4; 1995 c 137 § 5; 1977 ex.s. c 135 § 4; 1967 ex.s. c 70 § 5; 1945 c 205 § 5; Rem. Supp. 1945 § 10322-64.]

Effective date—1998 c 105: See note following RCW 43.19.025.

39.32.050 Deposit of revolving fund—Bond or collateral. (*Effective until July 1, 1999.*) The surplus property purchase revolving fund shall be deposited by the director in such banks as he may select, but any such depository shall furnish a surety bond executed by a surety company or companies authorized to do business in the state of Washington, or collateral eligible as security for deposit of state funds, in at least the full amount of the deposit in each depository bank. Moneys shall be paid from the surplus property purchase revolving fund by voucher and check in such form and in such manner as shall be prescribed by the director. [1945 c 205 § 6; Rem. Supp. 1945 § 10322-65.]

State depositories: Chapter 43.85 RCW.

39.32.060 Rules and regulations. The director of general administration shall have power to promulgate such rules and regulations as may be necessary to effectuate the purposes of RCW 39.32.010 through 39.32.060 and to carry out the provisions of the Federal Property and Administrative Services Act of 1949, as amended. [1977 ex.s. c 135 § 5; 1967 ex.s. c 70 § 6; 1945 c 205 § 7; Rem. Supp. 1945 § 10322-66.]

39.32.070 Purchase of property from federal government authorized—Authority to contract—Bidding—Payment. The state of Washington, through any department, division, bureau, board, commission, authority, or agency thereof, and all counties, cities, towns, and other political subdivisions thereof, is hereby authorized to enter into any contract with the United States of America, or with any agency thereof, for the purchase of any equipment, supplies, materials, or other property, without regard to the provisions of any law requiring the advertising, giving of notices, inviting or receiving bids, or which may require the delivery of purchases before payment, and to this end the executive head of any such department, division, bureau,

board, commission, authority, or agency of the state, the county commissioners and the executive authority of any city or town, may designate by appropriate resolution or order any office holder or employee of its own to enter a bid or bids in its behalf at any sale of any equipment, supplies, material or other property real or personal owned by the United States of America or any agency thereof, and may authorize said person to make any down payment, or payment in full, required in connection with such bidding. [1945 c 180 § 1; Rem. Supp. 1945 § 10322-50. FORMER PART OF SECTION: 1945 c 88 § 1 now codified as RCW 39.32.090.]

39.32.080 Purchase of property from federal government authorized—Inconsistent provisions suspended. Any provisions of any law, charter, ordinance, resolution, bylaw, rule or regulation which are inconsistent with the provisions of RCW 39.32.070 and 39.32.080 are suspended to the extent such provisions are inconsistent herewith. [1945 c 180 § 2; Rem. Supp. 1945 § 10322-51.]

39.32.090 Purchases by political subdivisions from or through United States authorized. Whenever authorized by ordinance or resolution of its legislative authority any political subdivision of the state shall have power to purchase supplies, materials and/or equipment from or through the United States government without calling for bids, notwithstanding any law or charter provision to the contrary. [1945 c 88 § 1; Rem. Supp. 1945 § 10322-40. Formerly RCW 39.32.070, part.]

Chapter 39.33

INTERGOVERNMENTAL DISPOSITION OF PROPERTY

Sections

- 39.33.010 Sale, exchange, transfer, lease of public property authorized—Section deemed alternative.
- 39.33.020 Disposal of surplus property—Hearing—Notice.
- 39.33.050 Public mass transportation systems—Contracts for services or use.
- 39.33.060 Transfer of property or contract for use for park and recreational purposes.
- 39.33.070 School districts and libraries—Disposal of obsolete or surplus reading materials—Procedures.

39.33.010 Sale, exchange, transfer, lease of public property authorized—Section deemed alternative. (1) The state or any municipality or any political subdivision thereof, may sell, transfer, exchange, lease or otherwise dispose of any property, real or personal, or property rights, including but not limited to the title to real property, to the state or any municipality or any political subdivision thereof, or the federal government, on such terms and conditions as may be mutually agreed upon by the proper authorities of the state and/or the subdivisions concerned.

(2) This section shall be deemed to provide an alternative method for the doing of the things authorized herein, and shall not be construed as imposing any additional condition upon the exercise of any other powers vested in the state, municipalities or political subdivisions.

(3) No intergovernmental transfer, lease, or other disposition of property made pursuant to any other provision of law prior to May 23, 1972 shall be construed to be invalid solely because the parties thereto did not comply with the procedures of this section. [1981 c 96 § 1; 1973 c 109 § 1; 1972 ex.s. c 95 § 1; 1953 c 133 § 1.]

Exchange of county tax title lands with other governmental agencies: Chapter 36.35 RCW.

39.33.020 Disposal of surplus property—Hearing—Notice. Before disposing of surplus property with an estimated value of more than fifty thousand dollars, the state or a political subdivision shall hold a public hearing in the county where the property or the greatest portion thereof is located. At least ten days but not more than twenty-five days prior to the hearing, there shall be published a public notice of reasonable size in display advertising form, setting forth the date, time, and place of the hearing at least once in a newspaper of general circulation in the area where the property is located. A news release pertaining to the hearing shall be disseminated among printed and electronic media in the area where the property is located. If real property is involved, the public notice and news release shall identify the property using a description which can easily be understood by the public. If the surplus is real property, the public notice and news release shall also describe the proposed use of the lands involved. If there is a failure to substantially comply with the procedures set forth in this section, then the sale, transfer, exchange, lease, or other disposal shall be subject to being declared invalid by a court. Any such suit must be brought within one year from the date of the disposal agreement. [1995 c 123 § 1; 1981 c 96 § 2.]

39.33.050 Public mass transportation systems—Contracts for services or use. The legislative body of any municipal corporation, quasi municipal corporation or political subdivision of the state of Washington authorized to develop and operate a public mass transportation system shall have power to contract with the legislative body of any other municipal corporation, quasi municipal corporation or political subdivision of the state of Washington, or with any person, firm or corporation for public transportation services or for the use of all or any part of any publicly owned transportation facilities for such period and under such terms and conditions and upon such rentals, fees and charges as the legislative body operating such public transportation system may determine, and may pledge all or any portion of such rentals, fees and charges and all other revenue derived from the ownership or operation of publicly owned transportation facilities to pay and to secure the payment of general obligation bonds and/or revenue bonds of such municipality issued for the purpose of acquiring or constructing a public mass transportation system. [1969 ex.s. c 255 § 16.]

Construction—Severability—1969 ex.s. c 255: See notes following RCW 35.58.272.

Public transportation systems: RCW 35.58.272 through 35.58.2792.

39.33.060 Transfer of property or contract for use for park and recreational purposes. Any governmental unit, as defined in RCW 36.93.020(1) as it now exists or is hereafter amended, may convey its real or personal property

or any interest or right therein to, or contract for the use of such property by, the county or park and recreation district wherein such property is located for park or recreational purposes, by private negotiation and upon such terms and with such consideration as might be mutually agreed to by such governmental unit and the board of county commissioners or the park and recreation district board of commissioners. [1971 ex.s. c 243 § 7.]

Severability—1971 ex.s. c 243: See RCW 84.34.920.

39.33.070 School districts and libraries—Disposal of obsolete or surplus reading materials—Procedures. Any school district or educational service district, after complying with the requirements of RCW 28A.335.180, and any library, as defined in RCW 27.12.010, may dispose of surplus or obsolete books, periodicals, newspapers, and other reading materials as follows:

(1) If the reading materials are estimated to have value as reading materials in excess of one thousand dollars, they shall be sold at public auction to the person submitting the highest reasonable bid following publication of notice of the auction in a newspaper with a general circulation in the library or school district.

(2) If no reasonable bids are submitted under subsection (1) of this section or if the reading materials are estimated to have value as reading materials of one thousand dollars or less, the library or school district may directly negotiate the sale of the reading materials to a public or private entity.

(3) If the reading materials are determined to have no value as reading materials or if no purchaser is found under subsection (2) of this section the reading materials may be recycled or destroyed.

These methods for disposing of surplus or obsolete reading materials shall be in addition to any other method available to libraries and school districts for disposal of the property. [1990 c 33 § 567; 1979 ex.s. c 134 § 1.]

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

Chapter 39.34

INTERLOCAL COOPERATION ACT

Sections	
39.34.010	Declaration of purpose.
39.34.020	Definitions.
39.34.030	Joint powers—Agreements for joint or cooperative action, requisites, effect on responsibilities of component agencies—Financing of joint projects.
39.34.040	Agreements to be filed—Status of interstate agreements—Real party in interest—Actions.
39.34.050	Duty to submit agreement to jurisdictional state officer or agency.
39.34.055	Public purchase agreements with public benefit nonprofit corporations.
39.34.060	Participating agencies may appropriate funds and provide personnel, property, and services.
39.34.070	Authority of joint boards to receive loans or grants.
39.34.080	Contracts to perform governmental activities which each contracting agency is authorized to perform.
39.34.085	Agreements for operation of bus services.
39.34.090	Agencies' contracting authority regarding electricity, utilities' powers, preserved.
39.34.100	Powers conferred by chapter are supplemental
39.34.110	Powers otherwise prohibited by Constitutions or federal laws.

- 39.34.130 Transactions between state agencies—Charging of costs—Regulation by director of financial management.
- 39.34.140 Transactions between state agencies—Procedures for payments through transfers upon accounts.
- 39.34.150 Transactions between state agencies—Advancements.
- 39.34.160 Transactions between state agencies—Time limitation for expenditure of advance—Unexpended balance.
- 39.34.170 Transactions between state agencies—Powers and authority cumulative.
- 39.34.180 Criminal justice responsibilities—Interlocal agreements.
- 39.34.900 Short title.
- 39.34.910 Severability—1967 c 239.
- 39.34.920 Effective date—1967 c 239.

Hydroelectric resources, creation of separate legal authority by irrigation districts and cities, towns, or public utility districts: RCW 87.03.828.

Irrigation districts, creation of legal authority to carry out powers: RCW 87.03.018.

School district associations, right to mortgage or convey money security interest in association property—Limitations: RCW 28A.335.100.

School districts agreements with other governmental entities for transportation of students, the public or other noncommon school purposes—Limitations: RCW 28A.160.120.

39.34.010 Declaration of purpose. It is the purpose of this chapter to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population and other factors influencing the needs and development of local communities. [1967 c 239 § 1.]

Joint operations by municipal corporations and political subdivisions, deposit and control of funds: RCW 43.09.285.

39.34.020 Definitions. For the purposes of this chapter, the term "public agency" shall mean any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.

The term "state" shall mean a state of the United States. [1985 c 33 § 1; 1979 c 36 § 1; 1977 ex.s. c 283 § 13; 1975 1st ex.s. c 115 § 1; 1973 c 34 § 1; 1971 c 33 § 1; 1969 c 88 § 1; 1969 c 40 § 1; 1967 c 239 § 3.]

Severability—1977 ex.s. c 283: See note following RCW 28A.310.010.

39.34.030 Joint powers—Agreements for joint or cooperative action, requisites, effect on responsibilities of component agencies—Financing of joint projects. (1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy

all of the powers, privileges and authority conferred by this chapter upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter: PROVIDED, That any such joint or cooperative action by public agencies which are educational service districts and/or school districts shall comply with the provisions of RCW 28A.320.080. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following:

(a) Its duration;

(b) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. Such entity may include a nonprofit corporation organized pursuant to chapter 24.03 or 24.06 RCW whose membership is limited solely to the participating public agencies or a partnership organized pursuant to chapter 25.04 RCW whose partners are limited solely to participating public agencies and the funds of any such corporation or partnership shall be subject to audit in the manner provided by law for the auditing of public funds;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination;

(f) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall, in addition to items (a), (c), (d), (e) and (f) enumerated in subdivision (3) hereof, contain the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies party to the agreement shall be represented;

(b) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking. Any joint board is authorized to establish a special fund with a state, county, city, or district treasurer servicing an involved public agency designated "Operating fund of . . . joint board"

(5) No agreement made pursuant to this chapter shall relieve any public agency of any obligation or responsibility imposed upon it by law except that to the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made hereunder, the performance may be offered in satisfaction of the obligation or responsibility.

(6) Financing of joint projects by agreement shall be as provided by law. [1992 c 161 § 4; 1990 c 33 § 568; 1981 c 308 § 2; 1972 ex.s. c 81 § 1; 1967 c 239 § 4.]

Intent—1992 c 161: See note following RCW 70.44.450.

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

Severability—1981 c 308: See note following RCW 28A.320.080.

Joint operations by municipal corporations or political subdivisions, deposit and control of funds: RCW 43.09.285.

39.34.040 Agreements to be filed—Status of interstate agreements—Real party in interest—Actions. Prior to its entry into force, an agreement made pursuant to this chapter shall be filed with the county auditor. In the event that an agreement entered into pursuant to this chapter is between or among one or more public agencies of this state and one or more public agencies of another state or of the United States the agreement shall have the status of an interstate compact, but in any case or controversy involving performance or interpretation thereof or liability thereunder, the public agencies party thereto shall be real parties in interest and the state may maintain an action to recoup or otherwise make itself whole for any damages or liability which it may incur by reason of being joined as a party therein. Such action shall be maintainable against any public agency or agencies whose default, failure of performance, or other conduct caused or contributed to the incurring of damage or liability by the state. [1995 c 22 § 1; 1992 c 161 § 5; 1967 c 239 § 5.]

Intent—1992 c 161: See note following RCW 70.44.450.

39.34.050 Duty to submit agreement to jurisdictional state officer or agency. In the event that an agreement made pursuant to this chapter shall deal in whole or in part with the provision of services or facilities with regard to which an officer or agency of the state government has constitutional or statutory powers of control, the agreement shall, as a condition precedent to its entry into force, be submitted to the state officer or agency having such power of control. The agreement shall be approved or disapproved by the state officer or agency with regard to matters within his, her, or its jurisdiction within ninety days after receipt of the agreement. If a state officer or agency fails to act within the ninety-day time limit, the agreement shall be deemed approved by that state officer or agency. [1992 c 161 § 6; 1967 c 239 § 6.]

Intent—1992 c 161: See note following RCW 70.44.450.

39.34.055 Public purchase agreements with public benefit nonprofit corporations. The office of state procurement within the department of general administration may enter into an agreement with a public benefit nonprofit corporation to allow the public benefit nonprofit corporation to participate in state contracts for purchases administered by the office of state procurement. Such agreement must comply with the requirements of RCW 39.34.030 through 39.34.050. For the purposes of this section "public benefit nonprofit corporation" means a public benefit nonprofit corporation as defined in RCW 24.03.005 that is receiving local, state, or federal funds either directly or through a public agency other than an Indian tribe or a political subdivision of another state. [1994 c 98 § 1.]

39.34.060 Participating agencies may appropriate funds and provide personnel, property, and services. Any public agency entering into an agreement pursuant to this chapter may appropriate funds and may sell, lease, give,

or otherwise supply property, personnel, and services to the administrative joint board or other legal or administrative entity created to operate the joint or cooperative undertaking. [1992 c 161 § 7; 1967 c 239 § 7.]

Intent—1992 c 161: See note following RCW 70.44.450.

39.34.070 Authority of joint boards to receive loans or grants. Any joint board created pursuant to the provisions of this chapter is hereby authorized to accept loans or grants of federal, state or private funds in order to accomplish the purposes of this chapter provided each of the participating public agencies is authorized by law to receive such funds. [1967 c 239 § 8.]

39.34.080 Contracts to perform governmental activities which each contracting agency is authorized to perform. Any one or more public agencies may contract with any one or more other public agencies to perform any governmental service, activity, or undertaking which each public agency entering into the contract is authorized by law to perform: PROVIDED, That such contract shall be authorized by the governing body of each party to the contract. Such contract shall set forth fully the purposes, powers, rights, objectives, and responsibilities of the contracting parties. [1967 c 239 § 9.]

39.34.085 Agreements for operation of bus services. In addition to the other powers granted by chapter 39.34 RCW, one or more cities or towns or a county, or any combination thereof, may enter into agreements with each other or with a public transportation agency of a contiguous state, or contiguous Canadian province, to allow a city or such other transportation agency to operate bus service for the transportation of the general public within the territorial boundaries of such city and/or county or to allow such city and/or county to operate such bus service within the jurisdiction of such other public agency when no such existing bus certificate of public convenience and necessity has been authorized by the Washington utilities and transportation commission: PROVIDED, HOWEVER, That such transportation may extend beyond the territorial boundaries of either party to the agreement if the agreement so provides, and if such service is not in conflict with existing bus service authorized by the Washington utilities and transportation commission. The provisions of this section shall be cumulative and nonexclusive and shall not affect any other right granted by this chapter or any other provision of law. [1977 c 46 § 1; 1969 ex.s. c 139 § 1.]

39.34.090 Agencies' contracting authority regarding electricity, utilities' powers, preserved. Nothing in this chapter shall be construed to increase or decrease existing authority of any public agency of this state to enter into agreements or contracts with any other public agency of this state or of any other state or the United States with regard to the generation, transmission, or distribution of electricity or the existing powers of any private or public utilities. [1967 c 239 § 10.]

39.34.100 Powers conferred by chapter are supplemental. The powers and authority conferred by this chapter shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of any public agency. [1967 c 239 § 11.]

39.34.110 Powers otherwise prohibited by Constitutions or federal laws. No power, privilege, or other authority shall be exercised under this chapter where prohibited by the state Constitution or the Constitution or laws of the federal government. [1967 c 239 § 12.]

39.34.130 Transactions between state agencies—Charging of costs—Regulation by director of financial management. Except as otherwise provided by law, the full costs of a state agency incurred in providing services or furnishing materials to or for another agency under chapter 39.34 RCW or any other statute shall be charged to the agency contracting for such services or materials and shall be repaid and credited to the fund or appropriation against which the expenditure originally was charged. Amounts representing a return of expenditures from an appropriation shall be considered as returned loans of services or of goods, supplies or other materials furnished, and may be expended as part of the original appropriation to which they belong without further or additional appropriation. Such interagency transactions shall be subject to regulation by the director of financial management, including but not limited to provisions for the determination of costs, prevention of interagency contract costs beyond those which are fully reimbursable, disclosure of reimbursements in the governor's budget and such other requirements and restrictions as will promote more economical and efficient operations of state agencies.

Except as otherwise provided by law, this section shall not apply to the furnishing of materials or services by one agency to another when other funds have been provided specifically for that purpose pursuant to law. [1979 c 151 § 45; 1969 ex.s. c 61 § 1.]

Duty to submit agreement of jurisdictional state officer or agency: RCW 39.34.050.

39.34.140 Transactions between state agencies—Procedures for payments through transfers upon accounts. The director of financial management may establish procedures whereby some or all payments between state agencies may be made by transfers upon the accounts of the state treasurer in lieu of making such payments by warrant or check. Such procedures, when established, shall include provision for corresponding entries to be made in the accounts of the affected agencies. [1979 c 151 § 46; 1969 ex.s. c 61 § 2.]

39.34.150 Transactions between state agencies—Advancements. State agencies are authorized to advance funds to defray charges for materials to be furnished or services to be rendered by other state agencies. Such advances shall be made only upon the approval of the director of financial management, or his order made pursuant to an appropriate regulation requiring advances in certain cases. An advance shall be made from the fund or appropriation

available for the procuring of such services or materials, to the state agency which is to perform the services or furnish the materials, in an amount no greater than the estimated charges therefor. [1979 c 151 § 47; 1969 ex.s. c 61 § 3.]

39.34.160 Transactions between state agencies—Time limitation for expenditure of advance—Unexpended balance. An advance made under RCW 39.34.130 through 39.34.150 from appropriated funds shall be available for expenditure for no longer than the period of the appropriation from which it was made. When the actual costs of materials and services have been finally determined, and in no event later than the lapsing of the appropriation, any unexpended balance of the advance shall be returned to the agency for credit to the fund or account from which it was made. [1969 ex.s. c 61 § 4.]

39.34.170 Transactions between state agencies—Powers and authority cumulative. The powers and authority conferred by RCW 39.34.130 through 39.34.160 shall be construed as in addition and supplemental to powers or authority conferred by any other law, and not to limit any other powers or authority of any public agency expressly granted by any other statute. [1969 ex.s. c 61 § 5.]

39.34.180 Criminal justice responsibilities—Interlocal agreements. (1) Each county, city, and town is responsible for the prosecution, adjudication, sentencing, and incarceration of misdemeanor and gross misdemeanor offenses committed by adults in their respective jurisdictions, and referred from their respective law enforcement agencies, whether filed under state law or city ordinance, and must carry out these responsibilities through the use of their own courts, staff, and facilities, or by entering into contracts or interlocal agreements under this chapter to provide these services. Nothing in this section is intended to alter the statutory responsibilities of each county for the prosecution, adjudication, sentencing, and incarceration for not more than one year of felony offenders, nor shall this section apply to any offense initially filed by the prosecuting attorney as a felony offense or an attempt to commit a felony offense.

(2) The following principles must be followed in negotiating interlocal agreements or contracts: Cities and counties must consider (a) anticipated costs of services; and (b) anticipated and potential revenues to fund the services, including fines and fees, criminal justice funding, and state-authorized sales tax funding levied for criminal justice purposes.

(3) If an agreement as to the levels of compensation within an interlocal agreement or contract for gross misdemeanor and misdemeanor services cannot be reached between a city and county, then either party may invoke binding arbitration on the compensation issued by notice to the other party. In the case of establishing initial compensation, the notice shall request arbitration within thirty days. In the case of nonrenewal of an existing contract or interlocal agreement, the notice must be given one hundred twenty days prior to the expiration of the existing contract or agreement and the existing contract or agreement remains in effect until a new agreement is reached or until an arbitration award on the matter of fees is made. The city and county

each select one arbitrator, and the initial two arbitrators pick a third arbitrator.

(4) For cities or towns that have not adopted, in whole or in part, criminal code or ordinance provisions related to misdemeanor and gross misdemeanor crimes as defined by state law, this section shall have no application until July 1, 1998. [1996 c 308 § 1.]

Effective date—1996 c 308: "This act shall take effect January 1, 1997." [1996 c 308 § 2.]

39.34.900 Short title. This chapter may be cited as the "Interlocal Cooperation Act." [1967 c 239 § 2.]

39.34.910 Severability—1967 c 239. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 239 § 14.]

39.34.920 Effective date—1967 c 239. The effective date of this chapter is July 1, 1967. [1967 c 239 § 15.]

Chapter 39.35

ENERGY CONSERVATION IN DESIGN OF PUBLIC FACILITIES

Sections

39.35.010	Legislative finding.
39.35.020	Legislative declaration.
39.35.030	Definitions.
39.35.040	Facility design to include life-cycle cost analysis.
39.35.050	Life-cycle cost analysis—Guidelines.
39.35.060	Life-cycle cost analysis—Review fees.
39.35.900	Severability—1975 1st ex.s. c 177.

39.35.010 Legislative finding. The legislature hereby finds:

(1) That major publicly owned or leased facilities have a significant impact on our state's consumption of energy;

(2) That energy conservation practices and renewable energy systems adopted for the design, construction, and utilization of such facilities will have a beneficial effect on our overall supply of energy;

(3) That the cost of the energy consumed by such facilities over the life of the facilities shall be considered in addition to the initial cost of constructing such facilities;

(4) That the cost of energy is significant and major facility designs shall be based on the total life-cycle cost, including the initial construction cost, and the cost, over the economic life of a major facility, of the energy consumed, and of the operation and maintenance of a major facility as they affect energy consumption; and

(5) That the use of energy systems in these facilities which utilize renewable resources such as solar energy, wood or wood waste, or other nonconventional fuels should be considered in the design of all publicly owned or leased facilities. [1982 c 159 § 1; 1975 1st ex.s. c 177 § 1.]

Applicability—1982 c 159: "This act does not apply to a major facility construction or renovation on which a life-cycle cost analysis is commenced under chapter 39.35 RCW before June 10, 1982." [1982 c 159 § 5.]

39.35.020 Legislative declaration. The legislature declares that it is the public policy of this state to insure that energy conservation practices and renewable energy systems are employed in the design of major publicly owned or leased facilities and that the use of at least one renewable energy system is considered. To this end the legislature authorizes and directs that public agencies analyze the cost of energy consumption of each major facility to be planned and constructed or renovated after September 8, 1975. [1982 c 159 § 2; 1975 1st ex.s. c 177 § 2.]

Applicability—1982 c 159: See notes following RCW 39.35.010.

39.35.030 Definitions. For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

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

(3) "Major facility" means any publicly owned or leased building having twenty-five thousand square feet or more of usable floor space.

(4) "Initial cost" means the moneys required for the capital construction or renovation of a major facility.

(5) "Renovation" means additions, alterations, or repairs within any twelve-month period which exceed fifty percent of the value of a major facility and which will affect any energy system.

(6) "Economic life" means the projected or anticipated useful life of a major facility as expressed by a term of years.

(7) "Life-cycle cost" means the initial cost and cost of operation of a major facility over its economic life. This shall be calculated as the initial cost plus the operation, maintenance, and energy costs over its economic life, reflecting anticipated increases in these costs discounted to present value at the current rate for borrowing public funds, as determined by the office of financial management. The energy cost projections used shall be those provided by the department. The department shall update these projections at least every two years.

(8) "Life-cycle cost analysis" includes, but is not limited to, the following elements:

(a) The coordination and positioning of a major facility on its physical site;

(b) The amount and type of fenestration employed in a major facility;

(c) The amount of insulation incorporated into the design of a major facility;

(d) The variable occupancy and operating conditions of a major facility; and

(e) An energy-consumption analysis of a major facility.

(9) "Energy systems" means all utilities, including, but not limited to, heating, air-conditioning, ventilating, lighting, and the supplying of domestic hot water.

(10) "Energy-consumption analysis" means the evaluation of all energy systems and components by demand and type of energy including the internal energy load imposed on a major facility by its occupants, equipment, and compo-

nents, and the external energy load imposed on a major facility by the climatic conditions of its location. An energy-consumption analysis of the operation of energy systems of a major facility shall include, but not be limited to, the following elements:

(a) The comparison of three or more system alternatives, at least one of which shall include renewable energy systems;

(b) The simulation of each system over the entire range of operation of such facility for a year's operating period; and

(c) The evaluation of the energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs.

The energy-consumption analysis shall be prepared by a professional engineer or licensed architect who may use computers or such other methods as are capable of producing predictable results.

(11) "Renewable energy systems" means methods of facility design and construction and types of equipment for the utilization of renewable energy sources including, but not limited to, hydroelectric power, active or passive solar space heating or cooling, domestic solar water heating, windmills, waste heat, biomass and/or refuse-derived fuels, photovoltaic devices, and geothermal energy.

(12) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. Where these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. 292.202 (c) through (m) as of July 28, 1991, shall apply.

(13) "Selected buildings" means educational, office, residential care, and correctional facilities that are designed to comply with the design standards analyzed and recommended by the department.

(14) "Design standards" means the heating, air-conditioning, ventilating, and renewable resource systems identified, analyzed, and recommended by the department as providing an efficient energy system or systems based on the economic life of the selected buildings. [1996 c 186 § 402; 1994 c 242 § 1; 1991 c 201 § 14; 1982 c 159 § 3; 1975 1st ex.s. c 177 § 3.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

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

Applicability—1982 c 159: See notes following RCW 39.35.010.

39.35.040 Facility design to include life-cycle cost analysis. Whenever a public agency determines that any major facility is to be constructed or renovated, such agency shall cause to be included in the design phase of such construction or renovation a provision that requires a life-cycle cost analysis conforming with the guidelines developed in RCW 39.35.050 to be prepared for such facility. Such analysis shall be approved by the agency prior to the commencement of actual construction or renovation. A public agency may accept the facility design if the agency is satisfied that the life-cycle cost analysis provides for an

efficient energy system or systems based on the economic life of the major facility.

Nothing in this section prohibits the construction or renovation of major facilities which utilize renewable energy systems. [1994 c 242 § 2; 1982 c 159 § 4; 1975 1st ex.s. c 177 § 4.]

Applicability—1982 c 159: See notes following RCW 39.35.010.

39.35.050 Life-cycle cost analysis—Guidelines. The department, in consultation with affected public agencies, shall develop and issue guidelines for administering this chapter. The purpose of the guidelines is to define a procedure and method for performance of life-cycle cost analysis to promote the selection of low-life-cycle cost alternatives. At a minimum, the guidelines must contain provisions that:

(1) Address energy considerations during the planning phase of the project;

(2) Identify energy components and system alternatives including renewable energy systems and cogeneration applications prior to commencing the energy consumption analysis;

(3) Identify simplified methods to assure the lowest life-cycle cost alternatives for selected buildings with between twenty-five thousand and one hundred thousand square feet of usable floor area;

(4) Establish times during the design process for preparation, review, and approval or disapproval of the life-cycle cost analysis;

(5) Specify the assumptions to be used for escalation and inflation rates, equipment service lives, economic building lives, and maintenance costs;

(6) Determine life-cycle cost analysis format and submittal requirements to meet the provisions of chapter 201, Laws of 1991;

(7) Provide for review and approval of life-cycle cost analysis. [1996 c 186 § 403; 1994 c 242 § 3; 1991 c 201 § 15.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

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

39.35.060 Life-cycle cost analysis—Review fees. The department may impose fees upon affected public agencies for the review of life-cycle cost analyses. The fees shall be deposited in the energy efficiency services account established in RCW 39.35C.110. The purpose of the fees is to recover the costs by the department for review of the analyses. The department shall set fees at a level necessary to recover all of its costs related to increasing the energy efficiency of state-supported new construction. The fees shall not exceed one-tenth of one percent of the total cost of any project or exceed two thousand dollars for any project unless mutually agreed to. The department shall provide detailed calculation ensuring that the energy savings resulting from its review of life-cycle cost analysis justify the costs of performing that review. [1996 c 186 § 404; 1991 c 201 § 16.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

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

39.35.900 Severability—1975 1st ex.s. c 177. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 177 § 5.]

Chapter 39.35A

PERFORMANCE-BASED CONTRACTS FOR ENERGY EQUIPMENT

Sections

- 39.35A.010 Legislative finding.
- 39.35A.020 Definitions.
- 39.35A.030 Performance-based contracts for energy equipment and supplies.
- 39.35A.040 Application of other procurement requirements.

39.35A.010 Legislative finding. The legislature finds that:

- (1) Conserving energy in publicly owned buildings will have a beneficial effect on our overall supply of energy;
- (2) Conserving energy in publicly owned buildings can result in cost savings for taxpayers; and
- (3) Performance-based energy contracts are a means by which municipalities can achieve energy conservation without capital outlay.

Therefore, the legislature declares that it is the policy that a municipality may, after a competitive selection process, negotiate a performance-based energy contract with a firm that offers the best proposal. [1985 c 169 § 1.]

39.35A.020 Definitions. Unless the context clearly indicates otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Energy equipment and services" means any equipment, materials, or supplies that are expected, upon installation, to reduce the energy use or energy cost of an existing building or facility, and the services associated with the equipment, materials, or supplies, including but not limited to design, engineering, financing, installation, project management, guarantees, operations, and maintenance.

(2) "Municipality" has the definition provided in RCW 39.04.010.

(3) "Performance-based contract" means one or more contracts for energy equipment and services between a municipality and any other persons or entities, if the payment obligation for each year under the contract, including the year of installation, is either: (a) Set as a percentage of the annual energy cost savings attributable under the contract to the energy equipment and services; or (b) guaranteed by the other persons or entities to be less than the annual energy cost savings attributable under the contract to the energy equipment and services. Such guarantee shall be, at the option of the municipality, a bond or insurance policy, or some other guarantee determined sufficient by the municipality to provide a level of assurance similar to the level provided by a bond or insurance policy. [1985 c 169 § 2.]

39.35A.030 Performance-based contracts for energy equipment and supplies. (1) Each municipality shall publish in advance its requirements to procure energy equipment and services under a performance-based contract. The announcement shall state concisely the scope and nature of the equipment and services for which a performance-based contract is required, and shall encourage firms to submit proposals to meet these requirements.

(2) The municipality may negotiate a fair and reasonable performance-based contract with the firm that is identified, based on the criteria that is established by the municipality, to be the firm that submits the best proposal.

(3) If the municipality is unable to negotiate a satisfactory contract with the firm that submits the best proposal, negotiations with that firm shall be formally terminated and the municipality may select another firm in accordance with this section and continue negotiation until a performance-based contract is reached or the selection process is terminated. [1985 c 169 § 3.]

39.35A.040 Application of other procurement requirements. If a municipality chooses, by resolution or other appropriate mechanism, to negotiate a performance-based contract under this chapter, no otherwise applicable statutory procurement requirement applies. [1985 c 169 § 4.]

Chapter 39.35B

LIFE-CYCLE COST ANALYSIS OF PUBLIC FACILITIES

Sections

- 39.35B.010 Legislative findings.
- 39.35B.020 Legislative declaration.
- 39.35B.030 Intent.
- 39.35B.040 Implementation.

39.35B.010 Legislative findings. The legislature finds that:

(1) Operating costs of a facility over its lifetime may greatly exceed the initial cost of the facility;

(2) In the planning, design, and funding for new construction or major renovation of state-owned facilities it is desirable to consider not only the initial costs relating to design and construction or acquisition, but the anticipated operating costs relating to the building throughout its life;

(3) The consideration of both initial and operating costs is known as life-cycle cost or life-cycle cost analysis;

(4) Operating costs of a facility for purposes of this chapter include, but are not limited to, energy costs, maintenance and repair costs, and costs of the work or activity performed within the facility, including wages and salaries;

(5) Current law, chapter 39.35 RCW, speaks to life-cycle cost analysis only in relation to energy conservation; and

(6) Life-cycle cost may not be suitable or cost-effective for all capital projects or all components of a facility, and is not an exclusive criteria for decision-making, but is nonetheless a useful framework for evaluating design and capital investment alternatives. [1986 c 127 § 1.]

39.35B.020 Legislative declaration. The legislature declares that:

(1) It is the policy of the state to consider life-cycle costs in the selection of facility design alternatives, to the full extent practical, reasonable, and cost-effective;

(2) Life-cycle cost should be considered by the state government, school districts, and state universities and community colleges in the planning, design, and funding for new construction or major renovations; and

(3) Use of life-cycle cost should be encouraged for cities, counties, and other governmental districts including special purpose districts. [1986 c 127 § 2.]

39.35B.030 Intent. It is the intent of the legislature to:

(1) Expand the definition and use of "life-cycle cost" and "life-cycle cost analysis" to include consideration of all operating costs, as opposed to only energy-related costs as addressed by chapter 39.35 RCW;

(2) Encourage the recognition, development, and use of life-cycle cost concepts and procedures by both the executive and legislative branches in the state's design development and capital budgeting processes;

(3) Ensure the dissemination and use of a common and realistic discount rate by all state agencies in the calculation of the present value of future costs;

(4) Allow and encourage the executive branch to develop specific techniques and procedures for the state government and its agencies, and state universities and community colleges to implement this policy; and

(5) Encourage cities, counties, and other governmental districts including special purpose districts to adopt programs and procedures to implement this policy. [1986 c 127 § 3.]

39.35B.040 Implementation. The principal executives of all state agencies are responsible for implementing the policy set forth in this chapter. The office of financial management in conjunction with the department of general administration may establish guidelines for compliance by the state government and its agencies, and state universities and community colleges. The office of financial management shall include within its biennial capital budget instructions:

(1) A discount rate for the use of all agencies in calculating the present value of future costs, and several examples of resultant trade-offs between annual operating costs eliminated and additional capital costs thereby justified; and

(2) Types of projects and building components that are particularly appropriate for life-cycle cost analysis. [1986 c 127 § 4.]

Chapter 39.35C

ENERGY CONSERVATION PROJECTS

Sections

39.35C.010 Definitions.

39.35C.020 State agency and school district conservation projects—
Implementation—Department assistance.

39.35C.030 Department coordination of conservation development with utilities.

39.35C.040 Sale of conserved energy.

39.35C.050 Authority of state agencies and school districts to implement conservation.

39.35C.060 Authority to finance conservation in school districts and state agencies.

39.35C.070 Development of cogeneration projects.

39.35C.080 Sale of cogenerated electricity and thermal energy.

39.35C.090 Additional authority of state agencies.

39.35C.100 Energy efficiency construction account.

39.35C.110 Energy efficiency services account—Fees.

39.35C.130 Adoption of rules.

39.35C.900 Captions not law—1991 c 201.

39.35C.901 Severability—1991 c 201.

39.35C.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Cogeneration" means the sequential generation of two or more forms of energy from a common fuel or energy source. If these forms are electricity and thermal energy, then the operating and efficiency standards established by 18 C.F.R. Sec. 292.205 and the definitions established by 18 C.F.R. Sec. 292.202 (c) through (m) apply.

(2) "Conservation" means reduced energy consumption or energy cost, or increased efficiency in the use of energy, and activities, measures, or equipment designed to achieve such results, but does not include thermal or electric energy production from cogeneration.

(3) "Cost-effective" means that the present value to a state agency or school district of the energy reasonably expected to be saved or produced by a facility, activity, measure, or piece of equipment over its useful life, including any compensation received from a utility or the Bonneville power administration, is greater than the net present value of the costs of implementing, maintaining, and operating such facility, activity, measure, or piece of equipment over its useful life, when discounted at the cost of public borrowing.

(4) "Energy" means energy as defined in RCW 43.21F.025(1).

(5) "Energy efficiency project" means a conservation or cogeneration project.

(6) "Energy efficiency services" means assistance furnished by the department to state agencies and school districts in identifying, evaluating, and implementing energy efficiency projects.

(7) "Department" means the state department of general administration.

(8) "Performance-based contracting" means contracts for which payment is conditional on achieving contractually specified energy savings.

(9) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

(10) "Public facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency or school district.

(11) "State agency" means every state office or department, whether elective or appointive, state institutions of higher education, and all boards, commissions, or divisions of state government, however designated.

(12) "State facility" means a building or structure, or a group of buildings or structures at a single site, owned by a state agency.

(13) "Utility" means privately or publicly owned electric and gas utilities, electric cooperatives and mutuals, whether located within or without Washington state.

(14) "Local utility" means the utility or utilities in whose service territory a public facility is located. [1996 c 186 § 405; 1991 c 201 § 2.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.020 State agency and school district conservation projects—Implementation—Department assistance.

(1) Each state agency and school district shall implement cost-effective conservation improvements and maintain efficient operation of its facilities in order to minimize energy consumption and related environmental impacts and reduce operating costs.

(2) The department shall assist state agencies and school districts in identifying, evaluating, and implementing cost-effective conservation projects at their facilities. The assistance shall include the following:

(a) Notifying state agencies and school districts of their responsibilities under this chapter;

(b) Apprising state agencies and school districts of opportunities to develop and finance such projects;

(c) Providing technical and analytical support, including procurement of performance-based contracting services;

(d) Reviewing verification procedures for energy savings; and

(e) Assisting in the structuring and arranging of financing for cost-effective conservation projects.

(3) Conservation projects implemented under this chapter shall have appropriate levels of monitoring to verify the performance and measure the energy savings over the life of the project. The department shall solicit involvement in program planning and implementation from utilities and other energy conservation suppliers, especially those that have demonstrated experience in performance-based energy programs.

(4) The department shall comply with the requirements of chapter 39.80 RCW when contracting for architectural or engineering services.

(5) The department shall recover any costs and expenses it incurs in providing assistance pursuant to this section, including reimbursement from third parties participating in conservation projects. The department shall enter into a written agreement with the public agency for the recovery of costs. [1996 c 186 § 406; 1991 c 201 § 3.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.030 Department coordination of conservation development with utilities.

(1) The department shall consult with the local utilities to develop priorities for energy conservation projects pursuant to this chapter, cooperate where possible with existing utility programs, and consult with the local utilities prior to implementing projects in their service territory.

(2) A local utility shall be offered the initial opportunity to participate in the development of conservation projects in the following manner:

(a) Before initiating projects in a local utility service territory, the department shall notify the local utility in writing, on an annual basis, of public facilities in the local utility's service territory at which the department anticipates cost-effective conservation projects will be developed.

(b) Within sixty days of receipt of this notification, the local utility may express interest in these projects by submitting to the department a written description of the role the local utility is willing to perform in developing and acquiring the conservation at these facilities. This role may include any local utility conservation programs which would be available to the public facility, any competitive bidding or solicitation process which the local utility will be undertaking in accordance with the rules of the utilities and transportation commission or the public utility district, municipal utility, cooperative, or mutual governing body for which the public facility would be eligible, or any other role the local utility may be willing to perform.

(c) Upon receipt of the written description from the local utility, the department shall, through discussions with the local utility, and with involvement from state agencies and school districts responsible for the public facilities, develop a plan for coordinated delivery of conservation services and financing or make a determination of whether to participate in the local utility's competitive bidding or solicitation process. The plan shall identify the local utility in roles that the local utility is willing to perform and that are consistent with the provisions of RCW 39.35C.040(2) (d) and (e). [1996 c 186 § 407; 1991 c 201 § 4.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.040 Sale of conserved energy. (1) It is the intent of this chapter that the state, state agencies, and school districts are compensated fairly for the energy savings provided to utilities and be allowed to participate on an equal basis in any utility conservation program, bidding, or solicitation process. State agencies and school districts shall not receive preferential treatment. For the purposes of this section, any type of compensation from a utility or the Bonneville power administration intended to achieve reductions or efficiencies in energy use which are cost-effective to the utility or the Bonneville power administration shall be regarded as a sale of energy savings. Such compensation may include credits to the energy bill, low or no interest loans, rebates, or payment per unit of energy saved. The department shall, in coordination with utilities, the Bonneville power administration, state agencies, and school districts, facilitate the sale of energy savings at public facilities including participation in any competitive bidding or solicitation which has been agreed to by the state agency or school district. Energy savings may only be sold to local utilities or, under conditions specified in this section, to the Bonneville power administration. The department shall not attempt to sell energy savings occurring in one utility service territory to a different utility. Nothing in this chapter mandates that utilities purchase the energy savings.

(2) To ensure an equitable allocation of benefits to the state, state agencies, and school districts, the following conditions shall apply to transactions between utilities or the Bonneville power administration and state agencies or school districts for sales of energy savings:

(a) A transaction shall be approved by both the state agency or school district and the department.

(b) The state agency or school district and the department shall work together throughout the planning and negotiation process for such transactions unless the department determines that its participation will not further the purposes of this section.

(c) Before making a decision under (d) of this subsection, the department shall review the proposed transaction for its technical and economic feasibility, the adequacy and reasonableness of procedures proposed for verification of project or program performance, the degree of certainty of benefits to the state, state agency, or school district, the degree of risk assumed by the state or school district, the benefits offered to the state, state agency, or school district and such other factors as the department determines to be prudent.

(d) The department shall approve a transaction unless it finds, pursuant to the review in (c) of this subsection, that the transaction would not result in an equitable allocation of costs and benefits to the state, state agency, or school district, in which case the transaction shall be disapproved.

(e) In addition to the requirements of (c) and (d) of this subsection, in areas in which the Bonneville power administration has a program for the purchase of energy savings at public facilities, the department shall approve the transaction unless the local utility cannot offer a benefit substantially equivalent to that offered by the Bonneville power administration, in which case the transaction shall be disapproved. In determining whether the local utility can offer a substantially equivalent benefit, the department shall consider the net present value of the payment for energy savings; any goods, services, or financial assistance provided by the local utility; and any risks borne by the local utility. Any direct negative financial impact on a nongrowing, local utility shall be considered.

(3) Any party to a potential transaction may, within thirty days of any decision to disapprove a transaction made pursuant to subsection (2)(c), (d), or (e) of this section, request an independent reviewer who is mutually agreeable to all parties to the transaction to review the decision. The parties shall within thirty days of selection submit to the independent reviewer documentation supporting their positions. The independent reviewer shall render advice regarding the validity of the disapproval within an additional thirty days. [1996 c 186 § 408; 1991 c 201 § 5.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.050 Authority of state agencies and school districts to implement conservation. In addition to any other authorities conferred by law:

(1) The department, with the consent of the state agency or school district responsible for a facility, a state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may:

(a) Develop and finance conservation at public facilities in accordance with express provisions of this chapter;

(b) Contract for energy services, including performance-based contracts;

(c) Contract to sell energy savings from a conservation project at public facilities to local utilities or the Bonneville power administration.

(2) A state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may undertake procurements for third-party development of conservation at its facilities.

(3) A school district may:

(a) Develop and finance conservation at school district facilities;

(b) Contract for energy services, including performance-based contracts at school district facilities; and

(c) Contract to sell energy savings from energy conservation projects at school district facilities to local utilities or the Bonneville power administration directly or to local utilities or the Bonneville power administration through third parties.

(4) In exercising the authority granted by subsections (1), (2), and (3) of this section, a school district or state agency must comply with the provisions of RCW 39.35C.040. [1996 c 186 § 409; 1991 c 201 § 6.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.060 Authority to finance conservation in school districts and state agencies. State agencies may use financing contracts under chapter 39.94 RCW to provide all or part of the funding for conservation projects. The department shall determine the eligibility of such projects for financing contracts. The repayments of the financing contracts shall be sufficient to pay, when due, the principal and interest on the contracts. [1996 c 186 § 410; 1991 c 201 § 7.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.070 Development of cogeneration projects. (1) Consistent with the region's need to develop cost-effective, high efficiency electric energy resources, the state shall investigate and, if appropriate, pursue development of cost-effective opportunities for cogeneration in existing or new state facilities.

(2) To assist state agencies in identifying, evaluating, and developing potential cogeneration projects at their facilities, the department shall notify state agencies of opportunities to develop and finance such projects; and provide technical and analytical support. The department shall recover costs for such assistance through written agreements, including reimbursement from third parties participating in such projects, for any costs and expenses incurred in providing such assistance.

(3)(a) The department shall identify priorities for cogeneration projects at state facilities, and, where such projects are initially deemed desirable by the department and the appropriate state agency, the department shall notify the local utility serving the state facility of its intent to conduct a feasibility study at such facility. The department shall consult with the local utility and provide the local utility an

opportunity to participate in the development of the feasibility study for the state facility it serves.

(b) If the local utility has an interest in participating in the feasibility study, it shall notify the department and the state agency whose facility or facilities it serves within sixty days of receipt of notification pursuant to (a) of this subsection as to the nature and scope of its desired participation. The department, state agency, and local utility shall negotiate the responsibilities, if any, of each in conducting the feasibility study, and these responsibilities shall be specified in a written agreement.

(c) If a local utility identifies a potential cogeneration project at a state facility for which it intends to conduct a feasibility study, it shall notify the department and the appropriate state agency. The department, state agency, and local utility shall negotiate the responsibilities, if any, of each in conducting the feasibility study, and these responsibilities shall be specified in a written agreement. Nothing in this section shall preclude a local utility from conducting an independent assessment of a potential cogeneration project at a state facility.

(d) Agreements written pursuant to (a) and (b) of this subsection shall include a provision for the recovery of costs incurred by a local utility in performing a feasibility study in the event such utility does not participate in the development of the cogeneration project. If the local utility does participate in the cogeneration project through energy purchase, project development or ownership, recovery of the utility's costs may be deferred or provided for through negotiation on agreements for energy purchase, project development or ownership.

(e) If the local utility declines participation in the feasibility study, the department and the state agency may receive and solicit proposals to conduct the feasibility study from other parties. Participation of these other parties shall also be secured and defined by a written agreement which may include the provision for reimbursement of costs incurred in the formulation of the feasibility study.

(4) The feasibility study shall include consideration of regional and local utility needs for power, the consistency of the proposed cogeneration project with the state energy strategy, the cost and certainty of fuel supplies, the value of electricity produced, the capability of the state agency to own and/or operate such facilities, the capability of utilities or third parties to own and/or operate such facilities, requirements for and costs of standby sources of power, costs associated with interconnection with the local electric utility's transmission system, the capability of the local electric utility to wheel electricity generated by the facility, costs associated with obtaining wheeling services, potential financial risks and losses to the state and/or state agency, measures to mitigate the financial risk to the state and/or state agency, and benefits to the state and to the state agency from a range of design configurations, ownership, and operation options.

(5) Based upon the findings of the feasibility study, the department and the state agency shall determine whether a cogeneration project will be cost-effective and whether development of a cogeneration project should be pursued. This determination shall be made in consultation with the local utility or, if the local utility had not participated in the development of the feasibility study, with any third party that

may have participated in the development of the feasibility study.

(a) Recognizing the local utility's expertise, knowledge, and ownership and operation of the local utility systems, the department and the state agency shall have the authority to negotiate directly with the local utility for the purpose of entering into a sole source contract to develop, own, and/or operate the cogeneration facility. The contract may also include provisions for the purchase of electricity or thermal energy from the cogeneration facility, the acquisition of a fuel source, and any financial considerations which may accrue to the state from ownership and/or operation of the cogeneration facility by the local utility.

(b) The department may enter into contracts through competitive negotiation under this subsection for the development, ownership, and/or operation of a cogeneration facility. In determining an acceptable bid, the department and the state agency may consider such factors as technical knowledge, experience, management, staff, or schedule, as may be necessary to achieve economical construction or operation of the project. The selection of a developer or operator of a cogeneration facility shall be made in accordance with procedures for competitive bidding under chapter 43.19 RCW.

(c) The department shall comply with the requirements of chapter 39.80 RCW when contracting for architectural or engineering services.

(6)(a) The state may own and/or operate a cogeneration project at a state facility. However, unless the cogeneration project is determined to be cost-effective, based on the findings of the feasibility study, the department and state agency shall not pursue development of the project as a state-owned facility. If the project is found to be cost-effective, and the department and the state agency agree development of the cogeneration project should be pursued as a state-owned and/or operated facility, the department shall assist the state agency in the preparation of a finance and development plan for the cogeneration project. Any such plan shall fully account for and specify all costs to the state for developing and/or operating the cogeneration facility.

(b) It is the general intent of this chapter that cogeneration projects developed and owned by the state will be sized to the projected thermal energy load of the state facility over the useful life of the project. The principal purpose and use of such projects is to supply thermal energy to a state facility and not primarily to develop generating capacity for the sale of electricity. For state-owned projects with electricity production in excess of projected thermal requirements, the department shall seek and obtain legislative appropriation and approval for development. Nothing in chapter 201, Laws of 1991 shall be construed to authorize any state agency to sell electricity or thermal energy on a retail basis.

(7) When a cogeneration facility will be developed, owned, and/or operated by a state agency or third party other than the local serving utility, the department and the state agency shall negotiate a written agreement with the local utility. Elements of such an agreement shall include provisions to ensure system safety, provisions to ensure reliability of any interconnected operations equipment necessary for parallel operation and switching equipment

capable of isolating the generation facility, the provision of and reimbursement for standby services, if required, and the provision of and reimbursement for wheeling electricity, if the provision of such has been agreed to by the local utility.

(8) The state may develop and own a thermal energy distribution system associated with a cogeneration project for the principal purpose of distributing thermal energy at the state facility. If thermal energy is to be sold outside the state facility, the state may only sell the thermal energy to a utility. [1996 c 186 § 411; 1991 c 201 § 8.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.080 Sale of cogenerated electricity and thermal energy. It is the intention of chapter 201, Laws of 1991 that the state and its agencies are compensated fairly for the energy provided to utilities from cogeneration at state facilities. Such compensation may include revenues from sales of electricity or thermal energy to utilities, lease of state properties, and value of thermal energy provided to the facility. It is also the intent of chapter 201, Laws of 1991 that the state and its agencies be accorded the opportunity to compete on a fair and reasonable basis to fulfill a utility's new resource acquisition needs when selling the energy produced from cogeneration projects at state facilities through energy purchase agreements.

(1)(a) The department and state agencies may participate in any utility request for resource proposal process, as either established under the rules and regulations of the utilities and transportation commission, or by the governing board of a public utility district, municipal utility, cooperative, or mutual.

(b) If a local utility does not have a request for resource proposal pending, the energy office [department] or a state agency may negotiate an equitable and mutually beneficial energy purchase agreement with that utility.

(2) To ensure an equitable allocation of benefits to the state and its agencies, the following conditions shall apply to energy purchase agreements negotiated between utilities and state agencies:

(a) An energy purchase agreement shall be approved by both the department and the affected state agency.

(b) The department and the state agency shall work together throughout the planning and negotiation process for energy purchase agreements, unless the department determines that its participation will not further the purposes of this section.

(c) Before approving an energy purchase agreement, the department shall review the proposed agreement for its technical and economic feasibility, the degree of certainty of benefits, the degree of financial risk assumed by the state and/or the state agency, the benefits offered to the state and/or state agency, and other such factors as the department deems prudent. The department shall approve an energy purchase agreement unless it finds that such an agreement would not result in an equitable allocation of costs and benefits, in which case the transaction shall be disapproved.

(3)(a) The state or state agency shall comply with and shall be bound by applicable avoided cost schedules, electric power wheeling charges, interconnection requirements, utility tariffs, and regulatory provisions to the same extent it would be required to comply and would be bound if it were a

private citizen. The state shall neither seek regulatory advantage, nor change regulations, regulatory policy, process, or decisions to its advantage as a seller of cogenerated energy. Nothing contained in chapter 201, Laws of 1991 shall be construed to mandate or require public or private utilities to wheel electric energy resources within or beyond their service territories. Nothing in chapter 201, Laws of 1991 authorizes any state agency or school district to make any sale of energy or waste heat beyond the explicit provisions of chapter 201, Laws of 1991. Nothing contained in chapter 201, Laws of 1991 requires a utility to purchase energy from the state or a state agency or enter into any agreement in connection with a cogeneration facility.

(b) The state shall neither construct, nor be party to an agreement for developing a cogeneration project at a state facility for the purpose of supplying its own electrical needs, unless it can show that such an arrangement would be in the economic interest of the state taking into account the cost of (i) interconnection requirements, as specified by the local electric utility, (ii) standby charges, as may be required by the local electric utility, and (iii) the current price of electricity offered by the local electric utility. If the local electric utility can demonstrate that the cogeneration project may place an undue burden on the electric utility, the department or the state agency shall attempt to negotiate a mutually beneficial agreement that would minimize the burden upon the ratepayers of the local electric utility.

(4) Any party to an energy purchase agreement may, within thirty days of any decision made pursuant to subsection (2)(c) of this section to disapprove the agreement made pursuant to this section, request an independent reviewer who is mutually agreeable to all parties to review the decision. The parties shall within thirty days of selection submit to the independent reviewer documentation supporting their positions. The independent reviewer shall render advice regarding the validity of the disapproval within an additional thirty days.

(5) For the purposes of this section, "waste heat" means the thermal energy that otherwise would be released to the environment from an industrial process, electric generation, or other process. [1996 c 186 § 412; 1996 c 33 § 4; 1991 c 201 § 9.]

Reviser's note: This section was amended by 1996 c 33 § 4 and by 1996 c 186 § 412, 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).

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Findings—1996 c 33: See note following RCW 80.04.550.

39.35C.090 Additional authority of state agencies.

In addition to any other authorities conferred by law:

(1) The department, with the consent of the state agency responsible for a facility, a state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may:

(a) Contract to sell electric energy generated at state facilities to a utility; and

(b) Contract to sell thermal energy produced at state facilities to a utility.

(2) A state or regional university acting independently, and any other state agency acting through the department of general administration or as otherwise authorized by law, may:

(a) Acquire, install, permit, construct, own, operate, and maintain cogeneration and facility heating and cooling measures or equipment, or both, at its facilities;

(b) Lease state property for the installation and operation of cogeneration and facility heating and cooling equipment at its facilities;

(c) Contract to purchase all or part of the electric or thermal output of cogeneration plants at its facilities;

(d) Contract to purchase or otherwise acquire fuel or other energy sources needed to operate cogeneration plants at its facilities; and

(e) Undertake procurements for third-party development of cogeneration projects at its facilities, with successful bidders to be selected based on the responsible bid, including nonprice elements listed in RCW 43.19.1911, that offers the greatest net achievable benefits to the state and its agencies.

(3) After July 28, 1991, a state agency shall consult with the department prior to exercising any authority granted by this section.

(4) In exercising the authority granted by subsections (1) and (2) of this section, a state agency must comply with the provisions of RCW 39.35C.080. [1996 c 186 § 413; 1991 c 201 § 10.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.100 Energy efficiency construction account.

(1) The energy efficiency construction account is hereby created in the state treasury. Moneys in the account may be spent only after appropriation and only for the following purposes:

(a) Construction of energy efficiency projects, including project evaluation and verification of benefits, project design, project development, project construction, and project administration.

(b) Payment of principal and interest and other costs required under bond covenant on bonds issued for the purpose of (a) of this subsection.

(2) Sources for this account may include:

(a) General obligation and revenue bond proceeds appropriated by the legislature;

(b) Loan repayments under RCW 39.35C.060 sufficient to pay principal and interest obligations; and

(c) Funding from federal, state, and local agencies. [1996 c 186 § 414; 1991 c 201 § 11.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.110 Energy efficiency services account—

Fees. (1) The energy efficiency services account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the department to provide energy efficiency services to public agencies including review of life-cycle cost analyses.

(2) All receipts from the following source shall be deposited into the account: Project fees charged under this section and RCW 39.35C.020, 39.35C.070, and 39.35.060.

(3) The department may accept moneys and make deposits to the account from federal, state, or local government agencies. [1996 c 186 § 415; 1991 c 201 § 12.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.130 Adoption of rules. The department may adopt rules to implement RCW 39.35C.020 through 39.35C.040, 39.35C.070, 39.35C.080, and 39.35.050. [1996 c 186 § 416; 1991 c 201 § 17.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

39.35C.900 Captions not law—1991 c 201. Captions as used in chapter 201, Laws of 1991 constitute no part of the law. [1991 c 201 § 22.]

39.35C.901 Severability—1991 c 201. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 201 § 24.]

Chapter 39.36

LIMITATION OF INDEBTEDNESS OF TAXING DISTRICTS

Sections

39.36.010	Definitions.
39.36.015	"Value of the taxable property" defined.
39.36.020	Limitation of indebtedness prescribed.
39.36.030	Computation of indebtedness.
39.36.040	Authorizations in violation of chapter void.
39.36.050	Ballot proposition authorizing indebtedness—Excess property tax levies.
39.36.060	Chapter not applicable to loan agreements under chapter 39.69 RCW.
39.36.900	Validation—1969 c 142.

Limitation of state debt: State Constitution Art. 8 § 1.

Limitation on levies: State Constitution Art. 7 § 2.

Limitations on municipal indebtedness: State Constitution Art. 8 § 6.

39.36.010 Definitions. The term "taxing district" as herein used shall be held to mean and embrace all counties, cities, towns, townships, port districts, school districts, metropolitan park districts or other municipal corporations which now, or may hereafter exist.

The term "the last assessed valuation of the taxable property in such taxing district" as used herein shall be held to mean and embrace the aggregate assessed valuation for such taxing district as placed on the last completed and balanced tax rolls of the county next preceding the date of contracting the debt or incurring the liability. [1917 c 143 § 4; RRS § 5608.]

39.36.015 "Value of the taxable property" defined. Whenever used in *this 1970 amendatory act, the term "value of the taxable property" shall mean the actual value of the taxable property in a taxing district incurring indebted-

ness, as the term "taxing district" is defined in RCW 39.36.010, to be ascertained by the last assessment for state and county purposes previous to the incurring of such indebtedness except that in incorporated cities the assessment shall be taken from the last assessment for city purposes, plus the timber assessed value for the district as defined in RCW 84.33.035. [1984 c 204 § 15; 1970 ex.s. c 42 § 1.]

***Reviser's note:** The phrase "this 1970 amendatory act" refers to 1970 ex.s. c 42, which amended RCW 39.36.015, 27.12.070, 27.12.222, 28A.47.801, 28A.51.010, 28A.51.020, 28A.58.550, 35.37.040, 35.58.450, 35.61.100, 35.61.110, 35A.40.090, 36.67.010, 36.67.020, 36.68.520, 36.69.140, 36.76.010, 36.76.080, 37.16.010, 37.16.020, 39.28.030, 39.30.010, 39.36.020, 47.57.530, 52.08.080, 52.16.080, 53.08.030, 53.36.030, 54.24.018, 56.16.050, 57.20.110, 57.20.120, 88.32.230, 89.30.400, 89.30.403, and 86.05.920.

Savings—Effective date—1984 c 204: See notes following RCW 84.33.035.

Severability—1970 ex.s. c 42: "If any provision of this 1970 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1970 amendatory act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 42 § 41.]

Effective date—1970 ex.s. c 42: "The effective date of this 1970 amendatory act is November 1, 1970." [1970 ex.s. c 42 § 42.]

39.36.020 Limitation of indebtedness prescribed.

(1) Except as otherwise expressly provided by law or in subsections (2), (3) and (4) of this section, no taxing district shall for any purpose become indebted in any manner to an amount exceeding three-eighths of one percent of the value of the taxable property in such taxing district without the assent of three-fifths of the voters therein voting at an election to be held for that purpose, nor in cases requiring such assent shall the total indebtedness incurred at any time exceed one and one-fourth percent on the value of the taxable property therein.

(2)(a)(i) Public hospital districts are limited to an indebtedness amount not exceeding three-fourths of one percent of the value of the taxable property in such public hospital districts without the assent of three-fifths of the voters therein voting at an election held for that purpose.

(ii) Counties, cities, and towns are limited to an indebtedness amount not exceeding one and one-half percent of the value of the taxable property in such counties, cities, or towns without the assent of three-fifths of the voters therein voting at an election held for that purpose.

(b) In cases requiring such assent counties, cities, towns, and public hospital districts are limited to a total indebtedness of two and one-half percent of the value of the taxable property therein. However, any county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW may become indebted to a larger amount for its authorized metropolitan functions, as provided under chapter 35.58 RCW, but not exceeding an additional three-fourths of one percent of the value of the taxable property in the county without the assent of three-fifths of the voters therein voting at an election held for that purpose, and in cases requiring such assent not exceeding an additional two and one-half percent of the value of the taxable property in the county.

(3) School districts are limited to an indebtedness amount not exceeding three-eighths of one percent of the value of the taxable property in such district without the assent of three-fifths of the voters therein voting at an elec-

tion held for that purpose. In cases requiring such assent school districts are limited to a total indebtedness of two and one-half percent of the value of the taxable property therein.

(4) No part of the indebtedness allowed in this chapter shall be incurred for any purpose other than strictly county, city, town, school district, township, port district, metropolitan park district, or other municipal purposes: **PROVIDED**, That a city or town, with such assent, may become indebted to a larger amount, but not exceeding two and one-half percent additional, determined as herein provided, for supplying such city or town with water, artificial light, and sewers, when the works for supplying such water, light, and sewers shall be owned and controlled by the city or town; and a city or town, with such assent, may become indebted to a larger amount, but not exceeding two and one-half percent additional for acquiring or developing open space and park facilities: **PROVIDED FURTHER**, That any school district may become indebted to a larger amount but not exceeding two and one-half percent additional for capital outlays.

(5) Such indebtedness may be authorized in any total amount in one or more propositions and the amount of such authorization may exceed the amount of indebtedness which could then lawfully be incurred. Such indebtedness may be incurred in one or more series of bonds from time to time out of such authorization but at no time shall the total general indebtedness of any taxing district exceed the above limitation.

The term "value of the taxable property" as used in this section shall have the meaning set forth in RCW 39.36.015. [1994 c 277 § 1; 1993 c 240 § 12; 1971 ex.s. c 218 § 1; 1971 c 38 § 1; 1970 ex.s. c 42 § 27; 1969 c 142 § 3; 1967 c 107 § 4; 1959 c 227 § 1; 1953 c 163 § 2; 1917 c 143 § 1; RRS § 5605.]

Severability—Effective date—1970 ex.s. c 42: See notes following RCW 39.36.015.

Validating—1953 c 163: "Bonds authorized, issued and sold by any school district prior to the effective date of this act [March 18, 1953] and not in excess of the limitations provided in sections 1 and 2 thereof are hereby approved, ratified and validated, and are a legal and irrevocable obligation of such school district." [1953 c 163 § 3.] This applies to RCW 28A.51.010 and 39.36.020.

Cemetery districts, limitation upon indebtedness: RCW 68.52.310.

Cities other than first class, limitations upon indebtedness: RCW 35.37.040, 35.37.050.

Conditional sales contract debt, not counted as part of debt limit: RCW 28A.335.200, 39.30.010.

Counties, limitations upon indebtedness: Chapter 36.67 RCW.

Executory conditional sales contracts, limitations on indebtedness: RCW 28A.335.200, 39.30.010.

Leases by cities and towns, limitations on indebtedness: RCW 35.42.200.

Metropolitan municipal corporations, limitations on indebtedness: RCW 35.58.450.

Metropolitan park districts, incurring indebtedness: RCW 35.61.100, 35.61.110.

Municipal corporations, limitations upon indebtedness: State Constitution Art. 8 § 6 (Amendment 27).

Port districts, limitations upon indebtedness: RCW 39.28.030, 53.36.030.

Public utility districts, limitations upon indebtedness: RCW 54.24.018.

School districts, limitations upon indebtedness: Chapters 28A.530, 28A.535.

Validation requirement: RCW 39.40.010.

Water-sewer districts, limitations upon indebtedness: RCW 57.20.110, 57.20.120.

39.36.030 Computation of indebtedness. (1) Whenever it shall be necessary to compute the indebtedness of a taxing district for bonding or any other indebtedness purposes, taxes levied for the current year and cash on hand received for the purpose of carrying on the business of such taxing district for such current year shall be considered as an asset only as against indebtedness incurred during such current year which is payable from such taxes or cash on hand: PROVIDED, HOWEVER, That all taxes levied for the payment of bonds, warrants or other public debts of such taxing district, shall be deemed a competent and sufficient asset of the taxing district to be considered in calculating the constitutional debt limit or the debt limit prescribed by this chapter for any taxing district: PROVIDED, That the provisions of this section shall not apply in computing the debt limit of a taxing district in connection with bonds authorized pursuant to a vote of the electors at an election called prior to March 1, 1917.

(2) If reductions in assessed valuation of property within a taxing district result in the outstanding indebtedness of the taxing district exceeding its statutory indebtedness limitations, the amount of such excess indebtedness shall not be included in the statutory indebtedness ceiling. Additional indebtedness that is subject to indebtedness limitations, other than refinancing indebtedness that does not increase the total amount of indebtedness, may not be issued by such a taxing district until its total outstanding indebtedness, including that which this subsection removes from the statutory indebtedness limitations, is below these limitations.

(3) Nothing in this section authorizes taxing districts to incur indebtedness beyond constitutional indebtedness limitations. [1986 c 50 § 1; 1921 c 123 § 1; 1917 c 143 § 2; RRS § 5606.]

39.36.040 Authorizations in violation of chapter void. All orders, authorizations, allowances, contracts, payments or liabilities to pay, made or attempted to be made in violation of this chapter, shall be absolutely void and shall never be the foundation of a claim against a taxing district. [1994 c 81 § 75; 1923 c 45 § 1; 1917 c 143 § 3; RRS § 5607.]

39.36.050 Ballot proposition authorizing indebtedness—Excess property tax levies. The governing body of a taxing district desiring to place a ballot proposition authorizing indebtedness before the voters may submit the proposition at any special election held on the dates authorized in chapter 29.13 RCW. The ballot proposition shall include the maximum amount of the indebtedness to be authorized, the maximum term any bonds may have, a description of the purpose or purposes of the bond issue, and whether excess property tax levies authorized under RCW 84.52.056 will be authorized.

When it is required that such bonds be retired by excess property tax levies, or when the governing body desires such bonds be retired by excess property tax levies, the ballot proposition shall also include authorization for such excess

bond retirement property tax levies provided under RCW 84.52.056.

Notice of the proposed election shall be published as required by RCW 29.27.080. [1984 c 186 § 3.]

Purpose—1984 c 186: See note following RCW 39.46.110.

39.36.060 Chapter not applicable to loan agreements under chapter 39.69 RCW. This chapter does not apply to a loan made pursuant to a loan agreement under chapter 39.69 RCW, and any computation of indebtedness under this chapter shall exclude the amount of any loan under such a loan agreement. [1987 c 19 § 5.]

39.36.900 Validation—1969 c 142. All bonds heretofore issued, or heretofore voted and which may have been or may hereafter be issued, by any taxing district pursuant to any of the foregoing sections as amended or for any of the purposes authorized by any of said sections are hereby validated. [1969 c 142 § 6.]

Reviser's note: This applies to RCW 28A.51.010, 36.67.040, and 39.36.020.

Chapter 39.40

VOTE REQUIRED AT BOND ELECTIONS

Sections

39.40.010	Forty percent poll of voters required.
39.40.020	Existing election laws to apply.
39.40.030	Certification of votes—Canvass.
39.40.040	Prior bonds not affected.
39.40.900	Severability—1925 c 13.

County acquisition of land for military purposes, bond election for: Chapter 37.16 RCW.

County roads and bridges, bond elections: Chapter 36.76 RCW.

Irrigation districts, bond elections: Chapter 87.03 RCW.

Port districts, vote required for certain bond issues: RCW 53.36.030.

Public utility districts, bond elections, vote required: RCW 54.24.018.

39.40.010 Forty percent poll of voters required. No general obligation bonds of any county, port district, or metropolitan park district upon which a vote of the people is required under existing laws shall be issued, nor shall they become a lien upon the taxable property within such county or district unless, in addition to all other requirements provided by law in the matter of the issuance of general obligation bonds by such county or district, the total vote cast upon such proposition shall exceed forty percent of the total number of voters voting in such county or district at the general county or state election next preceding such bond election. [1961 ex.s. c 15 § 1; 1959 c 290 § 3; 1925 c 13 § 1; RRS § 5646-1.]

Exceeding debt limitation by municipalities: State Constitution Art. 8 § 6 (Amendment 27).

Vote required for excess levy to retire bonds issued for capital purposes: RCW 84.52.056.

39.40.020 Existing election laws to apply. In all such elections the provisions of existing law with respect to registration, opening and closing of registration books and the duties of officers and the appointment and selection of

election officials shall apply. [1925 c 13 § 2; RRS § 5646-2.]

Election laws in general: Title 29 RCW.

39.40.030 Certification of votes—Canvass. The election officials in each of the precincts included within any such district shall, as soon as possible and in no case later than five days after the closing of the polls of any election involving the issuance of bonds, certify to the county auditor of the county within which such district is located the total number of votes cast for and against each separate proposal and the vote shall be canvassed and certified by a canvassing board consisting of the chairman of the board of county commissioners, the county auditor, and the prosecuting attorney who shall declare the result thereof. [1959 c 290 § 4; 1925 c 13 § 3; RRS § 5646-3.]

39.40.040 Prior bonds not affected. This chapter shall not affect the validity or the issuance of any such bonds voted at any lawful election held prior to the taking effect of this chapter. [1925 c 13 § 4; RRS § 5646-4.]

39.40.900 Severability—1925 c 13. If any section or provision of this chapter be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional. [1925 c 13 § 5; RRS § 5646-5.]

Chapter 39.42

STATE BONDS, NOTES, AND OTHER EVIDENCES OF INDEBTEDNESS

Sections

39.42.010	Scope of application.
39.42.020	Evidences of indebtedness—Issuance—Signature.
39.42.030	Evidences of indebtedness—Issuance—State finance committee, duties and powers.
39.42.040	Disposition of proceeds from sale of bonds.
39.42.050	Anticipation notes—Issued, when—Payment of principal and interest.
39.42.060	Limitation on issuance of evidences of indebtedness—Annual computation of amount required to pay on outstanding debt.
39.42.070	Computation of general state revenues—Filing of certificate—Estimate of debt capacity.
39.42.080	Obligations allowable under debt limitation.
39.42.090	Certificates of indebtedness—Issued, when—Retirement.
39.42.100	Evidences of indebtedness—Defects not to affect validity—Copy of resolution authorizing issuance filed—Action to contest before delivery.
39.42.110	Evidences of indebtedness—As negotiable instruments, legal investments, and security for deposits.
39.42.120	Excess earnings account—Payments to United States treasury.
39.42.900	Effective date—1971 ex.s. c 184.

39.42.010 Scope of application. This chapter shall apply to all bonds, notes and other evidences of indebtedness of the state authorized by the legislature after *the effective date of this chapter, unless otherwise provided in the authorizing acts. [1971 ex.s. c 184 § 1.]

*Reviser's note: For "the effective date of this chapter," see RCW 39.42.900.

39.42.020 Evidences of indebtedness—Issuance—Signature. Bonds, notes or other evidences of indebtedness shall be issued by the state finance committee. They may be issued at one time or in a series from time to time. The maturity date of each series shall be determined by the state finance committee, but in no case shall any bonds mature later than thirty years from the date of issue. All evidences of indebtedness shall be signed in the name of the state by said officials is authorized and said evidences of indebtedness may be issued notwithstanding that any of the officials signing them or whose facsimile signatures appear on such evidences of indebtedness has ceased to hold office at the time of issue or at the time of delivery to the purchaser. [1971 ex.s. c 184 § 2.]

39.42.030 Evidences of indebtedness—Issuance—State finance committee, duties and powers. The state finance committee shall determine by resolution the amount, date or dates, terms, conditions, covenants, denominations, interest rate or rates (which may be fixed or variable), maturity or maturities, redemption rights, manner of execution and authentication, manner and price of sale and form of all bonds, notes, or other evidences of indebtedness.

Such bonds, notes, or other evidences of indebtedness shall be payable either to the bearer or to the registered owner as provided in RCW 39.46.030. The resolution may provide for the deposit in trust with any qualified public depository of all or any part of the proceeds of the bonds, notes, or other evidences of indebtedness or money set aside for the payment thereof.

The state finance committee shall also determine by resolution whether interest on all or any part of the bonds is to be payable periodically during the term of such bonds or only at the maturity of the bonds. For purposes of the limitations on the amount of bonds authorized to be issued contained in the acts authorizing their issuance, the amount of bonds which pay interest only at maturity shall be equal to the price, exclusive of accrued interest, at which the bonds are initially offered to the public.

The state finance committee may issue, under chapter 39.53 RCW and this chapter, bonds, notes, or other evidences of indebtedness to refund at or prior to maturity any outstanding state bonds, notes, or other evidences of indebtedness.

The state finance committee may obtain bond insurance, letters of credit or other credit support instruments for the purpose of guaranteeing the payment or enhancing the marketability, or both, of any state bonds, notes, or other evidences of indebtedness, and may authorize the execution and delivery of agreements, promissory notes, and other related instruments. [1989 1st ex.s. c 14 § 16; 1983 c 167 § 104; 1971 ex.s. c 184 § 3.]

Severability—Effective dates—1989 1st ex.s. c 14: See RCW 43.99H.900 and 43.99H.901.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

39.42.040 Disposition of proceeds from sale of bonds. The proceeds of the sale of any bonds shall be used solely for the purposes, including any expense incurred in

connection with the issuance and sale of such bonds, specified in the general statute or special act authorizing the issuance of such bonds. [1971 ex.s. c 184 § 4.]

39.42.050 Anticipation notes—Issued, when—Payment of principal and interest. When the state finance committee has decided to issue such bonds or a portion thereof, it may, pending the issuing of such bonds, issue, in the name of the state, temporary notes in anticipation of the money to be derived from the sale of such bonds, which notes shall be designated as "anticipation notes". If, prior to the issuance of the bonds, it becomes necessary to redeem outstanding notes, additional bond anticipation notes may be issued to redeem the outstanding notes. Such portion of the proceeds of the sale of such bonds as may be required for such purpose shall be applied to the payment of the principal of such anticipation notes which have been issued. The interest on anticipation notes shall be paid from the revenue source and with the same priority of payment specified in the respective bond acts for payment of principal of and interest on the bonds against which anticipation notes are sold. The procedure for paying the interest on the notes, including the transfer of necessary funds for that purpose, shall be the same as prescribed for the bonds.

If the bonds shall constitute general obligations of the state and pledge the full faith and credit of the state to the payment thereof, then the notes issued in anticipation thereof shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due. The owner and holder of any of the notes or the trustee for the owner and holder of any of the notes may, by a mandamus or other appropriate proceeding, require the transfer and payment of funds as directed in this section. [1981 c 29 § 1; 1971 ex.s. c 184 § 5.]

Application—1981 c 29: "This act shall apply to all outstanding bond anticipation notes of the state, and interest on the notes shall be paid as provided in RCW 39.42.050: PROVIDED, That in the event such interest is not paid as provided in RCW 39.42.050 it shall be paid from such source or sources as are specified in such notes." [1981 c 29 § 2.] "This act" consists of the 1981 amendment of RCW 39.42.050.

39.42.060 Limitation on issuance of evidences of indebtedness—Annual computation of amount required to pay on outstanding debt. No bonds, notes, or other evidences of indebtedness for borrowed money shall be issued by the state which will cause the aggregate debt contracted by the state to exceed that amount for which payments of principal and interest in any fiscal year would require the state to expend more than seven percent of the arithmetic mean of its general state revenues, as defined in section 1(c) of Article VIII of the Washington state Constitution for the three immediately preceding fiscal years as certified by the treasurer in accordance with RCW 39.42.070. It shall be the duty of the state finance committee to compute annually the amount required to pay principal of and interest on outstanding debt. In making such computation, the state finance committee shall include all borrowed money represented by bonds, notes, or other evidences of indebtedness which are secured by the full faith and credit

of the state or are required to be paid, directly or indirectly, from general state revenues and which are incurred by the state, any department, authority, public corporation or quasi public corporation of the state, any state university or college, or any other public agency created by the state but not by counties, cities, towns, school districts, or other municipal corporations, and shall include debt incurred pursuant to section 3 of Article VIII of the Washington state Constitution, but shall exclude the following:

- (1) Obligations for the payment of current expenses of state government;
- (2) Indebtedness incurred pursuant to RCW 39.42.080 or 39.42.090;
- (3) Principal of and interest on bond anticipation notes;
- (4) Any indebtedness which has been refunded;
- (5) Financing contracts entered into under chapter 39.94 RCW;
- (6) Indebtedness authorized or incurred before July 1, 1993, pursuant to statute which requires that the state treasury be reimbursed, in the amount of the principal of and the interest on such indebtedness, from money other than general state revenues or from the special excise tax imposed pursuant to chapter 67.40 RCW;
- (7) Indebtedness authorized and incurred after July 1, 1993, pursuant to statute that requires that the state treasury be reimbursed, in the amount of the principal of and the interest on such indebtedness, from (a) moneys outside the state treasury, except higher education operating fees, (b) higher education building fees, (c) indirect costs recovered from federal grants and contracts, and (d) fees and charges associated with hospitals operated or managed by institutions of higher education;
- (8) Any agreement, promissory note, or other instrument entered into by the state finance committee under RCW 39.42.030 in connection with its acquisition of bond insurance, letters of credit, or other credit support instruments for the purpose of guaranteeing the payment or enhancing the marketability, or both, of any state bonds, notes, or other evidence of indebtedness; and
- (9) Indebtedness incurred for the purposes identified in RCW 43.99N.020.

To the extent necessary because of the constitutional or statutory debt limitation, priorities with respect to the issuance or guaranteeing of bonds, notes, or other evidences of indebtedness by the state shall be determined by the state finance committee. [1997 c 220 § 220 (Referendum Bill No. 48, approved June 17, 1997); 1993 c 52 § 1. Prior: 1989 1st ex.s. c 14 § 17; 1989 c 356 § 7; 1983 1st ex.s. c 36 § 1; 1979 ex.s. c 204 § 1; 1971 ex.s. c 184 § 6.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Effective date—1993 c 52: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 52 § 2.]

Severability—Effective dates—1989 1st ex.s. c 14: See RCW 43.99H.900 and 43.99H.901.

39.42.070 Computation of general state revenues—Filing of certificate—Estimate of debt capacity. On or after *the effective date of this act, the treasurer shall compute general state revenues for the three fiscal years immediately preceding such date and shall determine the arithmetic mean thereof. As soon as is practicable after the close of each fiscal year thereafter, he shall do likewise. In determining the amount of general state revenues, the treasurer shall include all state money received in the treasury from each and every source whatsoever except: (1) fees and revenues derived from the ownership or operation of any undertaking, facility or project; (2) moneys received as gifts, grants, donations, aid or assistance or otherwise from the United States or any department, bureau or corporation thereof, or any person, firm or corporation, public or private, when the terms and conditions of such gift, grant, donation, aid or assistance require the application and disbursement of such moneys otherwise than for the general purposes of the state of Washington; (3) moneys to be paid into and received from retirement system funds, and performance bonds and deposits; (4) moneys to be paid into and received from trust funds including but not limited to moneys received from taxes levied for specific purposes and the several permanent and irreducible funds of the state and the moneys derived therefrom but excluding bond redemption funds; (5) proceeds received from the sale of bonds or other evidences of indebtedness. Upon computing general state revenues, the treasurer shall make and file in the office of the secretary of state, a certificate containing the results of such computations. Copies of said certificate shall be sent to each elected official of the state and each member of the legislature. The treasurer shall, at the same time, advise each elected official and each member of the legislature of the current available debt capacity of the state, and may make estimated projections for one or more years concerning debt capacity. [1971 ex.s. c 184 § 7.]

*Reviser's note: For "the effective date of this act," see RCW 39.42.900.

39.42.080 Obligations allowable under debt limitation. The foregoing limitation on the aggregate amount of indebtedness of the state shall not prevent:

(1) The issuance of obligations to refund or replace any such indebtedness existing at any time in an amount not exceeding 1.05 times the amount which, taking into account earnings from the investment of the proceeds of the issue, is required to pay the principal thereof, interest thereon, and any premium payable with respect thereto, and the costs incurred in accomplishing such refunding, as provided in chapter 39.53 RCW, as now or hereafter amended: PROVIDED, That any proceeds of the refunding, bonds in excess of those acquired to accomplish such refunding or any obligations acquired with such excess proceeds, shall be applied exclusively for the payment of principal, interest, or call premiums with respect to such refunding obligations;

(2) The issuance of obligations in anticipation of revenues to be received by the state during a period of twelve calendar months next following their issuance;

(3) The issuance of obligations payable solely from revenues of particular public improvements;

(4) A pledge of the full faith, credit, and taxing power of the state to guarantee the payment of any obligation

payable from any of revenues received from any of the following sources:

(a) the fees collected by the state as license fees for motor vehicles;

(b) excise taxes collected by the state on the sale, distribution, or use of motor vehicle fuel; and

(c) interest on the permanent common school fund:

PROVIDED, That the legislature shall, at all times, provide sufficient revenues from such sources to pay the principal and interest due on all obligations for which said source of revenue is pledged. [1974 ex.s. c 111 § 1; 1971 ex.s. c 184 § 8.]

Severability—1974 ex.s. c 111: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 111 § 6.]

39.42.090 Certificates of indebtedness—Issued, when—Retirement. The state finance committee may issue certificates of indebtedness in such sum or sums that may be necessary to meet temporary deficiencies of the treasury. Such certificates may be issued only to provide for the appropriations already made by the legislature and such certificates must be retired and the debt discharged other than by refunding within twelve months after the date of issuance.

For the purposes of this section, the state treasury shall include all statutorily established funds and accounts except for any of the permanent irreducible funds of the state treasury. [1985 c 57 § 21; 1971 ex.s. c 184 § 9.]

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

39.42.100 Evidences of indebtedness—Defects not to affect validity—Copy of resolution authorizing issuance filed—Action to contest before delivery. Bonds, notes, or other obligations issued and sold by the state of Washington pursuant to and in conformity with this chapter shall not be invalid for any irregularity or defect in the proceedings of the issuance or sale thereof, except as provided in this paragraph, and shall be incontestable in the hands of a bona fide purchaser or holder thereof. Whenever the state finance committee determines to issue bonds, notes or other evidences of indebtedness, it shall file with the treasurer a certified copy of the resolution authorizing their issuance at least thirty days prior to delivery to the purchaser of such bonds, notes, of other evidences of indebtedness. At any time prior to delivery, any person in interest shall have the right to institute an appropriate action or proceeding to contest the validity of the authorized indebtedness, the pledge of revenues for the payment of principal and interest on such indebtedness, the validity of the collection and disposition of revenue necessary to pay the principal and interest on such indebtedness, the expenditure of the proceeds derived from the sale of the evidences of indebtedness for the purposes specified by law, and the validity of all other provisions and proceedings in connection with the authorization and issuance of the evidences of indebtedness. If such action or proceeding shall not have been instituted prior to delivery, then the validity of the evidences of indebtedness shall be conclusively presumed and no court shall have authority to inquire into such matters. [1971 ex.s. c 184 § 10.]

39.42.110 Evidences of indebtedness—As negotiable instruments, legal investments, and security for deposits. All evidences of indebtedness issued under the provisions of this chapter shall be fully negotiable instruments and shall be legal investment for all state funds or for funds under state control and all funds of municipal corporations, and shall be legal security for all state, county and municipal deposits. [1971 ex.s. c 184 § 11.]

39.42.120 Excess earnings account—Payments to United States treasury. The excess earnings account is created in the state treasury. From the revenue funds from which principal and interest payments on bonds are provided, the state treasurer shall periodically transfer to the excess earnings account such amounts as are owed to the federal government under section 148 of the federal internal revenue code. Pursuant to legislative appropriation from the excess earnings account, the state treasurer shall periodically remit to the United States treasury any amounts owed to the federal government under section 148 of the federal internal revenue code. [1988 c 92 § 1.]

39.42.900 Effective date—1971 ex.s. c 184. This act shall become effective coincident with the effective date of the constitutional amendment to Article VIII, section 1 and to Article VIII, section 3 of the Washington state Constitution as presented for a vote of the people by HJR 52, 1971 regular session. Unless such constitutional amendment shall be approved by the people at the next general election, this chapter shall be null and void. [1971 ex.s. c 184 § 12.]

Reviser's note: House Joint Resolution No. 52 was approved by the voters at the November 1972 general election.

Chapter 39.44

BONDS—MISCELLANEOUS PROVISIONS, BOND INFORMATION REPORTING

Sections

- 39.44.070 Life of bonds.
- 39.44.100 Facsimile signatures on bonds and coupons.
- 39.44.101 Facsimile signatures on bonds and coupons—Fraud—Destruction of plates—Penalty.
- 39.44.102 Facsimile signatures on bonds and coupons—Statements and signatures required on registered bonds.
- 39.44.110 Registration—Payment—Assignment.
- 39.44.120 Payment of coupon interest.
- 39.44.130 Treasurers as registration officers—Fiscal agent.
- 39.44.140 Revenue bonds—Funds for reserve purposes may be included in issue amount.
- 39.44.200 State and local government bond information—Definitions.
- 39.44.210 State and local government bond information—Submittal—Contents—Annual report.
- 39.44.230 State and local government bond information—Rules.
- 39.44.240 State and local government bond information—Validity of bonds not affected.
- 39.44.900 Validation—Savings—1982 c 216.

Cities and towns, local improvement bonds: Chapter 35.45 RCW.

Counties, bonds

form, interest, etc.: Chapter 36.67 RCW.
to acquire land for military purposes, form, interest, etc.: Chapter 37.08 RCW.

County road bonds, form, interest, etc.: Chapter 36.76 RCW.

Funding bonds, interest rate, form, sale, payment, etc.: Chapter 39.52 RCW.

Industrial development revenue bonds: Chapter 39.84 RCW.

Irrigation district bonds, form, interest, maturity, etc.: RCW 87.03.200.

Municipal revenue bond act: Chapter 35.41 RCW.

Port district bonds, form, terms, etc.: Chapters 53.40 and 53.44 RCW.

Public utility district bonds, form, terms, etc.: RCW 54.24.018.

School district bonds, form, terms of sale, etc.: Chapter 28A.530 RCW.

Validation: Chapter 39.90 RCW.

Water-sewer district bonds, form, terms, etc.: RCW 57.20.010.

39.44.070 Life of bonds. Notwithstanding the provisions of any charter to the contrary, bonds issued under *RCW 39.44.010 through 39.44.080 may be issued to run for a period up to forty years from the date of the issue and shall, as near as practicable, be issued for a period which shall not exceed the life of the improvement to be acquired by the use of the bonds. [1967 c 107 § 5; 1923 c 151 § 5; RRS § 5583-5.]

***Reviser's note:** RCW 39.44.010, 39.44.011, 39.44.020, 39.44.030, 39.44.060, and 39.44.080 were repealed by 1984 c 186 § 70.

39.44.100 Facsimile signatures on bonds and coupons. On all bonds hereafter issued by the state or any agency thereof or by any county, city, town, municipal corporation, quasi municipal corporation, junior taxing district, school district or other political subdivision of the state, the printed, engraved or lithographed facsimile signatures of the officers required by law to sign the bonds or any interest coupons thereon shall be sufficient signature on such bonds or coupons: PROVIDED, That such facsimile signatures shall not be used on the bonds of issues of less than one hundred thousand dollars par value and may always be used on interest coupons.

Whenever such facsimile signature reproduction of the signature of any officer is used in place of the personal signature of such officer, the issuing authority shall specify in a written order or requisition to the printer, engraver, or lithographer, the number of bonds or coupons upon which such facsimile signature is to be printed, engraved, or lithographed, and the manner of numbering the bonds or coupons upon which such signature shall be placed. Within ninety days after the completion of the printing, engraving, or lithographing of such bonds or coupons, the plate or plates used for the purpose of affixing the facsimile signature shall be destroyed and it shall be the duty of the issuing authority, within ninety days after receipt of the completed bonds or coupons, to ascertain that such plate or plates have been destroyed. [1983 c 167 § 107; 1961 c 141 § 3; 1955 c 375 § 1; 1941 c 52 § 1; Rem. Supp. 1941 § 5583-1a.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Uniform facsimile signature of public officials act: Chapter 39.62 RCW.

39.44.101 Facsimile signatures on bonds and coupons—Fraud—Destruction of plates—Penalty. Every printer, engraver, or lithographer, who with the intent to defraud, prints, engraves, or lithographs a facsimile signature upon any bond or coupon without written order of the issuing authority, or fails to destroy such plate or plates containing the facsimile signature upon direction of such issuing authority, shall be guilty of a felony. [1955 c 375 § 2.]

Fraud, forgery: Chapter 9A.60 RCW.

39.44.102 Facsimile signatures on bonds and coupons—Statements and signatures required on registered bonds. Where any bond so issued requires registration by the county treasurer, that bond shall bear a statement on the back thereof showing the name of the person to whom sold, date of issue, the number and series of the bond, and shall be signed by the county treasurer in his own name or by a deputy county treasurer in his own name. [1955 c 375 § 3.]

39.44.110 Registration—Payment—Assignment. Upon the presentation at the office of the officer or agent hereinafter provided for, any bond which is bearer in form that has heretofore been or may hereafter be issued by any county, city, town, port, school district, or other municipal or quasi municipal corporation in this state, may, if so provided in the proceedings authorizing the issuance of the same, be registered as to principal in the name of the owner upon the books of such municipality to be kept in said office, such registration to be noted on the reverse of the bond by such officer or agent. The principal of any bond so registered shall be payable only to the payee, his legal representative, successors or assigns, and such bond shall be transferable to another registered holder or back to bearer only upon presentation to such officer or agent, with a written assignment duly acknowledged or proved. The name of the assignee shall be written upon any bond so transferred and in the books so kept in the office of such officer or agent. [1983 c 167 § 108; 1961 c 141 § 4; 1915 c 91 § 1; RRS § 5494.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

39.44.120 Payment of coupon interest. If so provided in the proceedings authorizing the issuance of any such bonds, upon the registration thereof as to principal, or at any time thereafter, the coupons thereto attached, evidencing all interest to be paid thereon to the date of maturity, may be surrendered to the officer or agent hereinafter provided and the bonds shall also become registered as to interest. Such coupons shall be canceled by such officer or agent, who shall sign a statement endorsed upon such bond of the cancellation of all unmatured coupons and the registration of such bond. Thereafter the interest evidenced by such canceled coupons shall be paid at the times provided therein to the registered owner of such bond in lawful money of the United States of America mailed to his address. [1983 c 167 § 109; 1961 c 141 § 5; 1915 c 91 § 2; RRS § 5495.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

39.44.130 Treasurers as registration officers—Fiscal agent. (1) The duties prescribed in this chapter as to the registration of bonds of any city or town shall be performed by the treasurer thereof, and as to those of any county, port or school district by the county treasurer of the county in which such port or school district lies; but any treasurer as defined in RCW 39.46.020 may designate its legally desig-

nated fiscal agency or agencies for the performance of such duties, after making arrangements with such fiscal agency therefor, which arrangements may include provision for the payment by the bond owner of a fee for each registration.

(2) The county treasurer as ex officio treasurer of a special district shall act as fiscal agent or may appoint the fiscal agent to be used by the county. [1995 c 38 § 5; 1994 c 301 § 9; 1985 c 84 § 2; 1983 c 167 § 110; 1971 ex.s. c 79 § 1; 1915 c 91 § 3; RRS § 5496.]

Acts of municipal officers ratified and confirmed—1995 c 38: See note following RCW 3.02.045.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Fiscal agencies: Chapter 43.80 RCW.

39.44.140 Revenue bonds—Funds for reserve purposes may be included in issue amount. Any county, city, town, political subdivision, or other municipal or quasi municipal corporation authorized to issue revenue bonds may include in the amount of any such issue funds for the purpose of establishing, maintaining or increasing reserves to:

(1) Secure the payment of the principal of and interest on such revenue bonds; or

(2) Provide for replacements or renewals of or repairs or betterments to revenue producing facilities; or

(3) Provide for contingencies, including, but not limited to, loss of revenue caused by such contingencies.

The authority granted pursuant to this section is additional and supplemental to any existing authority to issue revenue bonds and nothing in this section shall prevent the issuance of such bonds pursuant to any other law: PROVIDED, That no such bond issue may include an amount in excess of fifteen percent thereof for the purpose of establishing, maintaining or increasing reserves as enumerated above. [1983 c 167 § 111; 1977 ex.s. c 229 § 1.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

39.44.200 State and local government bond information—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 39.44.200 through 39.44.240.

(1) "Bond" means "bond" as defined in RCW 39.46.020, but also includes any other indebtedness that may be issued by any local government to fund private activities or purposes where the indebtedness is of a nonrecourse nature payable from private sources.

(2) "Local government" means "local government" as defined in RCW 39.46.020.

(3) "Type of bond" includes: (a) General obligation bonds, including councilmanic and voter-approved bonds; (b) revenue bonds; (c) local improvement district bonds; (d) special assessment bonds such as those issued by irrigation districts and diking districts; and (e) other classes of bonds.

(4) "State" means "state" as defined in RCW 39.46.020 but also includes any commissions or other entities of the state. [1990 c 220 § 1; 1989 c 225 § 1; 1987 c 297 § 12; 1985 c 130 § 5.]

Severability—1987 c 297: See RCW 39.86.906.

39.44.210 State and local government bond information—Submittal—Contents—Annual report. For each state or local government bond issued, the underwriter of the issue shall supply the department of community, trade, and economic development with information on the bond issue within twenty days of its issuance. In cases where the issuer of the bond makes a direct or private sale to a purchaser without benefit of an underwriter, the issuer shall supply the required information. The bond issue information shall be provided on a form prescribed by the department of community, trade, and economic development and shall include but is not limited to: (1) The par value of the bond issue; (2) the effective interest rates; (3) a schedule of maturities; (4) the purposes of the bond issue; (5) cost of issuance information; and (6) the type of bonds that are issued. A copy of the bond covenants shall be supplied with this information.

For each state or local government bond issued, the issuer's bond counsel promptly shall provide to the underwriter or to the department of community, trade, and economic development information on the amount of any fees charged for services rendered with regard to the bond issue.

Each local government that issues any type of bond shall make a report annually to the department of community, trade, and economic development that includes a summary of all the outstanding bonds of the local government as of the first day of January in that year. Such report shall distinguish the outstanding bond issues on the basis of the type of bond, as defined in RCW 39.44.200, and shall report the local government's outstanding indebtedness compared to any applicable limitations on indebtedness, including RCW 35.42.200, 39.30.010, and 39.36.020. [1995 c 399 § 54; 1990 c 220 § 2; 1989 c 225 § 2; 1985 c 130 § 1.]

Fiscal agencies: Chapter 43.80 RCW.

Publication of local government bond information by department of community, trade, and economic development—Adoption of rules: RCW 43.63A.155.

39.44.230 State and local government bond information—Rules. The department of community, trade, and economic development may adopt rules and regulations pursuant to the administrative procedure act to require (1) the submission of bond issuance information by underwriters and bond counsel to the department of community, trade, and economic development in a timely manner and (2) the submission of additional information on bond issues by state and local governments, including summaries of outstanding bond issues. [1995 c 399 § 55; 1989 c 225 § 3; 1985 c 130 § 3.]

39.44.240 State and local government bond information—Validity of bonds not affected. Failure to file the information required by RCW 39.44.210 and 39.44.230 shall not affect the validity of the bonds that are issued. [1989 c 225 § 4; 1985 c 130 § 4.]

39.44.900 Validation—Savings—1982 c 216. All bonds, the issuance of which was authorized or ratified at a general or special election held within the issuing jurisdiction prior to April 3, 1982, or the proposition for the issuance of which will be submitted at such an election pursuant to

action of the legislative authority of the issuer taken prior to April 3, 1982, may be sold and issued with an interest rate or rates greater than any interest rate restriction contained in the ballot proposition or ordinance or resolution relating to such authorization or ratification if such bonds are or were sold and issued in accordance with the sale provisions and with an interest rate or rates not greater than those permitted by the applicable provision of *this amendatory act, and any such bonds heretofore sold are declared valid obligations of the issuer. This section shall not apply to bonds having a total value exceeding fifteen million dollars. [1982 c 216 § 12.]

***Reviser's note:** "this amendatory act" [1982 c 216] consists of the 1982 amendments to RCW 39.44.030 and 43.80.110 and the enactment of RCW 39.44.900 and chapter 39.50 RCW.

Chapter 39.46

BONDS—OTHER MISCELLANEOUS PROVISIONS—REGISTRATION

Sections	
39.46.010	Purposes—Liberal construction.
39.46.020	Definitions.
39.46.030	Registration system authorized—Requirements—Fiscal agencies, agents.
39.46.040	Bonds—Issuer to determine amount, terms, conditions, interest, etc.
39.46.050	Bonds—Issuer authorized to establish lines of credit.
39.46.060	Bonds—Reproduction of physical instrument.
39.46.070	Bonds—Payment of costs of issuance and sale.
39.46.100	RCW 39.46.010 through 39.46.070 constitutes alternative method.
39.46.110	Local government general obligation bonds—Indebtedness—Payment—Notice by special district.
39.46.120	Notice of intent to sell general obligation bonds.
39.46.150	Revenue bonds—Alternative method of issuance—Limitations.
39.46.160	Revenue bonds—Alternative method of issuance—Bonds may include reserve funds.

39.46.010 Purposes—Liberal construction. The purposes of this chapter are to permit the state and local governments to conform with registration requirements of federal law which are necessary to exempt interest payments from federal income taxes when the state or local governments issue bonds or incur other obligations and to authorize the establishment and maintenance of differing systems of registering bonds and other obligations as these systems are developed and recognized, which may be instituted, discontinued, and reinstated from time to time. It is further the purpose of this chapter to grant local governments an alternative flexible authority to structure and sell their bond issues and to include a variety of features on their bonds.

This act shall be liberally construed to effect its purposes. [1983 c 167 § 1.]

Severability—1983 c 167: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 167 § 273.]

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

(1) "Bond" means any agreement which may or may not be represented by a physical instrument, including notes, warrants, or certificates of indebtedness, that evidences an indebtedness of the state or a local government or a fund thereof, where the state or local government agrees to pay a specified amount of money, with or without interest, at a designated time or times to either registered owners or bearers.

(2) "Local government" means any county, city, town, special purpose district, political subdivision, municipal corporation, or quasi municipal corporation, including any public corporation created by such an entity.

(3) "Obligation" means an agreement that evidences an indebtedness of the state or a local government, other than a bond, and includes, but is not limited to, conditional sales contracts, lease obligations, and promissory notes.

(4) "State" includes the state, agencies of the state, and public corporations created by the state or agencies of the state.

(5) "Treasurer" means the state treasurer, county treasurer, city treasurer, or treasurer of any other municipal corporation. [1995 c 38 § 6; 1994 c 301 § 10; 1983 c 167 § 2.]

Acts of municipal officers ratified and confirmed—1995 c 38: See note following RCW 3.02.045.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

39.46.030 Registration system authorized—Requirements—Fiscal agencies, agents. (1) The state and local governments are authorized to establish a system of registering the ownership of their bonds or other obligations as to principal and interest, or principal only. Registration may include, without limitation: (a) A book entry system of recording the ownership of a bond or other obligation whether or not a physical instrument is issued; or (b) recording the ownership of a bond or other obligation together with the requirement that the transfer of ownership may only be effected by the surrender of the old bond or other obligation and either the reissuance of the old bond or other obligation or the issuance of a new bond or other obligation to the new owner.

(2) The system of registration shall define the method or methods by which transfer of the registered bonds or other obligations shall be effective, and by which payment of principal and any interest shall be made. The system of registration may permit the issuance of bonds or other obligations in any denomination to represent several registered bonds or other obligations of smaller denominations. The system of registration may also provide for any writing relating to a bond or other obligation that is not issued as a physical instrument, for identifying numbers or other designations, for a sufficient supply of certificates for subsequent transfers, for record and payment dates, for varying denominations, for communications to the owners of bonds or other obligations, for accounting, canceled certificate destruction, registration and release of securing interests, and for such other incidental matters pertaining to the registration of bonds or other obligations as the issuer may deem to be necessary or appropriate.

(3)(a) The state treasurer or a local treasurer may appoint (i) one or more of the fiscal agencies appointed from

time to time by the state finance committee in accordance with chapter 43.80 RCW or (ii) other fiscal agents to act with respect to an issue of its bonds or other obligations as authenticating trustee, transfer agent, registrar, and paying or other agent and specify the rights and duties and means of compensation of any such fiscal agency so acting. The state treasurer or local treasurers may also enter into agreements with the fiscal agency or agencies in connection with the establishment and maintenance by such fiscal agency or agencies of a central depository system for the transfer or pledge of bonds or other obligations.

(b) The county treasurer as ex officio treasurer of a special district shall act as fiscal agent for such special district, unless the county treasurer appoints either one or more of the fiscal agencies appointed from time to time by the state finance committee in accordance with chapter 43.80 RCW or other fiscal agents selected in a manner consistent with RCW 43.80.120 to act with respect to an issue of its bonds or other obligations as authenticating trustee, transfer agent, registrar, and paying or other agent and specify the rights and duties and means of compensation of any such fiscal agency.

(4) Nothing in this section precludes the issuer, or a trustee appointed by the issuer pursuant to any other provision of law, from itself performing, either alone or jointly with other issuers, fiscal agencies, or trustees, any transfer, registration, authentication, payment, or other function described in this section. [1995 c 38 § 7; 1994 c 301 § 11; 1985 c 84 § 1; 1983 c 167 § 3.]

Acts of municipal officers ratified and confirmed—1995 c 38: See note following RCW 3.02.045.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

39.46.040 Bonds—Issuer to determine amount, terms, conditions, interest, etc. A local government authorized to issue bonds shall determine for the bond issue its amount, date or dates, terms not in excess of the maximum term otherwise provided in law, conditions, bond denominations, interest rate or rates, which may be fixed or variable, interest payment dates, maturity or maturities, redemption rights, registration privileges, manner of execution, price, manner of sale, covenants, and form, including registration as to principal and interest, registration as to principal only, or bearer. Registration may be as provided in RCW 39.46.030. [1983 c 167 § 4.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

39.46.050 Bonds—Issuer authorized to establish lines of credit. Each local government authorized to issue bonds is authorized to establish lines of credit with any qualified public depository to be drawn upon in exchange for its bonds or other obligations, to delegate to its fiscal officer authority to determine the amount of credit extended, and to pay interest and other finance or service charges. The interest rates on such bonds or other obligations may be a fixed rate or rates set periodically or a variable rate or rates determined by agreement of the parties. [1983 c 167 § 5.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

39.46.060 Bonds—Reproduction of physical instrument. Where bonds are issued by the state or a local government as physical instruments, the bonds shall be printed, engraved, lithographed, typed, or reproduced and the manual or facsimile signatures of both a designated officer and chairperson of the governing body or chief executive shall be included on each bond. [1983 c 167 § 6.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

39.46.070 Bonds—Payment of costs of issuance and sale. The proceeds of any bonds issued by the state or a local government may be used to pay incidental costs and costs related to the sale and issuance of the bonds. Such costs include payments for fiscal and legal expenses, obtaining bond ratings, printing, engraving, advertising, establishing and funding reserve accounts and other accounts, an amount for working capital, capitalized interest for up to six months, necessary and related engineering, architectural, planning, and inspection costs, and other similar activities or purposes. [1983 c 167 § 7.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

39.46.100 RCW 39.46.010 through 39.46.070 constitutes alternative method. RCW 39.46.010 through 39.46.070 shall be deemed to provide a complete, additional, and alternative method for the performance of those subjects authorized by these sections and shall be regarded as supplemental and additional to powers conferred by other state laws. Whenever bonds and other obligations are issued and sold in conformance with RCW 39.46.010 through 39.46.070, such issuance and sale need not comply with contrary requirements of other state laws applicable to the issuance and sale of bonds or other obligations. [1983 c 167 § 8.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

39.46.110 Local government general obligation bonds—Indebtedness—Payment—Notice by special district. (1) General obligation bonds of local governments shall be subject to this section. Unless otherwise stated in law, the maximum term of any general obligation bond issue shall be forty years.

(2) General obligation bonds constitute an indebtedness of the local government issuing the bonds that are subject to the indebtedness limitations provided in Article VIII, section 6 of the state Constitution and are payable from tax revenues of the local government and such other money lawfully available and pledged or provided by the governing body of the local government for that purpose. Such governing body may pledge the full faith, credit and resources of the local government for the payment of general obligation bonds. The payment of such bonds shall be enforceable in mandamus against the local government and its officials. The officials now or hereafter charged by law with the duty of levying taxes pledged for the payment of general obligation bonds and interest thereon shall, in the manner provided by law, make an annual levy of such taxes sufficient together with other moneys lawfully available and pledge therefor to

meet the payments of principal and interest on the bonds as they come due.

(3) General obligation bonds, whether or not issued as physical instruments, shall be executed in the manner determined by the governing body or legislative body of the issuer. If the issuer is the county or a special district for which the county treasurer is the treasurer, the issuer shall notify the county treasurer at least thirty days in advance of authorizing the issuance of bonds or the incurrence of other certificates of indebtedness.

(4) Unless another statute specifically provides otherwise, the owner of a general obligation bond, or the owner of an interest coupon, issued by a local government shall not have any claim against the state arising from the general obligation bond or interest coupon.

(5) As used in this section, the term "local government" means every unit of local government, including municipal corporations, quasi municipal corporations, and political subdivisions, where property ownership is not a prerequisite to vote in the local government's elections. [1998 c 106 § 7; 1995 c 38 § 8; 1994 c 301 § 12; 1984 c 186 § 2.]

Acts of municipal officers ratified and confirmed—1995 c 38: See note following RCW 3 02.045.

Purpose—1984 c 186: "The purpose of this 1984 act is to provide simplified and uniform authorities for various local governments to issue and sell general obligation bonds. It is not the purpose of this 1984 act to alter the indebtedness limitation of local governments." [1984 c 186 § 1.]

39.46.120 Notice of intent to sell general obligation bonds. Notice of intent to sell general obligation bonds at a public sale shall be provided in a reasonable manner as determined by the legislative authority or governing body of the issuer. [1984 c 186 § 4.]

Purpose—1984 c 186: See note following RCW 39.46.110.

39.46.150 Revenue bonds—Alternative method of issuance—Limitations. (1) Any local government authorized to issue revenue bonds may issue revenue bonds under this section and RCW 39.46.160. If a local government chooses to issue revenue bonds under this section and RCW 39.46.160, the issue shall be subject to the limitations and restrictions of these sections. The authority to issue revenue bonds under this section and RCW 39.46.160 is supplementary and in addition to any authority otherwise existing. The maximum term of any revenue bonds shall be forty years unless another statute authorizing the local government to issue revenue bonds provides for a different maximum term, in which event the local government may issue revenue bonds only with terms not in excess of such different maximum term.

(2) The governing body of a local government issuing revenue bonds shall create a special fund or funds, or use an existing special fund or funds, exclusively from which, along with reserve funds which may be created by the governing body, the principal and interest on such revenue bonds shall be payable. These reserve funds include those authorized to be created by RCW 39.46.160.

Subject to the limitations contained in this section, the governing body of a local government may provide such covenants as it may deem necessary to secure the payment of the principal of and interest on revenue bonds, and premium on revenue bonds, if any. Such covenants may

include, but are not limited to, depositing certain revenues into a special fund or funds as provided in subsection (3) of this section; establishing, maintaining, and collecting fees, rates, charges, tariffs, or rentals, on facilities and services, the income of which is pledged for the payment of such bonds; operating, maintaining, managing, accounting, and auditing the local government; appointing trustees, depositaries, and paying agents; and any and all matters of like or different character, which affect the security or protection of the revenue bonds.

(3) The governing body may obligate the local government to set aside and pay into a special fund or funds created under subsection (2) of this section a proportion or a fixed amount of the revenues from the following: (a) The public improvements, projects, or facilities that are financed by the revenue bonds; or (b) the public utility or system, or an addition or extension to the public utility or system, where the improvements, projects, or facilities financed by the revenue bonds are a portion of the public utility or system; or (c) all the revenues of the local government; or (d) any other money legally available for such purposes. As used in this subsection, the term "revenues" includes the operating revenues of a local government that result from fees, rates, charges, tariffs, or rentals imposed upon the use or availability or benefit from projects, facilities, or utilities owned or operated by the local government and from related services provided by the local government and other revenues legally available to be pledged to secure the revenue bonds.

The proportion or fixed amount of revenue so obligated shall be a lien and charge against these revenues, subject only to maintenance and operating expenses. The governing body shall have due regard for the cost of maintenance and operation of the public utility, system, improvement, project, facility, addition, or extension that generates revenues obligated to be placed into the special fund or funds from which the revenue bonds are payable, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above such cost of maintenance and operation and the proportion or fixed amount, if any, of the revenue so previously pledged. Other revenues, including tax revenues, lawfully available for maintenance or operation of revenue generating facilities may be used for maintenance and operation purposes even though the facilities are acquired, constructed, expanded, replaced, or repaired with moneys arising from the sale of revenue bonds. However, the use of these other revenues for maintenance and operation purposes shall not be deemed to directly or indirectly guarantee the revenue bonds or create a general obligation. The obligation to maintain and impose fees, rates, charges, tariffs, or rentals at levels sufficient to finance maintenance and operations shall remain if the other revenues available for such purposes diminish or cease.

The governing body may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

(4) A revenue bond issued by a local government shall not constitute an obligation of the state, either general or special, nor a general obligation of the local government issuing the bond, but is a special obligation of the local

government issuing the bond, and the interest and principal on the bond shall only be payable from the special fund or funds established pursuant to subsection (2) of this section, the revenues lawfully pledged to the special fund or funds, and any lawfully created reserve funds. The owner of a revenue bond shall not have any claim for the payment thereof against the local government arising from the revenue bond except for payment from the special fund or funds, the revenues lawfully pledged to the special fund or funds, and any lawfully created reserve funds. The owner of a revenue bond issued by a local government shall not have any claim against the state arising from the revenue bond. Tax revenues shall not be used directly or indirectly to secure or guarantee the payment of the principal of or interest on revenue bonds.

[(5)] The substance of the limitations included in this subsection shall be plainly printed, written, engraved, or reproduced on: (a) Each revenue bond that is a physical instrument; (b) the official notice of sale; and (c) each official statement associated with the bonds.

(6) The authority to create a fund shall include the authority to create accounts within a fund.

(7) Local governments issuing revenue bonds, payable from revenues derived from projects, facilities, or utilities, shall covenant to maintain and keep these projects, facilities, or utilities in proper operating condition for their useful life. [1986 c 168 § 1.]

Funds for reserve purposes may be included in issue amount: RCW 39.44.140.

39.46.160 Revenue bonds—Alternative method of issuance—Bonds may include reserve funds. Any local government issuing revenue bonds under this section and RCW 39.46.150 may include in the amount of any such issue money for the purpose of establishing, maintaining, or increasing reserve funds to:

(1) Secure the payment of the principal of and interest on such revenue bonds; or

(2) Provide for replacements or renewals of or repairs or betterments to revenue producing facilities; or

(3) Provide for contingencies, including, but not limited to, loss of revenue caused by such contingencies. [1986 c 168 § 2.]

Chapter 39.48

BONDS SOLD TO GOVERNMENT AT PRIVATE SALE

Sections

39.48.010	Authority conferred.
39.48.020	Amortization—Requirements relaxed.
39.48.030	"Issuer" defined.
39.48.040	Chapter optional.

39.48.010 Authority conferred. Bonds and securities of all kinds heretofore or hereafter authorized, issued by any issuing corporation or district (hereinafter called the "issuer" and as hereinafter specified), whether such bonds and securities be issued for such issuer itself or for any other taxing or assessment district within its limits, and whether payable in whole or in part out of and from general taxes or

payable in whole or in part out of and from the earnings to be derived from any utility, system, construction, work, or works, belonging to or operated by any such issuer, or payable in whole or in part out of and from "local" or "benefit" assessments upon lands within any assessment district or assessment subdivision within any such issuer, may be sold to the United States government or to any department, corporation or agency thereof by private sale without giving any prior notice thereof by publication or otherwise and in such manner as the governing authority of such issuer may provide: PROVIDED, Only that bonds or other securities sold at private sale under the authority of this chapter shall bear interest at a rate or rates as authorized by the issuer and that all bonds and securities sold and issued under the authority of this chapter shall be sold, if now required by existing law, at not less than par and accrued interest. [1970 ex.s. c 56 § 59; 1969 ex.s. c 232 § 76; 1933 ex.s. c 30 § 1; RRS § 5583-11.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Validation—Saving—Severability—1969 ex.s. c 232: See notes following RCW 39.52.020.

39.48.020 Amortization—Requirements relaxed. It shall be proper to provide with respect to any bonds now required to be amortized as provided by *RCW 39.44.010 through 39.44.080, that such amortized annual maturities shall commence to be payable at any time on or before five years from the date of said bonds, and that any bonds, or any part thereof, issued under the authority of this chapter, shall be redeemable prior to their fixed maturities, as provided by the governing board or authority of any such issuer. [1933 ex.s. c 30 § 2; RRS § 5583-12.]

***Reviser's note:** RCW 39.44.010, 39.44.011, 39.44.020, 39.44.030, 39.44.060, and 39.44.080 were repealed by 1984 c 186 § 70.

39.48.030 "Issuer" defined. The issuing corporations, districts, and subdivisions hereinbefore referred to and described as "issuer", shall include any county, city, town, school district, port district, metropolitan park district, taxing district, assessment district or any public corporation or municipal corporation authorized by existing law to issue bonds, securities or other evidences of indebtedness for itself or for any other taxing or assessment district therein or department thereof. [1933 ex.s. c 30 § 3; RRS § 5583-13.]

39.48.040 Chapter optional. It shall be optional with any such issuer, at its discretion, to exercise all or any of the powers conferred by this chapter in connection with the adoption and exercise by any such issuer of the provisions and powers granted by existing law. [1933 ex.s. c 30 § 4; RRS § 5583-14.]

Chapter 39.50

**SHORT-TERM OBLIGATIONS—
MUNICIPAL CORPORATIONS**

Sections

- 39.50.010 Definitions.
- 39.50.020 Short-term obligations authorized.
- 39.50.030 Issuance of short-term obligations—Procedure—Interest rate—Contracts for future sale.

- 39.50.040 Refunding and renewal of short-term obligations.
- 39.50.050 Short-term obligations—Security.
- 39.50.060 Nonvoted general indebtedness.
- 39.50.070 Funds for payment of principal and interest.
- 39.50.900 Chapter cumulative—Applicability to joint operating agencies.

39.50.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

- (1) "Governing body" means the legislative authority of a municipal corporation by whatever name designated;
- (2) "Local improvement district" includes local improvement districts, utility local improvement districts, road improvement districts, and other improvement districts that a municipal corporation is authorized by law to establish;
- (3) "Municipal corporation" means any city, town, county, water district, sewer district, school district, port district, public utility district, metropolitan municipal corporation, public transportation benefit area, park and recreation district, irrigation district, fire protection district or any other municipal or quasi municipal corporation described as such by statute, or regional transit authority, except joint operating agencies under chapter 43.52 RCW;
- (4) "Ordinance" means an ordinance of a city or town or resolution or other instrument by which the governing body of the municipal corporation exercising any power under this chapter takes formal action and adopts legislative provisions and matters of some permanency; and
- (5) "Short-term obligations" are warrants, notes, or other evidences of indebtedness, except bonds. [1998 c 106 § 8; 1985 c 332 § 8; 1982 c 216 § 2.]

39.50.020 Short-term obligations authorized.

Subject to any applicable budget requirements, any municipal corporation may borrow money and issue short-term obligations as provided in this chapter, the proceeds of which may be used for any lawful purpose of the municipal corporation. Short-term obligations may be issued in anticipation of the receipt of revenues, taxes, or grants or the sale of (1) general obligation bonds if the bonds may be issued without the assent of the voters or if previously ratified by the voters; (2) revenue bonds if the bonds have been authorized by ordinance; (3) local improvement district bonds if the bonds have been authorized by ordinance. These short-term obligations shall be repaid out of money derived from the source or sources in anticipation of which they were issued or from any money otherwise legally available for this purpose. [1982 c 216 § 3.]

39.50.030 Issuance of short-term obligations—

Procedure—Interest rate—Contracts for future sale. (1) The issuance of short-term obligations shall be authorized by ordinance of the governing body which ordinance shall fix the maximum amount of the obligations to be issued or, if applicable, the maximum amount which may be outstanding at any time, the maximum term and interest rate or rates to be borne thereby, the manner of sale, maximum price, form including bearer or registered as provided in RCW 39.46.030, terms, conditions, and the covenants thereof. The ordinance may provide for designation and employment of a paying agent for the short-term obligations and may

authorize a designated representative of the municipal corporation, or if the county, the county treasurer to act on its behalf and subject to the terms of the ordinance in selling and delivering short-term obligations authorized and fixing the dates, price, interest rates, and other details as may be specified in the ordinance. Short-term obligations issued under this section shall bear such fixed or variable rate or rates of interest as the governing body considers to be in the best interests of the municipal corporation. Variable rates of interest may be fixed in relationship to such standard or index as the governing body designates.

The governing body may make contracts for the future sale of short-term obligations pursuant to which the purchasers are committed to purchase the short-term obligations from time to time on the terms and conditions stated in the contract, and may pay such consideration as it considers proper for the commitments. Short-term obligations issued in anticipation of the receipt of taxes shall be paid within six months from the end of the fiscal year in which they are issued. For the purpose of this subsection, short-term obligations issued in anticipation of the sale of general obligation bonds shall not be considered to be obligations issued in anticipation of the receipt of taxes.

(2) Notwithstanding subsection (1) of this section, such short-term obligations may be issued and sold in accordance with chapter 39.46 RCW. [1995 c 38 § 9; 1994 c 301 § 13; 1985 c 71 § 1; 1983 c 167 § 112; 1982 c 216 § 4.]

Acts of municipal officers ratified and confirmed—1995 c 38: See note following RCW 3.02.045.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

39.50.040 Refunding and renewal of short-term obligations. Short-term obligations may, from time to time, be renewed or refunded by the issuance of short-term obligations and may be funded by the issuance of revenue, local improvement district, special assessment, or general obligation bonds. Short-term obligations payable from taxes shall not be renewed or refunded to a date later than six months from the end of the fiscal year in which the original short-term obligation was issued. For the purpose of this section, short-term obligations issued in anticipation of the sale of general obligation bonds shall not be considered to be short-term obligations payable from taxes. [1985 c 332 § 9; 1985 c 71 § 2; 1982 c 216 § 5.]

39.50.050 Short-term obligations—Security. Short-term obligations issued in anticipation of the receipt of taxes or the sale of general obligation bonds and the interest thereon shall be secured by the full faith, credit, taxing power, and resources of the municipal corporation. Short-term obligations issued in anticipation of the sale of revenue or local improvement district bonds and the interest thereon may be secured in the same manner as the revenue and local improvement district bonds in anticipation of which the obligations are issued and by an undertaking to issue the bonds. Short-term obligations issued in anticipation of grants, loans, or other sources of money shall be secured in the manner set forth in the ordinance authorizing their issuance. [1982 c 216 § 6.]

39.50.060 Nonvoted general indebtedness. A municipal corporation may incur nonvoted general indebtedness under this chapter up to an amount which, when added to all other authorized and outstanding nonvoted indebtedness of the municipal corporation, is equal to the maximum amount of indebtedness the municipal corporation is otherwise permitted to incur without a vote of the electors. [1982 c 216 § 7.]

39.50.070 Funds for payment of principal and interest. For the purpose of providing funds for the payment of principal of and interest on short-term obligations, the governing body may authorize the creation of a special fund or funds and provide for the payment from authorized sources to such funds of amounts sufficient to meet principal and interest requirements. [1982 c 216 § 8.]

39.50.900 Chapter cumulative—Applicability to joint operating agencies. The authority granted by this chapter shall be in addition and supplemental to any authority previously granted and shall not limit any other powers or authority previously granted to any municipal corporation. The authority granted by this chapter to public utility districts organized under Title 54 RCW shall not extend to joint operating agencies organized under chapter 43.52 RCW. [1982 c 216 § 9.]

Chapter 39.52

FUNDING INDEBTEDNESS IN COUNTIES, CITIES AND TOWNS

Sections

- 39.52.010 Issuance of funding bonds authorized.
- 39.52.015 Validation of prior bond issues.
- 39.52.020 Limitations on issuance of bonds.
- 39.52.035 Tax levy—Purpose.
- 39.52.050 "Corporate authorities" defined.

Cities and towns, ratification and funding of indebtedness: Chapter 35.40 RCW.

Metropolitan municipal corporations, funding and refunding bonds: RCW 35.58.470.

Port districts, funding and refunding indebtedness: Chapter 53.44 RCW.

Public utility districts, funding and refunding bonds: RCW 54.24.090.

School districts, refunding bonds: RCW 28A.530.040.

39.52.010 Issuance of funding bonds authorized. Any county, city, or town in the state of Washington which now has or may hereafter have an outstanding indebtedness evidenced by warrants or bonds, including warrants or bonds of any county, city, or town which are special fund obligations of and constitute a lien upon the waterworks or other public utilities of such county, city, or town, and are payable only from the income or funds derived or to be derived therefrom, whether issued originally within the limitations of the Constitution of this state, or of any law thereof, or whether such outstanding indebtedness has been or may hereafter be validated or legalized in the manner prescribed by law, may, by its corporate authorities, provide by ordinance or resolution for the issuance of funding bonds with which to take up and cancel such outstanding indebtedness in the manner hereinafter described, said bonds to constitute

general obligations of such county, city, or town: PROVIDED, That special fund obligations payable only from the income funds of the public utility, shall not be refunded by the issuance of general municipal bonds where voter approval is required before general municipal bonds may be issued for such public utility purposes, unless such general municipal bonds shall have been previously authorized. Nothing in this chapter shall be so construed as to prevent any such county, city, or town from funding its indebtedness as now provided by law. [1995 2nd sp.s. c 17 § 6; 1984 c 186 § 36; 1917 c 145 § 1; 1895 c 170 § 1; RRS § 5617.]

Severability—1995 2nd sp.s. c 17: See RCW 43.99K.900.

Purpose—1984 c 186: See note following RCW 39.46.110.

39.52.015 Validation of prior bond issues. That all bonds heretofore voted or issued, and which may have been or may hereafter be issued by any county, city or town, for any of the purposes authorized by the preceding section as hereby amended, including general fund bonds issued for the purpose of refunding special utility fund bonds or warrants, shall be validated and have the same force and effect as though said section had been in full force and effect at the time said bonds were either authorized or issued. [1917 c 145 § 2; RRS § 5618.]

39.52.020 Limitations on issuance of bonds. No bonds issued under this chapter shall be issued for a longer period than twenty years. Nothing in this chapter shall be deemed to authorize the issuing of any funding bonds which exceeds any constitutional or statutory limitations of indebtedness. Such bonds shall be issued and sold in accordance with chapters 39.46 and 39.53 RCW, exclusive of RCW 39.53.120. [1995 2nd sp.s. c 17 § 7; 1984 c 186 § 37; 1983 c 167 § 113; 1970 ex.s. c 56 § 60; 1969 ex.s. c 232 § 31; 1895 c 170 § 2; RRS § 5619.]

Severability—1995 2nd sp.s. c 17: See RCW 43.99K.900.

Purpose—1984 c 186: See note following RCW 39.46.110.

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

Purpose—1970 ex.s. c 56: "Because market conditions are such that the state, state agencies, state colleges and universities, and the political subdivisions, municipal corporations and quasi municipal corporations of this state are finding it increasingly difficult and, in some cases, impossible to market bond issues and all other obligations, at the maximum permissible rate of interest payable on such bonds and obligations, it is the purpose of this 1970 amendatory act to remove all maximum rates of interest payable on such bonds and obligations." [1970 ex.s. c 56 § 1, 1969 ex.s. c 232 § 1.]

Validation—Saving—1969 ex.s. c 232: "All bonds, the issuance of which was authorized or ratified at a general or special election held within the issuing jurisdiction prior to the effective date of this amendatory act or the proposition for the issuance of which will be submitted at such an election pursuant to action of the legislative authority of the issuer taken prior to the effective date of this amendatory act, may be sold and issued with an interest rate or rates greater than any interest rate restriction contained in the ballot proposition or ordinance or resolution relating to such authorization or ratification if such bonds are sold and issued with an interest rate or rates not greater than those permitted by the applicable provision of this amendatory act." [1969 ex.s. c 232 § 94.]

Severability—1969 ex.s. c 232: "If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, paragraph, section, or part of this 1969 amendatory act, such judgment or decree shall not affect, impair or nullify the remainder of this act, but the effect thereof shall be confined to the clause, sentence, paragraph, section,

or part of this act so adjudged to be invalid or unconstitutional." [1969 ex.s. c 232 § 95.]

Bonds, form, terms of sale, payment, etc.: Chapter 39.44 RCW.

39.52.035 Tax levy—Purpose. The corporate authorities of any such county, city or town shall provide annually by ordinance or resolution for the levy and extension on the tax rolls of such county, city or town, and for the collection thereof, of a direct annual tax in addition to all other county, city or town taxes to be levied according to law, which shall be sufficient to meet the interest on all of said bonds promptly as the same matures, and also sufficient to fully pay each series of bonds as the same matures: PROVIDED, That such ordinance or resolution shall not be repealed until the levy therein provided for shall be fully paid, or the bonds both principal and interest shall be paid or canceled. [1895 c 170 § 4; RRS § 5621. Formerly RCW 39.52.030, part.]

39.52.050 "Corporate authorities" defined. The words "corporate authorities", used in this chapter, shall be held to mean the county legislative authority, or the council or commission of the city or town. [1984 c 186 § 38; 1895 c 170 § 6; RRS § 5623.]

Purpose—1984 c 186: See note following RCW 39.46.110.

Chapter 39.53 REFUNDING BOND ACT

Sections	
39.53.010	Definitions.
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39.53.030	Bonds may be exchanged for outstanding bonds or sold.
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39.53.910	Additional authority—Effect as to other laws.
39.53.920	Severability—1965 ex.s. c 138.
39.53.921	Severability—1977 ex.s. c 262.

39.53.010 Definitions. Except where the context otherwise requires, the terms defined in this section shall for all purposes have the meanings herein specified:

(1) "Governing body" means the council, commission, board of commissioners, board of directors, board of trustees, board of regents, or other legislative body of the public body designated herein in which body the legislative powers of the public body are vested: PROVIDED, That with respect to the state it shall mean the state finance committee.

(2) "Public body" means the state of Washington, its agencies, institutions, political subdivisions, and municipal and quasi municipal corporations now or hereafter existing under the laws of the state of Washington.

(3) "Bond" means any revenue bond or general obligation bond.

(4) "Revenue bond" means any bond, note, warrant, certificate of indebtedness, or other obligation for the payment of money issued by a public body or any predecessor of any public body and which is payable from designated revenues, special assessments, or a special fund but excluding any obligation constituting an indebtedness within the meaning of the constitutional debt limitation.

(5) "General obligation bond" means any bond, note, warrant, certificate of indebtedness, or other obligation of a public body which constitutes an indebtedness within the meaning of the constitutional debt limitation.

(6) "Advance refunding bonds" means bonds issued for the purpose of refunding bonds first subject to redemption or maturing one year or more from the date of the advance refunding bonds.

(7) "Issuer" means the public body issuing any bond or bonds.

(8) "Ordinance" means an ordinance of a city or town or resolution or other instrument by which the governing body of the public body exercising any power hereunder takes formal action and adopts legislative provisions and matters of some permanency.

(9) "Government obligations" means any of the following: (a) Direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by the United States of America and bank certificates of deposit secured by such obligations; (b) bonds, debentures, notes, participation certificates, or other obligations issued by the banks for cooperatives, the federal intermediate credit bank, the federal home loan bank system, the export-import bank of the United States, federal land banks, or the federal national mortgage association; (c) public housing bonds and project notes fully secured by contracts with the United States; and (d) obligations of financial institutions insured by the federal deposit insurance corporation or the federal savings and loan insurance corporation, to the extent insured or to the extent guaranteed as permitted under any other provision of state law.

(10) Words used herein importing singular or plural number may be construed so that one number includes both. [1984 c 186 § 68; 1973 1st ex.s. c 25 § 1; 1965 ex.s. c 138 § 2.]

Purpose—1984 c 186: See note following RCW 39.46.110.

39.53.020 Issuance authorized—Purposes—Saving to public body, criteria. The governing body of any public body may by ordinance provide for the issuance of bonds without an election to refund outstanding bonds heretofore or hereafter issued by such public body or its predecessor, only (1) in order to pay or discharge all or any part of such outstanding series or issue of bonds, including any interest thereon, in arrears or about to become due and for which sufficient funds are not available, (2) when necessary or in the best interest of the public body in order to modify debt service or reserve requirements, sources of payment, covenants, or other terms of the bonds to be refunded, or (3) in order to effect a saving to the public body. To determine whether or not a saving will be effected, consideration shall be given to the interest to fixed maturities of the refunding bonds and the bonds to be refunded, the costs of issuance of the refunding bonds, including any sale discount, the redemption premiums, if any, to be paid, and the known earned income from the investment of the refunding bond proceeds pending redemption of the bonds to be refunded. [1977 ex.s. c 262 § 1; 1974 ex.s. c 111 § 2; 1965 ex.s. c 138 § 3.]

Severability—1974 ex.s. c 111: See note following RCW 39.42.080.

39.53.030 Bonds may be exchanged for outstanding bonds or sold. Any bonds issued for refunding purposes may be delivered in exchange for the outstanding bonds being refunded or may be sold in such manner and at such price as the governing body may in its discretion determine advisable. [1973 1st ex.s. c 25 § 2; 1965 ex.s. c 138 § 4.]

39.53.040 What bonds may be refunded—Advance refunding, redemption of refunding bonds. Bonds may be refunded hereunder or under any other law of this state which authorizes the issuance of refunding bonds. In any advance refunding plan under this chapter the governing body shall provide irrevocably in the ordinance authorizing the issuance of the advance refunding bonds for the redemption or payment of the bonds to be refunded.

The ordinance authorizing the issuance of advance refunding bonds pursuant to this chapter may contain such provisions for the redemption of the refunding bonds prior to maturity and for payment of a premium upon such redemption as the governing body shall determine in its discretion. [1977 ex.s. c 262 § 2; 1973 1st ex.s. c 25 § 3; 1965 ex.s. c 138 § 5.]

39.53.045 Bonds payable from special assessments—Not subject to refunding. Bonds payable solely from special assessments or special assessments and a guaranty fund issued on or prior to June 7, 1984, shall not be subject to refunding under this chapter. [1984 c 186 § 69.]

Purpose—1984 c 186: See note following RCW 39.46.110.

39.53.050 Refunding bonds, principal amount—Disposition of reserves held to secure the bonds to be refunded. Refunding bonds may be issued in a principal amount in excess of the principal amount of the bonds to be refunded in an amount deemed reasonably required to effect such refunding. The principal amount of the refunding bonds may be less than or the same as the principal amount

of the bonds being refunded so long as provision is duly and sufficiently made for the retirement or redemption of such bonds to be refunded. Any reserves held to secure the bonds to be refunded may be used to accomplish the refunding in accordance with the refunding plan. Reserves not so used shall be pledged as security for the refunding bonds to the extent the reserves, if any, are required. The balance of any such reserves may be used for any lawful purpose. [1983 1st ex.s. c 69 § 1; 1977 ex.s. c 262 § 3; 1974 ex.s. c 111 § 3; 1965 ex.s. c 138 § 6.]

Severability—1974 ex.s. c 111: See note following RCW 39.42.080.

39.53.060 Application of proceeds of sale of advance refunding bonds and other funds—Investment in government obligations—Incidental expenses. Prior to the application of the proceeds derived from the sale of advance refunding bonds to the purposes for which such bonds shall have been issued, such proceeds, together with any other funds the governing body may set aside for the payment of the bonds to be refunded, may be invested and reinvested only in government obligations maturing or having guaranteed redemption prices at the option of the holder at such time or times as may be required to provide funds sufficient to pay principal, interest and redemption premiums, if any, in accordance with the advance refunding plan. To the extent incidental expenses have been capitalized, such bond proceeds may be used to defray such expenses. [1973 1st ex.s. c 25 § 4; 1965 ex.s. c 138 § 7.]

39.53.070 Application of proceeds of sale of advance refunding bonds and other funds—Contracts for safekeeping and application—Use to pay and secure advance refunding bonds—Pledge of revenues—Duty to provide sufficient money to accomplish refunding. The governing body may contract with respect to the safekeeping and application of the advance refunding bond proceeds and other funds included therewith and the income therefrom including the right to appoint a trustee which may be any trust company or state or national bank having powers of a trust company within or without the state of Washington. The governing body may provide in the refunding plan that until such moneys are required to redeem or retire the general obligation or revenue bonds to be refunded, the refunding bond proceeds and other funds, and the income therefrom shall be used to pay and secure the payment of the principal of and interest on the advance refunding bonds. The governing body may additionally pledge for the payment of such revenue refunding bonds any revenues which might legally be pledged for the payment of revenue bonds of the issuer of the type being refunded. Provisions must be made by the governing body for moneys sufficient in amount to accomplish the refunding as scheduled. [1973 1st ex.s. c 25 § 5; 1965 ex.s. c 138 § 8.]

39.53.080 Pledge of revenues to payment of advance refunding bonds when amounts sufficient to pay revenue bonds to be refunded are irrevocably set aside. When a public body has irrevocably set aside for and pledged to the payment of revenue bonds to be refunded advance refunding bond proceeds and other moneys in amounts which together with known earned income from the investment thereof are

sufficient in amount to pay the principal of and interest and any redemption premiums on such revenue bonds as the same become due and to accomplish the refunding as scheduled, the governing body may provide that the advance refunding revenue bonds shall be payable from any source which, either at the time of the issuance of the advance refunding bonds or the revenue bonds to be refunded, might legally be or have been pledged for the payment of the revenue bonds refunded to the extent it may legally do so, notwithstanding the pledge of such revenues for the payment of the outstanding revenue bonds being refunded. [1965 ex.s. c 138 § 9.]

39.53.090 Annual maturities of general obligation bonds issued to refund voted general obligation bonds. The various annual maturities of general obligation bonds issued to refund voted general obligation bonds shall not extend over a longer period of time than the bonds to be refunded. Such maturities may be changed in amount or shortened in term if the estimated respective annual principal and interest requirements of the refunding bonds, computed upon the anticipated effective interest rate the governing body shall in its discretion determine will be borne by such bonds, will not exceed the respective annual principal and interest requirements of the bonds being refunded: PROVIDED, That the issuer may increase the principal amount of annual maturities for the purpose of rounding out maturities to the nearest five thousand dollars. [1965 ex.s. c 138 § 10.]

39.53.100 Use of deposit moneys and investments in computing indebtedness. In computing indebtedness for the purpose of any constitutional or statutory debt limitation there shall be deducted from the amount of outstanding indebtedness the amounts of money and investments credited to or on deposit for general obligation bond retirement. [1973 1st ex.s. c 25 § 6; 1965 ex.s. c 138 § 11.]

39.53.110 Refunding and other bonds may be issued in combination. Bonds for refunding and bonds for any other purpose or purposes authorized may be issued separately or issued in combination in one or more series or issues by the same issuer. [1965 ex.s. c 138 § 12.]

39.53.120 Refunding bonds to be issued in accordance with laws applicable to type of bonds being refunded. Except as specifically provided in this chapter, refunding bonds issued hereunder shall be issued in accordance with the provisions of law applicable to the type of bonds of the issuer being refunded, either at the time of the issuance of the refunding bonds or the bonds to be refunded. [1965 ex.s. c 138 § 13.]

39.53.130 Amendment of power contracts pursuant to refunding of certain bond issues. If bonds are to be issued under this chapter for refunding of any bonds issued specifically to finance any electric power and energy project or facility and there are contracts in existence for the sale of electric power and energy generated by such project or facility wherein the cost of power to a purchaser specifically includes a portion of the debt service on the bonds to be

refunded, such power contracts shall be amended to reflect in each year during the remaining terms of such contracts that portion of the savings to be realized from such refunding during each such year equal to the percentage of power output from such project or facility purchased by the purchaser under such power contracts. Nothing in this chapter shall be construed to alter, modify or change any such power contracts without the mutual agreement of the parties thereto. [1965 ex.s. c 138 § 15.]

39.53.140 Issuance of general obligation bonds to refund special revenue or limited obligations. The state may issue general obligation bonds to refund any special revenue or limited obligations of the state or its agencies at or prior to the date they mature or are subject to redemption. The payment of such refunding general obligation bonds may be additionally secured by a pledge of the revenues pledged to the payment of the special revenue or limited obligations to be refunded.

If the payment of such special revenue obligations to be refunded as general obligation bonds of the state is secured by (1) fees collected by the state as license fees for motor vehicles, or (2) excise taxes collected by the state on the sale, distribution or use of motor vehicle fuel, or (3) interest on the permanent school fund, then the state shall also pledge to the payment of such refunding bonds the same fees, excise taxes, or interest that were pledged to the payment of the special revenue obligations being refunded. [1974 ex.s. c 111 § 4; 1973 1st ex.s. c 25 § 7.]

Severability—1974 ex.s. c 111: See note following RCW 39.42.080.

39.53.900 Short title. This chapter shall be known as the "Refunding Bond Act." [1965 ex.s. c 138 § 1.]

39.53.910 Additional authority—Effect as to other laws. The authority of a public body to issue refunding bonds pursuant to this chapter is additional to any existing authority to issue such bonds and nothing in this chapter shall prevent the issuance of such bonds pursuant to any other law, and this chapter shall not be construed to amend any existing law authorizing the issuance of refunding bonds by a public body. [1965 ex.s. c 138 § 14.]

39.53.920 Severability—1965 ex.s. c 138. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 ex.s. c 138 § 16.]

39.53.921 Severability—1977 ex.s. c 262. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 262 § 4.]

Chapter 39.56 WARRANTS

Sections

- 39.56.020 Rate on municipal warrants.
- 39.56.030 Issuing officer to fix rate.
- 39.56.040 Cancellation of municipal warrants.
- 39.56.050 Municipal corporations authorized to establish line of credit for payment of warrants—Interest.

Interest on judgments: RCW 4.56.110.

Usurious rates of interest: Chapter 19.52 RCW.

39.56.020 Rate on municipal warrants. All county, city, town and school warrants, and all warrants or other evidences of indebtedness, drawn upon or payable from any public funds, shall bear interest at a rate or rates as authorized by the issuing authority. [1970 ex.s. c 56 § 106; 1899 c 80 § 4; RRS § 7302. Prior: 1895 c 136 § 3.]

Purpose—1970 ex.s. c 56: See note following RCW 39.52.020.

Cities and towns, local improvement district warrants, interest rate: RCW 35.45.130.

39.56.030 Issuing officer to fix rate. It shall be the duty of every public officer issuing public warrants to make monthly investigation to ascertain the market value of the current warrants issued by him, and he shall, so far as practicable, fix the rate of interest on the warrants issued by him during the ensuing month so that the par value shall be the market value thereof. [1981 c 156 § 16; 1981 c 10 § 4; 1899 c 80 § 5; RRS § 7303.]

39.56.040 Cancellation of municipal warrants. Registered or interest bearing warrants of any municipal corporation not presented within one year of the date of their call, or other warrants not presented within one year of their issue, shall be canceled by passage of a resolution of the governing body of the municipal corporation, and upon notice of the passage of such resolution the auditor of the municipal corporation and the treasurer of the municipal corporation shall transfer all records of such warrants so as to leave the funds as if such warrants had never been drawn. [1975 1st ex.s. c 131 § 1.]

39.56.050 Municipal corporations authorized to establish line of credit for payment of warrants—Interest. See RCW 43.09.2853.

Chapter 39.58

PUBLIC FUNDS—DEPOSITS AND INVESTMENTS—PUBLIC DEPOSITARIES

Sections

- 39.58.010 Definitions.
- 39.58.020 Public funds—Protection against loss.
- 39.58.030 Public deposit protection commission—State finance committee constitutes—Proceedings.
- 39.58.040 General powers of commission.
- 39.58.045 Financial institutions claiming exemption from sales, use or ad valorem taxes—Notification of commission.
- 39.58.050 Collateral for deposits—Segregation—Eligible securities.
- 39.58.060 Loss in a bank public depository—Procedure for payment.
- 39.58.065 Loss in a thrift public depository—Procedure for payment.

- 39.58.070 Subrogation of commission to depositor's rights—Sums received from distribution of assets, payment.
- 39.58.080 Deposit of public funds in public depository required—Deposits in institutions located outside the state.
- 39.58.085 Demand accounts in out-of-state and alien banks—Limitations.
- 39.58.090 Authority to secure deposits in accordance with chapter—Bonds and securities for deposits dispensed with.
- 39.58.100 Reports of public depositories—Certification by director of financial institutions.
- 39.58.103 Notice to commission of reduced net worth.
- 39.58.105 Investigation of financial institution applying to become public depository—Report.
- 39.58.108 Requirements to become depository.
- 39.58.120 Interest rates.
- 39.58.130 Investment deposits—Net worth of public depository.
- 39.58.135 Limitations on deposits.
- 39.58.140 Liability of treasurers.
- 39.58.750 Receipt, disbursement, or transfer of public funds by wire or other electronic communication means authorized.

Department of financial institutions: Chapter 43.320 RCW.

State investment board: Chapter 43.33A RCW.

Surplus funds in state treasury, investment program: Chapter 43.86A RCW.

39.58.010 Definitions. In this chapter, unless the context otherwise requires:

(1) "Public funds" means moneys under the control of a treasurer or custodian belonging to, or held for the benefit of, the state or any of its political subdivisions, public corporations, municipal corporations, agencies, courts, boards, commissions, or committees, including moneys held as trustee, agent, or bailee;

(2) "Public depository" means a financial institution which does not claim exemption from the payment of any sales or compensating use or ad valorem taxes under the laws of this state, which has been approved by the commission to hold public deposits, and which has segregated for the benefit of the commission eligible collateral having a value of not less than its maximum liability. Addition of the word "bank" denotes a bank, trust company, or national banking association and the word "thrift" denotes a savings association or savings bank;

(3) "Loss" means the issuance of an order by a regulatory or supervisory authority or a court of competent jurisdiction (a) restraining a public depository from making payments of deposit liabilities or (b) appointing a receiver for a public depository;

(4) "Commission" means the Washington public deposit protection commission created under RCW 39.58.030;

(5) "Eligible collateral" means securities which are enumerated in RCW 39.58.050 (5) and (6) as eligible collateral for public deposits;

(6) The "maximum liability" of a public depository on any given date means a sum equal to ten percent of (a) all public deposits held by the *qualified public depository on the then most recent commission report date, or (b) the average of the balances of said public deposits on the last four immediately preceding reports required pursuant to RCW 39.58.100, whichever amount is greater, less any assessments paid to the commission pursuant to this chapter since the then most recent commission report date;

(7) "Public funds available for investment" means such public funds as are in excess of the anticipated cash needs throughout the duration of the contemplated investment period;

(8) "Investment deposits" means time deposits, money market deposit accounts, and savings deposits of public funds available for investment;

(9) "Treasurer" shall mean the state treasurer, a county treasurer, a city treasurer, a treasurer of any other municipal corporation, and any other custodian of public funds;

(10) "Financial institution" means any national or state chartered commercial bank or trust company, savings bank, or savings association, or branch or branches thereof, located in this state and lawfully engaged in business;

(11) "Commission report" means a formal accounting rendered by all public depositories to the commission in response to a demand for specific information made by the commission detailing pertinent affairs of each public depository as of the close of business on a specified date, which is the "commission report date." "Commission report due date" is the last day for the timely filing of a commission report;

(12) "Director of financial institutions" means the Washington state director of the department of financial institutions;

(13) "Net worth" of a public depository means (a) the equity capital as reported to its primary regulatory authority on the quarterly report of condition or statement of condition and may include capital notes and debentures which are subordinate to the interests of depositors, or (b) equity capital adjusted by rule of the commission;

(14) "Depository pledge agreement" means a tripartite agreement executed by the commission with a financial institution and its designated trustee. Such agreement shall be approved by the directors or the loan committee of the financial institution and shall continuously be a record of the financial institution. New securities may be pledged under this agreement in substitution of or in addition to securities originally pledged without executing a new agreement;

(15) "Trustee" means a third-party safekeeping agent which has completed a depository pledge agreement with a public depository and the commission. Such third-party safekeeping agent may be the federal reserve bank of San Francisco, the federal home loan bank of Seattle, the trust department of the public depository, or such other third-party safekeeping agent approved by the commission. [1996 c 256 § 1; 1994 c 92 § 494; 1984 c 177 § 10; 1983 c 66 § 3; 1977 ex.s. c 95 § 1; 1975 1st ex.s. c 77 § 1; 1973 c 126 § 9; 1969 ex.s. c 193 § 1.]

***Reviser's note:** The term "qualified public depository" was redefined as "public depository" by 1996 c 256 § 1.

Severability—1983 c 66: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 66 § 24.]

Severability—1969 ex.s. c 193: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 193 § 32.]

Construction—1969 ex.s. c 193: "Nothing in this act shall be construed so as to impair the obligation of any contract or agreement entered into prior to its effective date." [1969 ex.s. c 193 § 33.]

City depositories: Chapter 35.38 RCW.

County depositories: Chapter 36.48 RCW.

State depositories: Chapter 43.85 RCW.

39.58.020 Public funds—Protection against loss. All public funds deposited in public depositories, including

investment deposits and accrued interest thereon, shall be protected against loss, as provided in this chapter. [1996 c 256 § 2; 1984 c 177 § 11; 1983 c 66 § 5; 1973 c 126 § 10; 1969 ex.s. c 193 § 2.]

Severability—1983 c 66: See note following RCW 39.58.010.

39.58.030 Public deposit protection commission—State finance committee constitutes—Proceedings. The Washington public deposit protection commission shall be the state finance committee. The record of the proceedings of the public deposit protection commission shall be kept in the office of the commission and a duly certified copy thereof, or any part thereof, shall be admissible in evidence in any action or proceedings in any court of this state. [1983 c 66 § 6; 1969 ex.s. c 193 § 3.]

Severability—1983 c 66: See note following RCW 39.58.010.

39.58.040 General powers of commission. The commission shall have power (1) to make and enforce regulations necessary and proper to the full and complete performance of its functions under this chapter; (2) to require any public depository to furnish such information dealing with public deposits and the exact status of its net worth as the commission shall request. Any public depository which refuses or neglects to give promptly and accurately or to allow verification of any information so requested shall no longer be a public depository and shall be excluded from the right to receive or hold public deposits until such time as the commission shall acknowledge that such depository has furnished the information requested; (3) to take such action as it deems best for the protection, collection, compromise or settlement of any claim arising in case of loss; (4) to prescribe regulations, subject to this chapter, fixing the requirements for qualification of financial institutions as public depositories, and fixing other terms and conditions consistent with this chapter, under which public deposits may be received and held; (5) to make and enforce regulations setting forth criteria establishing minimum standards for the financial condition of bank and thrift depositories and, if the minimum standards are not met, providing for additional collateral requirements or restrictions regarding a public depository's right to receive or hold public deposits; (6) to fix the official date on which any loss shall be deemed to have occurred taking into consideration the orders, rules and regulations of supervisory authority as they affect the failure or inability of a public depository to repay public deposits in full; and (7) in case loss occurs in more than one public depository, to determine the allocation and time of payment of any sums due to public depositors under this chapter. [1996 c 256 § 3; 1986 c 25 § 2; 1984 c 177 § 12; 1983 c 66 § 7; 1975 1st ex.s. c 77 § 2; 1969 ex.s. c 193 § 4.]

Severability—1983 c 66: See note following RCW 39.58.010.

39.58.045 Financial institutions claiming exemption from sales, use or ad valorem taxes—Notification of commission. The director of the department of revenue shall notify the public deposit protection commission quarterly on the first day of October, January, April, and July of the names and addresses of any financial institutions which have claimed exemption from the payment of any

sales or compensating use or ad valorem taxes under the laws of this state. [1983 c 66 § 4.]

Severability—1983 c 66: See note following RCW 39.58.010.

39.58.050 Collateral for deposits—Segregation—Eligible securities. (1) Every public depository shall complete a depository pledge agreement with the commission and a trustee, and shall at all times maintain, segregated from its other assets, eligible collateral in the form of securities enumerated in this section having a value at least equal to its maximum liability and as otherwise prescribed in this chapter. Such collateral shall be segregated by deposit with the depository's trustee and shall be clearly designated as security for the benefit of public depositors under this chapter.

(2) Securities eligible as collateral shall be valued at market value, and the total market value of securities pledged in accordance with this chapter shall not be reduced by withdrawal or substitution of securities except by prior authorization, in writing, by the commission.

(3) The public depository shall have the right to make substitutions of an equal or greater amount of such collateral at any time.

(4) The income from the securities which have been segregated as collateral shall belong to the public depository without restriction.

(5) Each of the following enumerated classes of securities, providing there has been no default in the payment of principal or interest thereon, shall be eligible to qualify as collateral:

(a) Certificates, notes or bonds of the United States, or other obligations of the United States or its agencies, or of any corporation wholly owned by the government of the United States;

(b) State, county, municipal, or school district bonds or warrants of taxing districts of the state of Washington or any other state of the United States, provided that such bonds and warrants shall be only those found to be within the limit of indebtedness prescribed by law for the taxing district issuing them and to be general obligations;

(c) The obligations of any United States government-sponsored corporation whose obligations are or may become eligible as collateral for advances to member banks as determined by the board of governors of the federal reserve system;

(d) Bonds, notes, letters of credit, or other securities or evidence of indebtedness constituting the direct and general obligation of a federal home loan bank or federal reserve bank;

(e) Revenue bonds of this state or any authority, board, commission, committee, or similar agency thereof, and any municipality or taxing district of this state;

(f) Direct and general obligation bonds and warrants of any city, town, county, school district, port district, or other political subdivision of any state, having the power to levy general taxes, which are payable from general ad valorem taxes;

(g) Bonds issued by public utility districts as authorized under the provisions of Title 54 RCW, as now or hereafter amended;

(h) Bonds of any city of the state of Washington for the payment of which the entire revenues of the city's water system, power and light system, or both, less maintenance and operating costs, are irrevocably pledged, even though such bonds are not general obligations of such city;

(6) In addition to the securities enumerated in this section, every public depository may also segregate such bonds, securities, and other obligations as are designated to be authorized security for public deposits under the laws of this state.

(7) The commission may at any time or times declare any particular security as ineligible to qualify as collateral when in the commission's judgment it is deemed desirable to do so. [1996 c 256 § 4; 1989 c 97 § 4; 1984 c 177 § 13; 1983 c 66 § 8; 1975 1st ex.s. c 77 § 3; 1973 c 126 § 11; 1969 ex.s. c 193 § 5.]

Severability—1983 c 66: See note following RCW 39.58.010.

39.58.060 Loss in a bank public depository— Procedure for payment. When the commission determines that a loss has occurred in a bank public depository, it shall as soon as possible make payment to the proper public officers of all funds subject to such loss, pursuant to the following procedures:

(1) For the purposes of determining the sums to be paid, the director of financial institutions or the receiver shall, within twenty days after issuance of a restraining order or taking possession of any bank public depository, ascertain the amount of public funds on deposit therein as disclosed by its records and the amount thereof covered by deposit insurance and certify the amounts thereof to the commission and each such public depositor;

(2) Within ten days after receipt of such certification, each such public depositor shall furnish to the commission verified statements of its deposits in such bank public depository as disclosed by its records;

(3) Upon receipt of such certificate and statements, the commission shall ascertain and fix the amount of such public deposits, net after deduction of any amount received from deposit insurance, and, after determining and declaring the apparent net loss, assess the same against all then bank public depositories, as follows: First, against the public depository in which the loss occurred, to the extent of the full value of collateral segregated pursuant to this chapter; second, against all other bank public depositories pro rata in proportion to the maximum liability of each such depository as it existed on the date of loss;

(4) Assessments made by the commission shall be payable on the second business day following demand, and in case of the failure of any public depository so to pay, the commission shall forthwith take possession of the securities segregated as collateral by such depository pursuant to this chapter and liquidate the same for the purpose of paying such assessment;

(5) Upon receipt of such assessment payments, the commission shall reimburse the public depositors of the public depository in which the loss occurred to the extent of the depository's net deposit liability to them. [1996 c 256 § 5; 1983 c 66 § 9; 1973 c 126 § 12; 1969 ex.s. c 193 § 6.]

Severability—1983 c 66: See note following RCW 39.58.010.

39.58.065 Loss in a thrift public depository— Procedure for payment. When the commission determines that a loss has occurred in a thrift public depository, it shall as soon as possible make payment to the proper public officers of all funds subject to such loss, pursuant to the following procedures:

(1) For the purposes of determining the sums to be paid, the director of financial institutions or the receiver shall, within twenty days after issuance of a restraining order or taking possession of any thrift public depository, ascertain the amount of public funds on deposit therein as disclosed by its records and the amount thereof covered by deposit insurance and certify the amounts thereof to the commission and each such public depositor;

(2) Within ten days after receipt of such certification, each such public depositor shall furnish to the commission verified statements of its deposits in such thrift depository as disclosed by its records;

(3) Upon receipt of such certificate and statements, the commission shall ascertain and fix the amount of such public deposits, net after deduction of any amount received from deposit insurance, and, after determining and declaring the apparent net loss, assess the same against all then thrift public depositories, as follows: First, against the public depository in which the loss occurred, to the extent of the full value of collateral segregated pursuant to this chapter; second, against all other thrift public depositories pro rata in proportion to the maximum liability of each such depository as it existed on the date of loss;

(4) Assessments made by the commission shall be payable on the second business day following demand, and in case of the failure of any public depository so to pay, the commission shall forthwith take possession of the securities segregated as collateral by such depository pursuant to this chapter and liquidate the same for the purpose of paying such assessment;

(5) Upon receipt of such assessment payments, the commission shall reimburse the public depositors of the public depository in which the loss occurred to the extent of the depository's net deposit liability to them. [1996 c 256 § 6; 1983 c 66 § 10.]

Severability—1983 c 66: See note following RCW 39.58.010.

39.58.070 Subrogation of commission to depositor's rights—Sums received from distribution of assets, payment. Upon payment to any public depositor, the commission shall be subrogated to all of such depositor's right, title and interest against the public depository in which the loss occurred and shall share in any distribution of its assets ratably with other depositors. Any sums received from any distribution shall be paid to the public depositors to the extent of any unpaid net deposit liability and the balance remaining shall be paid to the public depositories against which assessments were made, pro rata in proportion to the assessments actually paid by each such depository: **PROVIDED,** That the public depository in which the loss occurred shall not share in any such distribution of the balance remaining. If the commission incurs expense in enforcing any such claim, the amount thereof shall be paid as a liquidation expense of the public depository in which

the loss occurred. [1996 c 256 § 7; 1973 c 126 § 13; 1969 ex.s. c 193 § 7.]

39.58.080 Deposit of public funds in public depository required—Deposits in institutions located outside the state. Except for funds deposited pursuant to a fiscal agency contract with the state fiscal agent or its correspondent bank, funds deposited pursuant to a custodial bank contract with the state's custodial bank, and funds deposited pursuant to a local government multistate joint self-insurance program as provided in RCW 48.62.081, no public funds shall be deposited in demand or investment deposits except in a public depository located in this state or as otherwise expressly permitted by statute: PROVIDED, That the commission, or the chair upon delegation by the commission, upon good cause shown, may authorize, for such time and upon such terms and conditions as the commission or chair deem appropriate, a treasurer to maintain a demand deposit account with a banking institution located outside the state of Washington solely for the purpose of transmitting money received to public depositories in the state of Washington for deposit. [1996 c 256 § 8; 1991 sp.s. c 30 § 27; 1986 c 160 § 1; 1984 c 177 § 14; 1983 c 66 § 11; 1969 ex.s. c 193 § 8.]

Effective date, implementation, application—Severability—1991 sp.s. c 30: See RCW 48.62.900 and 48.62.901.

Severability—1983 c 66: See note following RCW 39.58.010.

39.58.085 Demand accounts in out-of-state and alien banks—Limitations. The commission, or the chair upon delegation by the commission, may authorize state and local governmental entities to establish demand accounts in out-of-state and alien banks in an aggregate amount not to exceed one million dollars. No single governmental entity shall be authorized to hold more than fifty thousand dollars in one demand account.

The governmental entities establishing such demand accounts shall be solely responsible for their proper and prudent management and shall bear total responsibility for any losses incurred by such accounts. Accounts established under the provisions of this section shall not be considered insured by the commission.

The state auditor shall annually monitor compliance with this section and the financial status of such demand accounts. [1996 c 256 § 9; 1987 c 505 § 21; 1986 c 160 § 2.]

39.58.090 Authority to secure deposits in accordance with chapter—Bonds and securities for deposits dispensed with. All institutions located in this state which are permitted by the statutes of this state to hold and receive public funds shall have power to secure such deposits in accordance with this chapter. Except as provided in this chapter, no bond or other security shall be required of or given by any public depository for any public funds on deposit. [1996 c 256 § 10; 1984 c 177 § 15; 1969 ex.s. c 193 § 9.]

39.58.100 Reports of public depositories—Certification by director of financial institutions. On or before each commission report due date, each public depository shall render to the commission a written report, certified under oath, indicating the total amount of public

funds on deposit held by it, the net worth of the depository, and the amount and nature of eligible collateral then segregated for the benefit of the commission.

The commission may instruct the director of financial institutions to examine and thereafter certify as to the accuracy of any statement to the commission by any public depository. [1996 c 256 § 11; 1984 c 177 § 16; 1983 c 66 § 12; 1969 ex.s. c 193 § 10.]

Severability—1983 c 66: See note following RCW 39.58.010.

39.58.103 Notice to commission of reduced net worth. Each public depository shall notify the commission in writing within five working days of the happening of an event which causes its net worth to be reduced by an amount greater than ten percent of the amount shown as its net worth on the most recent report submitted pursuant to RCW 39.58.100. [1983 c 66 § 13; 1975 1st ex.s. c 77 § 4.]

Severability—1983 c 66: See note following RCW 39.58.010.

39.58.105 Investigation of financial institution applying to become public depository—Report. The commission may require the state auditor or the director of financial institutions to thoroughly investigate and report to it concerning the condition of any financial institution which makes application to become a public depository, and may also as often as it deems necessary require such investigation and report concerning the condition of any financial institution which has been designated as a public depository. The expense of all such investigations or reports shall be borne by the financial institution examined. In lieu of any such investigation or report, the commission may rely upon information made available to it or the director of financial institutions by the office of the comptroller of the currency, the office of thrift supervision, the federal deposit insurance corporation, the federal reserve board, or any state bank or thrift regulatory agency.

The director of financial institutions shall in addition advise the commission of any action he or she has directed any public depository to take which will result in a reduction of greater than ten percent of the net worth of such depository as shown on the most recent report it submitted pursuant to RCW 39.58.100. [1996 c 256 § 12; 1983 c 66 § 14; 1975 1st ex.s. c 77 § 5.]

Severability—1983 c 66: See note following RCW 39.58.010.

39.58.108 Requirements to become depository. Any financial institution may become a depository upon approval by the commission and segregation of collateral in the manner as set forth in this chapter, and upon compliance with all rules as promulgated by the commission. For the first twelve-month period following qualification as a public depository, the depository shall at all times pledge and segregate eligible securities in an amount equal to not less than ten percent of all public funds on deposit in the depository. [1996 c 256 § 13; 1984 c 177 § 17; 1983 c 66 § 15; 1975 1st ex.s. c 77 § 6.]

Severability—1983 c 66: See note following RCW 39.58.010.

39.58.120 Interest rates. Time deposits issued pursuant to this chapter shall bear interest at a rate not in excess of the maximum rate permitted by any applicable

governmental regulation. [1974 ex.s. c 50 § 1; 1969 ex.s. c 193 § 12.]

39.58.130 Investment deposits—Net worth of public depositary. A treasurer is authorized to deposit in a public depositary any public funds available for investment and secured by collateral in accordance with the provisions of this chapter, and receive interest thereon. The authority provided by this section is additional to any authority now or hereafter provided by law for the investment or deposit of public funds by any such treasurer: PROVIDED, That in no case shall the aggregate of demand and investment deposits of public funds by any such treasurer in any one public depositary exceed at any time the net worth of that depositary. If a public depositary's net worth is reduced, a treasurer may allow public funds on deposit in excess of the reduced net worth to remain until maturity upon pledging by the depositary of eligible securities valued at market value in an amount at least equal to the amount of the excess deposits. The collateral shall be segregated as provided in RCW 39.58.050. If the additional securities required by this section are not pledged by the depositary, the depositary shall permit withdrawal prior to maturity by the treasurer of deposits, including accrued interest, in accordance with applicable statutes and governmental regulations. [1996 c 256 § 14; 1984 c 177 § 18; 1983 c 66 § 16; 1969 ex.s. c 193 § 13.]

Severability—1983 c 66: See note following RCW 39.58.010.

39.58.135 Limitations on deposits. Notwithstanding RCW 39.58.130, (1) aggregate deposits received by a public depositary from all public treasurers shall not exceed at any time one hundred fifty percent of the value of the depositary's net worth, nor (2) shall the aggregate deposits received by any public depositary exceed thirty percent of the total aggregate deposits of all public treasurers in all depositaries as determined by the public deposit protection commission. However, a public depositary may receive deposits in excess of the limits provided in this section if eligible securities, as prescribed in RCW 39.58.050, are pledged as collateral in an amount equal to one hundred percent of the value of deposits received in excess of the limitations prescribed in this section. [1996 c 256 § 15; 1986 c 25 § 1; 1984 c 177 § 19.]

39.58.140 Liability of treasurers. When deposits are made in accordance with this chapter, a treasurer shall not be liable for any loss thereof resulting from the failure or default of any public depositary without fault or neglect on his or her part or on the part of his or her assistants or clerks. [1996 c 256 § 16; 1969 ex.s. c 193 § 29.]

Liability of state treasurer: RCW 43.85.070.

39.58.750 Receipt, disbursement, or transfer of public funds by wire or other electronic communication means authorized. Notwithstanding any provision of law to the contrary, the state treasurer or any county, city, or other municipal treasurer or other custodian of public funds may receive, disburse, or transfer public funds under his or her jurisdiction by means of wire or other electronic communication in accordance with accounting standards established

by the state auditor under RCW 43.09.200 with regard to municipal treasurers or other custodians or by the office of financial management under RCW 43.88.160 in the case of the state treasurer and other state custodians to safeguard and insure accountability for the funds involved. [1996 c 256 § 17; 1981 c 101 § 1; 1979 c 151 § 48; 1977 ex.s. c 15 § 1. Formerly RCW 39.58.150.]

Effective date—1977 ex.s. c 15: "The effective date of this act shall be July 1, 1977." [1977 ex.s. c 15 § 2.]

Chapter 39.59

PUBLIC FUNDS—AUTHORIZED INVESTMENTS

Sections

39.59.010	Definitions.
39.59.020	Authorized investments—Bonds, warrants, and other investments.
39.59.030	Authorized investments—Mutual funds and money market funds.
39.59.900	Severability—1988 c 281.

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

(1) "Bond" means any agreement which may or may not be represented by a physical instrument, including but not limited to bonds, notes, warrants, or certificates of indebtedness, that evidences an obligation under which the issuer agrees to pay a specified amount of money, with or without interest, at a designated time or times either to registered owners or bearers.

(2) "Local government" means any county, city, town, special purpose district, political subdivision, municipal corporation, or quasi-municipal corporation, including any public corporation, authority, or other instrumentality created by such an entity.

(3) "Money market fund" means a mutual fund the portfolio which consists of only bonds having maturities or demand or tender provisions of not more than one year, managed by an investment advisor who has posted with the risk management office of the department of general administration a bond or other similar instrument in the amount of at least five percent of the amount invested in the fund pursuant to RCW 39.59.030 (2) or (3).

(4) "Mutual fund" means a diversified mutual fund registered with the federal securities and exchange commission and which is managed by an investment advisor with assets under management of at least five hundred million dollars and with at least five years' experience in investing in bonds authorized for investment by this chapter and who has posted with the risk management office of the department of general administration a bond or other similar instrument in the amount of at least five percent of the amount invested in the fund pursuant to RCW 39.59.030(1).

(5) "State" includes a state, agencies, authorities, and instrumentalities of a state, and public corporations created by a state or agencies, authorities, or instrumentalities of a state. [1988 c 281 § 1.]

Enforcement of bonds under RCW 39.59.010 (3) and (4): RCW 43.19.19367.

39.59.020 Authorized investments—Bonds, warrants, and other investments. In addition to any other investment authority granted by law and notwithstanding any provision of law to the contrary, the state of Washington and local governments in the state of Washington are authorized to invest their funds and money in their custody or possession, eligible for investment, in:

(1) Bonds of the state of Washington and any local government in the state of Washington, which bonds have at the time of investment one of the three highest credit ratings of a nationally recognized rating agency;

(2) General obligation bonds of a state other than the state of Washington and general obligation bonds of a local government of a state other than the state of Washington, which bonds have at the time of investment one of the three highest credit ratings of a nationally recognized rating agency;

(3) Subject to compliance with RCW 39.56.030, registered warrants of a local government in the same county as the government making the investment; or

(4) Any investments authorized by law for the treasurer of the state of Washington or any local government of the state of Washington other than a metropolitan municipal corporation but, except as provided in chapter 39.58 RCW, such investments shall not include certificates of deposit of banks or bank branches not located in the state of Washington. [1988 c 281 § 2.]

39.59.030 Authorized investments—Mutual funds and money market funds. In addition to any other investment authority granted by law, the state of Washington and local governments in the state of Washington are authorized to invest their funds and money in their custody or possession, eligible for investment and subject to the arbitrage provisions of section 148 of the federal internal revenue code or similar provision concerning the investment of state and local money and funds, in:

(1) Shares of mutual funds with portfolios consisting of only United States government bonds or United States government guaranteed bonds issued by federal agencies with average maturities less than four years, or bonds described in RCW 39.59.020 (1) or (2), except that bonds otherwise described in RCW 39.59.020 (1) or (2) shall have one of the four highest credit ratings of a nationally recognized rating agency;

(2) Shares of money market funds with portfolios consisting of only bonds of states and local governments or other issuers authorized by law for investment by local governments, which bonds have at the time of investment one of the two highest credit ratings of a nationally recognized rating agency; or

(3) Shares of money market funds with portfolios consisting of securities otherwise authorized by law for investment by local governments. [1988 c 281 § 3.]

39.59.900 Severability—1988 c 281. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 281 § 10.]

Chapter 39.60

INVESTMENT OF PUBLIC FUNDS IN BONDS, NOTES, ETC.—COLLATERAL

Sections

- 39.60.010 Investment of public and trust funds authorized.
 39.60.020 Exchange of securities for federal agency bonds.
 39.60.030 Obligations eligible as collateral security.
 39.60.040 Insured shares, deposits or accounts as collateral—Partially guaranteed obligations.
 39.60.050 Investment of public and trust funds in notes, bonds or debentures authorized—Requirements.

Bonds and warrants of state and municipal corporations as investment and collateral for public funds:

- ferry system bonds:* RCW 47.60.100.
highway construction bonds: RCW 47.10.050, 47.10.190, 47.10.320, 47.10.450, 47.10.710.
metropolitan municipal corporation bonds: RCW 35.58.510.
public utility district bonds and warrants: RCW 54.24.120.
state warrants: RCW 43.84.120.
toll bridge bonds: RCW 47.56.150, 47.58.070, 47.60.100.

Investments in bonds and warrants of state and municipal corporations authorized for:

- cities of first class, employees' retirement fund:* RCW 41.28.080.
city and town pension funds: RCW 35.39.060.
current state funds: RCW 43.84.080.
insurers: RCW 48.13.040.
metropolitan municipal corporation funds: RCW 35.58.520.
mutual savings banks: RCW 32.20.050, 32.20.070, 32.20.110, 32.20.120, 32.20.130.
permanent school fund: State Constitution Art. 16 § 5 (Amendment 44).
savings and loan associations: RCW 33.24.030, 33.24.050, 33.24.080.
state-wide city employees' retirement fund: RCW 41.44.100.
volunteer fire fighters' relief and pension principal and administrative funds: RCW 41.24.030.
workers' compensation funds: RCW 51.44.100.

Investments in federal bonds and securities authorized for:

- cities and towns:* RCW 35.39.030.
current state funds: RCW 43.84.080.
insurers: RCW 48.13.040.
mutual savings banks: RCW 32.20.030.
savings and loan associations: RCW 33.24.020.
school district capital projects fund: RCW 28A.320.330.
school districts, first class, insurance reserve funds: RCW 28A.330.110.
state-wide city employees' retirement fund: RCW 41.44.100.
workers' compensation funds: RCW 51.44.100.

39.60.010 Investment of public and trust funds authorized. Notwithstanding the provisions of any other statute of the state of Washington to the contrary, it shall be lawful for the state of Washington and any of its departments, institutions and agencies, municipalities, districts, and any other political subdivision of the state, or any political or public corporation of the state, or for any insurance company, savings and loan association, or for any bank, trust company or other financial institution, operating under the laws of the state of Washington, or for any executor, administrator, guardian or conservator, trustee or other fiduciary to invest its funds or the moneys in its custody or possession, eligible for investment, in notes or bonds secured by mortgage which the Federal Housing Administrator has insured or has made a commitment to insure in obligations of national mortgage associations, in debentures issued by the Federal Housing Administrator, and in the bonds of the Home Owner's Loan Corporation, a corporation organized under and by virtue of the authority granted in H.R. 5240, designated as the Home Owner's Loan Act of 1933, passed by the congress of the United States and approved June 13,

1933, and in bonds of any other corporation which is or hereafter may be created by the United States, as a governmental agency or instrumentality. [1939 c 32 § 1; 1935 c 11 § 1; 1933 ex.s. c 37 § 1; RRS § 5545-1.]

Severability—1933 ex.s. c 37: "If any section, subsection, sentence, clause or phrase of this act for any reason shall be held to be unconstitutional, such holding shall not affect the validity of the remaining portion of this act. The legislature hereby declares that it would have passed this act in each section, subsection, sentence, clause and phrase thereof, separately and irrespective of the fact that any one or more of the sections, subsections, sentences, clauses or phrases be unconstitutional." [1933 ex.s. c 37 § 4.] This applies to RCW 39.60.010 through 39.60.030.

39.60.020 Exchange of securities for federal agency bonds. Notwithstanding the provisions of any other statute of the state of Washington to the contrary, it shall be also lawful for the state of Washington and any of its departments, institutions and agencies, municipalities, districts, and any other political subdivisions of the state, or any political or public corporation of the state, or for any insurance company, savings and loan association, building and loan association, or for any bank, trust company or other financial institution, operating under the laws of the state of Washington, or for any executor, administrator, guardian or conservator, trustee or other fiduciary, to exchange any mortgages, contracts, judgments or liens owned or held by it, for the bonds of the Home Owners' Loan Corporation, a corporation organized under and by virtue of the authority granted in H.R. 5240, designated as The Home Owners' Loan Act of 1933, passed by the congress of the United States and approved June 13, 1933, or for the bonds of any other corporation which is or hereafter may be created by the United States as a governmental agency or instrumentality; and to accept said bonds at their par value in any such exchange. [1933 ex.s. c 37 § 2; RRS § 5545-2.]

39.60.030 Obligations eligible as collateral security. Wherever, by statute of this state, collateral is required as security for the deposit of public or other funds; or deposits are required to be made with any public official or department; or an investment of capital or surplus, or a reserve or other fund is required to be maintained consisting of designated securities, the bonds and other securities herein made eligible for investment shall also be eligible for such purpose. [1939 c 32 § 2; 1935 c 11 § 2; 1933 ex.s. c 37 § 3; RRS § 5545-3.]

39.60.040 Insured shares, deposits or accounts as collateral—Partially guaranteed obligations. The obligations issued pursuant to said Federal Home Loan Bank Act and to said Title IV of the National Housing Act as such acts are now or hereafter amended, and the shares, deposits or accounts of any institution which has the insurance protection provided by Title IV of the National Housing Act, as now or hereafter amended, may be used at face value or withdrawal value, and bonds or other interest bearing obligations as to which the payment of some but less than the full principal and interest is guaranteed by the United States of America or any agency thereof may be used to the extent of the portion so guaranteed, wherever, by statute of this state or otherwise, collateral is required as security for the deposit of public or other funds, or deposits are required

to be made with any public official or department, or an investment of capital or surplus, or a reserve or other fund, is required to be maintained consisting of designated security, or wherever by statute of this state or otherwise, any surety, whether personal, corporate, or otherwise, or any collateral or security, is required or permitted for any purpose, including without limitation on the generality of the foregoing, any bond, recognizance, or undertaking. [1967 ex.s. c 48 § 1; 1941 c 249 § 2; Rem. Supp. 1941 § 3791-2.]

39.60.050 Investment of public and trust funds in notes, bonds or debentures authorized—Requirements. Notwithstanding the provisions of any other statute of the state of Washington to the contrary, it shall be lawful for the state of Washington and any of its departments, institutions and agencies, municipalities, districts, and any other political subdivision, or any political or public corporation of the state, or for any executor, administrator, guardian, or conservator, trustee or other fiduciary, to invest its funds or the moneys in its custody or possession, eligible for investment, in notes, bonds, or debentures of savings and loan associations, banks, mutual savings banks, savings and loan service corporations operating with approval of the federal home loan bank, and corporate mortgage companies: PROVIDED, That the notes, bonds or debentures are rated not less than "A" by a nationally recognized rating agency, or are insured or guaranteed by an agency of the federal government or by private insurer authorized to do business in the state: PROVIDED FURTHER, That the notes, bonds and debentures insured or guaranteed by a private insurer shall also be backed by a pool of mortgages equal to the amount of the notes, bonds or debentures. [1970 ex.s. c 93 § 1.]

Severability—1970 ex.s. c 93: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 93 § 4.] This applies to RCW 39.60.050 and 35.45.150.

Investment in local improvement district notes: RCW 35.45.150.

Chapter 39.62 UNIFORM FACSIMILE SIGNATURE OF PUBLIC OFFICIALS ACT

Sections

39.62.010	Definitions.
39.62.020	Facsimile signature—Authorized—Legal effect.
39.62.030	Facsimile seal—Authorized—Legal effect.
39.62.040	Unauthorized use—Penalty.
39.62.900	Construction—Uniformity.
39.62.910	Short title
39.62.920	Severability—1969 c 86.

Facsimile signatures on bonds and coupons: RCW 39.44.100 through 39.44.102.

39.62.010 Definitions. As used in this chapter:
(1) "Public security" means a bond, note, certificate of indebtedness, or other obligation for the payment of money, issued by this state or by any of its departments, agencies, counties, cities, towns, municipal corporations, junior taxing districts, school districts, or other instrumentalities or by any of its political subdivisions.

(2) "Instrument of payment" means a check, draft, warrant, or order for the payment, delivery, or transfer of funds.

(3) "Authorized officer" means any official of this state or any of its departments, agencies, counties, cities, towns, municipal corporations, junior taxing districts, school districts, or other instrumentalities or any of its political subdivisions whose signature to a public security or instrument of payment is required or permitted.

(4) "Facsimile signature" means a reproduction by engraving, imprinting, stamping, or other means of the manual signature of an authorized officer. [1969 c 86 § 1.]

39.62.020 Facsimile signature—Authorized—Legal effect. Any authorized officer, after filing with the secretary of state his manual signature certified by him under oath, may execute or cause to be executed with a facsimile signature in lieu of his manual signature:

(1) Any public security: PROVIDED, That at least one signature required or permitted to be placed thereon shall be manually subscribed, and

(2) Any instrument of payment.

Upon compliance with this chapter by the authorized officer, his facsimile signature has the same legal effect as his manual signature. [1969 c 86 § 2.]

39.62.030 Facsimile seal—Authorized—Legal effect. When the seal of this state or any of its departments, agencies, counties, cities, towns, municipal corporations, junior taxing districts, school districts, or other instrumentalities or of any of its political subdivisions is required in the execution of a public security or instrument of payment, the authorized officer may cause the seal to be printed, engraved, stamped or otherwise placed in facsimile thereon. The facsimile seal has the same legal effect as the impression of the seal. [1969 c 86 § 3.]

39.62.040 Unauthorized use—Penalty. Any person who with intent to defraud uses on a public security or an instrument of payment:

(1) A facsimile signature, or any reproduction of it, of any authorized officer, or

(2) Any facsimile seal, or any reproduction of it, of this state or any of its departments, agencies, counties, cities, towns, municipal corporations, junior taxing districts, school districts, or other instrumentalities or of any of its political subdivisions is guilty of a felony. [1969 c 86 § 4.]

39.62.900 Construction—Uniformity. This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it. [1969 c 86 § 5.]

39.62.910 Short title. This act may be cited as the uniform facsimile signature of public officials act. [1969 c 86 § 6.]

39.62.920 Severability—1969 c 86. If any provision of this 1969 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the

application of the provision to other persons or circumstances is not affected. [1969 c 86 § 7.]

Chapter 39.64 TAXING DISTRICT RELIEF

Sections

39.64.005	Short title.
39.64.010	Purpose of chapter.
39.64.020	Definitions.
39.64.030	Exercise of powers granted.
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39.64.900	Construction—Severability—1935 c 143.

39.64.005 Short title. This chapter may be cited as the taxing district relief act. [1935 c 143 § 1; RRS § 5608-1.]

39.64.010 Purpose of chapter. The purpose of this chapter is to facilitate and permit taxing districts which are unable to meet their debts either in their present amount and/or at the time they fall due, to obtain relief by the readjustment of such debts as provided for by the act of congress hereinafter referred to, by supplementing the powers of those taxing districts for which refunding of debts is provided for by existing statutes, and by providing a method of refunding of debts for those taxing districts for which no method of refunding such debts has heretofore been provided, and by other provisions appropriate to such purposes.

This chapter shall not be construed as in anywise limiting the powers of the federal courts to grant relief as provided for in said act of congress. [1935 c 143 § 2; RRS § 5608-2.]

39.64.020 Definitions. For the purposes of this chapter a "taxing district" is defined to be a "taxing district" as described in section 80 of chapter IX of the act of congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, as amended, to wit:

"Any municipality or other political subdivision of any state, including (but not hereby limiting the generality of the foregoing) any county, city, borough, village, parish, town, or township, unincorporated tax or special assessment district, and any school, drainage, irrigation, reclamation, levee, sewer, or paving, sanitary, port, improvement or other district (hereinafter referred to as a 'taxing district')."

Said act of congress and acts amendatory thereof and supplementary thereto, as the same may be amended from time to time, are herein referred to as the "federal bankruptcy act." [1935 c 143 § 3; RRS § 5608-3.]

39.64.030 Exercise of powers granted. All powers herein granted to taxing districts in state of Washington may be exercised by such districts. If a taxing district has no officers of its own, such powers may be exercised in its

behalf by the officer or officers, board, council or commission having the power to contract in behalf of such district or to levy special assessments or special taxes within such district. [1935 c 143 § 4; RRS § 5608-4.]

39.64.040 Petition in bankruptcy. Any taxing district in the state of Washington is hereby authorized to file the petition mentioned in section 80 of chapter IX of the federal bankruptcy act. [1935 c 143 § 5; RRS § 5608-5.]

39.64.050 Resolution of authorization. Before the filing of any petition referred to in RCW 39.64.040, such taxing district shall adopt a resolution authorizing the filing thereof and authorizing its duly and regularly elected or appointed attorney or special counsel duly appointed for such purpose to file the same and to represent it in the proceedings with respect thereto in the competent United States district court. [1935 c 143 § 6; RRS § 5608-6.]

39.64.060 Resolution consenting to readjustment. No final decree or order of such United States district court confirming a plan of readjustment shall be effective for the purpose of binding such taxing district unless and until such taxing district files with such court a certified copy of a resolution of such taxing district, adopted by it or by the officer or officers, board, council or commission referred to in RCW 39.64.030, consenting to the plan of readjustment set forth or referred to in such final decree or order. [1935 c 143 § 7; RRS § 5608-7.]

39.64.070 Plan of readjustment. Such taxing district is hereby authorized and empowered to take any and all action necessary to carry out any plan of readjustment contemplated in said petition, or as the same may be modified from time to time, notwithstanding any other provisions of law. In case of the refunding of debts of irrigation districts, diking or drainage improvement districts, general debts of cities, or debts of other taxing districts for the refunding of which provision is already made under existing statutes, such refunding shall be had and done as provided for in such existing statutes, except that the tenor and character of the refunding bonds and the assessments levied to meet such bonds may be modified to conform to the capacity of the taxing district, or the individual lots, tracts, or parcels of real property therein, to meet and carry the charges, both direct and contingent, against them, as found and set forth in the plan of readjustment and decree of court; and except also as such existing provisions of law may be otherwise supplemented by such plan of readjustment or the provisions of this chapter. [1935 c 143 § 8; RRS § 5608-8.]

39.64.080 Powers under plan of readjustment. Such taxing district shall have power to consummate the plan of readjustment, as adopted by the court's decree and approved by it as aforesaid, and if such plan, as approved by such decree, so requires, may, for such purpose, exercise any of the following powers:

(1) Cancel in whole or in part any assessments or any interest or penalties assessed thereon which may be outstanding and a lien upon any property in such taxing district, as

and when such assessments are replaced by the readjusted or revised assessments provided for in the plan of readjustment approved by such decree.

(2) Issue refunding bonds to refund bonds theretofore issued by such taxing district. Such refunding bonds shall have such denominations, rates of interest and maturities as shall be provided in such plan of readjustment and shall be payable by special assessments or by general taxes, according to the nature of the taxing district, in the manner provided in such plan of readjustment and decree.

(3) Apportion and levy new assessments or taxes appropriate in time or times of payment to provide funds for the payment of principal and interest of such refunding bonds, and of all expenses incurred by such taxing district in filing the petition mentioned in RCW 39.64.040, and any and all other expenses necessary or incidental to the consummation of the plan of readjustment.

In the case of special assessment districts for the refunding of whose debts no procedure is provided by existing laws, such assessments shall be equitably apportioned and levied upon each lot, tract or parcel of real property within such taxing district, due consideration being given to the relative extent to which the original apportionments upon the various lots, tracts or parcels of real property within such taxing district have already been paid and due consideration also being given to the capacity of the respective lots, tracts or parcels of real property to carry such charges against them. Before levying or apportioning such assessment such taxing district or the officer or officers, board, council or commission mentioned in RCW 39.64.030 shall hold a hearing with reference thereto, notice of which hearing shall be published once a week for four consecutive weeks in the newspaper designated for the publication of legal notices by the legislative body of the city or town, or by the board of county commissioners of the county within which such taxing district or any part thereof is located, or in any newspaper published in the city, town or county within which such taxing district or any part thereof is located and of general circulation within such taxing district. At such hearing every owner of real property within such taxing district shall be given an opportunity to be heard with respect to the apportionment and levy of such assessment.

(4) In the case of special assessment districts, of cities or towns, provide that if any of the real property within such taxing district shall not, on foreclosure of the lien of such new assessment for delinquent assessments and penalties and interest thereon, be sold for a sufficient amount to pay such delinquent assessments, penalties and interest, or if any real property assessed was not subject to assessment, or if any assessment or installment or installments thereof shall have been eliminated by foreclosure of a tax lien or made void in any other manner, such taxing district shall cause a supplemental assessment sufficient in amount to make up such deficiency to be made on the real property within such taxing district, including real property upon which any such assessment or any installment or installments thereof shall have been so eliminated or made void. Such supplemental assessment shall be apportioned to the various lots, tracts and parcels of real property within such taxing district in proportion to the amounts apportioned thereto in the assessment originally made under such plan of readjustment.

(5) Provide that refunding bonds may, at the option of the holders thereof, be converted into warrants of such denominations and bearing such rate of interest as may be provided in the plan of readjustment, and that the new assessments mentioned in subdivision (3) and the supplemental assessments mentioned in subdivision (4) of this section may be paid in refunding bonds or warrants of such taxing district without regard to the serial numbers thereof, or in money, at the option of the person paying such assessments, such refunding bonds and warrants to be received at their par value in payment of such assessments. In such case such refunding bonds and warrants shall bear the following legend: "This bond (or warrant) shall be accepted at its face value in payment of assessments (including interest and penalties thereon) levied to pay the principal and interest of the series of bonds and warrants of which this bond (or warrant) is one without regard to the serial number appearing upon the face hereof."

(6) Provide that all sums of money already paid to the treasurer of such taxing district or other authorized officer in payment, in whole or in part, of any assessment levied by or for such taxing district or of interest or penalties thereon, shall be transferred by such treasurer or other authorized officer to a new account and made applicable to the payment of refunding bonds and warrants to be issued under such plan of readjustment.

(7) Provide that such treasurer or other authorized officer shall have authority to use funds in his possession not required for payment of current interest of such bonds and warrants, to buy such bonds and warrants in the open market through tenders or by call at the lowest prices obtainable at or below par and accrued interest, without preference of one bond or warrant over another because of its serial number, or for any other cause other than the date and hour of such tender or other offer and the amount which the owner of such bond or warrant agrees to accept for it. In such case such refunding bonds and warrants shall bear the following legend: "This bond (or warrant) may be retired by tender or by call without regard to the serial number appearing upon the face hereof."

(8) Provide that if, after the payment of all interest on refunding bonds and warrants issued under any plan of readjustment adopted pursuant to this chapter and chapter IX of the federal bankruptcy act and the retirement of such bonds and warrants, there shall be remaining in the hands of the treasurer or other authorized officer of the taxing district which issued such bonds and warrants money applicable under the provisions of this chapter to the payment of such interest, bonds and warrants, such money shall be applied by such treasurer or other authorized officer to the maintenance, repair and replacement of the improvements originally financed by the bonds readjusted under this chapter and the federal bankruptcy act.

(9) The above enumeration of powers shall not be deemed to exclude powers not herein mentioned that may be necessary for or incidental to the accomplishment of the purposes hereof. [1935 c 143 § 9; RRS § 5608-9.]

39.64.085 Authority of operating agencies to levy taxes. Nothing in this chapter may be deemed to grant to any operating agency organized under chapter 43.52 RCW,

or a project of any such operating agency, the authority to levy any tax or assessment not otherwise authorized by law. [1983 2nd ex.s. c 3 § 54.]

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

39.64.090 Validation of prior bankruptcy proceedings. In the event that any taxing district in the state of Washington, before this chapter takes effect, shall have filed or purported or attempted to file a petition under the provisions of chapter IX of the federal bankruptcy act, or shall have taken or purported or attempted to take any other proceedings under or in contemplation of proceedings under the provisions of said chapter IX, then and in every such case all acts and proceedings of such taxing district, in connection with such petition or proceedings, are hereby, to all intents and purposes, declared as legal and valid as though taken after the *effective date of this chapter. [1935 c 143 § 10; RRS § 5608-10.]

***Reviser's note:** The "effective date of this chapter" was March 21, 1935.

39.64.900 Construction—Severability—1935 c 143. This chapter and all its provisions shall be liberally construed to the end that the purposes hereof may be made effective. If any section, part or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or of any section, provision or part thereof not adjudged invalid or unconstitutional. [1935 c 143 § 11; RRS § 5608-11.]

Chapter 39.67

AGREEMENTS BETWEEN TAXING DISTRICTS

Sections

- 39.67.010 Agreements contingent on property tax levy—Authorized.
39.67.020 Transfer of funds between taxing districts.

39.67.010 Agreements contingent on property tax levy—Authorized. Any agreement or contract between two taxing districts other than the state which is otherwise authorized by law may be made contingent upon a particular property tax levy rate of an identified taxing district other than the state where such rate affects the regular property tax rate of one of the parties to the contract and therefore affects the party's resources with which to perform under the contract. The governing body of every taxing district that could have its tax levy adversely affected by such a contract shall be notified about the contract. [1988 c 274 § 2; 1986 c 107 § 1.]

Purpose—Severability—1988 c 274: See notes following RCW 84.52.010.

Severability—1986 c 107: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 107 § 5.]

Construction—1986 c 107 §§ 1, 2: "Sections 1 and 2 of this act are supplementary and in addition to any other authority granted by law and shall not be construed to limit any other law." [1986 c 107 § 6.]

39.67.020 Transfer of funds between taxing districts. Any taxing district other than the state may transfer funds to another taxing district other than the state where the regular property tax levy rate of the second district may affect the regular property tax levy rate of the first district and where such transfer is part of an agreement whereby proration or reduction of property taxes is lessened or avoided. The governing body of every taxing district that could have its tax levy adversely affected by such an agreement shall be notified about the agreement. [1988 c 274 § 3; 1986 c 107 § 2.]

Purpose—Severability—1988 c 274: See notes following RCW 84.52.010.

Severability—Construction—1986 c 107: See notes following RCW 39.67.010.

Chapter 39.69

PUBLIC LOANS TO MUNICIPAL CORPORATIONS

Sections

- 39.69.010 "Municipal corporation" defined.
- 39.69.020 Loan agreements.
- 39.69.030 Application of constitutional debt limitations.
- 39.69.040 Chapter supplemental.

39.69.010 "Municipal corporation" defined. As used in this chapter, "municipal corporation" includes counties, cities, towns, port districts, sewer districts, water districts, school districts, metropolitan park districts, or such other units of local government which are authorized to issue obligations. [1987 c 19 § 1.]

39.69.020 Loan agreements. Any municipal corporation may enter into a loan agreement containing the terms and conditions of a loan from an agency of the state of Washington or the United States of America and evidencing the obligation of the municipal corporation to repay that loan under the terms and conditions set forth in the loan agreement. A loan agreement may provide that the municipal corporation will repay the loan solely from revenues set aside into a special fund for repayment of that loan. In the case of a municipal corporation authorized to borrow money payable from taxes, and authorized to levy such taxes, the loan agreement may provide that repayment of the loan is a general obligation of the municipal corporation, or both a general obligation and an obligation payable from revenues set aside into a special fund.

The state or federal agency making the loan shall have such rights of recovery in the event of default in payment or other breach of the loan agreement as may be provided in the loan agreement or otherwise by law. [1987 c 19 § 2.]

39.69.030 Application of constitutional debt limitations. Nothing in this chapter authorizes municipal corporations to incur indebtedness beyond constitutional indebtedness limitations. [1987 c 19 § 3.]

39.69.040 Chapter supplemental. The authority under this chapter is supplemental and in addition to the authority to issue obligations under any other provision of law. [1987 c 19 § 4.]

Chapter 39.72

LOST OR DESTROYED EVIDENCE OF INDEBTEDNESS

Sections

- 39.72.010 Local government indebtedness—Issuance of duplicate instrument.
- 39.72.020 Local government indebtedness—Records to be kept—Cancellation of originals.

39.72.010 Local government indebtedness—Issuance of duplicate instrument. In case of the loss or destruction of a warrant for the payment of money, or any bond or other instrument or evidence of indebtedness, issued by any county, city or town, district or other political subdivision or municipal corporation of the state of Washington, hereinafter referred to as a municipal corporation, or by any department or agency of such municipal corporation, such municipal corporation may cause a duplicate to be issued in lieu thereof, subject to the same requirements and conditions, and according to the same procedure, as prescribed for the issuance of duplicate state instruments in RCW 43.08.064 and 43.08.066 as now or hereafter amended: PROVIDED, That the requirements of *RCW 43.08.066(2) shall not be applicable to instruments received by employees of the above issuers for the payment of salary or wages or as other compensation for work performed nor shall those requirements be applicable to instruments received by former employees or their beneficiaries for the payment of pension benefits. [1975-'76 2nd ex.s. c 77 § 1; 1965 ex.s. c 61 § 4.]

*Reviser's note: Subsection (2) of RCW 43.08.066 was removed by chapter 71, Laws of 1979 ex. sess.

Lost or destroyed evidence of indebtedness issued by state: RCW 43.08.064 through 43.08.068.

39.72.020 Local government indebtedness—Records to be kept—Cancellation of originals. When a municipal corporation issues a duplicate instrument, as authorized in this chapter, the issuing officer of such municipal corporation shall keep a full and complete record of all warrants, bonds or other instruments alleged to have been lost or destroyed, which were issued by such municipal corporation, and of the issue of any duplicate therefor; and upon the issuance of any duplicate such officer shall enter upon his books the cancellation of the original instrument and immediately notify the treasurer of the county, city or other municipal corporation, the state auditor, and all trustees and paying agencies authorized to redeem such instruments on behalf of the municipal corporation, of such cancellation. The treasurer shall keep a similar list of all warrants, bonds or other instruments so canceled. [1965 ex.s. c 61 § 5.]

Chapter 39.76

INTEREST ON UNPAID PUBLIC CONTRACTS

Sections

- 39.76.010 Interest on unpaid public contracts—Timely payment.
- 39.76.011 Interest on unpaid public contracts—When payment is considered to be made.
- 39.76.020 Interest on unpaid public contracts—Exceptions.
- 39.76.030 Penalties by state agencies to be paid from administrative funds.

39.76.040 Interest on unpaid public contracts—Attorney fees.

39.76.010 Interest on unpaid public contracts—Timely payment. (1) Except as provided in RCW 39.76.020, every state agency and unit of local government shall pay interest at the rate of one percent per month, but at least one dollar per month, on amounts due on written contracts for public works, personal services, goods and services, equipment, and travel, whenever the state agency or unit of local government fails to make timely payment.

(2) For purposes of this section, payment shall be timely if:

(a) A check or warrant is mailed or is available on the date specified for the amount specified in the applicable contract documents or, if no date is specified, within thirty days of receipt of a properly completed invoice or receipt of goods or services, whichever is later.

(b) For any amount which is required to be withheld under state or federal law, a check or warrant is mailed or is available in the proper amount on the date the amount may be released under the applicable law. [1981 c 68 § 1.]

Application—1992 c 223: See RCW 39.04.901

39.76.011 Interest on unpaid public contracts—When payment is considered to be made. (1) Except as provided in RCW 39.76.020, every state agency, county, city, town, school district, board, commission, or any other public body shall pay interest at a rate of one percent per month, but at least one dollar per month, on amounts due on written contracts for public works, personal services, goods and services, equipment, and travel, whenever the public body fails to make timely payment.

(2) For purposes of this section, payment shall be timely if:

(a) Except as provided otherwise in this subsection, a check or warrant is mailed or is available on the date specified for the amount specified in the applicable contract documents but not later than thirty days of receipt of a properly completed invoice or receipt of goods or services, whichever is later. If a contract is funded by grant or federal money, the public body shall pay the prime contractor for satisfactory performance within thirty calendar days of the date the public body receives a payment request that complies with the contract or within thirty calendar days of the date the public body actually receives the grant or federal money, whichever is later.

(b) On written contracts for public works, when part or all of a payment is going to be withheld for unsatisfactory performance or if the payment request made does not comply with the requirements of the contract, the public body shall notify the prime contractor in writing within eight working days after receipt of the payment request stating specifically why part or all of the payment is being withheld and what remedial actions must be taken by the prime contractor to receive the withheld amount.

(c) If the notification by the public body required by (b) of this subsection does not comply with the notice contents required under (b) of this subsection, the public body shall pay the interest under subsection (1) of this section from the ninth working day after receipt of the initial payment request

until the contractor receives notice that does comply with the notice contents required under (b) of this subsection.

(d) If part or all of a payment is withheld under (b) of this subsection, the public body shall pay the withheld amount within thirty calendar days after the prime contractor satisfactorily completes the remedial actions identified in the notice. If the withheld amount is not paid within the thirty calendar days, the public body shall pay interest under subsection (1) of this section from the thirty-first calendar day until the date paid.

(e)(i) If the prime contractor on a public works contract, after making a request for payment to the public body but before paying a subcontractor for the subcontractor's performance covered by the payment request, discovers that part or all of the payment otherwise due to the subcontractor is subject to withholding from the subcontractor under the subcontract for unsatisfactory performance, the prime contractor may withhold the amount as allowed under the subcontract. If the prime contractor withholds an amount under this subsection, the prime contractor shall:

(A) Give the subcontractor notice of the remedial actions that must be taken as soon as practicable after determining the cause for the withholding but before the due date for the subcontractor payment;

(B) Give the contracting officer of the public body a copy of the notice furnished to the subcontractor under (e)(i)(A) of this subsection; and

(C) Pay the subcontractor within eight working days after the subcontractor satisfactorily completes the remedial action identified in the notice.

(ii) If the prime contractor does not comply with the notice and payment requirements of (e)(i) of this subsection, the contractor shall pay the subcontractor interest on the withheld amount from the eighth working day at an interest rate that is equal to the amount set forth in subsection (1) of this section.

(3) For the purposes of this section:

(a) A payment is considered to be made when mailed or personally delivered to the party being paid.

(b) An invoice is considered to be received when it is date-stamped or otherwise marked as delivered. If the invoice is not date-stamped or otherwise marked as delivered, the date of the invoice is considered to be the date when the invoice is received. [1992 c 223 § 1.]

Effective date—1992 c 223: "This act shall take effect September 1, 1992." [1992 c 223 § 9.]

Waiver of rights, construction—Application—1992 c 223: See RCW 39.04.900 and 39.04.901.

39.76.020 Interest on unpaid public contracts—Exceptions. RCW 39.76.010 does not apply to the following:

(1) Interagency or intergovernmental transactions;

(2) Amounts payable to employees or prospective employees of state agencies or local governmental units as reimbursement for expenses;

(3) Belated claims for any time of delinquency after July 31 following the second year of the fiscal biennium;

(4) Claims subject to a good faith dispute, when before the date of timely payment, notice of the dispute is:

(a) Sent by certified mail;

(b) Personally delivered; or

- (c) Sent in accordance with procedures in the contract;
- (5) Delinquencies due to natural disasters, disruptions in postal or delivery service, work stoppages due to labor disputes, power failures, or any other cause resulting from circumstances clearly beyond the control of the unit of local government or state agency;
- (6) Contracts entered before July 26, 1981; and
- (7) Payment from any retirement system listed in RCW 41.50.030 and chapter 41.24 RCW. [1981 c 68 § 2.]

39.76.030 Penalties by state agencies to be paid from administrative funds. Any state agency required to pay late payment penalties under this chapter shall pay the penalties from funds designated for administrative costs of the agency receiving the public works, personal services, goods and services, equipment, or travel and shall not be paid from funds appropriated for client services. [1981 c 68 § 3.]

39.76.040 Interest on unpaid public contracts—Attorney fees. In any action brought to collect interest due under this chapter, the prevailing party is entitled to an award of reasonable attorney fees. [1981 c 68 § 4.]

Chapter 39.80

CONTRACTS FOR ARCHITECTURAL AND ENGINEERING SERVICES

Sections	
39.80.010	Legislative declaration.
39.80.020	Definitions.
39.80.030	Agency's requirement for professional services—Advance publication.
39.80.040	Procurement of architectural and engineering services—Submission of statement of qualifications and performance data—Participation by minority and women-owned firms.
39.80.050	Procurement of architectural and engineering services—Contract negotiations.
39.80.060	Procurement of architectural and engineering services—Exception for emergency work.
39.80.070	Contracts, modifications reported to the office of financial management.
39.80.900	Savings.
39.80.910	Severability—1981 c 61.

39.80.010 Legislative declaration. The legislature hereby establishes a state policy, to the extent provided in this chapter, that governmental agencies publicly announce requirements for architectural and engineering services, and negotiate contracts for architectural and engineering services on the basis of demonstrated competence and qualification for the type of professional services required and at fair and reasonable prices. [1981 c 61 § 1.]

Effective date—1981 c 61: "This act shall take effect on January 1, 1982." [1981 c 61 § 9.]

39.80.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "State agency" means any department, agency, commission, bureau, office, or any other entity or authority of the state government.

(2) "Local agency" means any city and any town, county, special district, municipal corporation, agency, port district or authority, or political subdivision of any type, or any other entity or authority of local government in corporate form or otherwise.

(3) "Special district" means a local unit of government, other than a city, town, or county, authorized by law to perform a single function or a limited number of functions, and including but not limited to, water districts, irrigation districts, fire districts, school districts, community college districts, hospital districts, sewer districts, transportation districts, and metropolitan municipal corporations organized under chapter 35.58 RCW.

(4) "Agency" means both state and local agencies and special districts as defined in subsection[s] (1), (2), and (3) of this section.

(5) "Architectural and engineering services" or "professional services" means professional services rendered by any person, other than as an employee of the agency, contracting to perform activities within the scope of the general definition of professional practice in chapters 18.08, 18.43, or 18.96 RCW.

(6) "Person" means any individual, organization, group, association, partnership, firm, joint venture, corporation, or any combination thereof.

(7) "Consultant" means any person providing professional services who is not an employee of the agency for which the services are provided.

(8) "Application" means a completed statement of qualifications together with a request to be considered for the award of one or more contracts for professional services. [1981 c 61 § 2.]

Effective date—1981 c 61: See note following RCW 39.80.010.

39.80.030 Agency's requirement for professional services—Advance publication. Each agency shall publish in advance that agency's requirement for professional services. The announcement shall state concisely the general scope and nature of the project or work for which the services are required and the address of a representative of the agency who can provide further details. An agency may comply with this section by: (1) Publishing an announcement on each occasion when professional services provided by a consultant are required by the agency; or (2) announcing generally to the public its projected requirements for any category or type of professional services. [1981 c 61 § 3.]

Effective date—1981 c 61: See note following RCW 39.80.010.

39.80.040 Procurement of architectural and engineering services—Submission of statement of qualifications and performance data—Participation by minority and women-owned firms. In the procurement of architectural and engineering services, the agency shall encourage firms engaged in the lawful practice of their profession to submit annually a statement of qualifications and performance data. The agency shall evaluate current statements of qualifications and performance data on file with the agency, together with those that may be submitted by other firms regarding the proposed project, and shall conduct discussions with one or more firms regarding anticipated concepts and the relative utility of alternative methods of approach for

furnishing the required services and then shall select therefrom, based upon criteria established by the agency, the firm deemed to be the most highly qualified to provide the services required for the proposed project. Such agency procedures and guidelines shall include a plan to insure that minority and women-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts for services. The level of participation by minority and women-owned firms shall be consistent with their general availability within the professional communities involved. [1981 c 61 § 4.]

Effective date—1981 c 61: See note following RCW 39.80.010.

39.80.050 Procurement of architectural and engineering services—Contract negotiations. (1) The agency shall negotiate a contract with the most qualified firm for architectural and engineering services at a price which the agency determines is fair and reasonable to the agency. In making its determination, the agency shall take into account the estimated value of the services to be rendered as well as the scope, complexity, and professional nature thereof.

(2) If the agency is unable to negotiate a satisfactory contract with the firm selected at a price the agency determines to be fair and reasonable, negotiations with that firm shall be formally terminated and the agency shall select other firms in accordance with RCW 39.80.040 and continue in accordance with this section until an agreement is reached or the process is terminated. [1981 c 61 § 5.]

Effective date—1981 c 61: See note following RCW 39.80.010.

39.80.060 Procurement of architectural and engineering services—Exception for emergency work. (1) This chapter need not be complied with by any agency when the contracting authority makes a finding in accordance with this or any other applicable law that an emergency requires the immediate execution of the work involved.

(2) Nothing in this chapter shall relieve the contracting authority from complying with applicable law limiting emergency expenditures. [1981 c 61 § 6.]

Effective date—1981 c 61: See note following RCW 39.80.010.

39.80.070 Contracts, modifications reported to the office of financial management. Contracts entered into by any state agency for architectural and engineering services, and modifications thereto, shall be reported to the office of financial management on a quarterly basis, in such form as the office of financial management prescribes. [1993 c 433 § 9.]

39.80.900 Savings. Nothing in this chapter shall affect the validity or effect of any contract in existence on January 1, 1982. [1981 c 61 § 7.]

Effective date—1981 c 61: See note following RCW 39.80.010.

39.80.910 Severability—1981 c 61. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 61 § 8.]

Effective date—1981 c 61: See note following RCW 39.80.010.

Chapter 39.84

INDUSTRIAL DEVELOPMENT REVENUE BONDS

Sections

39.84.010	Finding and declaration of necessity.
39.84.020	Definitions.
39.84.030	Public corporations—Creation, dissolution.
39.84.040	Board of directors of public corporation.
39.84.050	Public corporations—Directors—Conflicts of interest.
39.84.060	Public corporations—Limitations.
39.84.070	Public corporations—Audit by state.
39.84.080	Public corporations—Powers.
39.84.090	Reporting to the department of community, trade, and economic development.
39.84.100	Revenue bonds—Provisions.
39.84.110	Revenue bonds—Refunding.
39.84.120	Trust agreements.
39.84.130	Commingling of bond proceeds or revenues with municipal funds prohibited—Exception.
39.84.140	Subleases and assignments.
39.84.150	Determination of rent.
39.84.160	Proceedings in the event of default.
39.84.200	Authority of community economic revitalization board under this chapter.
39.84.900	Construction—Supplemental nature of chapter.
39.84.910	Captions not part of law.
39.84.920	Severability—1981 c 300.

Special revenue financing: State Constitution Art. 33 § 1.

39.84.010 Finding and declaration of necessity. The legislature hereby finds and declares that this state urgently needs to do the following: Promote higher employment; encourage the development of new jobs; maintain and supplement the capital investments in industry that currently exist in this state; encourage future employment by ensuring future capital investment; attract environmentally sound industry to the state; protect and enhance the quality of natural resources and the environment; and promote the production and conservation of energy. [1981 c 300 § 1.]

39.84.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Board of directors" means the board of directors of a public corporation.

(2) "Construction" or "construct" means construction and acquisition, whether by devise, purchase, gift, lease, or otherwise.

(3) "Facilities" means land, rights in land, buildings, structures, docks, wharves, machinery, transmission equipment, public broadcast equipment, landscaping, utilities, approaches, roadways and parking, handling and storage areas, and similar ancillary facilities.

(4) "Financing document" means a lease, sublease, installment sale agreement, conditional sale agreement, loan agreement, mortgage, deed of trust guaranty agreement, or other agreement for the purpose of providing funds to pay or secure debt service on revenue bonds.

(5) "Improvement" means reconstruction, remodeling, rehabilitation, extension, and enlargement; and "to improve" means to reconstruct, to remodel, to rehabilitate, to extend, and to enlarge.

(6) "Industrial development facilities" means manufacturing, processing, research, production, assembly, warehousing, transportation, public broadcasting, pollution control,

solid waste disposal, energy facilities, sports facilities, parking facilities associated with industrial development facilities as defined in this section or with historic properties as defined in RCW 84.26.020 and industrial parks. For the purposes of this section, the term "sports facilities" shall not include facilities which are constructed for use by members of a private club or as integral or subordinate parts of a hotel or motel, or which are not available on a regular basis for general public use.

(7) "Industrial park" means acquisition and development of land as the site for an industrial park. For the purposes of this chapter, "development of land" includes the provision of water, sewage, drainage, or similar facilities, or of transportation, energy, or communication facilities, which are incidental to the use of the site as an industrial park, but does not include the provision of structures or buildings.

(8) "Municipality" means a city, town, county, or port district of this state.

(9) "Ordinance" means any appropriate method of taking official action or adopting a legislative decision by any municipality, whether known as a resolution, ordinance, or otherwise.

(10) "Project costs" means costs of (a) acquisition, construction, and improvement of any facilities included in an industrial development facility; (b) architectural, engineering, consulting, accounting, and legal costs related directly to the development, financing, and construction of an industrial development facility, including costs of studies assessing the feasibility of an industrial development facility; (c) finance costs, including discounts, if any, the costs of issuing revenue bonds, and costs incurred in carrying out any trust agreement; (d) interest during construction and during the six months after estimated completion of construction, and capitalized debt service or repair and replacement or other appropriate reserves; (e) the refunding of any outstanding obligations incurred for any of the costs outlined in this subsection; and (f) other costs incidental to any of the costs listed in this section.

(11) "Revenue bond" means a nonrecourse revenue bond, nonrecourse revenue note, or other nonrecourse revenue obligation issued for the purpose of financing an industrial development facility on an interim or permanent basis.

(12) "User" means one or more persons acting as lessee, purchaser, mortgagor, or borrower under a financing document and may include a party who transfers the right of use and occupancy to another party by lease, sublease, or otherwise. [1986 c 309 § 1; 1986 c 308 § 2; 1985 c 439 § 1; 1983 1st ex.s. c 51 § 1; 1981 c 300 § 2.]

Reviser's note: This section was amended by 1986 c 308 § 2 and by 1986 c 309 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1986 c 308: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 308 § 3.]

39.84.030 Public corporations—Creation, dissolution. (1) For the purpose of facilitating economic development and employment opportunities in the state of Washington through the financing of the project costs of industrial

development facilities, a municipality may enact an ordinance creating a public corporation for the purposes authorized in this chapter. The ordinance creating the public corporation shall approve a charter for the public corporation containing such provisions as are authorized by and not in conflict with this chapter. Any charter issued under this chapter shall contain in substance the limitations set forth in RCW 39.84.060. In any suit, action, or proceeding involving the validity or enforcement of or relating to any contract of the public corporation, the public corporation is conclusively presumed to be established and authorized to transact business and exercise its powers under this chapter upon proof of the adoption of the ordinance creating the public corporation by the governing body. A copy of the ordinance duly certified by the clerk of the governing body of the municipality shall be admissible in evidence in any suit, action, or proceeding.

(2) A public corporation created by a municipality pursuant to this chapter may be dissolved by the municipality if the public corporation: (a) Has no property to administer, other than funds or property, if any, to be paid or transferred to the municipality by which it was established; and (b) all its outstanding obligations have been satisfied. Such a dissolution shall be accomplished by the governing body of the municipality adopting an ordinance providing for the dissolution.

(3) The creating municipality may, at its discretion and at any time, alter or change the structure, organizational programs, or activities of a public corporation, including termination of the public corporation if contracts entered into by the public corporation are not impaired. Any net earnings of a public corporation, beyond those necessary for retirement of indebtedness incurred by it, shall not inure to the benefit of any person other than the creating municipality. Upon dissolution of a public corporation, title to all property owned by the public corporation shall vest in the municipality. [1981 c 300 § 3.]

39.84.040 Board of directors of public corporation. The ordinance creating a public corporation shall include provisions establishing a board of directors to govern the affairs of the public corporation, what constitutes a quorum of the board of directors, and how the public corporation shall conduct its affairs. [1981 c 300 § 4.]

39.84.050 Public corporations—Directors—Conflicts of interest. It shall be illegal for a director, officer, agent, or employee of a public corporation to have, directly or indirectly, any financial interest in any property to be included in or any contract for property, services, or materials to be furnished or used in connection with any industrial development facility financed through the public corporation. Violation of any provision of this section is a gross misdemeanor. [1981 c 300 § 5.]

39.84.060 Public corporations—Limitations. No municipality may give or lend any money or property in aid of a public corporation. The municipality that creates a public corporation shall annually review any financial statements of the public corporation and at all times shall have access to the books and records of the public corpora-

tion. No public corporation may issue revenue obligations under this chapter except upon the approval of both the municipality under the auspices of which it was created and the county, city, or town within whose planning jurisdiction the proposed industrial development facility lies. No revenue bonds may be issued pursuant to this chapter unless the board of directors of the public corporation proposing to issue revenue bonds makes a finding that in its opinion the interest paid on the bonds will be exempt from income taxation by the federal government. Revenue bonds issued by a public corporation under this chapter shall not be considered to constitute a debt of the state, of the municipality, or of any other municipal corporation, quasi municipal corporation, subdivision, or agency of this state or to pledge any or all of the faith and credit of any of these entities. The revenue bonds shall be payable solely from both the revenues derived as a result of the industrial development facilities funded by the revenue bonds, including, without limitation, amounts received under the terms of any financing document or by reason of any additional security furnished by the user of the industrial development facility in connection with the financing thereof, and money and other property received from private sources. Each revenue bond shall contain on its face statements to the effect that: (1) Neither the state, the municipality, or any other municipal corporation, quasi municipal corporation, subdivision, or agency of the state is obligated to pay the principal or the interest thereon; (2) no tax funds or governmental revenue may be used to pay the principal or interest thereon; and (3) neither any or all of the faith and credit nor the taxing power of the state, the municipality, or any other municipal corporation, quasi municipal corporation, subdivision, or agency thereof is pledged to the payment of the principal of or the interest on the revenue bond. A public corporation may incur only those financial obligations which will be paid from revenues received pursuant to financing documents, from fees or charges paid by users or prospective users of the industrial development facilities funded by the revenue bonds, or from the proceeds of revenue bonds. A public corporation established under the terms of this chapter constitutes an authority and an instrumentality (within the meaning of those terms in the regulations of the United States treasury and the rulings of the Internal Revenue Service prescribed pursuant to section 103 of the Internal Revenue Code of 1954, as amended) and may act on behalf of the municipality under whose auspices it is created for the specific public purposes authorized by this chapter. The public corporation is not a municipal corporation within the meaning of the state Constitution and the laws of the state, or a political subdivision within the meaning of the state Constitution and the laws of the state, including without limitation, Article VIII, section 7, of the Washington state Constitution. A municipality shall not delegate to a public corporation any of the municipality's attributes of sovereignty, including, without limitation, the power to tax, the power of eminent domain, and the police power. [1981 c 300 § 6.]

39.84.070 Public corporations—Audit by state. The finances of any public corporation are subject to examination by the state auditor's office pursuant to RCW 43.09.260. [1981 c 300 § 7.]

39.84.080 Public corporations—Powers. (1) A public corporation created under this chapter has the following powers with respect to industrial development facilities together with all powers incidental thereto or necessary for the performance thereof:

(a) To construct and maintain one or more industrial development facilities;

(b) To lease to a lessee all or any part of any industrial development facility for such rentals and upon such terms and conditions, including options to purchase, as its board of directors considers advisable and not in conflict with this chapter;

(c) To sell by installment contract or otherwise and convey all or any part of any industrial development facility for such purchase price and upon such terms and conditions as its board of directors considers advisable which are not in conflict with this chapter;

(d) To make secured loans for the purpose of providing temporary or permanent financing or refinancing of all or part of the project cost of any industrial development facility, including the refunding of any outstanding obligations, mortgages, or advances issued, made, or given by any person for the project costs; and to charge and collect interest on the loans for the loan payments upon such terms and conditions as its board of directors considers advisable which are not in conflict with this chapter;

(e) To issue revenue bonds for the purpose of financing all or part of the project cost of any industrial development facility and to secure the payment of the revenue bonds as provided in this chapter;

(f) As security for the payment of the principal of and interest on any revenue bonds issued and any agreements made in connection therewith, to mortgage, pledge, or otherwise encumber any or all of its industrial development facilities or any part or parts thereof, whether then owned or thereafter acquired, and to assign any mortgage and repledge any security conveyed to the public corporation, to secure any loan made by the public corporation and to pledge the revenues and receipts therefrom;

(g) To sue and be sued, complain, and defend in its corporate name;

(h) To make contracts and to execute all instruments necessary or convenient for the carrying out of its business;

(i) To have a corporate seal and to use the same by causing it, or a facsimile thereof, to be impressed or affixed or in any other manner reproduced;

(j) Subject to the limitations of RCW 39.84.060, to borrow money, accept grants from, or contract with any local, state, or federal governmental agency or with any financial, public, or private corporation;

(k) To make and alter bylaws not inconsistent with its charter for the administration and regulation of the affairs of the corporation;

(l) To collect fees or charges from users or prospective users of industrial development facilities to recover actual or anticipated administrative costs;

(m) To execute financing documents incidental to the powers enumerated in this subsection.

(2) No public corporation created under this chapter may operate any industrial development facility as a business other than as lessor, seller, or lender. The purchase and holding of mortgages, deeds of trust, or other security

interests and contracting for any servicing thereof is not considered the operation of an industrial development facility.

(3) No public corporation may exercise any of the powers authorized in this section or issue any revenue bonds with respect to any industrial development facility unless the industrial development facility is located wholly within the boundaries of the municipality under whose auspices the public corporation is created or unless the industrial development facility comprises energy facilities or solid waste disposal facilities which provide energy for or dispose of solid waste from the municipality or the residents thereof. [1981 c 300 § 8.]

39.84.090 Reporting to the department of community, trade, and economic development. (1) Prior to issuance of any revenue bonds, each public corporation shall submit a copy of its enabling ordinance and charter, a description of any industrial development facility proposed to be undertaken, and the basis for its qualification as an industrial development facility to the department of community, trade, and economic development.

(2) If the industrial development facility is not eligible under this chapter, the department of community, trade, and economic development shall give notice to the public corporation, in writing and by certified mail, within twelve working days of receipt of the description.

(3) The department of community, trade, and economic development shall provide such advice and assistance to public corporations and municipalities which have created or may wish to create public corporations as the public corporations or municipalities request and the department of community, trade, and economic development considers appropriate. [1998 c 245 § 34; 1995 c 399 § 56; 1987 c 505 § 22; 1985 c 466 § 46; 1981 c 300 § 9.]

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

Department of community, trade, and economic development: Chapter 43.330 RCW.

39.84.100 Revenue bonds—Provisions. (1) The principal of and the interest on any revenue bonds issued by a public corporation shall be payable solely from the funds provided for this payment from the revenues of the industrial development facilities funded by the revenue bonds. Each issue of revenue bonds shall be dated, shall bear interest at such rate or rates, and shall mature at such time or times as may be determined by the board of directors, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the board of directors prior to the issuance of the revenue bonds or other revenue obligations.

(2) The board of directors shall determine the form and the manner of execution of the revenue bonds and shall fix the denomination or denominations of the revenue bonds and the place or places of payment of principal and interest. If any officer whose signature or a facsimile of whose signature appears on any revenue bonds or any coupons ceases to be an officer before the delivery of the revenue bonds, the signature shall for all purposes have the same effect as if he had remained in office until delivery. The revenue bonds

may be issued in coupon or in registered form, as provided in RCW 39.46.030, or both as the board of directors may determine, and provisions may be made for the registration of any coupon revenue bonds as to the principal alone and also as to both principal and interest and for the reconversion into coupon bonds of any bonds registered as to both principal and interest. A public corporation may sell revenue bonds at public or private sale for such price and bearing interest at such fixed or variable rate as may be determined by the board of directors.

(3) The proceeds of the revenue bonds of each issue shall be used solely for the payment of all or part of the project cost of or for the making of a loan in the amount of all or part of the project cost of the industrial development facility for which authorized and shall be disbursed in such manner and under such restrictions, if any, provided in the resolution authorizing the issuance of the revenue bonds or in the trust agreement securing the bonds. If the proceeds of the revenue bonds of any series issued with respect to the cost of any industrial development facility exceeds the cost of the industrial development facility for which issued, the surplus shall be deposited to the credit of the debt service fund for the revenue bonds or used to purchase revenue bonds in the open market.

(4) A public corporation may issue interim notes in the manner provided for the issuance of revenue bonds to fund industrial development facilities prior to issuing other revenue bonds to fund such facilities. A public corporation may issue revenue bonds to fund industrial development facilities that are exchangeable for other revenue bonds when these other revenue bonds are executed and available for delivery.

(5) The principal of and interest on any revenue bonds issued by a public corporation shall be secured by a pledge of unexpended bond proceeds and the revenues and receipts received by the public corporation from the industrial development facilities funded by the revenue bonds pursuant to financing documents. The resolution under which the revenue bonds are authorized to be issued and any financing document may contain agreements and provisions respecting the maintenance or use of the industrial development facility covered thereby, the fixing and collection of rents, purchase price payments or loan payments, the creation and maintenance of special funds from such revenues or from revenue bond proceeds, the rights and remedies available in the event of default, and other provisions relating to the security for the bonds, all as the board of directors consider advisable which are not in conflict with this chapter.

(6) The governing body of the municipality under whose auspices the public corporation is created shall approve by resolution any agreement to issue revenue bonds adopted by a public corporation, which agreement and resolution shall set out the amount and purpose of the revenue bonds. Additionally, no issue of revenue bonds, including refunding bonds, may be sold and delivered by a public corporation without a resolution of the governing body of the municipality under whose auspices the public corporation is created, adopted no more than sixty days before the date of sale of the revenue bonds specifically, approving the resolution of the public corporation providing for the issuance of the revenue bonds.

(7) All revenue bonds issued under this chapter and any interest coupons applicable thereto are negotiable instruments within the meaning of Article 8 of the Uniform Commercial Code, Title 62A RCW, regardless of form or character.

(8) Notwithstanding subsections (1) and (2) of this section, such bonds and interim notes may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 115; 1981 c 300 § 10.]

Liberal construction—Severability—1983 c 167: See RCW 39.46.010 and note following.

39.84.110 Revenue bonds—Refunding. Each public corporation may provide by resolution for the issuance of revenue refunding bonds for the purpose of refunding any revenue bonds issued for an industrial development facility under this chapter, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption or maturity of the revenue bonds and, if considered advisable by the public corporation, for the additional purpose of financing improvements, extensions, or enlargements to the industrial development facility for another industrial development facility. The issuance of the revenue bonds, the maturities and other details thereof, the rights of the holders thereof, and the rights, duties, and obligations of the public corporation in respect to the same shall be governed by this chapter insofar as applicable. [1981 c 300 § 11.]

39.84.120 Trust agreements. Any bonds issued under this chapter may be secured by a trust agreement between the public corporation and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the state. The trust agreement may evidence a pledge or assignment of the financing documents and lease, sale, or loan revenues to be received from a lessee or purchaser of or borrower with respect to an industrial development facility for the payment of principal of and interest and any premium on the bonds as the same shall become due and payable and may provide for creation and maintenance of reserves for these purposes. A trust agreement or resolution providing for the issuance of the revenue bonds may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties in relation to the acquisition of property and the construction, improvement, maintenance, use, repair, operation, and insurance of the industrial development facility for which the bonds are authorized, and the custody, safeguarding, and application of all money. Any bank or trust company incorporated under the laws of the state which may act as depository of the proceeds of revenue bonds or of revenues may furnish such indemnifying bonds or pledge such securities as may be required by the corporation. A trust agreement may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action by bondholders as is customary in trust agreements or trust indentures securing bonds and debentures of private corporations. In addition, a trust agreement may contain such provisions as the public corporation considers reasonable and proper for

the security of the bondholders which are not in conflict with this chapter. [1981 c 300 § 12.]

39.84.130 Commingling of bond proceeds or revenues with municipal funds prohibited—Exception. No part of the proceeds received from the sale of any revenue bonds under this chapter, of any revenues derived from any industrial development facility acquired or held under this chapter, or of any interest realized on moneys received under this chapter may be commingled by the public corporation with funds of the municipality creating the public corporation. However, those funds of the public corporation, other than proceeds received from the sale of revenue bonds, that are not otherwise encumbered for the payment of revenue bonds and are not reasonably anticipated by the board of directors to be necessary for administrative expenses of the public corporation may be transferred to the creating municipality and used for growth management, planning, or other economic development purposes. [1993 c 139 § 1; 1981 c 300 § 13.]

39.84.140 Subleases and assignments. A lessee or contracting party under a sale contract or loan agreement shall not be required to be the eventual user of an industrial development facility if any sublessee or assignee assumes all of the obligations of the lessee or contracting party under the lease, sale contract, or loan agreement, but the lessee or contracting party or their successors shall remain primarily liable for all of its obligations under the lease, sale contract, or loan agreement and the use of the industrial development facility shall be consistent with the purposes of this chapter. [1981 c 300 § 14.]

39.84.150 Determination of rent. Before entering into a lease, sale contract, or loan agreement with respect to any industrial development facility, the public corporation shall determine that there are sufficient revenues to pay (1) the principal of and the interest on the revenue bonds proposed to be issued to finance the industrial development facility; (2) the amount necessary to be paid each year into any reserve funds which the public corporation considers advisable to establish in connection with the retirement of the proposed bonds and the maintenance of the industrial development facility; and (3) unless the terms of the lease, sale contract, or loan agreement provide that the lessee or contracting party shall maintain the industrial development facility and carry all proper insurance with respect thereto, the estimated cost of maintaining the industrial development facility in good repair and keeping it properly insured. [1981 c 300 § 15.]

39.84.160 Proceedings in the event of default. The proceedings authorizing any revenue bonds under this chapter or any financing document securing the revenue bonds may provide that if there is a default in the payment of the principal of or the interest on the bonds or in the performance of any agreement contained in the proceedings or financing document, the payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents, purchase price payments, and loan repayments, and to apply

the revenues from the industrial development facility in accordance with the proceedings or provisions of the financing document. Any financing document entered into under this chapter to secure revenue bonds issued under this chapter may also provide that if there is a default in the payment thereof or a violation of any agreement contained in the financing document, the industrial development facility may be foreclosed and sold under proceedings in equity or in any other manner now or hereafter permitted by law. Any financing document may also provide that any trustee under the financing document or the holder of any revenue bonds secured thereby may become the purchaser at any foreclosure sale if it is the highest bidder. [1981 c 300 § 16.]

39.84.200 Authority of community economic revitalization board under this chapter. The community economic revitalization board under chapter 43.160 RCW shall have all the powers of a public corporation under this chapter. To the extent applicable, all duties of a public corporation apply to the community economic revitalization board in exercising its powers under this chapter. [1984 c 257 § 11.]

39.84.900 Construction—Supplemental nature of chapter. This chapter supplements and neither restricts nor limits any powers which a municipality or presently authorized public corporation might otherwise have under any laws of this state. [1981 c 300 § 17.]

39.84.910 Captions not part of law. As used in this chapter, captions constitute no part of the law. [1981 c 300 § 19.]

39.84.920 Severability—1981 c 300. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 300 § 20.]

Chapter 39.86

PRIVATE ACTIVITY BOND ALLOCATION

Sections

39.86.100	Legislative findings and policy.
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39.86.906	Severability—1987 c 297.

39.86.100 Legislative findings and policy. The federal tax reform act of 1986 imposes an annual ceiling on the aggregate amount of federally tax-exempt private activity bonds, including bonds for housing, student loans, exempt

facilities, small issue industrial, redevelopment, and certain public utility projects, that may be issued during any calendar year by or on behalf of states and their political subdivisions. The tax reform act of 1986 establishes a private activity bond ceiling for each state of seventy-five dollars per capita for 1987 and of fifty dollars per capita for 1988 and each year thereafter. However, a study by the *department of community development indicates that the dollar amount of the state ceiling is considerably less than the anticipated dollar amount for which issuers would need an allocation from the state ceiling. The tax reform act of 1986 provides a formula for allocating the annual ceiling among various issuers of private activity bonds within a state, but permits each state to enact a different allocation method that is appropriate to that state's needs. The purpose of this chapter is to provide a flexible and efficient method of allocating the annual state ceiling in Washington in a manner that recognizes the need of the state and its political subdivisions to finance activities or projects that satisfy a substantial public purpose. [1987 c 297 § 1.]

***Reviser's note:** Powers, duties, and functions of the department of community development and the department of trade and economic development were transferred to the department of community, trade, and economic development by 1993 c 280, effective July 1, 1994.

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

(1) "Agency" means the department of community, trade, and economic development.

(2) "Board" means the community economic revitalization board established under chapter 43.160 RCW.

(3) "Bonds" means bonds, notes, or other obligations of an issuer.

(4) "Bond use category" means any of the following categories of bonds which are subject to the state ceiling: (a) Housing, (b) student loans, (c) small issue, (d) exempt facility, (e) redevelopment, (f) public utility; and (g) remainder.

(5) "Carryforward" is an allocation or reallocation of the state ceiling which is carried from one calendar year to a later year, in accordance with the code.

(6) "Code" means the federal internal revenue code of 1986 as it exists on May 8, 1987. It also means the code as amended after May 8, 1987, but only if the amendments are approved by the agency under RCW 39.86.180.

(7) "Director" means the director of the agency or the director's designee.

(8) "Exempt facility" means the bond use category which includes all bonds which are exempt facility bonds as described in the code, except those for qualified residential rental projects.

(9) "Firm and convincing evidence" means documentation that satisfies the director that the issuer is committed to the prompt financing of, and will issue tax exempt bonds for, the project or program for which it requests an allocation from the state ceiling.

(10) "Housing" means the bond use category which includes: (a) Mortgage revenue bonds and mortgage credit certificates as described in the code; and (b) exempt facility bonds for qualified residential rental projects as described in the code.

(11) "Initial allocation" means the portion or dollar value of the state ceiling which initially in each calendar year is allocated to a bond use category for the issuance of private activity bonds, in accordance with RCW 39.86.120.

(12) "Issuer" means the state, any agency or instrumentality of the state, any political subdivision, or any other entity authorized to issue private activity bonds under state law.

(13) "Private activity bonds" means obligations that are private activity bonds as defined in the code or bonds for purposes described in section 1317(25) of the tax reform act of 1986.

(14) "Program" means the activities for which housing bonds or student loan bonds may be issued.

(15) "Public utility" means the bond use category which includes those bonds described in section 1317(25) of the tax reform act of 1986.

(16) "Redevelopment" means the bond use category which includes qualified redevelopment bonds as described in the code.

(17) "Remainder" means that portion of the state ceiling remaining after initial allocations are made under RCW 39.86.120 for any other bond use category.

(18) "Small issue" means the bond use category which includes all industrial development bonds that constitute qualified small issue bonds, as described in the code.

(19) "State" means the state of Washington.

(20) "State ceiling" means the volume limitation for each calendar year on tax-exempt private activity bonds, as imposed by the code.

(21) "Student loans" means the bond use category which includes qualified student loan bonds as described in the code. [1995 c 399 § 57; 1987 c 297 § 2.]

39.86.120 Initial allocation. (1) Except as provided in subsections (2) and (4) of this section, the initial allocation of the state ceiling shall be for each year as follows:

BOND USE CATEGORY	1987 1988		1989 and THEREAFTER (If the small issue category is permitted under federal law)	1990 and THEREAFTER (If the small issue category is not permitted under federal law)
	Housing	5%	25%	25%
Student Loans	10%	15%	15%	15%
Exempt Facility	40%	20%	20%	35%
Public Utility	10%	10%	10%	10%
Small Issue	30%	25%	25%	0%
Remainder and redevelopment	5%	5%	5%	5%

(2) Initial allocations may be modified by the agency only to reflect an issuer's carryforward amount. Any reduction of the initial allocation shall be added to the remainder and be available for allocation or reallocation.

(3) The remainder shall be allocated by the agency among one or more issuers from any bond use category with regard to the criteria specified in RCW 39.86.130.

(4) Should any bond use category no longer be subject to the state ceiling due to federal or state provisions of law, the agency shall divide the amount of that initial allocation among the remaining categories as necessary or appropriate with regard to the criteria specified in RCW 39.86.130.

(5)(a) Prior to September 1 of each calendar year, any available portion of an initial allocation may be allocated or reallocated only to an issuer within the same bond use category, except that the remainder category, or portions thereof, may be allocated at any time to any bond use category.

(b) Beginning September 1 of each calendar year, the agency may allocate or reallocate any available portion of the state ceiling to any bond use category with regard to the criteria specified in RCW 39.86.130. [1990 c 50 § 1; 1987 c 297 § 3.]

39.86.130 Criteria. (1) In granting an allocation, reallocation, or carryforward of the state ceiling as provided in this chapter, the agency shall consider existing state priorities and other such criteria, including but not limited to, the following criteria:

(a) Need of issuers to issue private activity bonds within a bond use category;

(b) Amount of the state ceiling available;

(c) Public benefit and purpose to be satisfied, including economic development, educational opportunity, and public health, safety, or welfare;

(d) Cost or availability of alternative methods of financing for the project or program; and

(e) Certainty of using the allocation which is being requested.

(2) In determining whether to allocate an amount of the state ceiling to an issuer within any bond use category, the agency shall consider, but is not limited to, the following criteria for each of the bond use categories:

(a) Housing: Criteria which comply with RCW 43.180.200.

(b) Student loans: Criteria which comply with the applicable provisions of Title 28B RCW and rules adopted by the higher education coordinating board or applicable state agency dealing with student financial aid.

(c) Small issue: Recommendation by the board regarding how the amount of the state ceiling set aside for the small issue bond use category shall be allocated among issuers. Factors may include:

(i) The number of employment opportunities the project is likely to create or retain in relation to the amount of the bond issuance;

(ii) The level of unemployment existing in the geographic area likely to be affected by the project;

(iii) A commitment to providing employment opportunities to low-income persons in cooperation with the employment security department;

(iv) Geographic distribution of projects;

(v) The number of persons who will benefit from the project;

(vi) Consistency with criteria identified in subsection (1) of this section;

(vii) Order in which requests were received; and

(viii) Requirements of the board's umbrella bond program.

(d) Exempt facility or redevelopment: Factors which may include:

(i) State issuance needs;

- (ii) Consistency with criteria identified in subsection (1) of this section;
 - (iii) Order in which requests were received;
 - (iv) The proportionate number of persons in relationship to the size of the community who will benefit from the project; and
 - (v) The unique timing and issuance needs of large scale projects that may require allocations in more than one year.
- (e) Public utility: Factors which may include:
- (i) Consistency with criteria identified in subsection (1) of this section; and
 - (ii) Timing needs for issuance of bonds over a multi-year period. [1987 c 297 § 4.]

39.86.140 Procedure for obtaining state ceiling allocation. (1) No issuer may receive an allocation of the state ceiling without a certificate of approval from the agency.

(2)(a) For each state ceiling allocation request, an issuer shall submit to the agency, no sooner than ninety days prior to the beginning of a calendar year for which an allocation of the state ceiling is being requested, a form identifying:

- (i) The amount of the allocation sought;
- (ii) The bond use category from which the allocation sought would be made;
- (iii) The project or program for which the allocation is requested;
- (iv) The financing schedule for which the allocation is needed; and
- (v) Any other such information required by the agency, including information which corresponds to the allocation criteria of RCW 39.86.130.

(b) Nothing in (a) of this subsection precludes a public utility issuer from filing and the agency from considering a request at such times as may be appropriate in order to meet the criteria set forth in RCW 39.86.130(2)(e)(ii).

(3) The agency may approve or deny an allocation for all or a portion of the issuer's request. Any denied request, however, shall remain on file with the agency for the remainder of the calendar year and shall be considered for receiving any allocation, reallocation, or carryforward of unused portions of the state ceiling during that period.

(4) After receiving an allocation request, the agency shall mail to the requesting issuer a written certificate of approval or notice of denial for an allocation amount, by a date no later than the latest of the following:

- (a) Forty-five days from May 8, 1987;
- (b) February 1 of the calendar year, other than 1987, for which the request is made;
- (c) Fifteen days from the date the agency receives an allocation request; or
- (d) Fifteen days from the date the agency receives a recommendation by the board with regard to a small issue allocation request, should the board choose to review individual requests.

(5)(a) For requests of the state ceiling of any calendar year, the following applies to all bond use categories except housing and student loans:

- (i) Except for housing and student loans, any allocations granted prior to April 1, for which bonds have not been issued by September 1 of the same calendar year, shall

revert to the agency on September 1 of the same calendar year for reallocation unless an extension or carryforward is granted;

(ii) Except for housing and student loans, any allocations granted on or after April 1, for which bonds have not been issued by December 15 of the same calendar year, shall revert to the agency on December 15 of the same calendar year for reallocation unless an extension or carryforward is granted.

(b) For each calendar year, any housing or student loan allocations, for which bonds have not been issued by December 15 of the same calendar year, shall revert to the agency on December 15 of the same calendar year for reallocation unless an extension or carryforward is granted.

(6) An extension of the deadlines provided by subsection (5) of this section may be granted by the agency for the approved allocation amount or a portion thereof, based on:

(a) Firm and convincing evidence that the bonds will be issued before the end of the calendar year if the extension is granted; and

(b) Any other criteria the agency deems appropriate.

(7) If an issuer determines that bonds subject to the state ceiling will not be issued for the project or program for which an allocation was granted, the issuer shall promptly notify the agency in writing so that the allocation may be canceled and the amount may be available for reallocation.

(8) Bonds subject to the state ceiling may be issued only to finance the project or program for which a certificate of approval is granted.

(9) Within three business days of the date that bonds for which an allocation of the state ceiling is granted have been delivered to the original purchasers, the issuer shall mail to the agency a written notification of the bond issuance. In accordance with chapter 39.44 RCW, the issuer shall also complete bond issuance information on the form provided by the agency.

(10) If the total amount of tax-exempt bonds issued for a project or program is less than the amount allocated, the remaining portion of the allocation shall revert to the agency for reallocation in accordance with the criteria in RCW 39.86.130. If the amount of tax-exempt bonds actually issued under the state ceiling is greater than the amount allocated, the entire allocation shall be disallowed. [1987 c 297 § 5.]

39.86.150 Reallocation process and carryforwards.

(1) Beginning September 1 of each calendar year, the agency may allocate or reallocate any portions of the state ceiling for which no certificate of approval is in effect. Reallocations may also be made from the remainder category at any time during the year.

(2) Prior to the end of each calendar year, the agency shall allocate or reallocate any unused portions of the state ceiling among one or more issuers as carryforward, to be used within three years, in accordance with the code and relevant criteria described in RCW 39.86.130. [1987 c 297 § 6.]

39.86.160 Executive orders. If federal legislation is enacted or federal regulations are promulgated which affect the state ceiling, when the legislature is not in session or is

less than forty-five days from the constitutional end of session, the governor may establish by executive order an alternative system for the allocation of tax-exempt bonds under the state ceiling, effective until the legislature acts. In allocating or reallocating under this section, the governor shall take into account the requirements of federal law, the policy choices expressed in state law, and the projected needs of issuers. [1987 c 297 § 7.]

39.86.170 Fees. A fee schedule shall be established by rule by the agency to assist in support of bond allocation activities. Fees shall reflect costs actually incurred or expected to be incurred by the agency in its bond allocation activities. [1987 c 297 § 8.]

39.86.180 Code amendments. In order to permit the full use of the authorized state ceiling under federal law, the agency may adopt rules approving any amendments made to the code after May 8, 1987. [1987 c 297 § 9.]

39.86.190 Annual and biennial reports. By February 1 of each year, the agency shall summarize for the legislature each previous year's bond allocation requests and issuance. Beginning in June of 1988 and thereafter in June of each even-numbered year, the agency shall also submit a biennial report summarizing usage of the bond allocation proceeds and any policy concerns for future bond allocations. [1987 c 297 § 10.]

39.86.200 Ratification. Any state ceiling allocations taken prior to May 8, 1987, in conformance with the code and an applicable executive order of the governor are ratified and confirmed and shall remain in full force and effect notwithstanding any other provision of this chapter. [1987 c 297 § 11.]

39.86.905 Captions. As used in this chapter, captions constitute no part of the law. [1987 c 297 § 15.]

39.86.906 Severability—1987 c 297. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 297 § 14.]

Chapter 39.88

COMMUNITY REDEVELOPMENT FINANCING ACT

Sections

39.88.010	Declaration.
39.88.020	Definitions.
39.88.030	Authority—Limitations.
39.88.040	Procedure for adoption of public improvement.
39.88.050	Notice of public improvement.
39.88.060	Disagreements between taxing districts.
39.88.070	Apportionment of taxes.
39.88.080	Application of tax allocation revenues.
39.88.090	General obligation bonds.
39.88.100	Tax allocation bonds.
39.88.110	Legal investments.
39.88.120	Notice to state.

39.88.130	Conclusive presumption of validity.
39.88.900	Supplemental nature of chapter.
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39.88.910	Captions not part of law—1982 1st ex.s. c 42.
39.88.915	Severability—1982 1st ex.s. c 42.

Reviser's note: Senate Joint Resolution No. 143, amending the state Constitution to authorize the use of increased property tax revenues resulting from a public improvement for the purpose of paying obligations incurred for the improvement, was enacted during the 1982 first extraordinary session of the legislature and was submitted to the voters at the November 1982 state general election. It was defeated by a vote of 393,030 in favor and 882,194 against. A similar constitutional amendment, House Joint Resolution No. 23, was defeated at the November 1985 state general election.

39.88.010 Declaration. It is declared to be the public policy of the state of Washington to promote and facilitate the orderly development and economic stability of its urban areas. The provision of adequate government services and the creation of employment opportunities for the citizens within urban areas depends upon the economic growth and the strength of their tax base. The construction of necessary public improvements in accordance with local community planning will encourage investment in job-producing private development and will expand the public tax base.

It is the purpose of this chapter to allocate a portion of regular property taxes for limited periods of time to assist in the financing of public improvements which are needed to encourage private development of urban areas; to prevent or arrest the decay of urban areas due to the inability of existing financing methods to provide needed public improvements; to encourage local taxing districts to cooperate in the allocation of future tax revenues arising in urban areas in order to facilitate the long-term growth of their common tax base; and to encourage private investment within urban areas. [1982 1st ex.s. c 42 § 2.]

39.88.020 Definitions. As used in this chapter the following terms have the following meanings unless a different meaning is clearly indicated by the context:

(1) "Apportionment district" means the geographic area, within an urban area, from which regular property taxes are to be apportioned to finance a public improvement contained therein.

(2) "Assessed value of real property" means the valuation of real property as placed on the last completed assessment roll of the county.

(3) "City" means any city or town.

(4) "Ordinance" means any appropriate method of taking a legislative action by a county or city, whether known as a statute, resolution, ordinance, or otherwise.

(5) "Public improvement" means an undertaking to provide public facilities in an urban area which the sponsor has authority to provide.

(6) "Public improvement costs" means the costs of design, planning, acquisition, site preparation, construction, reconstruction, rehabilitation, improvement, and installation of the public improvement; costs of relocation, maintenance, and operation of property pending construction of the public improvement; costs of utilities relocated as a result of the public improvement; costs of financing, including interest during construction, legal and other professional services, taxes, and insurance; costs incurred by the assessor to revalue real property for the purpose of determining the tax

allocation base value that are in excess of costs incurred by the assessor in accordance with his revaluation plan under chapter 84.41 RCW, and the costs of apportioning the taxes and complying with this chapter and other applicable law; and administrative costs reasonably necessary and related to these costs. These costs may include costs incurred prior to the adoption of the public improvement ordinance, but subsequent to July 10, 1982.

(7) "Public improvement ordinance" means the ordinance passed under RCW 39.88.040(4).

(8) "Regular property taxes" means regular property taxes as now or hereafter defined in RCW 84.04.140, except regular property taxes levied by port districts or public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness.

(9) "Sponsor" means any county or city initiating and undertaking a public improvement.

(10) "Tax allocation base value of real property" means the true and fair value of real property within an apportionment district for the year in which the apportionment district was established.

(11) "Tax allocation bonds" means any bonds, notes, or other obligations issued by a sponsor pursuant to *section 10 of this act.

(12) "Tax allocation revenues" means those tax revenues allocated to a sponsor under RCW 39.88.070(1)(b).

(13) "Taxing districts" means any governmental entity which levies or has levied for it regular property taxes upon real property located within a proposed or approved apportionment district.

(14) "Value of taxable property" means value of taxable property as defined in RCW 39.36.015.

(15) "Urban area" means an area in a city or located outside of a city that is characterized by intensive use of the land for the location of structures and receiving such urban services as sewers, water, and other public utilities and services normally associated with urbanized areas. Not more than twenty-five percent of the area within the urban area proposed apportionment district may be vacant land. [1982 1st ex.s. c 42 § 3.]

***Reviser's note:** "section 10 of this act," codified as RCW 39.88.090, deals with general obligation bonds. Tax allocation bonds are the subject of section 11 (RCW 39.88.100), which was apparently intended. The error arose in the renumbering of sections in the engrossing of amendments to Second Substitute Senate Bill No. 4603 [1982 1st ex.s. c 42].

39.88.030 Authority—Limitations. (1) Only public improvements which are determined by the legislative authority of the sponsor to meet the following criteria are eligible to be financed under this chapter:

(a) The public improvement is located within an urban area;

(b) The public improvement will encourage private development within the apportionment district;

(c) The public improvement will increase the fair market value of the real property located within the apportionment district;

(d) The private development which is anticipated to occur within the apportionment district as a result of the public improvement is consistent with an existing comprehensive land use plan and approved growth policies of the jurisdiction within which it is located;

(e) A public improvement located within a city has been approved by the legislative authority of such city; and

(f) A public improvement located within an urban area in an unincorporated area has been approved by the legislative authority of the county within whose boundaries the area lies.

(2) Apportionment of regular property tax revenues to finance the public improvements is subject to the following limitations:

(a) No apportionment of regular property tax revenues may take place within a previously established apportionment district where regular property taxes are still apportioned to finance public improvements without the concurrence of the sponsor which established the district;

(b) No apportionment district may be established which includes any geographic area included within a previously established apportionment district which has outstanding bonds payable in whole or in part from tax allocation revenues;

(c) The total amount of outstanding bonds payable in whole or in part from tax allocation revenues arising from property located within a city shall not exceed two percent of the value of taxable property within the city, and the total amount of outstanding bonds payable in whole or in part from tax allocation revenues arising from property located within the unincorporated areas of a county shall not exceed two percent of the value of taxable property within the entire unincorporated area of the county; and

(d) No taxes other than regular property taxes may be apportioned under this chapter.

(3) Public improvements may be undertaken and coordinated with other programs or efforts undertaken by the sponsor or others and may be funded in whole or in part from sources other than those provided by this chapter. [1982 1st ex.s. c 42 § 4.]

39.88.040 Procedure for adoption of public improvement. Public improvements funded by tax allocation revenues may only be located within an urban area. In order to secure an allocation of regular property taxes to finance a public improvement, a sponsor shall:

(1) Propose by ordinance a plan for the public improvement which includes a description of the contemplated public improvement, the estimated cost thereof, the boundaries of the apportionment district, the estimated period during which tax revenue apportionment is contemplated, and the ways in which the sponsor plans to use tax allocation revenues to finance the public improvement, and which sets at least three public hearings thereon before the legislative authority of the sponsor or a committee thereof: **PROVIDED**, That public hearings for the public improvement that is undertaken in combination or coordination by two or more sponsors may be held jointly; and public hearings, held before the legislative authority or a committee of a majority thereof may be combined with public hearings held for other purposes;

(2) At least fifteen days in advance of the hearing:

(a) Deliver notice of the hearing to all taxing districts, the county treasurer, and the county assessor, which notice includes a map or drawing showing the location of the contemplated public improvement and the boundaries of the proposed apportionment district, a brief description of the

public improvement, the estimated cost thereof, the anticipated increase in property values within the apportionment district, the location of the sponsor's principal business office where it will maintain information concerning the public improvement for public inspection, and the date and place of hearing; and

(b) Post notice in at least six public places located in the proposed apportionment district and publish notice in a legal newspaper of general circulation within the sponsor's jurisdiction briefly describing the public improvement, the proposed apportionment, the boundaries of the proposed apportionment district, the location where additional information concerning the public improvement may be inspected, and the date and place of hearing;

(3) At the time and place fixed for the hearing under subsection (1) of this section, and at such times to which the hearing may be adjourned, receive and consider all statements and materials as may be submitted, and objections and letters filed before or within ten days thereafter;

(4) Within one hundred twenty days after completion of the public hearings, pass an ordinance establishing the apportionment district and authorizing the proposed public improvement, including any modifications which in the sponsor's opinion the hearings indicated should be made, which includes the boundaries of the apportionment district, a description of the public improvement, the estimated cost thereof, the portion of the estimated cost thereof to be reimbursed from tax allocation revenues, the estimated time during which regular property taxes are to be apportioned, the date upon which apportionment of the regular property taxes will commence, and a finding that the public improvement meets the conditions of RCW 39.88.030. [1982 1st ex.s. c 42 § 5.]

39.88.050 Notice of public improvement. Within fifteen days after enactment of the public improvement ordinance, the sponsor shall publish notice in a legal newspaper circulated within the designated apportionment district summarizing the final public improvement, including a brief description of the public improvement, the boundaries of the apportionment district, and the location where the public improvement ordinance and any other information concerning the public improvement may be inspected.

Within fifteen days after enactment of the public improvement ordinance, the sponsor shall deliver a certified copy thereof to each taxing district, the county treasurer, and the county assessor. [1982 1st ex.s. c 42 § 6.]

39.88.060 Disagreements between taxing districts.

(1) Any taxing district that objects to the apportionment district, the duration of the apportionment, the manner of apportionment, or the propriety of cost items established by the public improvement ordinance of the sponsor may, within thirty days after mailing of the ordinance, petition for review thereof by the state board of tax appeals. The state board of tax appeals shall meet within a reasonable time, hear all the evidence presented by the parties on matters in dispute, and determine the issues upon the evidence as may be presented to it at the hearing. The board may approve or deny the public improvement ordinance as enacted or may grant approval conditioned upon modification of the ordi-

nance by the sponsor. The decision by the state board of tax appeals shall be final and conclusive but shall not preclude modification or discontinuation of the public improvement.

(2) If the sponsor modifies the public improvement ordinance as directed by the board, the public improvement ordinance shall be effective without further hearings or findings and shall not be subject to any further appeal. If the sponsor modifies the public improvement ordinance in a manner other than as directed by the board, the public improvement ordinance shall be subject to the procedures established pursuant to RCW 39.88.040 and 39.88.050. [1989 c 378 § 1; 1982 1st ex.s. c 42 § 7.]

39.88.070 Apportionment of taxes. (1) Upon the date established in the public improvement ordinance, but not sooner than the first day of the calendar year following the passage of the ordinance, the regular property taxes levied upon the assessed value of real property within the apportionment district shall be divided as follows:

(a) That portion of the regular property taxes produced by the rate of tax levied each year by or for each of the taxing districts upon the tax allocation base value of real property, or upon the assessed value of real property in each year, whichever is smaller, shall be allocated to and paid to the respective taxing districts; and

(b) That portion of the regular property taxes levied each year by or for each of the taxing districts upon the assessed value of real property within an apportionment district which is in excess of the tax allocation base value of real property shall be allocated and paid to the sponsor, or the sponsor's designated agent, until all public improvement costs to be paid from the tax allocation revenues have been paid, except that the sponsor may agree to receive less than the full amount of such portion as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of the taxes shall be allocated to the respective taxing districts as the sponsor and the taxing districts may agree.

(2) The county assessor shall revalue the real property within the apportionment district for the purpose of determining the tax allocation base value for the apportionment district and shall certify to the sponsor the tax allocation base value as soon as practicable after the assessor receives notice of the public improvement ordinance and shall certify to the sponsor the total assessed value of real property within thirty days after the property values for each succeeding year have been established, except that the assessed value of state-assessed real property within the apportionment district shall be certified as soon as the values are provided to the assessor by the department of revenue. Nothing in this section authorizes revaluations of real property by the assessor for property taxation that are not made in accordance with the assessor's revaluation plan under chapter 84.41 RCW.

(3) The date upon which the apportionment district was established shall be considered the date upon which the public improvement ordinance was enacted by the sponsor.

(4) The apportionment of regular property taxes under this section shall cease when tax allocation revenues are no longer necessary or obligated to pay public improvement costs or to pay principal of and interest on bonds issued to

finance public improvement costs and payable in whole or in part from tax allocation revenues. At the time of termination of the apportionment, any excess money and any earnings thereon held by the sponsor shall be returned to the county treasurer and distributed to the taxing districts which were subject to the allocation in proportion to their regular property tax levies due for the year in which the funds are returned. [1982 1st ex.s. c 42 § 8.]

39.88.080 Application of tax allocation revenues.

Tax allocation revenues may be applied as follows:

- (1) To pay public improvement costs;
- (2) To pay principal of and interest on, and to fund any necessary reserves for, tax allocation bonds;
- (3) To pay into bond funds established to pay the principal of and interest on general obligation bonds issued pursuant to law to finance public facilities that are specified in the public improvement ordinance and constructed following the establishment of and within the apportionment district; or
- (4) To pay any combination of the foregoing. [1982 1st ex.s. c 42 § 9.]

39.88.090 General obligation bonds. General obligation bonds which are issued to finance public facilities that are specified in the public improvement ordinance, and for which part or all of the principal or interest is paid by tax allocation revenues, shall be subject to the following requirements:

- (1) The intent to issue such bonds and the maximum amount which the sponsor contemplates issuing are specified in the public improvement ordinance; and
- (2) A statement of the intent of the sponsor to issue such bonds is included in all notices required by RCW 39.88.040 and 39.88.050.

In addition, the ordinance or resolution authorizing the issuance of such general obligation bonds shall be subject to potential referendum approval by the voters of the issuing entity when the bonds are part of the non-voter approved indebtedness limitation established pursuant to RCW 39.36.020. If the voters of the county or city issuing such bonds otherwise possess the general power of referendum on county or city matters, the ordinance or resolution shall be subject to that procedure. If the voters of the county or city issuing such bonds do not otherwise possess the general power of referendum on county or city matters, the referendum shall conform to the requirements and procedures for referendum petitions provided for code cities in RCW 35A.11.100. [1982 1st ex.s. c 42 § 10.]

39.88.100 Tax allocation bonds. (1) A sponsor may issue such tax allocation bonds as it may deem appropriate for the financing of public improvement costs and a reasonable bond reserve and for the refunding of any outstanding tax allocation bonds.

- (2) The principal and interest of tax allocation bonds may be made payable from:
 - (a) Tax allocation revenues;
 - (b) Project revenues which may include (i) nontax income, revenues, fees, and rents from the public improvement financed with the proceeds of the bonds, or portions

thereof, and (ii) contributions, grants, and nontax money available to the sponsor for payment of costs of the public improvement or the debt service of the bonds issued therefor;

- (c) Any combination of the foregoing.

(3) Tax allocation bonds shall not be the general obligation of or guaranteed by all or any part of the full faith and credit of the sponsor or any other state or local government, or any tax revenues other than tax allocation revenues, and shall not be considered a debt of the sponsor or other state or local government for general indebtedness limitation purposes.

(4) The terms and conditions of tax allocation bonds may include provisions for the following matters, among others:

(a) The date of issuance, maturity date or dates, denominations, form, series, negotiability, registration, rank or priority, place of payment, interest rate or rates which may be fixed or may vary over the life of the tax allocation bonds, bond reserve, coverage, and such other terms related to repayment of the tax allocation bonds;

(b) The application of tax allocation bond proceeds; the use, sale, or disposition of property acquired; consideration or rents and fees to be charged in the sale or lease of property acquired; consideration or rents and fees to be charged in the sale or lease of property within a public improvement; the application of rents, fees, and revenues within a public improvement; the maintenance, insurance, and replacement of property within a public improvement; other encumbrances, if any, upon all or part of property within a public improvement, then existing or thereafter acquired; and the type of debts that may be incurred;

(c) The creation of special funds; the money to be so applied; and the use and disposition of the money;

(d) The securing of the tax allocation bonds by a pledge of property and property rights, by assignment of income generated by the public improvement, or by pledging such additional specifically described resources other than tax revenues as are available to the sponsor;

(e) The terms and conditions for redemption;

(f) The replacement of lost and destroyed bond instruments;

(g) Procedures for amendment of the terms and conditions of the tax allocation bonds;

(h) The powers of a trustee to enforce covenants and take other actions in event of default; the rights, liabilities, powers, and duties arising upon the breach of any covenant, condition, or obligation; and

(i) When consistent with the terms of this chapter, such other terms, conditions, and provisions which may make the tax allocation bonds more marketable and further the purposes of this chapter.

(5) Tax allocation bonds may be issued and sold in such manner as the legislative authority of the sponsor shall determine.

(6) The sponsor may also issue or incur obligations in anticipation of the receipt of tax allocation bond proceeds or other money available to pay public improvement costs. [1982 1st ex.s. c 42 § 11.]

39.88.110 Legal investments. Tax allocation bonds authorized in this chapter shall be legal investments for any of the funds of the state and of municipal corporations, for trustees, and for other fiduciaries. [1982 1st ex.s. c 42 § 13.]

39.88.120 Notice to state. Whenever notice is required to be given to the state, notice shall be given to the director of revenue. [1982 1st ex.s. c 42 § 14.]

39.88.130 Conclusive presumption of validity. No direct or collateral attack on any public improvement, public improvement ordinance, or apportionment district purported to be authorized or created in conformance with applicable legal requirements, including the requirements of this chapter, may be commenced more than thirty days after publication of notice as required by RCW 39.88.050. [1982 1st ex.s. c 42 § 15.]

39.88.900 Supplemental nature of chapter. This chapter supplements and neither restricts nor limits any powers which the state or any municipal corporation might otherwise have under any laws of this state. [1982 1st ex.s. c 42 § 16.]

39.88.905 Short title. This chapter may be known and cited as the Community Redevelopment Financing Act of 1982. [1982 1st ex.s. c 42 § 1.]

39.88.910 Captions not part of law—1982 1st ex.s. c 42. As used in this act, captions constitute no part of the law. [1982 1st ex.s. c 42 § 17.]

39.88.915 Severability—1982 1st ex.s. c 42. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 1st ex.s. c 42 § 18.]

Chapter 39.90

VALIDATION OF BONDS AND FINANCING PROCEEDINGS

Sections

- 39.90.010 Definition.
- 39.90.020 Validation of bonds, proceedings for issuance, sales, etc.
- 39.90.030 Validation of proceedings to finance or aid in financing.
- 39.90.050 Revenue bonds—Sale or issuance with greater interest rate than that specified authorized.
- 39.90.060 Validation of debts, contracts and obligations regardless of interest rates.

Cities and towns

sewerage system bonds validated: RCW 35.67.194.
validating indebtedness: Chapter 35.40 RCW.

City and county armory sites: Chapter 36.64 RCW.

Counties: Chapter 36.67 RCW.

County road bonds: RCW 36.76.080.

Funding bonds, validation: RCW 39.52.015.

Irrigation district bonds, validating. See note following RCW 87.19.005.

Metropolitan park districts, validating bonds: See note following RCW 35.61.010

Municipal utilities, validating bond proceedings: See notes following RCW 35.92.010.

School districts

validating bonds proceedings: RCW 28A.530.010, 28A.530.020, and note following RCW 39.36.020.

validating indebtedness: Chapter 28A.535 RCW.

Second class cities, validating bonds and proceedings: See note following RCW 35.23.545.

39.90.010 Definition. As used in this chapter, the term "public body" means any city, town, district or other governmental agency created by or under the laws of this state. [1947 c 242 § 1; Rem. Supp. 1947 § 5616-20.]

39.90.020 Validation of bonds, proceedings for issuance, sales, etc. All bonds heretofore issued for the purpose of financing or aiding in the financing of any work, undertaking, or project by any public body, including all proceedings for the authorization and issuance of such bonds, and the sale, execution, and delivery thereof, are hereby validated, ratified, approved, and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing body or commission or officers thereof, to authorize and issue such bonds, or to sell, execute, or deliver the same, and notwithstanding any defects or irregularities (other than constitutional), including the failure to publish notices of elections, in such proceedings, or in such sale, execution or delivery, and notwithstanding that such governing body or commission or officers may not have been elected, appointed or qualified for the offices they purported to hold; and such bonds are and shall be binding, legal, valid, and enforceable obligations of such public body. [1947 c 242 § 2; Rem. Supp. 1947 § 5616-21.]

39.90.030 Validation of proceedings to finance or aid in financing. All proceedings which have been taken prior to March 19, 1947, for the purpose of financing or aiding in the financing of any work, undertaking, or project by any public body, including all proceedings for the authorization and issuance of bonds and for the sale, execution, and delivery thereof, are hereby validated, ratified, approved, and confirmed, notwithstanding any lack of power (other than constitutional) of such public body, or the governing body or commission or officers thereof, to authorize and issue such bonds, or to sell, execute, or deliver the same, and notwithstanding any defects or irregularities (other than constitutional) in such proceedings. [1947 c 242 § 3; Rem. Supp. 1947 § 5616-22.]

39.90.050 Revenue bonds—Sale or issuance with greater interest rate than that specified authorized. All revenue bonds, the issuance of which was authorized or ratified at a general or special election held within the issuing jurisdiction prior to July 1, 1970 or the proposition for the issuance of which will be submitted at such an election pursuant to action of the legislative authority of the issuer taken prior to July 1, 1970, may be sold and issued with an interest rate or rates greater than any interest rate restriction contained in the ballot proposition or ordinance or resolution relating to such authorization or ratification. [1970 ex.s. c 66 § 6.]

39.90.060 Validation of debts, contracts and obligations regardless of interest rates. All debts, contracts and obligations heretofore made or incurred by or in favor of the state, state agencies, The Evergreen State College, community colleges, and regional and state universities, and the political subdivisions, municipal corporations and quasi municipal corporations of this state, are hereby declared to be legal and valid and of full force and effect from the date thereof, regardless of the interest rate borne by any such debts, contracts and obligations. [1977 ex.s. c 169 § 93; 1970 ex.s. c 66 § 7.]

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW 28B.10.016.

Chapter 39.92

LOCAL TRANSPORTATION ACT

Sections

39.92.010	Purpose.
39.92.020	Definitions.
39.92.030	Local programs authorized.
39.92.040	Transportation impact fee.
39.92.050	Interlocal cooperation—Consistency and assistance.
39.92.900	Severability—Prospective application—1988 c 179.
39.92.901	Section captions—1988 c 179.

39.92.010 Purpose. The legislature finds that there is an increasing need for local and regional transportation improvements as the result of both existing demands and the foreseeable future demands from economic growth and development within the state, including residential, commercial, and industrial development.

The legislature intends with this chapter to enable local governments to develop and adopt programs for the purpose of jointly funding, from public and private sources, transportation improvements necessitated in whole or in part by economic development and growth within their respective jurisdictions. The programs should provide a fair and predictable method for allocating the cost of necessary transportation improvements between the public and private sectors. The programs should include consideration of public transportation as a method of reducing off-site transportation impacts from development. The legislature finds that the private funds authorized to be collected pursuant to this chapter are for the purpose of mitigating the impacts of development and are not taxes. The state shall encourage and give priority to the state funding of local and regional transportation improvements that are funded in part by local, public, and private funds.

The authority provided by this chapter, RCW 35.43.182 through 35.43.188, and 36.88.072 through 36.88.078 for local governments to create and implement local transportation programs is intended to be supplemental, except as expressly provided in RCW 39.92.030(9), 82.02.020, and 36.73.120, to the existing authorities and responsibilities of local governments to regulate development and provide public facilities. [1988 c 179 § 1.]

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

(1) "Developer" means an individual, group of individuals, partnership, corporation, association, municipal corpora-

tion, state agency, or other person undertaking development and their successors and assigns.

(2) "Development" means the subdivision or short platting of land or the construction or reconstruction of residential, commercial, industrial, public, or any other building, building space, or land.

(3) "Direct result of the proposed development" means those quantifiable transportation impacts that are caused by vehicles or pedestrians whose trip origin or destination is the proposed development.

(4) "Local government" means all counties, cities, and towns in the state of Washington and transportation benefit districts created pursuant to chapter 36.73 RCW.

(5) "Off-site transportation improvements" means those transportation capital improvements designated in the local plan adopted under this chapter that are authorized to be undertaken by local government and that serve the transportation needs of more than one development.

(6) "Transportation impact fee" means a monetary charge imposed on new development for the purpose of mitigating off-site transportation impacts that are a direct result of the proposed development.

(7) "Fair market value" means the price in terms of money that a property will bring in a competitive and open market under all conditions of a fair sale, the buyer and seller each prudently knowledgeable, and assuming the price is not affected by undue stimulus, measured at the time of the dedication to local government of land or improved transportation facilities. [1988 c 179 § 2.]

39.92.030 Local programs authorized. Local governments may develop and adopt programs for the purpose of jointly funding, from public and private sources, transportation improvements necessitated in whole or in part by economic development and growth within their respective jurisdictions. Local governments shall adopt the programs by ordinance after notice and public hearing. Each program shall contain the elements described in this section.

(1) The program shall identify the geographic boundaries of the entire area or areas generally benefited by the proposed off-site transportation improvements and within which transportation impact fees will be imposed under this chapter.

(2) The program shall be based on an adopted comprehensive, long-term transportation plan identifying the proposed off-site transportation improvements reasonable and necessary to meet the future growth needs of the designated plan area and intended to be covered by this joint funding program, including acquisition of right of way, construction and reconstruction of all major and minor arterials and intersection improvements, and identifying design standards, levels of service, capacities, and costs applicable to the program. The program shall also indicate how the transportation plan is coordinated with applicable transportation plans for the region and for adjacent jurisdictions. The program shall also indicate how public transportation and ride-sharing improvements and services will be used to reduce off-site transportation impacts from development.

(3) The program shall include at least a six-year capital funding program, updated annually, identifying the specific public sources and amounts of revenue necessary to pay for

that portion of the cost of all off-site transportation improvements contained in the transportation plan that will not foreseeably be funded by transportation impact fees. The program shall include a proposed schedule for construction and expenditures of funds. The funding plan shall consider the additional local tax revenue estimated to be generated by new development within the plan area if all or a portion of the additional revenue is proposed to be earmarked as future appropriations for such off-site transportation improvements.

(4) The program shall authorize transportation impact fees to be imposed on new development within the plan area for the purpose of providing a portion of the funding for reasonable and necessary off-site transportation improvements to solve the cumulative impacts of planned growth and development in the plan area. Off-site transportation impacts shall be measured as a pro rata share of the capacity of the off-site transportation improvements being funded under the program. The fees shall not exceed the amount that the local government can demonstrate is reasonably necessary as a direct result of the proposed development.

(5) The program shall provide that the funds collected as a result of a particular new development shall be used in substantial part to pay for improvements mitigating the impacts of the development or be refunded to the property owners of record. Fees paid toward more than one transportation improvement may be pooled and expended on any one of the improvements mitigating the impact of the development. The funds shall be expended in all cases within six years of collection by the local government or the unexpended funds shall be refunded.

(6) The program shall also describe the formula, timing, security, credits, and other terms and conditions affecting the amount and method of payment of the transportation impact fees as further provided for in RCW 39.92.040. In calculating the amount of the fee, local government shall consider and give credit for the developer's participation in public transportation and ride-sharing improvements and services.

(7) The administrative element of the program shall include: An opportunity for administrative appeal by the developer and hearing before an independent examiner of the amount of the transportation impact fee imposed; establishment of a designated account for the public and private funds appropriated or collected for the transportation improvements identified in the plan; methods to enforce collection of the public and private funds identified in the program; designation of the administrative departments or other entities responsible for administering the program, including determination of fee amounts, transportation planning, and construction; and provisions for future amendment of the program including the addition of other off-site transportation improvements. The program shall not be amended in a manner to relieve local government of any contractual obligations made to prior developers.

(8) The program shall provide that private transportation impact fees shall not be collected for any off-site transportation improvement that is incapable of being reasonably carried out because of lack of public funds or other foreseeable impediment.

(9) The program shall provide that no transportation impact fee may be imposed on a development by local government pursuant to this program when mitigation of the same off-site transportation impacts for the development is

being required by any government agency pursuant to any other local, state, or federal law. [1988 c 179 § 3.]

39.92.040 Transportation impact fee. The program shall describe the formula or method for calculating the amount of the transportation impact fees to be imposed on new development within the plan area. The program may require developers to pay a transportation impact fee for off-site transportation improvements not yet constructed and for those jointly-funded improvements constructed since the commencement of the program.

The program shall define the event in the development approval process that triggers a determination of the amount of the transportation impact fees and the event that triggers the obligation to make actual payment of the fees. However, the payment obligation shall not commence before the date the developer has obtained a building permit for the new development or, in the case of residential subdivisions or short plats, at the time of final plat approval, at the developer's option. If the developer of a residential subdivision or short plat elects to pay the fee at the date a building permit has been obtained, the option to pay the transportation impact fee by installments as authorized by this section is deemed to have been waived by the developer. The developer shall be given the option to pay the transportation impact fee in a lump sum, without interest, or by installment with reasonable interest over a period of five years or more as specified by the local government.

The local government shall require security for the obligation to pay the transportation impact fee, in the form of a recorded agreement, deed of trust, letter of credit, or other instrument determined satisfactory by the local government. The developer shall also be given credit against its obligations for the transportation impact fee, for the fair market value of off-site land and/or the cost of constructing off-site transportation improvements dedicated to the local government. If the value of the dedication exceeds the amount of transportation impact fee obligation, the developer is entitled to reimbursement from transportation impact fees attributable to the dedicated improvements and paid by subsequent developers within the plan area.

Payment of the transportation impact fee entitles the developer and its successors and assigns to credit against any other fee, local improvement district assessment, or other monetary imposition made specifically for the designated off-site transportation improvements intended to be covered by the transportation impact fee imposed pursuant to this program. The program shall also define the criteria for establishing periodic fee increases attributable to construction and related cost increases for the improvements designated in the program. [1989 c 296 § 1; 1988 c 179 § 4.]

39.92.050 Interlocal cooperation—Consistency and assistance. Local governments are authorized and encouraged to enter into interlocal agreements to jointly develop and adopt with other local governments the transportation programs authorized by this chapter for the purpose of accomplishing regional transportation planning and development. Local governments shall also seek, to the greatest degree practicable, consistency among jurisdictions in the terms and conditions of their programs for the purpose of

increasing fairness and predictability on a regional basis. Local governments shall seek comment, in the development of their programs, from other affected local governments, state agencies, and governments authorized to perform public transportation functions. Local governments are also encouraged to enter into interlocal agreements to provide technical assistance to each other, in return for reasonable reimbursement, for the purpose of developing and implementing such transportation programs. [1988 c 179 § 5.]

39.92.900 Severability—Prospective application—1988 c 179. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. This act is intended to be prospective, not retroactive, in its application. [1988 c 179 § 17.]

39.92.901 Section captions—1988 c 179. Section captions used in this act do not constitute any part of the law. [1988 c 179 § 18.]

Chapter 39.94 FINANCING CONTRACTS

Sections

39.94.010	Purposes—Construction.
39.94.020	Definitions.
39.94.030	Authority to enter into financing contracts—Terms—Intent—Obligation of state revenues.
39.94.040	State finance committee—Duties—Legislative approval required, when.
39.94.050	Financing program to be self-supporting—Payment of program expenses.
39.94.900	Application.

39.94.010 Purposes—Construction. The purposes of this chapter are to confirm the authority of the state, its agencies, departments, and instrumentalities, the state board for community and technical colleges, and the state institutions of higher education to enter into contracts for the acquisition of real and personal property which provide for payments over a term of more than one year and to exclude such contracts from the computation of indebtedness under RCW 39.42.060 and Article VIII, section 1 of the state Constitution. It is further the purpose of this chapter to permit the state, its agencies, departments, and instrumentalities, the state board for community and technical colleges, and the state institutions of higher education to enter into financing contracts which make provision for the issuance of certificates of participation and other financing structures. Financing contracts of the state, whether or not entered into under this chapter, shall be subject to approval by the state finance committee except as provided in this chapter.

This chapter shall be liberally construed to effect its purposes. [1998 c 291 § 2; 1989 c 356 § 1.]

Application—1998 c 291: See note following RCW 39.94.050.

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

(1) "Credit enhancement" includes insurance, letters of credit, lines of credit, or other similar agreements which enhance the security for the payment of the state's or an other agency's obligations under financing contracts.

(2) "Financing contract" means any contract entered into by the state for itself or on behalf of an other agency which provides for the use and purchase of real or personal property by the state and provides for payment by the state over a term of more than one year, and which provides that title to the subject property may secure performance of the state or transfer to the state or an other agency by the end of the term, upon exercise of an option, for a nominal amount or for a price determined without reference to fair market value. Financing contracts shall include, but not be limited to, conditional sales contracts, financing leases, lease purchase contracts, or refinancing contracts, but shall not include operating or true leases. For purposes of this chapter, the term "financing contract" shall not include any nonrecourse financing contract or other obligation payable only from money or other property received from private sources and not payable from any public money or property. The term "financing contract" shall include a "master financing contract."

(3) "Master financing contract" means a financing contract which provides for the use and purchase of property by the state, and which may include more than one financing contract and appropriation.

(4) "Other agency" means any commission established under Title 15 RCW, a library or regional library, an educational service district, the superintendent of public instruction, the school directors' association, a health district, or any county, city, town, school district, or other municipal corporation or quasi-municipal corporation described as such by statute.

(5) "State" means the state, agency, department, or instrumentality of the state, the state board for community and technical colleges, and any state institution of higher education.

(6) "State finance committee" means the state finance committee under chapter 43.33 RCW.

(7) "Trustee" means a bank or trust company, within or without the state, authorized by law to exercise trust powers. [1998 c 291 § 3; 1990 c 47 § 3; 1989 c 356 § 2.]

Application—1998 c 291: See note following RCW 39.94.050.

39.94.030 Authority to enter into financing contracts—Terms—Intent—Obligation of state revenues. (1) The state may enter into financing contracts for itself or on behalf of an other agency for the use and acquisition for public purposes of real and personal property. Payments under financing contracts of the state shall be made by the state from currently appropriated funds or funds not constituting "general state revenues" as defined in Article VIII, section 1 of the state Constitution. Except as provided in subsection (4)(b) of this section, payments under financing contracts of the state on behalf of any other agency shall be made solely from the sources identified in the financing contract, which may not obligate general state revenues as defined in Article VII, section 1 of the state Constitution. The treasurer of an other agency shall remit payments under financing contracts to the office of the state treasurer or to

the state treasurer's designee. In the event of any deficiency of payments by an other agency under a financing contract, the treasurer of the other agency shall transfer any legally available funds of the other agency in satisfaction of the other agency's obligations under the financing contract if such funds have been obligated by the other agency under the financing contract and, if such deficiency is not thereby cured, the office of the state treasurer is directed to withdraw from that agency's share of state revenues for distribution or other money an amount sufficient to fulfill the terms and conditions of the financing contract. The term of any financing contract shall not exceed thirty years or the remaining useful life of the property, whichever is shorter. Financing contracts may include other terms and conditions agreed upon by the parties.

(2) The state for itself or on behalf of an other agency may enter into contracts for credit enhancement, which shall limit the recourse of the provider of credit enhancement solely to the security provided under the financing contract secured by the credit enhancement.

(3) The state or an other agency may grant a security interest in real or personal property acquired under financing contracts. The security interest may be perfected as provided by the uniform commercial code secured transactions, or otherwise as provided by law for perfecting liens on real estate. Other terms and conditions may be included as agreed upon by the parties.

(4)(a) Except under (b) of this subsection, financing contracts and contracts for credit enhancement entered into under the limitations set forth in this chapter shall not constitute a debt or the contracting of indebtedness under RCW 39.42.060 or any other law limiting debt of the state. It is the intent of the legislature that such contracts also shall not constitute a debt or the contracting of indebtedness under Article VIII, section 1 of the state Constitution. Certificates of participation in payments to be made under financing contracts also shall not constitute a debt or the contracting of an indebtedness under RCW 39.42.060 if payment is conditioned upon payment by the state under the financing contract with respect to which the same relates. It is the intent of the legislature that such certificates also shall not constitute a debt or the contracting of indebtedness under Article VIII, section 1 of the state Constitution if payment of the certificates is conditioned upon payment by the state under the financing contract with respect to which those certificates relate.

(b) A financing contract made by the state on behalf of an other agency may be secured by the pledge of revenues of the other agency or other agency's full faith and credit or may, at the option of the state finance committee, include a contingent obligation by the state for payment under such financing contract. [1998 c 291 § 4; 1989 c 356 § 3.]

Application—1998 c 291: See note following RCW 39.94.050.

39.94.040 State finance committee—Duties—Legislative approval required, when. (1) Except as provided in RCW 28B.10.022, the state may not enter into any financing contract for itself if the aggregate principal amount payable thereunder is greater than an amount to be established from time to time by the state finance committee or participate in a program providing for the issuance of cer-

tificates of participation, including any contract for credit enhancement, without the prior approval of the state finance committee. Except as provided in RCW 28B.10.022, the state finance committee shall approve the form of all financing contracts or a standard format for all financing contracts. The state finance committee also may:

(a) Consolidate existing or potential financing contracts into master financing contracts with respect to property acquired by one or more agencies, departments, instrumentalities of the state, the state board for community and technical colleges, or a state institution of higher learning; or to be acquired by an other agency;

(b) Approve programs providing for the issuance of certificates of participation in master financing contracts for the state or for other agencies;

(c) Enter into agreements with trustees relating to master financing contracts; and

(d) Make appropriate rules for the performance of its duties under this chapter.

(2) In the performance of its duties under this chapter, the state finance committee may consult with representatives from the department of general administration, the office of financial management, and the department of information services.

(3) With the approval of the state finance committee, the state also may enter into agreements with trustees relating to financing contracts and the issuance of certificates of participation.

(4) The state may not enter into any financing contract for real property of the state without prior approval of the legislature.

(5) The state may not enter into any financing contract on behalf of an other agency without the approval of such a financing contract by the governing body of the other agency. [1998 c 291 § 5; 1989 c 356 § 4.]

Application—1998 c 291: See note following RCW 39.94.050.

39.94.050 Financing program to be self-supporting—Payment of program expenses. (1) It is the intent of the legislature that the financing program authorized by this chapter be self-supporting.

(2) The state treasurer is authorized to levy fees and apply specified investment earnings from time to time in amounts not to exceed sums sufficient to pay program expenses including, but not limited to, costs of issuance, and to create reserves to assure timely payment of financing contracts. The investment earnings available for this purpose represent the earnings on payments received from state and other agencies. [1998 c 291 § 1.]

Application—1998 c 291: "Chapter 291, Laws of 1998 is applicable to an other agency, as defined in RCW 39.94.020, for the financing of equipment on September 1, 1998, and for the financing of real estate on July 1, 2000." [1998 c 291 § 6.]

39.94.900 Application. The provisions of this chapter shall apply to all financing contracts entered into following July 23, 1989. [1989 c 356 § 5.]

Chapter 39.96
PAYMENT AGREEMENTS

Sections

39.96.010	Findings and declaration—Seven-year expiration.
39.96.020	Definitions.
39.96.030	Payment agreements authorized—Conditions.
39.96.040	Terms and conditions.
39.96.050	Payments—Credit enhancements.
39.96.060	Calculations regarding payment of obligations—Status of payments.
39.96.070	Payment agreements not allowed after June 30, 2000—Exception.
39.96.080	Authority cumulative.
39.96.900	Liberal construction—1993 c 273.
39.96.901	Captions not law—1993 c 273.
39.96.902	Severability—1993 c 273.
39.96.903	Effective date—1993 c 273.

39.96.010 Findings and declaration—Seven-year expiration. The legislature finds and declares that the issuance by state and local governments of bonds and other obligations, and the investment of moneys in connection with these obligations, involve exposure to changes in interest rates; that a number of financial instruments are available to lower the net cost of these borrowings, to increase the net return on these investments, or to reduce the exposure of state and local governments to changes in interest rates; that these reduced costs and increased returns for state and local governments will benefit taxpayers and ratepayers; and that the legislature desires to provide state and local governments with express statutory authority to take advantage of these instruments. In recognition of the complexity of these financial instruments, the legislature desires that this authority be subject to certain limitations, and be granted for a period of seven years. [1995 c 192 § 1; 1993 c 273 § 1.]

Effective date—1995 c 192: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 192 § 3.]

39.96.020 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter:

(1) "Financial advisor" means a financial services or financial advisory firm:

(a) With recognized knowledge and experience in connection with the negotiation and execution of payment agreements;

(b) That is acting solely as financial advisor to the governmental entity in connection with the execution of the payment agreement and the issuance or incurring of any related obligations, and not as a principal, placement agent, purchaser, underwriter, or other similar party, and that does not control, nor is it controlled by or under common control with, any such party;

(c) That is compensated for its services in connection with the execution of payment agreements, either directly or indirectly, solely by the governmental entity; and

(d) Whose compensation is not based on a percentage of the notional amount of the payment agreement or of the principal amount of any related obligations.

(2) "Governmental entity" means state government or local government.

(3) "Local government" means any city, county, port district, or public utility district, or any joint operating agency formed under RCW 43.52.360, that has or will have outstanding obligations in an aggregate principal amount of at least one hundred million dollars as of the date a payment agreement is executed or is scheduled by its terms to commence or had at least one hundred million dollars in gross revenues during the preceding calendar year.

(4) "Obligations" means bonds, notes, bond anticipation notes, commercial paper, or other obligations for borrowed money, or lease, installment purchase, or other similar financing agreements or certificates of participation in such agreements.

(5) "Payment agreement" means a written agreement which provides for an exchange of payments based on interest rates, or for ceilings or floors on these payments, or an option on these payments, or any combination, entered into on either a current or forward basis.

(6) "State government" means (a) the state of Washington, acting by and through its state finance committee, (b) the Washington health care facilities authority, (c) the Washington higher education facilities authority, (d) the Washington state housing finance commission, or (e) the state finance committee upon adoption of a resolution approving a payment agreement on behalf of any state institution of higher education as defined under RCW 28B.10.016: PROVIDED, That such approval shall not constitute the pledge of the full faith and credit of the state, but a pledge of only those funds specified in the approved agreement. [1993 c 273 § 2.]

39.96.030 Payment agreements authorized—Conditions. (1) Subject to subsections (2) and (3) of this section, any governmental entity may enter into a payment agreement in connection with, or incidental to, the issuance, incurring, or carrying of specific obligations, for the purpose of managing or reducing the governmental entity's exposure to fluctuations or levels of interest rates. No governmental entity may carry on a business of acting as a dealer in payment agreements.

(2) No governmental entity may enter into a payment agreement under this chapter unless it first:

(a) Finds and determines, by ordinance or resolution, that the payment agreement, if fully performed by all parties thereto, will (i) reduce the amount or duration of its exposure to changes in interest rates; or (ii) result in a lower net cost of borrowing with respect to the related obligations, or a higher net rate of return on investments made in connection with, or incidental to, the issuance, incurring, or carrying of those obligations;

(b) Obtains, on or prior to the date of execution of the payment agreement, a written certification from a financial advisor that (i) the terms and conditions of the payment agreement and any ancillary agreements, including without limitation, the interest rate or rates and any other amounts payable thereunder, are commercially reasonable in light of then existing market conditions; and (ii) the finding and determination contained in the ordinance or resolution required by (a) of this subsection is reasonable.

(3) Prior to selecting the other party to a payment agreement, a governmental entity shall solicit and give due

consideration to proposals from at least two entities that meet the criteria set forth in RCW 39.96.040(2). Such solicitation and consideration shall be conducted in such manner as the governmental entity shall determine is reasonable. [1993 c 273 § 3.]

39.96.040 Terms and conditions. (1) Subject to subsections (2), (3), and (4) of this section, payment agreements entered into by any governmental entity may include those payment, term, security, default, remedy, termination, and other terms and conditions, and may be with those parties, as the governmental entity deems reasonably necessary or desirable.

(2) No governmental entity may enter into a payment agreement under this chapter unless:

(a) The other party to the agreement has a rating from at least two nationally recognized credit rating agencies, as of the date of execution of the agreement, that is within the two highest long-term investment grade rating categories, without regard to subcategories, or the payment obligations of the party under the agreement are unconditionally guaranteed by an entity that then has the required ratings; or

(b)(i) The other party to the agreement has a rating from at least two nationally recognized credit rating agencies, as of the date of execution of the agreement, that is within the three highest long-term investment grade rating categories, without regard to subcategories, or the payment obligations of the party under the agreement are unconditionally guaranteed by an entity that has the required ratings; and

(ii) The payment obligations of the other party under the agreement are collateralized by direct obligations of, or obligations the principal and interest on which are guaranteed by, the United States of America, that (A) are deposited with the governmental entity or an agent of the governmental entity; and (B) maintain a market value of not less than one hundred two percent of the net market value of the payment agreement to the governmental entity, as such net market value may be defined and determined from time to time under the terms of the payment agreement.

(3) No governmental entity may enter into a payment agreement with a party who qualifies under subsection (2)(a) of this section unless the payment agreement provides that, in the event the credit rating of the other party or its guarantor falls below the level required by subsection (2)(a) of this section, such party will comply with the collateralization requirements contained in subsection (2)(b) of this section.

(4) No governmental entity may enter into a payment agreement unless:

(a) The notional amount of the payment agreement does not exceed the principal amount of the obligations with respect to which the payment agreement is made; and

(b) The term of the payment agreement does not exceed the final term of the obligations with respect to which the payment agreement is made. [1993 c 273 § 4.]

39.96.050 Payments—Credit enhancements. (1) Subject to any covenants or agreements applicable to the obligations issued or incurred by the governmental entity, any payments required to be made by the governmental entity under a payment agreement entered into in connection with the issuance, incurring, or carrying of those obligations

may be made from money set aside or pledged to pay or secure the payment of those obligations or from any other legally available source.

(2) Any governmental entity may enter into credit enhancement, liquidity, line of credit, or other similar agreements in connection with, or incidental to, the execution of a payment agreement. The credit enhancement, liquidity, line of credit, or other similar agreement may include those payment, term, security, default, remedy, termination, and other terms and conditions, and may be with those parties, as the governmental entity deems reasonably necessary or desirable. [1993 c 273 § 5.]

39.96.060 Calculations regarding payment of obligations—Status of payments. (1) Subject to any covenants or agreements applicable to the obligations issued or incurred by the governmental entity, if the governmental entity enters into a payment agreement with respect to those obligations, then it may elect to treat the amounts payable from time to time with respect to those obligations as the amounts payable after giving effect to the payment agreement for the purposes of calculating:

(a) Rates and charges to be imposed by a revenue-producing enterprise if the revenues are pledged or used to pay those obligations;

(b) Any taxes to be levied and collected to pay those obligation[s]; and

(c) Payments or debt service on those obligations for any other purpose.

(2) A payment agreement and any obligation of the governmental entity to make payments under the agreement in future fiscal years shall not constitute debt or indebtedness of the governmental entity for purposes of state constitutional and statutory debt limitation provisions if the obligation to make any payments is contingent upon the performance of the other party or parties to the agreement, and no moneys are paid to the governmental entity under the payment agreement that must be repaid in future fiscal years. [1993 c 273 § 6.]

39.96.070 Payment agreements not allowed after June 30, 2000—Exception. (1) Except as provided in subsection (3) of this section, no governmental entity may enter a payment agreement under RCW 39.96.030 after June 30, 2000.

(2) The termination of authority to enter payment agreements after June 30, 2000, shall not affect the validity of any payment agreements or other contracts entered into under RCW 39.96.030 on or before that date.

(3) A governmental entity may enter into a payment agreement under and in accordance with this chapter after June 30, 2000, to replace a payment agreement that relates to specified obligations issued on or before that date and that has terminated before the final term of those obligations. [1998 c 245 § 35; 1995 c 192 § 2; 1993 c 273 § 7.]

Effective date—1995 c 192: See note following RCW 39.96.010.

39.96.080 Authority cumulative. The powers conferred by this chapter are in addition to, and not in substitution for, the powers conferred by any existing law, and the limitations imposed by this chapter do not directly

or indirectly modify, limit, or affect the powers conferred by any existing law. [1993 c 273 § 8.]

39.96.900 Liberal construction—1993 c 273. This chapter shall be liberally construed to effect its purposes. [1993 c 273 § 9.]

39.96.901 Captions not law—1993 c 273. Captions used in this chapter do not constitute any part of the law. [1993 c 273 § 10.]

39.96.902 Severability—1993 c 273. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 273 § 11.]

39.96.903 Effective date—1993 c 273. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 7, 1993]. [1993 c 273 § 13.]

Title 40

PUBLIC DOCUMENTS, RECORDS, AND PUBLICATIONS

Chapters

- 40.04 Public documents.
- 40.06 State publications distribution center.
- 40.07 Management and control of state publications.
- 40.10 Microfilming of records to provide continuity of civil government.
- 40.14 Preservation and destruction of public records.
- 40.16 Penal provisions.
- 40.20 Reproduced records for governments and business.
- 40.24 Address confidentiality for victims of domestic violence and sexual assault.

Disclosure of public records: Chapter 42.17 RCW.

Historical materials, preservation: Chapter 27.48 RCW.

Minutes of governmental agencies open to public inspection: RCW 42.32.030.

Newspapers: Chapter 19.56 RCW.

Public documents as evidence: Chapter 5.44 RCW.

Publication of legal notices: Chapter 65.16 RCW.

Recording, registration, and legal publication: Title 65 RCW.

Records and exhibits of superior court, destruction, reproduction: RCW 36.23.065, 36.23.067, 36.23.070.

State records

secretary of state as custodian: RCW 43.07.040.

to be kept at the seat of government: State Constitution Art. 3 § 24.

Uniform business records as evidence act: Chapter 5.45 RCW.

Uniform photographic copies of business and public records as evidence act: Chapter 5.46 RCW.

Chapter 40.04 PUBLIC DOCUMENTS

Sections

- 40.04.030 Session laws, legislative journals, supreme court and court of appeals reports—Duties of public printer, publisher.
- 40.04.035 Temporary edition of session laws—Distribution and sale.
- 40.04.040 Permanent edition of session laws—Distribution, sale, exchange—Sale of surplus copies.
- 40.04.090 Legislative journals—Distribution, sale, exchange.
- 40.04.100 Supreme court and court of appeals reports—Distribution, exchange—Duties of reporter of decisions.
- 40.04.110 Supreme court and court of appeals reports—Provision by publisher to reporter.

Attorney general to give written opinions: RCW 43.10.030.

Revised Code of Washington, publication: Chapter 1.08 RCW.

Session laws, publication, etc.: Chapter 44.20 RCW.

Supreme court reports, publication: Chapter 2.32 RCW, RCW 43.78.070.

40.04.030 Session laws, legislative journals, supreme court and court of appeals reports—Duties of public printer, publisher. The public printer shall deliver to the statute law committee all bound volumes of the session laws.

The public printer shall deliver the house and senate journals as they are published to the chief clerk of the house of representatives and the secretary of the senate, as appropriate. The publisher of the supreme court reports and the court of appeals reports of the state of Washington shall deliver the copies that are purchased by the supreme court for the use of the state to the state law librarian. [1995 c 24 § 1; 1971 c 42 § 2; 1941 c 150 § 3; Rem. Supp. 1941 § 8217-3.]

40.04.035 Temporary edition of session laws—Distribution and sale. The statute law committee, after each legislative session, shall furnish one temporary bound copy of each act as published under chapter 44.20 RCW to each requesting member of the legislature at which such law was enacted, and to each requesting state department or division thereof, commission, committee, board, and council, and to community colleges. Copies shall be furnished to the senate and the house of representatives as may be requested. Two copies shall be furnished the administrator for the courts. One copy shall be furnished for each assistant attorney general; and one copy each to the Olympia representatives of the Associated Press and the United Press.

Each county auditor shall submit each year to the statute law committee a list of county officials requiring temporary session laws for official use only, and the auditor shall receive and distribute such copies to the county officials.

There shall be a charge established by the statute law committee for each of the complete sets of such temporary publications when delivered to any person, firm, corporation, or institution excepting the persons and institutions named in this section. All moneys received from the sale of such temporary sets shall be transmitted to the state treasurer, who shall deposit them in the state treasury to the credit of the general fund. [1995 c 24 § 2; 1982 1st ex.s. c 32 § 5.]

Publication of temporary edition of session laws: RCW 44.20.030.

40.04.040 Permanent edition of session laws—Distribution, sale, exchange—Sale of surplus copies. Permanent session laws shall be distributed, sold, and exchanged by the statute law committee as follows:

(1) Copies shall be given as follows: One to each requesting United States senator and representative in congress from this state; two to the Library of Congress; one to the United States supreme court library; three to the library of the circuit court of appeals of the ninth circuit; two to each United States district court room within this state; two to each office and branch office of the United States district attorneys in this state; one to each requesting state official whose office is created by the Constitution; one each to the secretary of the senate and the chief clerk of the house of representatives and such additional copies as they may request; fourteen copies to the code reviser; two copies to

the state library; two copies each to the law libraries of any accredited law schools established in this state; one copy to each state adult correctional institution; and one copy to each state mental institution.

(2) Copies, for official use only, shall be distributed as follows: Two copies to the governor; one each to the state historical society and the state bar association; and one copy to each prosecuting attorney.

Sufficient copies shall be furnished for the use of the supreme court, the court of appeals, the superior courts, and the state law library as from time to time are requested. One copy to the University of Washington library; one copy to the library of each of the regional universities and to The Evergreen State College; and one copy to the Washington State University library. Six copies shall be sent to the King county law library, and one copy to each of the county law libraries organized pursuant to law; one copy to each public library in cities of the first class, and one copy to the municipal reference branch of the Seattle public library.

(3) Surplus copies of the session laws shall be sold and delivered by the statute law committee, in which case the price of the bound volumes shall be sufficient to cover costs. All moneys received from the sale of such bound volumes of session laws shall be paid into the state treasury for the general fund.

(4) The statute law committee may exchange bound copies of the session laws for similar laws or legal materials of other states, territories, and governments, and make such other and further distribution of the bound volumes as in its judgment seems proper. [1995 c 24 § 3; 1982 1st ex.s. c 32 § 1; 1981 c 162 § 1; 1977 ex.s. c 169 § 94; 1973 c 33 § 1; 1969 c 6 § 8; 1941 c 150 § 4; Rem. Supp. 1941 § 8217-4. Formerly RCW 40.04.040 through 40.04.080.]

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW 28B.10.016.

Publication of permanent edition of session laws: RCW 44.20.050.

40.04.090 Legislative journals—Distribution, sale, exchange. The house and senate journals shall be distributed and sold by the chief clerk of the house of representatives and the secretary of the senate as follows:

(1) Subject to subsection (5) of this section, sets shall be distributed as follows: One to each requesting official whose office is created by the Constitution, and one to each requesting state department director; two copies to the state library; ten copies to the state law library; two copies to the University of Washington library; one to the King county law library; one to the Washington State University library; one to the library of each of the regional universities and to The Evergreen State College; one each to the law library of any accredited law school in this state; and one to each free public library in the state that requests it.

(2) House and senate journals of the preceding regular session during an odd- or even-numbered year, and of any intervening special session, shall be provided for use of legislators and legislative staff in such numbers as directed by the chief clerk of the house of representatives and secretary of the senate.

(3) Surplus sets of the house and senate journals shall be sold and delivered by the chief clerk of the house of representatives and the secretary of the senate at a price set

by them after consulting with the state printer to determine reasonable costs associated with the production of the journals, and the proceeds therefrom shall be paid to the state treasurer for the general fund.

(4) The chief clerk of the house of representatives and the secretary of the senate may exchange copies of the house and senate journals for similar journals of other states, territories, and governments, or for other legal materials, and make such other and further distribution of them as in their judgment seems proper.

(5) Periodically the chief clerk of the house of representatives and the secretary of the senate may canvas those entitled to receive copies under this section, and may reduce or eliminate the number of copies distributed to anyone who so concurs. [1995 c 24 § 4; 1993 c 169 § 1; 1982 1st ex.s. c 32 § 2; 1980 c 87 § 13; 1977 ex.s. c 169 § 95; 1973 c 33 § 2; 1941 c 150 § 5; Rem. Supp. 1941 § 8217-5.]

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW 28B.10.016.

40.04.100 Supreme court and court of appeals reports—Distribution, exchange—Duties of reporter of decisions. The supreme court reports and the court of appeals reports shall be distributed by the reporter of decisions as follows:

(1) Each supreme court justice and court of appeals judge is entitled to receive one copy of each volume containing an opinion signed by him or her.

(2) The state law library shall receive such copies as are necessary of each for the benefit of the state law library, the supreme court and its subsidiary offices; and the court of appeals and its subsidiary offices.

(3) The reporter shall provide one copy of each volume to each county for use in the county law library and one copy of the same to each accredited law school established in the state.

(4) The reporter shall likewise provide the state law library with such copies of volumes as necessary to exchange copies of the supreme court reports and the court of appeals reports for similar reports of other states, territories, and governments. [1995 c 257 § 4; 1991 c 363 § 113; 1979 c 151 § 49; 1973 c 33 § 3; 1971 c 42 § 3; 1941 c 150 § 6; Rem. Supp. 1941 § 8217-6.]

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

Commission on supreme court reports: RCW 2.32.160.

Publication of supreme court reports by public printer: RCW 43.78.070.

40.04.110 Supreme court and court of appeals reports—Provision by publisher to reporter. On the publication of each volume of reports the publisher to whom the contract is awarded shall provide to the reporter the number of copies of each volume of supreme court and court of appeals reports necessary for the reporter and the state law library to comply with RCW 40.04.100. [1995 c 257 § 5; 1971 c 42 § 4; 1941 c 150 § 7; Rem. Supp. 1941 § 8217-7.]

Chapter 40.06

STATE PUBLICATIONS DISTRIBUTION CENTER

Sections

40.06.010	Definitions.
40.06.020	Center created as division of state library—Depository library system—Rules and regulations.
40.06.030	Deposits by state agencies—Exemptions.
40.06.040	Inter-library depository contracts.
40.06.050	Center to publish list and other printed matter.
40.06.060	Agencies to furnish lists to center.
40.06.070	Exemptions.
40.06.900	Effective date—1963 c 233.

40.06.010 Definitions. As used in this chapter:

(1) "Print" includes all forms of reproducing multiple copies, with the exception of typewritten correspondence and interoffice memoranda.

(2) "State agency" includes every state office, officer, department, division, bureau, board, commission and agency of the state, and, where applicable, all subdivisions of each.

(3) "State publication" includes annual, biennial, and special reports, state periodicals and magazines, books, pamphlets, leaflets, and all other materials, other than news releases sent exclusively to the news media, typewritten correspondence and interoffice memoranda, issued in print by the state, the legislature, constitutional officers, or any state department, committee, or other state agency supported wholly or in part by state funds. [1977 ex.s. c 232 § 8; 1963 c 233 § 1.]

40.06.020 Center created as division of state library—Depository library system—Rules and regulations. There is hereby created as a division of the state library, and under the direction of the state librarian, a state publications distribution center. The center shall utilize the depository library system to permit citizens economical and convenient access to state publications. To this end the state library commission shall make such rules and regulations as may be deemed necessary to carry out the provisions of this chapter. [1977 ex.s. c 232 § 9; 1963 c 233 § 2.]

40.06.030 Deposits by state agencies—Exemptions.

(1) Every state agency shall promptly deposit copies of each of its state publications with the state library in quantities as certified by the state librarian as required to meet the needs of the depository library system. Upon consent of the issuing state agency such state publications as are printed by the public printer shall be delivered directly to the center.

(2) In the interest of economy and efficiency, the state librarian may specifically or by general rule exempt a given state publication or class of publications from the requirements of this section in full or in part. [1977 ex.s. c 232 § 10; 1963 c 233 § 3.]

40.06.040 Inter-library depository contracts.

To provide economical public access to state publications, the center may enter into depository contracts with any free public library, The Evergreen State College, regional university, or state university library, or, if needed, the library of any privately incorporated college or university in this state. The requirements for eligibility to contract as a

depository library shall be established by the state library commission upon recommendations of the state librarian. The standards shall include and take into consideration the type of library, available housing and space for the publications, the number and qualifications of personnel, and availability for public use. The center may also contract with public, out-of-state libraries for the exchange of state and other publications on a reciprocal basis. Any state publication to be distributed to the public and the legislature shall be mailed at the lowest available postal rate. [1981 c 260 § 8. Prior: 1977 ex.s. c 232 § 11; 1977 ex.s. c 169 § 96; 1963 c 233 § 4.]

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW 28B.10.016.

40.06.050 Center to publish list and other printed matter. The center shall publish and distribute regularly a list of available state publications, and may publish and distribute such other descriptive printed matter as will facilitate the distribution of state publications. [1963 c 233 § 5.]

40.06.060 Agencies to furnish lists to center. Upon request by the center, issuing state agencies shall furnish the center with a complete list of its current state publications and a copy of its mailing and/or exchange lists. [1963 c 233 § 6.]

40.06.070 Exemptions. This chapter shall not apply to nor affect the duties concerning publications distributed by, or officers of:

(1) The state law library; and

(2) The statute law committee and the code reviser.

[1983 c 3 § 83; 1963 c 233 § 7.]

40.06.900 Effective date—1963 c 233. The effective date of this chapter shall be July 1, 1963. [1963 c 233 § 8.]

Chapter 40.07

MANAGEMENT AND CONTROL OF STATE PUBLICATIONS

Sections

40.07.010	Legislative declaration.
40.07.020	Definitions.
40.07.030	Reports—Where filed—Review of state publications—Duties of agency head with respect to publications—Guidelines for publications—Director's duties
40.07.040	Duties of the governor.
40.07.050	Prohibition of state publications not in accordance with RCW 40.07.030—Exceptions.
40.07.060	Notification—Removal from mailing lists, exceptions—Mailing rates.
40.07.070	Advertising in state publications—Prerequisites for advertisers.

40.07.010 Legislative declaration. It is the intent of this legislation to improve executive management and control of state publications and reduce state expenditures through: (1) Elimination of reports and publications which are economically or otherwise unjustified; and (2) the simplifi-

ation and consolidation of other reports and publications. [1977 ex.s. c 232 § 1.]

40.07.020 Definitions. The terms defined in this section shall have the meanings indicated when used in this chapter.

(1) "Director" means the director of financial management.

(2) "State agency" includes every state office, department, division, bureau, board, commission, committee, higher education institution, community college, and agency of the state and all subordinate subdivisions of such agencies in the executive branch financed in whole or in part from funds held in the state treasury, but does not include the offices of executive officials elected on a state-wide basis, agricultural commodity commissions, the legislature, the judiciary, or agencies of the legislative or judicial branches of state government.

(3)(a) "State publication" means publications of state agencies and shall include any annual and biennial reports, any special report required by law, state agency newsletters, periodicals and magazines, and other printed informational material intended for general dissemination to the public or to the legislature.

(b) "State publication" may include such other state agency printed informational material as the director may prescribe by rule or regulation, in the interest of economy and efficiency, after consultation with the governor, the state librarian, and any state agencies affected.

(c) "State publication" does not include:

(i) Business forms, preliminary draft reports, working papers, or copies of testimony and related exhibit material prepared solely for purposes of a presentation to a committee of the state legislature;

(ii) Typewritten correspondence and interoffice memoranda, and staff memoranda and similar material prepared exclusively as testimony or exhibits in any proceeding in the courts of this state, the United States, or before any administrative entity;

(iii) Any notices of intention to adopt rules under RCW 34.05.320;

(iv) Publications relating to a multistate program financed by more than one state or by federal funds or private subscriptions; or

(v) News releases sent exclusively to the news media.

(4) "Print" includes all forms of reproducing multiple copies with the exception of typewritten correspondence and interoffice memoranda. [1989 c 175 § 86; 1979 c 151 § 50; 1977 ex.s. c 232 § 2.]

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

40.07.030 Reports—Where filed—Review of state publications—Duties of agency head with respect to publications—Guidelines for publications—Director's duties. (1) Any annual, biennial, or special report required to be made by any state officer, board, agency, department, commissioner, regents, trustees, or institution to the governor or to the legislature may be typewritten and a copy shall be filed with the governor, or the governor's designee, and the legislature as the law may require. An additional copy shall be filed with the state library as a public record.

(2) The director or the director's designee may selectively review state publications in order to determine if specific state publications are economically and effectively contributing to the accomplishment of state agency program objectives. The director or the director's designee shall provide general guidelines as to the number of copies to be printed for use or distribution by the issuing agency and any public or other distribution under chapter 40.06 RCW as now or hereafter amended, or other applicable directives.

(3) No agency head shall recommend a state publication for printing and distribution, other than those required by law, unless the benefits from the publication and distribution thereof to the citizens and taxpayers of this state clearly exceed the costs of preparation, printing, and distribution.

(4) The director, after consultation with affected agencies, shall prepare and publish guidelines for use by state agencies in determining and evaluating the benefits and costs of current and proposed state publications. All state agencies shall evaluate each new state publication they propose and shall annually evaluate each continuing state publication they produce in accordance with the guidelines published by the director.

(5) The director shall, after consultation with affected state agencies, also provide by general rules and regulations for overall control of the quality of the printing of state publications. Necessary publications are to be prepared and printed in the most economic manner consistent with effectiveness and achievement of program objectives. [1977 ex.s. c 232 § 3.]

40.07.040 Duties of the governor. (1) The governor or the governor's designee shall take such other action as may be necessary to maximize the economy, efficiency, and effectiveness of state publications and to do so may eliminate, consolidate, or simplify state agency publications.

(2) Nothing in this chapter shall be construed in any way as restricting public access to public records or the public right to copy such records as provided by RCW 42.17.250 through 42.17.340 as now existing or hereafter amended. [1977 ex.s. c 232 § 4.]

40.07.050 Prohibition of state publications not in accordance with RCW 40.07.030—Exceptions. Neither the public printer nor any state agency shall print or authorize for printing any state publication that has been determined by the director to be inconsistent with RCW 40.07.030 except to the extent this requirement may conflict with the laws of the United States or any rules or regulations lawfully promulgated under those laws. A copy of any state publication printed without the approval of the director under the exceptions authorized in this section shall be filed with the director with a letter of transmittal citing the federal statute, rule, or regulation requiring the publication. [1986 c 158 § 5; 1977 ex.s. c 232 § 5.]

40.07.060 Notification—Removal from mailing lists, exceptions—Mailing rates. Each state agency shall at least once each biennium notify the addressees of each state publication in or with that publication that they may be removed from the mailing list by notifying the originating agency. Mailings required by a state or federal statute, rule,

or regulation, those maintained by an institution of higher education for official fund raising or curriculum offerings, bulk mailings addressed to "occupant" or a similar designation, and paid subscriptions are excluded from the provisions of this paragraph.

All publications shall be distributed or mailed at the lowest available rate. [1977 ex.s. c 232 § 6.]

40.07.070 Advertising in state publications—Prerequisites for advertisers. A state agency may not accept advertising for placement in a state publication unless the advertiser: (1) Has obtained a certificate of registration from the department of revenue under chapter 82.32 RCW; and (2) if the advertiser is not otherwise obligated to collect and remit Washington retail sales tax or use tax, the advertiser either (a) agrees to voluntarily collect and remit the Washington use tax upon all sales to Washington consumers, or (b) agrees to provide to the department of revenue, no less frequently than quarterly, a listing of the names and addresses of Washington customers to whom sales were made. This section does not apply to advertising that does not offer items for sale or to advertising that does not solicit orders for sales. [1993 c 74 § 1.]

Effective date—1993 c 74: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 74 § 2.]

Chapter 40.10

MICROFILMING OF RECORDS TO PROVIDE CONTINUITY OF CIVIL GOVERNMENT

Sections

- 40.10.010 Essential records—Designation—List—Security and protection—Reproduction.
- 40.10.020 Essential records—Reproduction and storage—Coordination of protection program—Fees.

40.10.010 Essential records—Designation—List—Security and protection—Reproduction. In order to provide for the continuity and preservation of civil government, each elected and appointed officer of the state shall designate those public documents which are essential records of his office and needed in an emergency and for the reestablishment of normal operations after any such emergency. A list of such records shall be forwarded to the state archivist on forms prescribed by the state archivist. This list shall be reviewed at least annually by the elected or appointed officer to insure its completeness. Any changes or revisions following this review shall be forwarded to the state archivist. Each such elected and appointed officer of state government shall insure that the security of essential records of his office is by the most economical means commensurate with adequate protection. Protection of essential records may be by vaulting, planned or natural dispersal of copies, or any other method approved by the state archivist. Reproductions of essential records may be by photo copy, magnetic tape, microfilm or other method approved by the state archivist. Local government offices may coordinate the protection of their essential records with the state archivist as necessary to provide continuity of local

government under emergency conditions. [1982 c 36 § 1; 1973 c 54 § 1; 1963 c 241 § 1.]

Severability—1973 c 54: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 54 § 6.]

40.10.020 Essential records—Reproduction and storage—Coordination of protection program—Fees. The state archivist is authorized to reproduce those documents designated as essential records by the several elected and appointed officials of the state and local government by microfilm or other miniature photographic process and to assist and cooperate in the storage and safeguarding of such reproductions in such place as is recommended by the state archivist with the advice of the director of community, trade, and economic development. The state archivist shall coordinate the essential records protection program and shall carry out the provisions of the state emergency plan as they relate to the preservation of essential records. The state archivist is authorized to charge the several departments of the state and local government the actual cost incurred in reproducing, storing and safeguarding such documents: PROVIDED, That nothing herein shall authorize the destruction of the originals of such documents after reproduction thereof. [1995 c 399 § 58; 1986 c 266 § 45; 1985 c 7 § 106; 1982 c 36 § 2; 1973 c 54 § 2; 1963 c 241 § 2.]

Severability—1986 c 266: See note following RCW 38.52.005.

Chapter 40.14

PRESERVATION AND DESTRUCTION OF PUBLIC RECORDS

Sections

- 40.14.010 Definition and classification of public records.
- 40.14.020 Division of archives and records management—State archivist—Powers and duties—Duties of public officials.
- 40.14.025 Division of archives and records management—Allocation of costs of services—Archives and records management account.
- 40.14.027 Public archives and records management services—Judgment debtor surcharge.
- 40.14.030 Transfer to state archives—Certified copies, cost.
- 40.14.040 Records officers—Designation—Powers and duties.
- 40.14.050 Records committee—Composition, travel expenses, meetings, powers and duties—Retention schedules.
- 40.14.060 Destruction, disposition of official public records or office files and memoranda—Record retention schedules.
- 40.14.070 Destruction, disposition of local government records—Preservation for historical interest—Local records committee, duties—Record retention schedules.
- 40.14.080 Chapter not to affect other laws.
- 40.14.100 Legislative records—Defined.
- 40.14.110 Legislative records—Contribution of papers by legislators and employees.
- 40.14.120 Legislative records—"Clerk," "secretary" defined.
- 40.14.130 Legislative records—Duties of legislative officials, employees and state archivist—Delivery of records—Custody—Availability.
- 40.14.140 Legislative records—Party caucuses to be advised—Information and instructions.
- 40.14.150 Legislative records—Use for research.
- 40.14.160 Legislative records—Rules for access to records.
- 40.14.170 Legislative records—Sound recordings.
- 40.14.180 Legislative records—Construction—Confidentiality of bill drafting records.

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

40.14.010 Definition and classification of public records. As used in this chapter, the term "public records" shall include any paper, correspondence, completed form, bound record book, photograph, film, sound recording, map drawing, machine-readable material, compact disc meeting current industry ISO specifications, or other document, regardless of physical form or characteristics, and including such copies thereof, that have been made by or received by any agency of the state of Washington in connection with the transaction of public business, and legislative records as described in RCW 40.14.100.

For the purposes of this chapter, public records shall be classified as follows:

(1) Official public records shall include all original vouchers, receipts, and other documents necessary to isolate and prove the validity of every transaction relating to the receipt, use, and disposition of all public property and public income from all sources whatsoever; all agreements and contracts to which the state of Washington or any agency thereof may be a party; all fidelity, surety, and performance bonds; all claims filed against the state of Washington or any agency thereof; all records or documents required by law to be filed with or kept by any agency of the state of Washington; all legislative records as defined in RCW 40.14.100; and all other documents or records determined by the records committee, created in RCW 40.14.050, to be official public records.

(2) Office files and memoranda include such records as correspondence, exhibits, drawings, maps, completed forms, or documents not above defined and classified as official public records; duplicate copies of official public records filed with any agency of the state of Washington; documents and reports made for the internal administration of the office to which they pertain but not required by law to be filed or kept with such agency; and other documents or records as determined by the records committee to be office files and memoranda. [1996 c 71 § 1; 1982 c 36 § 3; 1981 c 32 § 4; 1971 ex.s. c 102 § 1; 1957 c 246 § 1.]

40.14.020 Division of archives and records management—State archivist—Powers and duties—Duties of public officials. All public records shall be and remain the property of the state of Washington. They shall be delivered by outgoing officials and employees to their successors and shall be preserved, stored, transferred, destroyed or disposed of, and otherwise managed, only in accordance with the provisions of this chapter. In order to insure the proper management and safeguarding of public records, the division of archives and records management is established in the office of the secretary of state. The state archivist, who shall administer the division and have reasonable access to all public records, wherever kept, for purposes of information, surveying, or cataloguing, shall undertake the following functions, duties, and responsibilities:

- (1) To manage the archives of the state of Washington;
- (2) To centralize the archives of the state of Washington, to make them available for reference and scholarship, and to insure their proper preservation;

(3) To inspect, inventory, catalog, and arrange retention and transfer schedules on all record files of all state departments and other agencies of state government;

(4) To insure the maintenance and security of all state public records and to establish safeguards against unauthorized removal or destruction;

(5) To establish and operate such state record centers as may from time to time be authorized by appropriation, for the purpose of preserving, servicing, screening and protecting all state public records which must be preserved temporarily or permanently, but which need not be retained in office space and equipment;

(6) To adopt rules under chapter 34.05 RCW:

(a) Setting standards for the durability and permanence of public records maintained by state and local agencies;

(b) Governing procedures for the creation, maintenance, transmission, cataloging, indexing, storage, or reproduction of photographic, optical, electronic, or other images of public documents or records in a manner consistent with current standards, policies, and procedures of the department of information services for the acquisition of information technology;

(c) Governing the accuracy and durability of, and facilitating access to, photographic, optical, electronic, or other images used as public records; or

(d) To carry out any other provision of this chapter;

(7) To gather and disseminate to interested agencies information on all phases of records management and current practices, methods, procedures, techniques, and devices for efficient and economical management and preservation of records;

(8) To operate a central microfilming bureau which will microfilm, at cost, records approved for filming by the head of the office of origin and the archivist; to approve microfilming projects undertaken by state departments and all other agencies of state government; and to maintain proper standards for this work;

(9) To maintain necessary facilities for the review of records approved for destruction and for their economical disposition by sale or burning; directly to supervise such destruction of public records as shall be authorized by the terms of this chapter; [and]

(10) To assist and train state and local agencies in the proper methods of creating, maintaining, cataloging, indexing, transmitting, storing, and reproducing photographic, optical, electronic, or other images used as public records. [1995 c 326 § 1. Prior: 1991 c 237 § 4; 1991 c 184 § 1; 1986 c 275 § 1; 1983 c 84 § 1; 1981 c 115 § 1; 1957 c 246 § 2.]

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

Effective date—1981 c 115: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 115 § 10.]

40.14.025 Division of archives and records management—Allocation of costs of services—Archives and records management account. (1) The secretary of state and the director of financial management shall jointly establish a procedure and formula for allocating the costs of services provided by the division of archives and records management to state agencies. The total amount allotted for

services to state agencies shall not exceed the appropriation to the archives and records management account during any allotment period.

[(2)] There is created the archives and records management account in the state treasury which shall consist of all fees and charges collected under this section, RCW 36.22.175, and 40.14.027. The account shall be appropriated exclusively for the payment of costs and expenses incurred in the operation of the division of archives and records management as specified by law. [1996 c 245 § 3; 1991 sp.s. c 13 § 5; 1985 c 57 § 22; 1981 c 115 § 4.]

Effective date—1996 c 245: See note following RCW 36.22.175.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

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

Effective date—1981 c 115: See note following RCW 40.14.020.

40.14.027 Public archives and records management services—Judgment debtor surcharge. State agencies shall collect a surcharge of twenty dollars from the judgment debtor upon the satisfaction of a warrant filed in superior court for unpaid taxes or liabilities. The surcharge is imposed on the judgment debtor in the form of a penalty in addition to the filing fee provided in RCW 36.18.012(3). The surcharge revenue shall be transmitted to the state treasurer for deposit in the archives and records management account.

Surcharge revenue deposited in the archives and records management account shall be expended by the secretary of state exclusively for disaster recovery, essential records protection services, and records management training for local government agencies by the division of archives and records management. The secretary of state shall, with local government representatives, establish a committee to advise the state archivist on the local government archives and records management program. [1996 c 245 § 4; 1995 c 292 § 17; 1994 c 193 § 2.]

Effective date—1996 c 245: See note following RCW 36.22.175.

Findings—1994 c 193: "The legislature finds that: (1) Accountability for and the efficient management of local government records are in the public interest and that compliance with public records management requirements significantly affects the cost of local government administration; (2) the secretary of state is responsible for insuring the preservation of local government archives and may assist local government compliance with public records statutes; (3) as provided in RCW 40.14.025, all archives and records management services provided by the secretary of state are funded exclusively by a schedule of fees and charges established jointly by the secretary of state and the director of financial management; (4) the secretary of state's costs for preserving and providing public access to local government archives and providing records management assistance to local government agencies have been funded by fees paid by state government agencies; (5) local government agencies are responsible for costs associated with managing, protecting, and providing public access to the records in their custody; (6) local government should help fund the secretary of state's local government archives and records management services; (7) the five-dollar fee collected by county clerks for processing warrants for unpaid taxes or liabilities filed by the state of Washington is not sufficient to cover processing costs and is far below filing fees commonly charged for similar types of minor civil actions; (8) a surcharge of twenty dollars would bring the filing fee for warrants for the collection of unpaid taxes and liabilities up to a level comparable to other minor civil filings and should be applied to the support of the secretary of state's local government archives and records services without placing an undue burden on local government; and (9) the process of collecting and transmitting surcharge revenue should not have an undue impact on the operations of the state agencies that file

warrants for the collection of unpaid taxes and liabilities or the clerks of superior court who process them." [1994 c 193 § 1.]

Effective date—1994 c 193: "This act shall take effect July 1, 1994." [1994 c 193 § 3.]

40.14.030 Transfer to state archives—Certified copies, cost. All public records, not required in the current operation of the office where they are made or kept, and all records of every agency, commission, committee, or any other activity of state government which may be abolished or discontinued, shall be transferred to the state archives so that the valuable historical records of the state may be centralized, made more widely available, and insured permanent preservation: PROVIDED, That this section shall have no application to public records approved for destruction under the subsequent provisions of this chapter.

When so transferred, copies of the public records concerned shall be made and certified by the archivist, which certification shall have the same force and effect as though made by the officer originally in charge of them. Fees may be charged to cover the cost of reproduction. In turning over the archives of his office, the officer in charge thereof, or his successor, thereby loses none of his rights of access to them, without charge, whenever necessary. [1957 c 246 § 3.]

Columbia River boundary compact, transfer of records to division of archives: RCW 43.58.070.

40.14.040 Records officers—Designation—Powers and duties. Each department or other agency of the state government shall designate a records officer to supervise its records program and to represent the office in all contacts with the records committee, hereinafter created, and the division of archives and records management. The records officer shall:

(1) Coordinate all aspects of the records management program.

(2) Inventory, or manage the inventory, of all public records at least once during a biennium for disposition scheduling and transfer action, in accordance with procedures prescribed by the state archivist and state records committee: PROVIDED, That essential records shall be inventoried and processed in accordance with chapter 40.10 RCW at least annually.

(3) Consult with any other personnel responsible for maintenance of specific records within his state organization regarding records retention and transfer recommendations.

(4) Analyze records inventory data, examine and compare divisional or unit inventories for duplication of records, and recommend to the state archivist and state records committee minimal retentions for all copies commensurate with legal, financial and administrative needs.

(5) Approve all records inventory and destruction requests which are submitted to the state records committee.

(6) Review established records retention schedules at least annually to insure that they are complete and current.

(7) Exercise internal control over the acquisition of filming and file equipment.

If a particular agency or department does not wish to transfer records at a time previously scheduled therefor, the records officer shall, within thirty days, notify the archivist and request a change in such previously set schedule,

including his reasons therefor. [1982 c 36 § 4; 1979 c 151 § 51; 1973 c 54 § 3; 1957 c 246 § 4.]

40.14.050 Records committee—Composition, travel expenses, meetings, powers and duties—Retention schedules. There is created a committee, to be known as the records committee, composed of the archivist, an appointee of the state auditor, an appointee of the attorney general, and an appointee of the director of financial management. Committee members shall serve without additional salary, but shall be entitled to travel expenses incurred in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. Such expenses shall be paid from the appropriations made for operation of their respective departments or offices.

The records committee shall meet at least once every quarter or oftener as business dictates. Action by the committee shall be by majority vote and records shall be kept of all committee business.

It shall be the duty of the records committee to approve, modify or disapprove the recommendations on retention schedules of all files of public records and to act upon requests to destroy any public records: PROVIDED, That any modification of a request or recommendation must be approved by the head of the agency originating the request or recommendation.

The division of archives and records management shall provide forms, approved by the records committee, upon which it shall prepare recommendations to the committee in cooperation with the records officer of the department or other agency whose records are involved. [1985 c 192 § 1; 1975-'76 2nd ex.s. c 34 § 83; 1957 c 246 § 5.]

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

40.14.060 Destruction, disposition of official public records or office files and memoranda—Record retention schedules. (1) Any destruction of official public records shall be pursuant to a schedule approved under RCW 40.14.050. Official public records shall not be destroyed unless:

(a) The records are six or more years old;

(b) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly if lesser federal retention periods for records generated by the state under federal programs have been established; or

(c) The originals of official public records less than six years old have been copied or reproduced by any photographic or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

(2) Any lesser term of retention than six years must have the additional approval of the director of financial management, the state auditor and the attorney general, except when records have federal retention guidelines the state records committee may adjust the retention period accordingly. An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be

made, but the same shall be reviewed individually by the state records committee for approval or disapproval of the change to a retention period of six years.

Recommendations for the destruction or disposition of office files and memoranda shall be submitted to the records committee upon approved forms prepared by the records officer of the agency concerned and the archivist. The committee shall determine the period of time that any office file or memorandum shall be preserved and may authorize the division of archives and records management to arrange for its destruction or disposition. [1982 c 36 § 5; 1979 c 151 § 52; 1973 c 54 § 4; 1957 c 246 § 6.]

40.14.070 Destruction, disposition of local government records—Preservation for historical interest—Local records committee, duties—Record retention schedules. County, municipal, and other local government agencies may request authority to destroy noncurrent public records having no further administrative or legal value by submitting to the division of archives and records management lists of such records on forms prepared by the division. The archivist, a representative appointed by the state auditor, and a representative appointed by the attorney general shall constitute a committee, known as the local records committee, which shall review such lists and which may veto the destruction of any or all items contained therein.

A local government agency, as an alternative to submitting lists, may elect to establish a records control program based on recurring disposition schedules recommended by the agency to the local records committee. The schedules are to be submitted on forms provided by the division of archives and records management to the local records committee, which may either veto, approve, or amend the schedule. Approval of such schedule or amended schedule shall be by unanimous vote of the local records committee. Upon such approval, the schedule shall constitute authority for the local government agency to destroy the records listed thereon, after the required retention period, on a recurring basis until the schedule is either amended or revised by the committee.

Except as otherwise provided by law, no public records shall be destroyed until approved for destruction by the local records committee. Official public records shall not be destroyed unless:

(1) The records are six or more years old;

(2) The department of origin of the records has made a satisfactory showing to the state records committee that the retention of the records for a minimum of six years is both unnecessary and uneconomical, particularly where lesser federal retention periods for records generated by the state under federal programs have been established; or

(3) The originals of official public records less than six years old have been copied or reproduced by any photographic, photostatic, microfilm, miniature photographic, or other process approved by the state archivist which accurately reproduces or forms a durable medium for so reproducing the original.

An automatic reduction of retention periods from seven to six years for official public records on record retention schedules existing on June 10, 1982, shall not be made, but the same shall be reviewed individually by the local records

committee for approval or disapproval of the change to a retention period of six years.

The state archivist may furnish appropriate information, suggestions, and guidelines to local government agencies for their assistance in the preparation of lists and schedules or any other matter relating to the retention, preservation, or destruction of records under this chapter. The local records committee may adopt appropriate regulations establishing procedures to be followed in such matters.

Records of county, municipal, or other local government agencies, designated by the archivist as of primarily historical interest, may be transferred to a recognized depository agency. [1995 c 301 § 71; 1982 c 36 § 6; 1973 c 54 § 5; 1971 ex.s. c 10 § 1; 1957 c 246 § 7.]

Copying, preserving, and indexing of documents recorded by county auditor: RCW 36.22.160 through 36.22.190.

Destruction and reproduction of court records: RCW 36.23.065 through 36.23.070.

40.14.080 Chapter not to affect other laws. The provisions of this chapter shall not be construed as repealing or modifying any other acts or parts of acts authorizing the destruction of public records save for those specifically named in *section 9 of this act; nor shall this chapter affect the provisions of chapter 40.07 RCW requiring the deposit of all state publications in the state library. [1983 c 3 § 84; 1957 c 246 § 8.]

***Reviser's note:** "section 9 of this act" refers to 1957 c 246 § 9, which repealed RCW 40.08.010 through 40.08.050 and 40.12.010 through 40.12.110.

40.14.100 Legislative records—Defined. As used in RCW 40.14.010 and 40.14.100 through 40.14.180, unless the context requires otherwise, "legislative records" shall be defined as correspondence, amendments, reports, and minutes of meetings made by or submitted to legislative committees or subcommittees and transcripts or other records of hearings or supplementary written testimony or data thereof filed with committees or subcommittees in connection with the exercise of legislative or investigatory functions, but does not include the records of an official act of the legislature kept by the secretary of state, bills and their copies, published materials, digests, or multi-copied matter which are routinely retained and otherwise available at the state library or in a public repository, or reports or correspondence made or received by or in any way under the personal control of the individual members of the legislature. [1971 ex.s. c 102 § 2.]

40.14.110 Legislative records—Contribution of papers by legislators and employees. Nothing in RCW 40.14.010 and 40.14.100 through 40.14.180 shall prohibit a legislator or legislative employee from contributing his personal papers to any private library, public library, or the state archives. The state archivist is authorized to receive papers of legislators and legislative employees and is directed to encourage the donation of such personal records to the state. The state archivist is authorized to establish such guidelines and procedures for the collection of personal papers and correspondence relating to the legislature as he sees fit. Legislators and legislative employees are encour-

aged to contribute their personal papers to the state for preservation. [1971 ex.s. c 102 § 3.]

40.14.120 Legislative records—"Clerk," "secretary" defined. As used in RCW 40.14.010 and 40.14.100 through 40.14.180 "clerk" means clerk of the Washington state house of representatives and "secretary" means the secretary of the Washington state senate. [1971 ex.s. c 102 § 4.]

40.14.130 Legislative records—Duties of legislative officials, employees and state archivist—Delivery of records—Custody—Availability. The legislative committee chairman, subcommittee chairman, committee member, or employed personnel of the state legislature having possession of legislative records that are not required for the regular performance of official duties shall, within ten days after the adjournment sine die of a regular or special session, deliver all such legislative records to the clerk of the house or the secretary of the senate.

The clerk of the house and the secretary of the senate are charged to include requirements and responsibilities for keeping committee minutes and records as part of their instructions to committee chairmen and employees.

The clerk or the secretary, with the assistance of the state archivist, shall classify and arrange the legislative records delivered to the clerk or secretary in a manner that he considers best suited to carry out the efficient and economical utilization, maintenance, preservation, and disposition of the records. The clerk or the secretary may deliver to the state archivist all legislative records in his possession when such records have been classified and arranged and are no longer needed by either house. The state archivist shall thereafter be custodian of the records so delivered, but shall deliver such records back to either the clerk or secretary upon his request.

The chairman, member, or employee of a legislative interim committee responsible for maintaining the legislative records of that committee shall, on a scheduled basis agreed upon by the chairman, member, or employee of the legislative interim committee, deliver to the clerk or secretary all legislative records in his possession, as long as such records are not required for the regular performance of official duties. He shall also deliver to the clerk or secretary all records of an interim committee within ten days after the committee ceases to function. [1971 ex.s. c 102 § 5.]

40.14.140 Legislative records—Party caucuses to be advised—Information and instructions. It shall be the duty of the clerk and the secretary to advise the party caucuses in each house concerning the necessity to keep public records. The state archivist or his representative shall work with the clerk and secretary to provide information and instructions on the best method for keeping legislative records. [1971 ex.s. c 102 § 6.]

40.14.150 Legislative records—Use for research. Committee records may be used by legislative employees for research at the discretion of the clerk or the secretary. [1971 ex.s. c 102 § 7.]

40.14.160 Legislative records—Rules for access to records. The clerk or the secretary shall, with advice of the state archivist, prescribe rules for access to records more than three years old when such records have been delivered to the state archives for preservation and maintenance. [1971 ex.s. c 102 § 8.]

40.14.170 Legislative records—Sound recordings. Any sound recording of debate in the house or senate made by legislative employees shall be preserved by the chief clerk of the house and by the secretary of the senate, respectively, for two years from the end of the session at which made, and thereafter shall be transmitted to the state archivist. The chief clerk and the secretary shall catalogue or index the recordings in their custody according to a uniform system, in order to allow easy access to the debate on specific questions before either house, and shall make available to any court of record, at the cost of reproduction, such portions of the recordings as the court may request. [1971 ex.s. c 102 § 9.]

40.14.180 Legislative records—Construction—Confidentiality of bill drafting records. The provisions of RCW 40.14.010 and 40.14.100 through 40.14.180 shall not be construed as repealing or modifying any other acts or parts of acts authorizing the retention or destruction of public records nor shall RCW 40.14.010 and 40.14.100 through 40.14.180 affect the provisions of chapter 40.07 RCW requiring the deposit of all state publications in the state library nor shall it affect the confidentiality of the bill drafting records of the code reviser's office. [1983 c 3 § 85; 1971 ex.s. c 102 § 10.]

Chapter 40.16 PENAL PROVISIONS

Sections

- 40.16.010 Injury to public record.
40.16.020 Injury to and misappropriation of record.
40.16.030 Offering false instrument for filing or record.

Fraud: Chapter 9A.60 RCW.

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

Misconduct of public officers: Chapter 42.20 RCW.

Public works accounts and records, penalty for falsifying: RCW 39.04.110.

40.16.010 Injury to public record. Every person who shall willfully and unlawfully remove, alter, mutilate, destroy, conceal, or obliterate a record, map, book, paper, document, or other thing filed or deposited in a public office, or with any public officer, by authority of law, shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both. [1992 c 7 § 34; 1909 c 249 § 95; RRS § 2347.]

40.16.020 Injury to and misappropriation of record. Every officer who shall mutilate, destroy, conceal, erase, obliterate, or falsify any record or paper appertaining to the officer's office, or who shall fraudulently appropriate to the

officer's own use or to the use of another person, or secrete with intent to appropriate to such use, any money, evidence of debt or other property intrusted to the officer by virtue of the officer's office, shall be punished by imprisonment in a state correctional facility for not more than ten years, or by a fine of not more than five thousand dollars, or by both. [1992 c 7 § 35; 1909 c 249 § 96; RRS § 2348.]

40.16.030 Offering false instrument for filing or record. Every person who shall knowingly procure or offer any false or forged instrument to be filed, registered, or recorded in any public office, which instrument, if genuine, might be filed, registered or recorded in such office under any law of this state or of the United States, shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than five thousand dollars, or by both. [1992 c 7 § 36; 1909 c 249 § 97; RRS § 2349.]

Chapter 40.20

REPRODUCED RECORDS FOR GOVERNMENTS AND BUSINESS

Sections

- 40.20.010 "Business" defined.
40.20.020 Reproduction by film or photograph.
40.20.030 Use as original.

Court records, destruction and reproduction: RCW 36.23.065 through 36.23.070.

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

Method for recordation of plats and documents: RCW 65.04.040.

Uniform business records as evidence act: Chapter 5.45 RCW.

Uniform photographic copies of business and public records as evidence act: Chapter 5.46 RCW.

40.20.010 "Business" defined. For the purpose of this chapter, the term "business" shall mean and include business, industry, profession, occupation and calling of every kind. [1949 c 223 § 3; Rem. Supp. 1949 § 1257-6.]

40.20.020 Reproduction by film or photograph. The head of any business or the head of any state, county or municipal department, commission, bureau or board may cause any or all records required or authorized by law to be made or kept by such official, department, commission, bureau, board, or business to be photographed, microphotographed, reproduced on film, or photocopied for all purposes of recording documents, plats, files or papers, or copying or reproducing such records. Such film or reproducing material shall be of permanent material and the device used to reproduce such records on such film or material shall be such as to accurately reproduce and perpetuate the original records in all details, and shall be approved for the intended purpose: PROVIDED, That the state archivist shall approve such material for state records use: PROVIDED, FURTHER, That the state auditor shall approve such material for use by local governmental subdivisions. [1981 c 32 § 5; 1973 c 95 § 1; 1949 c 223 § 1; Rem. Supp. 1949 § 1257-4.]

40.20.030 Use as original. Such photostatic copy, photograph, microphotograph or photographic film record, or copy of the original records shall be deemed to be an original record for all purposes, and shall be admissible in evidence in all courts or administrative agencies. A facsimile, exemplification or certified copy thereof shall, for all purposes recited herein, be deemed to be a transcript, exemplification or certified copy of the original. [1949 c 223 § 2; Rem. Supp. 1949 § 1257-5.]

Chapter 40.24

ADDRESS CONFIDENTIALITY FOR VICTIMS OF DOMESTIC VIOLENCE AND SEXUAL ASSAULT

Sections

40.24.010	Findings—Purpose.
40.24.020	Definitions.
40.24.030	Address confidentiality program—Application—Certification.
40.24.040	Certification cancellation.
40.24.050	Agency use of designated address.
40.24.060	Voting by program participant—Use of designated address by county auditor.
40.24.070	Disclosure of records prohibited—Exceptions.
40.24.080	Assistance for program applicants.
40.24.090	Adoption of rules.

40.24.010 Findings—Purpose. The legislature finds that persons attempting to escape from actual or threatened domestic violence or sexual assault frequently establish new addresses in order to prevent their assailants or probable assailants from finding them. The purpose of this chapter is to enable state and local agencies to respond to requests for public records without disclosing the location of a victim of domestic violence or sexual assault, to enable interagency cooperation with the secretary of state in providing address confidentiality for victims of domestic violence or sexual assault, and to enable state and local agencies to accept a program participant's use of an address designated by the secretary of state as a substitute mailing address. [1998 c 138 § 1; 1991 c 23 § 1.]

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

(1) "Address" means a residential street address, school address, or work address of an individual, as specified on the individual's application to be a program participant under this chapter.

(2) "Program participant" means a person certified as a program participant under RCW 40.24.030.

(3) "Domestic violence" means an act as defined in RCW 10.99.020 and includes a threat of such acts committed against an individual in a domestic situation, regardless of whether these acts or threats have been reported to law enforcement officers. [1991 c 23 § 2.]

40.24.030 Address confidentiality program—Application—Certification. (1) An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, as defined in RCW 11.88.010, may apply to the secretary of state to have an

address designated by the secretary of state serve as the person's address or the address of the minor or incapacitated person. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state and if it contains:

(a) A sworn statement by the applicant that the applicant has good reason to believe (i) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence or sexual assault; and (ii) that the applicant fears for his or her safety or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made;

(b) A designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail;

(c) The mailing address where the applicant can be contacted by the secretary of state, and the phone number or numbers where the applicant can be called by the secretary of state;

(d) The new address or addresses that the applicant requests not be disclosed for the reason that disclosure will increase the risk of domestic violence or sexual assault;

(e) The signature of the applicant and of any individual or representative of any office designated in writing under RCW 40.24.080 who assisted in the preparation of the application, and the date on which the applicant signed the application.

(2) Applications shall be filed with the office of the secretary of state.

(3) Upon filing a properly completed application, the secretary of state shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The secretary of state shall by rule establish a renewal procedure.

(4) A person who falsely attests in an application that disclosure of the applicant's address would endanger the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, or who knowingly provides false or incorrect information upon making an application, shall be punishable under RCW 40.16.030 or other applicable statutes. [1998 c 138 § 2; 1991 c 23 § 3.]

40.24.040 Certification cancellation. (1) If the program participant obtains a name change, he or she loses certification as a program participant.

(2) The secretary of state may cancel a program participant's certification if there is a change in the residential address from the one listed on the application, unless the program participant provides the secretary of state with seven days' prior notice of the change of address.

(3) The secretary of state may cancel certification of a program participant if mail forwarded by the secretary to the program participant's address is returned as nondeliverable.

(4) The secretary of state shall cancel certification of a program participant who applies using false information. [1991 c 23 § 4.]

40.24.050 Agency use of designated address. (1) A program participant may request that state and local agencies use the address designated by the secretary of state as his or her address. When creating a new public record, state and local agencies shall accept the address designated by the secretary of state as a program participant's substitute address, unless the secretary of state has determined that:

(a) The agency has a bona fide statutory or administrative requirement for the use of the address which would otherwise be confidential under this chapter; and

(b) This address will be used only for those statutory and administrative purposes.

(2) A program participant may use the address designated by the secretary of state as his or her work address.

(3) The office of the secretary of state shall forward all first class mail to the appropriate program participants. [1991 c 23 § 5.]

40.24.060 Voting by program participant—Use of designated address by county auditor. (1) A program participant who is otherwise qualified to vote may apply as a service voter under RCW 29.01.155. The program participant shall automatically receive absentee ballots for all elections in the jurisdictions for which that individual resides in the same manner as absentee voters who qualify under RCW 29.36.013, except that the program participant shall not be required to reapply following January 1st of each odd-numbered year. The county auditor shall transmit the absentee ballot to the program participant at the address designated by the participant in his or her application as a service voter. Neither the name nor the address of a program participant shall be included in any list of registered voters available to the public.

(2) The county auditor may not make the participant's address contained in voter registration records available for public inspection or copying except under the following circumstances:

(a) If requested by a law enforcement agency, to the law enforcement agency; and

(b) If directed by a court order, to a person identified in the order. [1991 c 23 § 6.]

40.24.070 Disclosure of records prohibited—Exceptions. The secretary of state may not make any records in a program participant's file available for inspection or copying, other than the address designated by the secretary of state, except under the following circumstances:

(1) If requested by a law enforcement agency, to the law enforcement agency;

(2) If directed by a court order, to a person identified in the order;

(3) If certification has been canceled; or

(4) To verify the participation of a specific program participant, in which case the secretary may only confirm information supplied by the requester. [1998 c 138 § 3; 1991 c 23 § 7.]

40.24.080 Assistance for program applicants. The secretary of state shall designate state and local agencies and nonprofit agencies that provide counseling and shelter services to either victims of domestic violence or sexual

assault to assist persons applying to be program participants. Any assistance and counseling rendered by the office of the secretary of state or its designees to applicants shall in no way be construed as legal advice. [1998 c 138 § 4; 1991 c 23 § 8.]

40.24.090 Adoption of rules. The secretary of state may adopt rules to facilitate the administration of this chapter by state and local agencies. [1991 c 23 § 9.]

Title 41

PUBLIC EMPLOYMENT, CIVIL SERVICE, AND PENSIONS

Chapters

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Exemption from payment of college fees for children of law enforcement officer or fire fighter totally disabled or losing life: RCW 28B.15.380, 28B.15.385, and 28B.15.520.

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Chapter 41.04

GENERAL PROVISIONS

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Payroll deductions authorized for school district employees: RCW 28A.405.400 and 28A.405.410.

41.04.005 "Veteran" defined for certain purposes.

(1) As used in RCW 41.04.005, 41.16.220, and 41.20.050 "veteran" includes every person, who at the time he or she seeks the benefits of RCW 41.04.005, 41.04.010, 41.16.220, 41.20.050, 41.40.170, 73.04.110, or 73.08.080 has received an honorable discharge or received a discharge for physical reasons with an honorable record and who meets at least one of the following criteria:

(a) The person has served between World War I and World War II or during any period of war, as defined in subsection (2) of this section, as either:

(i) A member in any branch of the armed forces of the United States;

(ii) A member of the women's air forces service pilots;

(iii) A U.S. documented merchant mariner with service aboard an oceangoing vessel operated by the war shipping administration, the office of defense transportation, or their agents, during the period of armed conflict, December 7, 1941, to August 15, 1945; or

(iv) A civil service crewmember with service aboard a U.S. army transport service or U.S. naval transportation service vessel in oceangoing service during the period of armed conflict, December 7, 1941, to August 15, 1945; or

(b) The person has received the armed forces expeditionary medal, or marine corps and navy expeditionary medal, for opposed action on foreign soil, for service:

(i) In any branch of the armed forces of the United States; or

(ii) As a member of the women's air forces service pilots.

(2) A "period of war" includes:

(a) World War I;

(b) World War II;

(c) The Korean conflict;

(d) The Vietnam era, which was the period beginning August 5, 1964, and ending on May 7, 1975;

(e) The Persian Gulf War, which was the period beginning August 2, 1990, and ending on the date prescribed by presidential proclamation or law;

(f) The period beginning on the date of any future declaration of war by the congress and ending on the date prescribed by presidential proclamation or concurrent resolution of the congress; and

(g) The following armed conflicts, if the participant was awarded the respective campaign badge or medal: The crisis in Lebanon; the invasion of Grenada; Panama, Operation Just Cause; Somalia, Operation Restore Hope; Haiti, Operation Uphold Democracy; and Bosnia, Operation Joint Endeavor. [1996 c 300 § 1; 1991 c 240 § 1; 1984 c 36 § 1; 1983 c 230 § 1; 1982 1st ex.s. c 37 § 20; 1969 ex.s. c 269 § 1.]

Effective date—1983 c 230: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1983." [1983 c 230 § 3.]

Effective date—Severability—1982 1st ex.s. c 37: See notes following RCW 28B.15.012.

41.04.010 Veterans' preference in examinations. In all competitive examinations, unless otherwise provided herein, to determine the qualifications of applicants for public offices, positions or employment, the state, and all of its political subdivisions and all municipal corporations, shall give a preference status to all veterans as defined in RCW 41.04.005, by adding to the passing mark, grade or rating only, based upon a possible rating of one hundred points as perfect a percentage in accordance with the following:

(1) Ten percent to a veteran who is not receiving any veterans retirement payments and said percentage shall be utilized in said veteran's competitive examination and not in any promotional examination until one of such examinations results in said veteran's first appointment: PROVIDED, That said percentage shall not be utilized in any promotional examination;

(2) Five percent to a veteran who is receiving any veterans retirement payments and said percentage shall be utilized in said veteran's competitive examination only and not in any promotional examination until one of such examinations results in said veteran's first appointment: PROVIDED, That said percentage shall not be utilized in any promotional examination;

(3) Five percent to a veteran who, after having previously received employment with the state or any of its political subdivisions or municipal corporations, shall be called, or recalled, to active military service for a period of one year, or more, during any period of war, for his first promotional examination only, upon compliance with RCW 73.16.035 as it now exists or may hereafter be amended;

(4) There shall be no examination preferences other than those which have been specifically provided for above and all preferences above specified in (1), (2) and (3) must be claimed by a veteran within eight years of the date of his release from active service. [1974 ex.s. c 170 § 1; 1969 ex.s. c 269 § 2; 1953 ex.s. c 9 § 1; 1949 c 134 § 1; 1947 c 119 § 1; 1945 c 189 § 1; Rem. Supp. 1949 § 9963-5.]

Veterans and veterans' affairs: Title 73 RCW.

41.04.015 Public employment—Evidence of educational competence. A Washington certificate of educational competence as awarded by the Washington state superintendent of public instruction or an official report of equivalent acceptable scores of the general educational development test shall be accepted in lieu of a high school diploma by the state and any local political subdivision when considering applicants for employment or promotion. [1971 c 43 § 1.]

41.04.020 Public employees—Payroll deductions authorized. Any employee or group of employees of the state of Washington or any of its political subdivisions, or of any institution supported, in whole or in part, by the state or any of its political subdivisions, may authorize the deduction from his or her salaries or wages and payment to another, the amount or amounts of his or her subscription payments

or contributions to any person, firm, or corporation administering, furnishing, or providing (1) medical, surgical, and hospital care or either of them, or (2) life insurance or accident and health disability insurance, or (3) any individual retirement account selected by the employee or the employee's spouse established under applicable state or federal law: PROVIDED, That such authorization by said employee or group of employees, shall be first approved by the head of the department, division office or institution of the state or any political subdivision thereof, employing such person or group of persons, and filed with the department of personnel; or in the case of political subdivisions of the state of Washington, with the auditor of such political subdivision or the person authorized by law to draw warrants against the funds of said political subdivision. [1998 c 116 § 1; 1982 c 107 § 1; 1973 c 106 § 15; 1947 c 70 § 1; Rem. Supp. 1947 § 9963-10.]

Group insurance

disability: Chapter 48.21 RCW.

for employees of

cities and towns: RCW 35.23.460.

counties: RCW 36.32.400.

life: Chapter 48.24 RCW.

41.04.030 Payroll deductions—Duty of auditing officer. Upon being authorized by any employee or group of employees so to do under the provisions of RCW 41.04.020, the auditor or other person authorized to draw warrants against the funds involved is authorized, and if such medical, surgical, and hospital care or either of them, or life insurance or accident and health disability insurance is to be provided on a group basis for groups each of not less than twenty-five individuals such auditor or other person is hereby required, to draw and issue a proper warrant or warrants directly to and in favor of the person, firm, or corporation, or organization named in the authorization for the total amount authorized to be deducted from the payroll of any such office, department, division, or institution. [1953 c 260 § 1; 1947 c 70 § 2; Rem. Supp. 1947 § 9963-11.]

41.04.035 Salary and wage deductions for contributions to charitable agencies—"United Fund" defined. For the purpose of RCW 41.04.035 and 41.04.036 "United Fund" means the organization conducting the single, annual, consolidated effort to secure funds for distribution to agencies engaged in charitable and public health, welfare and service purposes, which is commonly known as the United Fund, or the organization which serves in place of the United Fund organizations in communities where an organization known as the United Fund is not organized. [1957 c 208 § 1.]

41.04.036 Salary and wage deductions for contributions to charitable agencies—Deduction and payment to United Fund—Regulations, procedures. Any official of the state or of any of its political subdivisions authorized to disburse funds in payment of salaries or wages of public officers or employees is authorized, upon written request of the officer or employee, to deduct from the salary or wages of the officer or employee the amount of money designated by the officer or employee for payment to the United Fund.

The moneys so deducted shall be paid over promptly to the United Fund designated by the officer or employee. Subject to any regulations prescribed by the office of financial management, the official authorized to disburse the funds in payment of salaries or wages may prescribe any procedures necessary to carry out RCW 41.04.035 and 41.04.036. [1983 1st ex.s. c 28 § 2; 1979 c 151 § 53; 1973 c 106 § 16; 1957 c 208 § 2.]

Application—1983 1st ex.s. c 28: See note following RCW 42.16.010.

41.04.110 Persons employed by more than one agency—Joint operation—May provide membership in single system. When there exists a joint operation of a public service, the authorities may make provision for membership of all new employees in one designated retirement system by agreement with the proper authorities. [1951 c 98 § 5.]

41.04.120 Civil service and retirement rights preserved when elective office assumed. Any civil service employee of the state of Washington or of any political subdivision thereof who is on leave of absence by reason of having been elected or appointed to an elective office shall be preserved in his civil service status, his seniority, rank and retirement rights so long as he regularly continues to make the usual contribution incident to the retention of such beneficial rights as if he were not on leave of absence: PROVIDED, That such contributions being made shall be based on the rank at the time of taking such leave of absence. [1957 c 164 § 1.]

41.04.130 Extension of provisions of retirement and pension systems by cities of the first class to nonincluded personnel. Any city of the first class may, by ordinance, extend, upon conditions deemed proper, the provisions of retirement and pension systems for superannuated and disabled officers and employees to officers and employees with five years of continuous service and acting in capacities in which they would otherwise not be entitled to participation in such systems: PROVIDED, That the following shall be specifically exempted from the provisions of this section.

(1) Members of the police departments who are entitled to the benefits of the police relief and pension fund as established by state law.

(2) Members of the fire department who are entitled to the benefits of the firemen's relief and pension fund as established by state law. [1945 c 52 § 1; 1941 c 192 § 1; Rem. Supp. 1945 § 9592-129. Formerly codified as RCW 41.28.250.]

41.04.140 Interchange of personnel between federal and state agencies—"State agency" defined. "State agency" means a board, department, commission or institution of the state or its political subdivisions. [1959 c 102 § 1.]

41.04.150 Interchange of personnel between federal and state agencies—Agreements—Provisions. A state agency may enter into agreements with departments or other subdivisions of the federal government for the interchange of

personnel on projects which are of mutual benefit to the state and federal government.

An interchange agreement shall specify the fiscal arrangements to be made, including compensations, rights, benefits and obligations of the employees concerned, travel and transportation of employees, their immediate families and household goods, and the duties and supervision of employees while on assignment. [1959 c 102 § 2.]

41.04.160 Interchange of personnel between federal and state agencies—Employment status of state employees participating—Retirement—Civil service. State agency employees participating in an interchange may be carried on detail or in a leave of absence status.

(1) Wherever practicable, employees should be carried on detail. While on detail under an interchange agreement, employees shall remain employees of the state agency for all fiscal purposes, but shall receive no reimbursement for travel or other expenses except as provided in RCW 41.04.150.

(2) State agency employees who receive temporary appointments with federal agencies shall be carried by the state agency in a leave of absence status. Participation in an interchange shall be considered as service under any retirement system of which the employees are members. Arrangements for payment of employees' contributions to a retirement system may be by the interchange agreement or otherwise. Employees participating in an interchange shall be entitled to credit the full period toward promotion or salary increase as provided by any applicable civil service laws or regulations. [1959 c 102 § 3.]

41.04.170 Interchange of personnel between federal and state agencies—Employment status of federal employees participating—Retirement—Civil service. Federal employees participating in an interchange may receive appointment by the state agency, or may be considered to be on detail with the state agency.

(1) Appointments of federal employees shall be made without regard to civil service laws or regulations. Compensation shall be in accordance with the usual rates paid by the state agency for similar positions.

An appropriate percentage of compensation shall be deducted and transmitted to the federal agency for retirement and insurance where the interchange agreement so provides.

(2) Federal employees on detail with a state agency remain employees of and shall continue to receive their compensation from the federal agency, subject to the terms of the interchange agreement. [1959 c 102 § 4.]

41.04.180 Hospitalization and medical aid for county, municipal and other political subdivision employees—Governmental contributions authorized. Any county, municipality, or other political subdivision of the state acting through its principal supervising official or governing body may, whenever funds shall be available for that purpose provide for all or a part of hospitalization and medical aid for its employees and their dependents through contracts with regularly constituted insurance carriers or with health care service contractors as defined in chapter 48.44 RCW or self-insurers as provided for in chapter 48.62 RCW, for group hospitalization and medical aid policies or plans:

PROVIDED, That any county, municipality, or other political subdivision of the state acting through its principal supervising official or governing body shall provide the employees thereof a choice of policies or plans through contracts with not less than two regularly constituted insurance carriers or health care service contractors or other health care plans, including but not limited to, trusts of self-insurance as provided for in chapter 48.62 RCW: AND PROVIDED FURTHER, That any county may provide such hospitalization and medical aid to county elected officials and their dependents on the same basis as such hospitalization and medical aid is provided to other county employees and their dependents: PROVIDED FURTHER, That provision for school district personnel shall not be made under this section but shall be as provided for in RCW 28A.400.350. [1991 sp.s. c 30 § 18; 1974 ex.s. c 82 § 1; 1973 1st ex.s. c 147 § 6; 1970 ex.s. c 39 § 10; 1969 ex.s. c 237 § 1; 1967 c 135 § 1; 1965 c 57 § 1; 1963 c 75 § 1.]

Effective date, implementation, application—Severability—1991 sp.s. c 30: See RCW 48.62.900 and 48.62.901.

Effective date—Effect of veto—Savings—Severability—1973 1st ex.s. c 147: See notes following RCW 41.05.050.

Severability—1970 ex.s. c 39: See note following RCW 41.05.050.

Effective date—1969 ex.s. c 237: "The effective date of this 1969 amendatory act shall be July 1, 1969: PROVIDED, That health benefit contracts awarded under the provisions of RCW 41.04.180 which expire after July 1, 1969 may be extended up to one year with the approval of the state employees' insurance and health care advisory committee as established under the provisions of section 8 of this act." [1969 ex.s. c 237 § 10.]

Retirement allowance deductions for health care benefit plans: RCW 41.04.235.

State health care authority: Chapter 41.05 RCW.

41.04.190 Hospitalization and medical aid for county, municipal and other political subdivision employees—Cost not additional compensation—Disbursement. The cost of a policy or plan to a public agency or body is not additional compensation to the employees or elected officials covered thereby. The elected officials to whom this section applies include but are not limited to commissioners elected under chapters 28A.315, 52.14, 53.12, 54.12, 57.12, 70.44, and 87.03 RCW, as well as any county elected officials who are provided insurance coverage under RCW 41.04.180. Any officer authorized to disburse such funds may pay in whole or in part to an insurance carrier or health care service contractor the amount of the premiums due under the contract. [1996 c 230 § 1610; 1992 c 146 § 13; 1983 1st ex.s. c 37 § 1; 1965 c 57 § 2; 1963 c 75 § 2.]

Part headings not law—Effective date—1996 c 230: See notes following RCW 57.02.001.

Action disqualifying legislators proscribed—Severability—1965 c 57: "No board of county commissioners shall take any action under this 1965 amendatory act which shall disqualify members of the present legislature, under Article II, section 13, of the Constitution, from being candidates for or being elected or appointed to county elected offices.

If any provision of the action of a board of county commissioners is held invalid under the preceding paragraph of this section, the remainder of the action or the application of the provision to other persons or circumstances shall not be affected." [1965 c 57 § 3]

41.04.205 Participation of county, municipal, and other political subdivision employees in state employees' insurance or self-insurance and health care program—

Transfer procedure. (1) Notwithstanding the provisions of RCW 41.04.180, the employees, with their dependents, of any county, municipality, or other political subdivision of this state shall be eligible to participate in any insurance or self-insurance program for employees administered under chapter 41.05 RCW if the legislative authority of any such county, municipality, or other political subdivisions of this state determines, subject to collective bargaining under applicable statutes, a transfer to an insurance or self-insurance program administered under chapter 41.05 RCW should be made. In the event of a special district employee transfer pursuant to this section, members of the governing authority shall be eligible to be included in such transfer if such members are authorized by law as of June 25, 1976 to participate in the insurance program being transferred from and subject to payment by such members of all costs of insurance for members.

(2) When the legislative authority of a county, municipality, or other political subdivision determines to so transfer, the state health care authority shall:

- (a) Establish the conditions for participation; and
- (b) Have the sole right to reject the application.

Approval of the application by the state health care authority shall effect a transfer of the employees involved to the insurance, self-insurance, or health care program applied for.

(3) Any application of this section to members of the law enforcement officers' and fire fighters' retirement system under chapter 41.26 RCW is subject to chapter 41.56 RCW.

(4) School districts may voluntarily transfer, except that all eligible employees in a bargaining unit of a school district may transfer only as a unit and all nonrepresented employees in a district may transfer only as a unit. [1995 1st sp.s. c 6 § 8; 1993 c 386 § 3; 1992 c 199 § 1; 1990 c 222 § 1; 1988 c 107 § 17; 1975-'76 2nd ex.s. c 106 § 1.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Effective date—1993 c 386 §§ 3, 7, and 11: "Sections 3, 7, and 11 of this act shall take effect October 1, 1993." [1993 c 386 § 17.]

Intent—1993 c 386: See note following RCW 28A.400.391.

Implementation—Effective dates—1988 c 107: See RCW 41.05.901.

41.04.220 Department of general administration to procure health benefit programs—Other governmental entities may use services. Any governmental entity other than state agencies, may use the services of the department of general administration upon the approval of the director, in procuring health benefit programs as provided by RCW 41.04.180, 28A.400.350 and 28B.10.660: PROVIDED, That the department of general administration may charge for the administrative cost incurred in the procuring of such services. [1983 c 3 § 88; 1969 ex.s. c 237 § 7.]

Effective date—1969 ex.s. c 237: See note following RCW 41.04.180.

41.04.230 Payroll deductions authorized. Any official of the state authorized to disburse funds in payment of salaries and wages of public officers or employees is authorized, upon written request of the officer or employee, to deduct from the salaries or wages of the officers or

employees, the amount or amounts of subscription payments, premiums, contributions, or continuation thereof, for payment of the following:

(1) Credit union deductions: PROVIDED, That twenty-five or more employees of a single state agency or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same credit union. An agency may, in its own discretion, establish a minimum participation requirement of fewer than twenty-five employees.

(2) Parking fee deductions: PROVIDED, That payment is made for parking facilities furnished by the agency or by the department of general administration.

(3) U.S. savings bond deductions: PROVIDED, That a person within the particular agency shall be appointed to act as trustee. The trustee will receive all contributions; purchase and deliver all bond certificates; and keep such records and furnish such bond or security as will render full accountability for all bond contributions.

(4) Board, lodging or uniform deductions when such board, lodging and uniforms are furnished by the state, or deductions for academic tuitions or fees or scholarship contributions payable to the employing institution.

(5) Dues and other fees deductions: PROVIDED, That the deduction is for payment of membership dues to any professional organization formed primarily for public employees or college and university professors: AND PROVIDED, FURTHER, That twenty-five or more employees of a single state agency, or a total of one hundred or more state employees of several agencies have authorized such a deduction for payment to the same professional organization.

(6) Labor or employee organization dues may be deducted in the event that a payroll deduction is not provided under a collective bargaining agreement under the provisions of RCW 41.06.150: PROVIDED, That twenty-five or more officers or employees of a single agency, or a total of one hundred or more officers or employees of several agencies have authorized such a deduction for payment to the same labor or employee organization: PROVIDED, FURTHER, That labor or employee organizations with five hundred or more members in state government may have payroll deduction for employee benefit programs.

(7) Insurance contributions to the authority for payment of premiums under contracts authorized by the state health care authority. However, enrollment or assignment by the state health care authority to participate in a health care benefit plan, as required by RCW 41.05.065(5), shall authorize a payroll deduction of premium contributions without a written consent under the terms and conditions established by the public employees' benefits board.

(8) Deductions to a bank, savings bank, or savings and loan association if (a) the bank, savings bank, or savings and loan association is authorized to do business in this state; and (b) twenty-five or more employees of a single agency, or fewer, if a lesser number is established by such agency, or a total of one hundred or more state employees of several agencies have authorized a deduction for payment to the same bank, savings bank, or savings and loan association.

Deductions from salaries and wages of public officers and employees other than those enumerated in this section or

by other law, may be authorized by the director of financial management for purposes clearly related to state employment or goals and objectives of the agency and for plans authorized by the state health care authority.

The authority to make deductions from the salaries and wages of public officers and employees as provided for in this section shall be in addition to such other authority as may be provided by law: PROVIDED, That the state or any department, division, or separate agency of the state shall not be liable to any insurance carrier or contractor for the failure to make or transmit any such deduction. [1995 1st sp.s. c 6 § 21. Prior: 1993 c 2 § 26 (Initiative Measure No. 134, approved November 3, 1992); 1992 c 192 § 1; 1988 c 107 § 19; 1985 c 271 § 1; 1983 1st ex.s. c 28 § 3; 1980 c 120 § 1; 1979 c 151 § 54; 1973 1st ex.s. c 147 § 5; 1970 ex.s. c 39 § 11; 1969 c 59 § 5.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Implementation—Effective dates—1988 c 107: See RCW 41.05.901.

Application—1983 1st ex.s. c 28: See note following RCW 42.16.010.

Effective date—Effect of veto—Savings—Severability—1973 1st ex.s. c 147: See notes following RCW 41.05.050.

Severability—1970 ex.s. c 39: See note following RCW 41.05.050.

41.04.232 Transition to two payrolls per month—Guidelines on deductions and deferrals. In order to facilitate the transition from one payroll per month to two payrolls per month, the following guidelines concerning payroll deductions and deferrals are established:

(1) All mandatory and voluntary deductions which are based upon a percentage of salary shall be deducted, after August 23, 1983, from the salaries payable for each pay period. This subsection shall apply regardless of when the deductions were authorized or required.

(2) The office of financial management shall adopt reasonable procedures providing for deductions, including deferrals, which are not based on a percentage of salary.

(3) Amounts which are deducted in accordance with subsections (1) and (2) of this section shall be paid to the designated recipient no later than the established paydates except when other agreements are reached with the designated recipient.

(4) Payment of deductions and deferrals to the designated recipient shall be made by warrant or check except when the designated recipient requests payment by electronic funds transfer. If recipients request electronic funds transfers, sufficient time shall be made available to establish the process. The elapsed time to establish the process shall not exceed three months from the time the recipient has requested in writing to the appropriate data processing payroll systems manager to receive payment by electronic funds transfer.

Documentation and itemization of deductions or deferrals paid shall be in printed form unless the designated recipient requests computer tapes. If recipients request computer tapes, sufficient time shall be made available to establish the process. Computer tapes shall be made available to the requesting designated recipient if at least one hundred employees paid from an automated payroll system have such deductions. The elapsed time to establish the

process for providing computer tapes shall not exceed three months from the time the recipient has requested in writing to the appropriate data processing payroll systems manager to receive computer tapes. With the approval of the office of financial management, more advanced technology may be utilized to provide payment, documentation, and itemization of deductions to designated recipients. [1983 1st ex.s. c 28 § 4.]

Application—1983 1st ex.s. c 28: See note following RCW 42.16.010.

41.04.233 Payroll deductions for capitation payments to health maintenance organizations. Any employee or retired employee of the state or its departments, agencies, or subdivisions and any employee or retired employee of a county, public or municipal corporation, school district, or tax supported institution may authorize the deduction from his salary or wages of the amount of his capitation payments to any health maintenance organization receiving a certificate of authority under this chapter. Upon the filing of an authorization with the auditor or fiscal officer of the employer, such auditor or fiscal officer shall make payments in favor of the health maintenance organizations referred to in the authorization for the amounts of the deductions authorized, *RCW 41.04.230(7) notwithstanding. [1975 1st ex.s. c 290 § 20.]

***Reviser's note:** RCW 41.04.230 was amended by 1993 c 2 § 26 (Initiative Measure No. 134), and subsection (7) was deleted.

Severability—1975 1st ex.s. c 290: See RCW 48.46.910.

41.04.235 Retirement allowance deductions for health care benefit plans. Participants in a health care benefit plan approved pursuant to RCW 41.04.180, 41.05.065, or 28A.400.350, whichever is applicable, who are retired public employees, may authorize the deduction from their retirement allowances, of the amount or amounts of their subscription payments, premiums, or contributions to any person, firm, or corporation furnishing or providing medical, surgical, and hospital care or other health care insurance upon the approval by the retirement board of an application for such deduction on the prescribed form, and the treasurer of the state shall duly and timely draw and issue proper warrants directly to and in favor of the person, firm, or corporation, or organization named in the authorization for the amount authorized to be deducted. [1993 c 386 § 4; 1983 c 3 § 89; 1975 1st ex.s. c 73 § 1.]

Intent—1993 c 386: See note following RCW 28A.400.391.

Effective date—1993 c 386 § 1, 2, 4-6, 8-10, and 12-16: See note following RCW 28A.400.391.

41.04.240 Direct deposit of salaries into financial institutions authorized. Any official of the state or of any political subdivision, municipal corporation, or quasi municipal corporation authorized to disburse funds in payment of salaries and wages of employees is authorized upon written request of at least twenty-five employees to pay all or part of such salaries or wages to any financial institution for either: (1) Credit to the employees' accounts in such financial institution; or (2) immediate transfer therefrom to the employees' accounts in any other financial institutions: PROVIDED, That nothing in this section shall be construed

as authorizing any employer to require the employees to have an account in any particular financial institution or type of financial institution. A single warrant may be drawn in favor of such financial institution, for the total amount due the employees involved, and written directions provided to such financial institution of the amount to be credited to the account of an employee or to be transferred to an account in another financial institution for such employee. The issuance and delivery by the disbursing officer of a warrant in accordance with the procedure set forth herein and proper indorsement thereof by the financial institution shall have the same legal effect as payment directly to the employee.

For the purposes of this section "financial institution" means any bank or trust company established in this state pursuant to chapter 2, Title 12, United States Code, or Title 30 RCW, and any credit union established in this state pursuant to chapter 14, Title 12, United States Code, or chapter 31.12 RCW, and any mutual savings bank established in this state pursuant to Title 32 RCW, and any savings and loan association established in this state pursuant to chapter 12, Title 12, United States Code, or Title 33 RCW. [1977 ex.s. c 269 § 1; 1969 c 59 § 6.]

41.04.245 Payroll deductions to a bank, savings bank, credit union, or savings and loan association. Any official of any local political subdivision of the state, municipal corporation, or quasi-municipal corporation authorized to disburse funds in payment of salaries and wages of employees is authorized upon written request of any employee, to deduct all or part of such employee's salary or wages for payment to any bank, savings bank, credit union, or savings and loan association if (1) the bank, savings bank, credit union, or savings and loan association is authorized to do business in this state; and (2) twenty-five or more employees of a single local political subdivision, or fewer, if a lesser number is established by such local political subdivision, authorize such a deduction for payment to the same bank, savings bank, credit union, or savings and loan association. [1992 c 192 § 2.]

41.04.270 Public retirement systems—Members or beneficiaries estopped from becoming a member or accruing rights in any other public retirement system. (1) Notwithstanding any provision of chapter 2.10, 2.12, 41.26, 41.28, 41.32, 41.40, or 43.43 RCW to the contrary, on and after March 19, 1976, any member or former member who (a) receives a retirement allowance earned by said former member as deferred compensation from any public retirement system authorized by the general laws of this state, or (b) is eligible to receive a retirement allowance from any public retirement system listed in RCW 41.50.030, but chooses not to apply, or (c) is the beneficiary of a disability allowance from any public retirement system listed in RCW 41.50.030 shall be estopped from becoming a member of or accruing any contractual rights whatsoever in any other public retirement system listed in RCW 41.50.030: PROVIDED, That (a) and (b) of this subsection shall not apply to persons who have accumulated less than fifteen years service credit in any such system.

(2) Nothing in this section is intended to apply to any retirement system except those listed in RCW 41.50.030 and

the city employee retirement systems for Seattle, Tacoma, and Spokane. Subsection (1)(b) of this section does not apply to a dual member as defined in RCW 41.54.010. [1988 c 195 § 5; 1987 c 192 § 9; 1980 c 29 § 1; 1975-'76 2nd ex.s. c 105 § 1.]

Effective date—1988 c 195: See RCW 41.54.901.

Effective dates—1987 c 192: See RCW 41.54.900.

Severability—1975-'76 2nd ex.s. c 105: "If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1975-'76 2nd ex.s. c 105 § 28.]

41.04.273 Prohibition of retirement benefits passing to slayer beneficiary—Determination by department of retirement systems—Duties upon notice—Payment upon verdicts—Admissibility of evidence—Immunity. (1) For purposes of this section, the following definitions shall apply:

(a) "Slayer" means a slayer as defined in RCW 11.84.010.

(b) "Decedent" means any person whose life is taken by a slayer, and who is entitled to benefits from the Washington state department of retirement systems by written designation or by operation of law.

(2) Property that would have passed to or for the benefit of a beneficiary under one of the retirement systems listed in RCW 41.50.030 shall not pass to that beneficiary if the beneficiary was a slayer of the decedent and the property shall be distributed as if the slayer had predeceased the decedent.

(3) A slayer is deemed to have predeceased the decedent as to property which, by designation or by operation of law, would have passed from the decedent to the slayer because of the decedent's entitlement to benefits under one of the retirement systems listed in RCW 41.50.030.

(4)(a) The department of retirement systems has no affirmative duty to determine whether a beneficiary is, or is alleged to be, a slayer. However, upon receipt of written notice that a beneficiary is a defendant in a civil lawsuit that alleges the beneficiary is a slayer or is charged with a crime that, if committed, means the beneficiary is a slayer, the department of retirement systems shall determine whether the beneficiary is a defendant in such a civil suit or has been formally charged in court with the crime, or both. If so, the department shall withhold payment of any benefits until:

(i) The case or charges, or both if both are pending, are dismissed;

(ii) The beneficiary is found not guilty in the criminal case or prevails in the civil suit, or both if both are pending; or

(iii) The beneficiary is convicted or is found to be a slayer in the civil suit.

(b) If the case or charges, or both if both are pending, are dismissed or if a beneficiary is found not guilty or prevails in the civil suit, or both if both are pending, the department shall pay the beneficiary the benefits the beneficiary is entitled to receive. If the beneficiary is convicted or found to be a slayer in a civil suit, the department shall distribute the benefits according to subsection (2) of this section.

(5) The slayer's conviction for having participated in the willful and unlawful killing of the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this section.

(6) This section shall not subject the department of retirement systems to liability for payment made to a slayer or alleged slayer prior to the department's receipt of written notice that the slayer has been convicted of, or the alleged slayer has been formally criminally or civilly charged in court with, the death of the decedent. If the conviction or civil judgment of a slayer is reversed on appeal, the department of retirement systems shall not be liable for payment made prior to the receipt of written notice of the reversal to a beneficiary other than the person whose conviction or civil judgment is reversed. [1998 c 292 § 501.]

Application—1998 c 292: "Sections 501 through 505 of this act apply to acts that result in unlawful killings of decedents by slayers on and after April 2, 1998." [1998 c 292 § 506.]

Conflict with federal requirements—1998 c 292: "If any part of sections 501 through 505 of this act is found to be in conflict with federal requirements, the conflicting part of sections 501 through 505 of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination does not affect the operation of the remainder of sections 501 through 505 of this act. Rules adopted under sections 501 through 505 of this act must meet federal requirements." [1998 c 292 § 507.]

Part headings and section captions not law—Effective dates—1998 c 292: See RCW 11.11.902 and 11.11.903.

41.04.275 Pension funding account created.

Reviser's note: RCW 41.04.275 was amended by 1998 c 340 § 12 without reference to its repeal by 1998 c 340 § 13. It has been decodified for publication purposes under RCW 1.12.025.

41.04.300 Travel expenses of state officials and employees. Except as otherwise provided by law the payment of travel expenses by the state to any appointive official or employee of any commission, agency, or other body of the executive, judicial, or legislative branches of state government shall be in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 3.]

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

41.04.340 State employee attendance incentive program—Sick leave records to be kept—Remuneration or benefits for unused sick leave. (1) An attendance incentive program is established for all eligible employees. As used in this section the term "eligible employee" means any employee of the state, other than eligible employees of the community and technical colleges and the state board for community and technical colleges identified in RCW 28B.50.553, and teaching and research faculty at the state and regional universities and The Evergreen State College, entitled to accumulate sick leave and for whom accurate sick leave records have been maintained. No employee may receive compensation under this section for any portion of sick leave accumulated at a rate in excess of one day per month. The state and regional universities and The Evergreen State College shall maintain complete and accurate sick leave records for all teaching and research faculty.

(2) In January of the year following any year in which a minimum of sixty days of sick leave is accrued, and each January thereafter, any eligible employee may receive remuneration for unused sick leave accumulated in the previous year at a rate equal to one day's monetary compensation of the employee for each four full days of accrued sick leave in excess of sixty days. Sick leave for which compensation has been received shall be deducted from accrued sick leave at the rate of four days for every one day's monetary compensation.

(3) At the time of separation from state service due to retirement or death, an eligible employee or the employee's estate may elect to receive remuneration at a rate equal to one day's current monetary compensation of the employee for each four full days of accrued sick leave.

(4) Remuneration or benefits received under this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state.

(5) Except as provided in subsections (7) through (9) of this section for employees not covered by chapter 41.06 RCW, this section shall be administered, and rules shall be adopted to carry out its purposes, by the Washington personnel resources board for persons subject to chapter 41.06 RCW: PROVIDED, That determination of classes of eligible employees shall be subject to approval by the office of financial management.

(6) Should the legislature revoke any remuneration or benefits granted under this section, no affected employee shall be entitled thereafter to receive such benefits as a matter of contractual right.

(7) In lieu of remuneration for unused sick leave at retirement as provided in subsection (3) of this section, an agency head or designee may with equivalent funds, provide eligible employees with a benefit plan that provides for reimbursement for medical expenses. This plan shall be implemented only after consultation with affected groups of employees. For eligible employees covered by chapter 41.06 RCW, procedures for the implementation of these plans shall be adopted by the Washington personnel resources board. For eligible employees exempt from chapter 41.06 RCW, and classified employees who have opted out of coverage of chapter 41.06 RCW as provided in RCW 41.56.201, implementation procedures shall be adopted by an agency head having jurisdiction over the employees.

(8) Implementing procedures adopted by the Washington personnel resources board or agency heads shall require that each medical expense plan authorized by subsection (7) of this section apply to all eligible employees in any one of the following groups: (a) Employees in an agency; (b) employees in a major organizational subdivision of an agency; (c) employees at a major operating location of an agency; (d) exempt employees under the jurisdiction of an elected or appointed Washington state executive; (e) employees of the Washington state senate; (f) employees of the Washington state house of representatives; (g) classified employees in a bargaining unit established by the Washington personnel resources board; or (h) other group of employees defined by an agency head that is not designed to provide an individual-employee choice regarding participation in a medical expense plan. However, medical expense plans for eligible employees in any of the groups under (a) through (h) of this

subsection who are covered by a collective bargaining agreement shall be implemented only by written agreement with the bargaining unit's exclusive representative and a separate medical expense plan may be provided for unrepresented employees.

(9) Medical expense plans authorized by subsection (7) of this section must require as a condition of participation in the plan that employees in the group affected by the plan sign an agreement with the employer. The agreement must include a provision to hold the employer harmless should the United States government find that the employer or the employee is in debt to the United States as a result of the employee not paying income taxes due on the equivalent funds placed into the plan, or as a result of the employer not withholding or deducting a tax, assessment, or other payment on the funds as required by federal law. The agreement must also include a provision that requires an eligible employee to forfeit remuneration under subsection (3) of this section if the employee belongs to a group that has been designated to participate in the medical expense plan permitted under this section and the employee refuses to execute the required agreement. [1998 c 254 § 1; 1998 c 116 § 2; 1997 c 232 § 2; 1993 c 281 § 17; 1991 c 249 § 1; 1990 c 162 § 1; 1980 c 182 § 1; 1979 ex.s. c 150 § 1.]

Reviser's note: This section was amended by 1998 c 116 § 2 and by 1998 c 254 § 1, 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).

Severability—1998 c 254 § 1: "If any part of RCW 41.04.340 (7) through (9) is found to be in conflict with federal tax laws or rulings or regulations of the federal internal revenue service, the conflicting part is inoperative solely to the extent of the conflict and such a finding shall not affect the remainder of section 1, chapter 254, Laws of 1998." [1998 c 254 § 2.]

Effective date—1993 c 281: See note following RCW 41.06.022.

Severability—1980 c 182: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 182 § 7.]

41.04.350 Mandatory retirement prior to seventy years of age prohibited—Exceptions—Waiver of mandatory retirement. (1) Notwithstanding any other provisions of law, no employee of the state of Washington or any of its political subdivisions or any institution supported in total or in part by the state or any of its political subdivisions, other than employees covered by chapters 41.26 and 43.43 RCW, shall be compelled to retire solely on the basis of age prior to attaining seventy years of age.

(2) All compulsory retirement provisions relating to public employees, other than employees covered by chapters 41.26 and 43.43 RCW, may be waived for individuals attaining seventy years of age by the individual's employer. [1979 ex.s. c 159 § 1.]

41.04.360 State-employed chaplains—Housing allowance. In the case of a minister or other clergyperson employed as a chaplain in a state institution or agency, there is designated in the salary or wage paid to the person an amount up to forty percent of the gross salary as either of the following:

(1) The rental value of a home furnished to the person as part of the person's compensation; or

(2) The housing/rental allowance paid to the person as part of the person's compensation, to the extent used by the person to rent or provide a home. [1982 c 190 § 1.]

Appointment and duties of institutional chaplains: RCW 72.01.210 through 72.01.260.

Volunteer law enforcement chaplains: Chapter 41.22 RCW.

41.04.362 State employee wellness program. (1) The director of the department of personnel, in consultation with applicable state agencies and employee organizations, may develop and administer a voluntary state employee wellness program.

(2) The director may:

(a) Develop and implement state employee wellness policies, procedures, and activities;

(b) Disseminate wellness educational materials to state agencies and employees;

(c) Encourage the establishment of wellness activities in state agencies;

(d) Provide technical assistance and training to agencies conducting wellness activities for their employees;

(e) Develop standards by which agencies sponsoring specific wellness activities may impose a fee to participating employees to help defray the cost of those activities;

(f) Monitor and evaluate the effectiveness of this program, including the collection, analysis, and publication of relevant statistical information; and

(g) Perform other duties and responsibilities as necessary to carry out the purpose of this section.

(3) No wellness program or activity that involves or requires organized or systematic physical exercise may be implemented or conducted during normal working hours. [1987 c 248 § 2.]

Legislative findings—Purpose—1987 c 248: "The legislature finds that:

(1) Improved health among employees will result in a more productive workforce, better morale, reduced stress, lower injury rates and absenteeism, and improved recruitment and retention rates;

(2) A substantial amount of illness and injury in the work force is preventable because it results from lifestyle decisions;

(3) Illness and injury among state employees can be reduced if employees engage in healthier lifestyles.

The state, as an employer, desires to foster a working environment that promotes the health and well-being of its employees. Therefore, it is the purpose of this act to establish a state employee wellness program. "Wellness program" means those policies, procedures, and activities that promote the health and well-being of state employees and that contribute to a healthful work environment." [1987 c 248 § 1.]

41.04.364 State employee wellness program—Confidentiality of individually identifiable information. Individual employees' participation in the wellness program and all individually identifiable information gathered in the process of conducting the program shall be held in strict confidence and shall not in any way jeopardize any employee's job security, promotional opportunities, or other employment rights. [1987 c 248 § 3.]

Legislative findings—Purpose—1987 c 248: See note following RCW 41.04.362.

41.04.370 Child care—Legislative intent. The legislature recognizes that supporting child care for employees of public and private organizations is a worthwhile pursuit. To further the goals of affordable, accessible, and

quality child care for working parents, the legislature intends to provide for the development of self-supporting child care programs for employees of state government. [1993 c 194 § 1; 1984 c 162 § 1.]

41.04.375 Child care—Rental of suitable space. An agency may identify space they wish to use for child care facilities or they may request assistance from the department of general administration in identifying the availability of suitable space in state-owned or state-leased buildings for use as child care centers for the children of state employees.

When suitable space is identified in state-owned or state-leased buildings, the department of general administration shall establish a rental rate for organizations to pay for the space used by persons who are not state employees. [1993 c 194 § 2; 1984 c 162 § 2.]

41.04.380 Child care—Contracts—Provision of suitable space at reduced cost authorized. When suitable space is determined to be available, either agencies or organizations of state employees may contract with one or more providers to operate child care facilities.

Subject to the approval of the director of financial management, suitable space for child care centers may be provided to organizations of state employees without charge or at reduced charge for rent or services solely for the purpose of reducing employee child care costs. [1993 c 194 § 3; 1984 c 162 § 3.]

41.04.382 Child care organizations—Qualifications for services. In order to qualify for services under RCW 41.04.380, state employee child care organizations shall be organized as nonprofit under chapter 24.03 RCW. [1993 c 194 § 4.]

41.04.385 Child care—Legislative findings—State policy—Responsibilities of director of personnel. The legislature finds that (1) demographic, economic, and social trends underlie a critical and increasing demand for child care in the state of Washington; (2) working parents and their children benefit when the employees' child care needs have been resolved; (3) the state of Washington should serve as a model employer by creating a supportive atmosphere, to the extent feasible, in which its employees may meet their child care needs; and (4) the state of Washington should encourage the development of partnerships between state agencies, state employees, state employee labor organizations, and private employers to expand the availability of affordable quality child care. The legislature finds further that resolving employee child care concerns not only benefits the employees and their children, but may benefit the employer by reducing absenteeism, increasing employee productivity, improving morale, and enhancing the employer's position in recruiting and retaining employees. Therefore, the legislature declares that it is the policy of the state of Washington to assist state employees by creating a supportive atmosphere in which they may meet their child care needs. Policies and procedures for state agencies to address employee child care needs will be the responsibility of the director of personnel in consultation with the child care coordinating committee, as provided in RCW 74.13.090

and state employee representatives as provided under RCW 41.06.140. [1993 c 194 § 5; 1986 c 135 § 1.]

41.04.390 Flexible-time work schedules. (1) The legislature finds that flexible-time work schedules, which provide varying times for employees to arrive at and depart from work, tend to alleviate traffic congestion during peak rush hour periods and thereby reduce hazardous traffic conditions; provide more efficient use of highways and other transit facilities; and decrease fuel consumption. In addition, the legislature finds that flexible-time work schedules provide families in which both parents work outside of the home with the flexibility necessary to provide for day care; provide employees with flexibility allowing them to spend more time with their families; improve employee morale and, in-so-doing, improve productivity. Therefore, due to the clear advantages to both agencies and employees, the legislature finds that flexible-time work schedules should be utilized by agencies to the maximum extent possible.

(2) As used in this section, "flexible-time work schedule" means a daily work schedule which contains a core time of required hours during which an employee subject to the schedule is required to be present for work and designated hours before or after the core time during which an employee, with the approval of his or her agency, may elect a time of arrival to work and departure from work.

(3) Each agency shall prepare a flexible-time work schedule or schedules and shall offer the schedule or schedules to employees as an option to the traditional eight o'clock a.m. to five o'clock p.m. working day. However, an agency shall not be required to prepare or offer a flexible-time work schedule or schedules if the agency head determines that the implementation of such a schedule would serve as an impediment to the provision of services to the public or would in any other way impede the agency in accomplishing its mission.

(4) Any employee wishing to use a flexible-time work schedule prepared under subsection (3) of this section must first obtain the permission of the agency head or the agency head's designee. However, if there is an employee organization certified as an exclusive bargaining representative for a bargaining unit affected by the flexible-time work schedule, the agency shall first negotiate with the certified employee organization.

(5) Nothing in this section affects official hours during which state offices are required to be open for the transaction of business, as prescribed in RCW 42.04.060. [1985 c 411 § 1.]

41.04.395 Disability accommodation revolving fund—Disbursements. (1) The disability accommodation revolving fund is created in the custody of the state treasurer. Disbursements from the fund shall be on authorization of the director of the department of personnel or the director's designee. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements. The fund shall be used exclusively by state agencies to accommodate the unanticipated job site or equipment needs of persons of disability in state employ.

(2) The director of the department of personnel shall consult with the governor's committee on disability issues and employment regarding requests for disbursements from the disability accommodation revolving fund. The department shall establish application procedures, adopt criteria, and provide technical assistance to users of the fund.

(3) Agencies that receive moneys from the disability accommodation revolving fund shall return to the fund the amount received from the fund by no later than the end of the first month of the following fiscal biennium. [1994 sp.s. c 9 § 801; 1987 c 9 § 2.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Intent—1987 c 9: "The legislature recognizes that persons of disability have faced unfair discrimination in employment. Equal opportunity for persons of disability often necessitate job site changes and equipment purchases. It is the intent of the legislature to remove a potential barrier to employment of persons of disability by giving state agencies, including institutions of higher education, the ability to accommodate the job site and equipment needs of persons of disability without the delay of waiting for an appropriation from the legislature." [1987 c 9 § 1.]

41.04.400 Consolidation of local governmental unit and first class city retirement system—Intent. It is the purpose of RCW 41.04.405 through 41.04.430 to govern the retirement rights of persons whose employment status is altered when: (1) Two or more units of local government of this state, at least one of which is a first class city with its own retirement system, enter into an agreement for the consolidated performance of a governmental service, activity, or undertaking; (2) the service, activity, or undertaking is to be performed either by one of the participating local governmental units or by a newly established separate legal entity; and (3) the employees of the participating local governmental units are not all members of the same Washington public retirement system.

RCW 41.04.405 through 41.04.430 are not intended to and do not govern retirement rights of any members of the retirement systems established by chapter 41.16, 41.18, 41.20, or 41.26 RCW, or of employees described in RCW 35.58.265, 35.58.390, or 70.08.070. To the extent there is any conflict between RCW 41.04.405 through 41.04.430 and RCW 41.04.110, the provisions of RCW 41.04.405 through 41.04.430 shall govern. [1984 c 184 § 22.]

Severability—1984 c 184: See note following RCW 41.50.150.

41.04.405 Consolidation of local governmental unit and first class city retirement system—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 41.04.400 through 41.04.430.

(1) "Legal entity" means any political subdivision or municipal corporation of the state, including but not limited to public agencies created under RCW 35.63.070, 36.70.060, or 39.34.030.

(2) "Consolidated employer" means the legal entity assigned by agreement to perform a governmental service, activity, or undertaking for two or more units of local government of the state, at least one of which is a first class city with its own retirement system.

(3) "Existing employee" means a person who both (a) becomes employed by the consolidated employer within one

year after the consolidation and (b) was employed by one of the combining legal entities at the time of the consolidation.

(4) "New employee" means an employee of the consolidated employer who is not an existing employee.

(5) "Active member" means a member of a retirement system who was making contributions to that retirement system at the time of the consolidation. [1984 c 184 § 23.]

Severability—1984 c 184: See note following RCW 41.50.150.

41.04.410 Consolidation of local governmental unit and first class city retirement system—Membership in public employees' retirement system. If a consolidated employer is a participating member in the public employees' retirement system under chapter 41.40 RCW prior to the consolidation:

(1) All existing employees of the consolidated employer who are active members of the public employees' retirement system immediately prior to the consolidation shall continue to be members of that retirement system while employed by the consolidated employer.

(2) All existing employees of the consolidated employer who are active members of a first class city retirement system under chapter 41.28 RCW immediately prior to the consolidation shall cease to be members of that system at the time of the consolidation and, if eligible, shall immediately become members of the public employees' retirement system. However, any such active member may, by a writing filed with the consolidated employer within thirty days after the consolidation or within thirty days after March 15, 1984, whichever is later, irrevocably elect instead to continue to be a member of the first class city retirement system, thereby forever waiving any rights under the public employees' retirement system based upon employment with the consolidated employer.

(3) Only prospective periods of qualifying service under the public employees' retirement system may be established under this section. [1984 c 184 § 24.]

Severability—1984 c 184: See note following RCW 41.50.150.

41.04.415 Consolidation of local governmental unit and first class city retirement system—Membership in first class city retirement system. If a consolidated employer is a city operating a first class city retirement system under chapter 41.28 RCW prior to the consolidation:

(1) All existing employees of the consolidated employer who are active members of the first class city retirement system immediately prior to the consolidation shall continue to be members of that retirement system while employed by the consolidated employer.

(2) All existing employees of the consolidated employer who are active members of the public employees' retirement system under chapter 41.40 RCW immediately prior to the consolidation shall cease to be members of that system at the time of the consolidation and, if eligible, shall immediately become members of the first class city retirement system. However, any such active member may, by a writing filed with the consolidated employer within thirty days after the consolidation or within thirty days after March 15, 1984, whichever is later, irrevocably elect instead to continue to be a member of the public employees' retirement system, thereby forever waiving any rights under the first class city

retirement system based upon such employment with the consolidated employer.

(3) Only prospective periods of qualifying service under the first class city retirement system may be established under this section. [1984 c 184 § 25.]

Severability—1984 c 184: See note following RCW 41.50.150.

41.04.420 Consolidation of local governmental unit and first class city retirement system—Newly created legal entity. If a consolidated employer is a newly created legal entity and does not immediately join the public employees' retirement system pursuant to RCW 41.40.062:

(1) All existing employees of the consolidated employer who are active members of a first class city retirement system or the public employees' retirement system immediately prior to the consolidation shall cease to be members of these systems. However, any such active members may, by a writing filed with the consolidated employer within thirty days after the consolidation or within thirty days after March 15, 1984, whichever is later, irrevocably elect instead to continue as members of the retirement system to which they belonged at the time of the consolidation for all periods of employment with the consolidated employer.

(2) If the consolidated employer later joins the public employees' retirement system, all existing employees still employed on that date shall, effective from that date, have the same retirement system rights and options, subject to the same conditions as employees governed by RCW 41.04.410, notwithstanding any previous election under subsection (1) of this section.

(3) No new employees of the consolidated employer may become members of an employer-sponsored retirement system until such time as the employer joins the public employees' retirement system pursuant to RCW 41.40.062. [1984 c 184 § 26.]

Severability—1984 c 184: See note following RCW 41.50.150.

41.04.425 Consolidation of local governmental unit and first class city retirement system—Limitations. Notwithstanding any provision of RCW 41.04.410, 41.04.415, or 41.04.420:

(1) No person may simultaneously accrue any contractual rights whatsoever in more than one Washington public retirement system as a consequence of employment by a consolidated employer.

(2) No person who makes a written election permitted by RCW 41.04.410, 41.04.415, or 41.04.420 may receive a retirement allowance from such retirement system under any circumstances while employed or reemployed by the consolidated employer.

(3) No person may accrue any benefits or rights under any Washington public retirement system as a result of RCW 41.04.410, 41.04.415, or 41.04.420 except such rights of continuing membership that are specifically and explicitly granted by RCW 41.04.410, 41.04.415, or 41.04.420.

(4) Nothing in RCW 41.04.400 through 41.04.425 is intended to constitute an amendment or waiver of any law or rule of any Washington public retirement system, including but not limited to those governing eligibility for service credit, benefits, or membership, except to broaden the class of legal entities that are deemed to be participating employ-

ers in the retirement systems in the specific circumstances stated in RCW 41.04.410, 41.04.415, and 41.04.420. [1984 c 184 § 27.]

Severability—1984 c 184: See note following RCW 41.50.150.

41.04.430 Consolidation of local governmental unit and first class city retirement system—Compliance with laws and rules—Application of sections. (1) Consolidated employers that employ persons governed by RCW 41.04.410, 41.04.415, or 41.04.420 shall comply with all laws and rules governing the retirement system in which the persons participate as members, including but not limited to the obligations to make employer contributions, to deduct and transmit employee contributions, and to submit required reports.

(2) RCW 41.04.410, 41.04.415, 41.04.420, and 41.04.425 govern any consolidation occurring on or after December 31, 1981. [1984 c 184 § 28.]

Severability—1984 c 184: See note following RCW 41.50.150.

41.04.440 Members' retirement contributions—Pick up by employer—Purpose—Benefits not contractual right. (1) The sole purpose of RCW 41.04.445 and 41.04.450 is to allow the members of the retirement systems created in chapters 2.10, 2.12, 41.26, 41.32, 41.40, 41.34, and 43.43 RCW to enjoy the tax deferral benefits allowed under 26 U.S.C. 414(h). Chapter 227, Laws of 1984 does not alter in any manner the provisions of RCW 41.26.450 and 41.40.650 which require that the member contribution rates shall be set so as to provide fifty percent of the cost of the respective retirement plans.

(2) Should the legislature revoke any benefit allowed under 26 U.S.C. 414(h), no affected employee shall be entitled thereafter to receive such benefit as a matter of contractual right. [1995 c 239 § 322; 1984 c 227 § 1.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Effective date—1984 c 227: "This act shall take effect on September 1, 1984." [1984 c 227 § 4.]

Conflict with federal requirements—1984 c 227: "If any part of this act is found to be in conflict with federal requirements, the conflicting part of the act is hereby declared to be inoperative solely to the extent of the conflict and such finding or determination shall not affect the operation of the remainder of the act in its application: PROVIDED, That the employee proportional contributions required under RCW 41.26.450, 41.32.775 and 41.40.650 may not be altered in any manner. The rules under this act shall meet federal requirements." [1984 c 227 § 6.]

Severability—1984 c 227: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected: PROVIDED, That the employee proportional contributions required under RCW 41.26.450, 41.32.775 and 41.40.650 may not be altered in any manner." [1984 c 227 § 7.]

Benefits not contractual right until date specified: RCW 41.34.100.

41.04.445 Members' retirement contributions—Pick up by employer—Implementation. (1) This section applies to all members who are:

(a) Judges under the retirement system established under chapter 2.10, 2.12, or 2.14 RCW;

(b) Employees of the state under the retirement system established by chapter 41.32, 41.40, or 43.43 RCW;

(c) Employees of school districts under the retirement system established by chapter 41.32 or 41.40 RCW, except for substitute teachers as defined by RCW 41.32.010;

(d) Employees of educational service districts under the retirement system established by chapter 41.32 or 41.40 RCW; or

(e) Employees of community college districts under the retirement system established by chapter 41.32 or 41.40 RCW.

(2) Only for compensation earned after the effective date of the implementation of this section and as provided by section 414(h) of the federal internal revenue code, the employer of all the members specified in subsection (1) of this section shall pick up only those member contributions as required under:

- (a) RCW 2.10.090(1);
- (b) RCW 2.12.060;
- (c) RCW 2.14.090;
- (d) RCW 41.32.263;
- (e) RCW 41.32.350;
- (f) RCW 41.40.330 (1) and (3);
- (g) RCW 41.40.650;
- (h) RCW 41.34.070;
- (i) RCW 43.43.300; and
- (j) RCW 41.34.040.

(3) Only for the purposes of federal income taxation, the gross income of the member shall be reduced by the amount of the contribution to the respective retirement system picked up by the employer.

(4) All member contributions to the respective retirement system picked up by the employer as provided by this section, plus the accrued interest earned thereon, shall be paid to the member upon the withdrawal of funds or lump-sum payment of accumulated contributions as provided under the provisions of the retirement systems.

(5) At least forty-five days prior to implementing this section, the employer shall provide:

(a) A complete explanation of the effects of this section to all members; and

(b) Notification of such implementation to the director of the department of retirement systems. [1995 c 239 § 323; 1992 c 212 § 15; 1990 c 274 § 6; 1988 c 109 § 24; 1985 c 13 § 2; 1984 c 227 § 2.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Effective date—1988 c 109: See note following RCW 2.10.030.

Purpose—Application—1985 c 13: "The sole purpose of this 1985 act is to clarify and more explicitly state the intent of the legislature in enacting chapter 227, Laws of 1984. This 1985 act makes no substantive changes in the meaning or impact of that chapter and the provisions of this 1985 act shall be deemed to have retrospective application to September 1, 1984." [1985 c 13 § 1.]

Retrospective application—1985 c 13: "This act shall have retrospective application to September 1, 1984." [1985 c 13 § 8.]

Effective date—Conflict with federal requirements—Severability—1984 c 227: See notes following RCW 41.04.440.

Benefits not contractual right until date specified: RCW 41.34.100.

41.04.450 Members' retirement contributions—Pick up by employer—Optional implementation and with-

drawal. (1) Employers of those members under chapters 41.26, 41.40, and 41.34 RCW who are not specified in RCW 41.04.445 may choose to implement the employer pick up of all member contributions without exception under RCW 41.26.080(1), 41.26.450, 41.40.330(1), 41.40.650, and chapter 41.34 RCW. If the employer does so choose, the employer and members shall be subject to the conditions and limitations of RCW 41.04.445 (3), (4), and (5) and RCW 41.04.455.

(2) An employer exercising the option under this section may later choose to withdraw from and/or reestablish the employer pick up of member contributions only once in a calendar year following forty-five days prior notice to the director of the department of retirement systems. [1995 c 239 § 324; 1985 c 13 § 3; 1984 c 227 § 3.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Effective date—Conflict with federal requirements—Severability—1984 c 227: See notes following RCW 41.04.440.

Benefits not contractual right until date specified: RCW 41.34.100.

41.04.455 Members' retirement contributions—Pick up by employer—Conditions. The following two conditions apply to the employer pick up of member contributions authorized under RCW 41.04.445 (section 2, chapter 227, Laws of 1984):

(1) The retirement contributions, although designated as member contributions, will be picked up by the employer, as provided in RCW 41.04.445 (section 2, chapter 227, Laws of 1984) in lieu of contributions by the member.

(2) No retirement system member will have the option of choosing to receive the contributed amounts directly instead of having them paid by the employer to the retirement system. [1985 c 13 § 4.]

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

41.04.460 Financial planning for retirement—Department of personnel to provide information to retirement system members. The department of personnel, through the combined benefits communication project, shall prepare information encouraging individual financial planning for retirement and describing the potential consequences of early retirement, including members' assumption of health insurance costs, members' receipt of reduced retirement benefits, and the increased period of time before members will become eligible for cost-of-living adjustments. The department of retirement systems shall distribute the information to members who are eligible to retire under the provisions of chapter 234, Laws of 1992. Prior to retiring, such members who elect to retire shall sign a statement acknowledging their receipt and understanding of the information. [1992 c 234 § 10.]

41.04.500 Disability leave supplement for law enforcement officers and fire fighters. County, municipal, and political subdivision employers of full-time, commissioned law enforcement officers and full-time, paid fire

fighters shall provide a disability leave supplement to such employees who qualify for payments under RCW 51.32.090 due to a temporary total disability. [1985 c 462 § 1.]

Program and fiscal review—1985 c 462: "The legislative budget committee shall cause to be conducted a program and fiscal review of the program established by RCW 41.04.500 through 41.04.530. The review shall be conducted on or before June 30, 1987. In conducting the review, the legislative budget committee shall consider, but not be limited to, the following issues:

- (1) The fiscal impact of the program on local governmental entities;
- (2) The number of claims made and allowed, and duration of claims allowed, for disability leave supplement pursuant to RCW 41.04.500 through 41.04.530;
- (3) The number of claimants for disability leave supplement under RCW 41.04.500 through 41.04.530 who have not returned to active service within six months from the injury or illness causing disability;
- (4) The number of local governmental entities who have entered into agreements with law enforcement officers and fire fighters which establish benefits which are greater than those prescribed by RCW 41.04.530, and the number of employees covered by such agreements." [1985 c 462 § 10.]

41.04.505 Disability leave supplement for law enforcement officers and fire fighters—Amount. The disability leave supplement shall be an amount which, when added to the amount payable under RCW 51.32.090 will result in the employee receiving the same pay he or she would have received for full time active service, taking into account that industrial insurance payments are not subject to federal income or social security taxes. [1985 c 462 § 2.]

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

41.04.510 Disability leave supplement for law enforcement officers and fire fighters—Payment. The disability leave supplement shall be paid as follows:

- (1) The disability leave supplement shall begin on the sixth calendar day from the date of the injury or illness which entitles the employee to benefits under RCW 51.32.090. For the purposes of this section, the day of injury shall constitute the first calendar day.
- (2) One-half of the amount of the supplement as defined in RCW 41.04.505 shall be charged against the accrued paid leave of the employee. In computing such charge, the employer shall convert accumulated days, or other time units as the case may be, to a money equivalent based on the base monthly salary of the employee at the time of the injury or illness. "Base monthly salary" for the purposes of this section means the amount earned by the employee before any voluntary or involuntary payroll deductions, and not including overtime pay.
- (3) One-half of the amount of the supplement as defined in RCW 41.04.505 shall be paid by the employer.

If an employee has no accrued paid leave at the time of an injury or illness which entitles him to benefits under RCW 51.32.090, or if accrued paid leave is exhausted during the period of disability, the employee shall receive only that portion of the disability leave supplement prescribed by subsection (3) of this section. [1989 c 21 § 1; 1985 c 462 § 3.]

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

41.04.515 Disability leave supplement for law enforcement officers and fire fighters—Time limitation. The disability leave supplement provided by RCW 41.04.500 through 41.04.530 shall continue as long as the employee is receiving benefits under RCW 51.32.090, up to a maximum of six months from the date of the injury or illness. [1985 c 462 § 4.]

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

41.04.520 Disability leave supplement for law enforcement officers and fire fighters—Employee to perform light duty tasks. While an employee is receiving disability leave supplement, the employee, subject to the approval of his or her treating physician, shall perform light duty tasks in the employee's previous department as the employer may require, with no reduction in the disability leave supplement. [1985 c 462 § 5.]

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

41.04.525 Disability leave supplement for law enforcement officers and fire fighters—Continuation of employee insurance benefits. The disability leave supplement provided in RCW 41.04.510(3) shall not be considered salary or wages for personal services: PROVIDED, That the employee shall also continue to receive all insurance benefits provided in whole or in part by the employer, notwithstanding the fact that some portion of the cost of those benefits is paid by the employee: PROVIDED FURTHER, That the portion of the cost not paid by the employer continues to be paid by the employee. [1989 c 11 § 10; 1985 c 462 § 7.]

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

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

41.04.530 Disability leave supplement for law enforcement officers and fire fighters—Exhaustion of accrued sick leave. If an employee's accrued sick leave is exhausted during the period of disability, the employee may, for a period of two months following return to active service, draw prospectively upon sick leave the employee is expected to accumulate up to a maximum of three days or three work shifts, whichever is greater. Any sick leave drawn prospectively as provided in this section shall be charged against earned sick leave until such time as the employee has accrued the amount needed to restore the amount used. In the event an employee terminates active service without having restored the sick leave drawn prospectively, the employer shall deduct the actual cost of any payments made under this section from compensation or other money payable to the employee, or otherwise recover such payments. [1985 c 462 § 8.]

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

41.04.535 Disability leave supplement for law enforcement officers and fire fighters—Greater benefits not precluded. Nothing in RCW 41.04.500 through 41.04.530 shall preclude employers of law enforcement officers and fire fighters and such employees from entering

into agreements which provide benefits to employees which are greater than those prescribed by RCW 41.04.500 through 41.04.530, nor is there any intent by the legislature to alter or in any way affect any such agreements which may now exist. [1985 c 462 § 11.]

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

41.04.540 Disability leave supplement for law enforcement officers and fire fighters—Supplement not required in smaller cities, towns, and counties. Cities and towns with a population of less than twenty-five hundred and counties with a population of less than ten thousand shall not be required to provide a disability leave supplement to their commissioned law enforcement officers and full-time paid fire fighters who qualify for payments pursuant to RCW 51.32.090, due to temporary total disability. [1985 c 462 § 12.]

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

41.04.545 Disability leave supplement for law enforcement officers and fire fighters—Vested right not created. *This act neither grants employees a vested right to receive a disability leave supplement nor creates a contractual obligation on behalf of the state or its political subdivisions to provide a disability leave supplement. [1985 c 462 § 13.]

***Reviser's note:** "This act" [1985 c 462] consists of RCW 41.04.500 through 41.04.550 and the 1985 c 462 amendment to RCW 51.32.090.

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

41.04.550 Disability leave supplement for law enforcement officers and fire fighters—Not subject to interest arbitration. Disability leave supplement payments for employees covered by *this act shall not be subject to interest arbitration as defined in RCW 41.56.430 through 41.56.905. [1985 c 462 § 14.]

***Reviser's note:** "This act," see note following RCW 41.04.545.

Program and fiscal review—1985 c 462: See note following RCW 41.04.500.

41.04.580 Dismissal of municipal employees during World War II—Redress authorized. A municipality may by ordinance or resolution provide for redress to any municipal employee or the surviving spouse of a municipal employee who, due to the promulgation of federal Executive Order 9066, was dismissed, terminated from a temporary position, or rejected during the person's probationary period, or who voluntarily resigned in lieu of dismissal from municipal employment, and who incurred salary and other employment related losses as a result thereof during the years 1942 through 1947. [1986 c 225 § 2.]

Legislative findings—1986 c 225: "The dismissal or termination of various municipal employees during World War II resulted from the promulgation of federal Executive Order 9066 which was based mainly on fear and suspicion rather than on factual justification. It is fair and just that redress be made to those employees who were terminated from municipal employment during the wartime years because of these circumstances. The legislature therefore finds that equity and fairness will be served by authorizing municipalities to accept claims for salary and other employment

related losses suffered by the municipal employees directly affected and to pay the claims subject to the provisions of this chapter." [1986 c 225 § 1.]

Severability—1986 c 225: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 225 § 7.]

Reparations to state employees terminated during World War II: Chapter 41.68 RCW.

41.04.585 Dismissal of municipal employees during World War II—Redress not mandatory. RCW 41.04.580 through 41.04.595 do not require a municipality to adopt an ordinance or resolution providing for redress of salary and other employment related losses. [1986 c 225 § 3.]

Legislative findings—Severability—1986 c 225: See notes following RCW 41.04.580.

41.04.590 Dismissal of municipal employees during World War II—Redress—Limitations. Under the system of redress authorized under RCW 41.04.580 through 41.04.595:

(1) A municipality may determine in its sole discretion the monetary amount of redress for salary and other employment related losses, which may not exceed five thousand dollars for any undivided claim.

(2) If a municipality adopts an ordinance or resolution providing for redress of salary and other employment related losses, it has no obligation to notify directly any person of possible eligibility for redress of salary and other employment related losses. [1986 c 225 § 4.]

Legislative findings—Severability—1986 c 225: See notes following RCW 41.04.580.

41.04.595 Dismissal of municipal employees during World War II—Definitions. For the purposes of this chapter, "municipality" means a city, town, county, special purpose district, municipal corporation, quasi-municipal corporation, or political subdivision of the state of Washington. For the purposes of this chapter, a "municipal employee" means an employee of a municipality. [1986 c 225 § 5.]

Legislative findings—Severability—1986 c 225: See notes following RCW 41.04.580.

41.04.600 Dependent care—Salary reduction plan—Purpose. (1) The state of Washington may enter into salary reduction agreements with employees pursuant to the Internal Revenue Code, 26 U.S.C. Sec. 125 for the purpose of making it possible for employees to select on a "before-tax basis" certain taxable and nontaxable benefits pursuant to 26 U.S.C. Sec. 125. The purpose of the salary reduction plan established in this chapter is to attract and retain individuals in governmental service by permitting them to enter into agreements with the state to provide for benefits pursuant to 26 U.S.C. Sec. 129.

(2) Nothing in the salary reduction plan constitutes an employment agreement between the participant and the state, and nothing contained in the participant's salary reduction agreement, the plan, or RCW 41.04.605 through 41.04.645 gives a participant any right to be retained in state employment. [1987 c 475 § 1.]

Severability—1987 c 475: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of

the act or the application of the provision to other persons or circumstances is not affected." [1987 c 475 § 13.]

41.04.605 Dependent care—Salary reduction plan—

Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 41.04.610 through 41.04.635.

(1) "Salary reduction plan" means a plan whereby state employees and officers may agree to a reduction of salary which reduction will allow the employee to participate in benefits offered pursuant to 26 U.S.C. Sec. 125.

(2) "Department" means the department of retirement systems.

(3) "Salary" means a state employee's or officer's monthly salary or wages.

(4) "Dependent care program" means the program for the care of dependents pursuant to 26 U.S.C. Sec. 129 financed from funds deposited in the salary reduction account in the state treasury for the purpose of holding and disbursing the funds deposited under the auspices of the salary reduction plan.

(5) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the salary reduction plan.

(6) "Plan year" means the time period established by the department. [1998 c 116 § 3; 1987 c 475 § 2.]

Severability—1987 c 475: See note following RCW 41.04.600.

41.04.610 Dependent care—Salary reduction plan—

Powers and duties of department. The department shall have responsibility for the formulation and adoption of a plan and policies and procedures designed to guide, direct, and administer the salary reduction plan. [1998 c 116 § 4; 1987 c 475 § 3.]

Severability—1987 c 475: See note following RCW 41.04.600.

41.04.615 Dependent care—Salary reduction plan document—Funds, fees, and appropriations—Dependent care administrative account created—Presumptions. (1) A plan document describing the salary reduction plan shall be adopted and administered by the department. The department shall represent the state in all matters concerning the administration of the plan. The state through the department, may engage the services of a professional consultant or administrator on a contractual basis to serve as an agent to assist the department in carrying out the purposes of RCW 41.04.600 through 41.04.645.

(2) The department shall formulate and establish policies and procedures for the administration of the salary reduction plan that are consistent with existing state law, the internal revenue code, and the regulations adopted by the internal revenue service as they may apply to the benefits offered to participants under the plan.

(3) The funds held by the state for the dependent care program shall be deposited in the salary reduction account in the state treasury. Any interest in excess of the amount used to defray the cost of administering the salary reduction plan shall become a part of the general fund. Unclaimed moneys remaining in the salary reduction account at the end of a plan year after all timely submitted claims for that plan year have been processed shall become a part of the dependent

care administrative account. The department may assess each participant a fee for administering the salary reduction plan. In addition to moneys for initial costs, moneys may be appropriated from the general fund or dependent care administrative account for any expense relating to the administration of the salary reduction plan.

(4) The dependent care administrative account is created in the state treasury. The department may periodically bill agencies for employer savings experienced as the result of dependent care program participation by employees. All receipts from the following shall be deposited in the account: (a) Charges to agencies for all or a portion of the estimated savings due to reductions in employer contributions under the social security act; (b) charges for other similar savings; (c) unclaimed moneys in the salary reduction account at the end of the plan year after all timely submitted claims for that plan year have been processed; and (d) fees charged to participants. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for any expense related to the administration of the salary reduction plan.

(5) Every action taken by the department in administering RCW 41.04.600 through 41.04.645 shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon it. The department shall be presumed to have exercised reasonable care, diligence, and prudence and to have acted impartially as to all persons interested unless the contrary be proved by clear and convincing affirmative evidence. [1998 c 116 § 5; 1993 c 34 § 1; 1987 c 475 § 4.]

Effective date—1993 c 34: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 34 § 3.]

Severability—1987 c 475: See note following RCW 41.04.600.

41.04.620 Dependent care—Salary reduction plan—

Participation by eligible persons—Enrollment, termination, or modification. (1) Elected officials and all permanent officers and employees of the state are eligible to participate in the salary reduction plan and reduce their salary by agreement with the department. The department may adopt rules to permit participation in the plan by temporary employees of the state.

(2) Persons eligible under subsection (1) of this section may enter into salary reduction agreements with the state.

(3)(a) In the initial year of the salary reduction plan, an eligible person may become a participant after the adoption of the plan and before its effective date by agreeing to have a portion of his or her gross salary reduced and deposited into a dependent care account to be used for reimbursement of expenses covered by the plan.

(b) After the initial year of the salary reduction plan, an eligible person may become a participant for a full plan year, with annual benefit selection for each new plan year made before the beginning of the plan year, as determined by the department, or upon becoming eligible.

(c) Once an eligible person elects to participate and determines the amount his or her salary shall be reduced and the benefit for which the funds are to be used during the plan year, the agreement shall be irrevocable and may not be amended during the plan year except as provided in (d) of

this subsection. Prior to making an election to participate in the salary reduction plan, the eligible person shall be informed in writing of all the benefits and reductions that will occur as a result of such election.

(d) The department shall provide in the salary reduction plan that a participant may enroll, terminate, or change his or her election after the plan year has begun if there is a significant change in a participant's status, as provided by 26 U.S.C. Sec. 125 and the regulations adopted under that section.

(4) The department shall establish as part of the salary reduction plan the procedures for and effect of withdrawal from the plan by reason of retirement, death, leave of absence, or termination of employment. To the extent possible under federal law, the department shall protect participants from forfeiture of rights under the plan.

(5) Any salary reduced under the salary reduction plan shall continue to be included as regular compensation for the purpose of computing the state retirement and pension benefits earned by the employee. [1998 c 116 § 6; 1987 c 475 § 5.]

Severability—1987 c 475: See note following RCW 41.04.600.

41.04.625 Dependent care—Salary reduction account. The salary reduction account is established in the state treasury. All fees paid to reimburse participants or service providers pursuant to the provisions of RCW 41.04.600 through 41.04.645 shall be paid from the salary reduction account. [1987 c 475 § 6.]

Severability—1987 c 475: See note following RCW 41.04.600.

41.04.630 Dependent care—Salary reduction plan—Records and reports. (1) The department shall keep or cause to be kept full and adequate accounts and records of the assets, obligations, transactions, and affairs of a salary reduction plan created under RCW 41.04.615.

(2) The department shall file an annual report of the financial condition, transactions, and affairs of the salary reduction plan under the department's jurisdiction. [1998 c 245 § 36; 1998 c 116 § 7; 1987 c 475 § 7.]

Reviser's note: This section was amended by 1998 c 116 § 7 and by 1998 c 245 § 36, 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).

Severability—1987 c 475: See note following RCW 41.04.600.

41.04.635 Dependent care—Salary reduction plan—Termination or amendment of plan. (1) The state may terminate the salary reduction plan at the end of the plan year or upon notification of federal action affecting the status of the plan.

(2) The department may amend the salary reduction plan at any time if the amendment does not affect the rights of the participants to receive eligible reimbursement from the participants' dependent care accounts. [1998 c 116 § 8; 1987 c 475 § 8.]

Severability—1987 c 475: See note following RCW 41.04.600.

41.04.640 Dependent care—Salary reduction plan—Adoption of rules. The department shall adopt rules to

implement RCW 41.04.610 through 41.04.635. [1998 c 116 § 9; 1987 c 475 § 9.]

Severability—1987 c 475: See note following RCW 41.04.600.

41.04.645 Dependent care—Salary reduction plan—Construction of statutes. RCW 41.04.600 through 41.04.640 shall be construed to effectuate the purposes of 26 U.S.C. Sec. 125. [1987 c 475 § 10.]

Severability—1987 c 475: See note following RCW 41.04.600.

41.04.650 Leave sharing program—Intent. The legislature finds that: (1) State employees historically have joined together to help their fellow employees who suffer from, or have relatives or household members suffering from, an extraordinary or severe illness, injury, impairment, or physical or mental condition which prevents the individual from working and causes great economic and emotional distress to the employee and his or her family; and (2) these circumstances may be exacerbated because the affected employees use all their accrued sick leave and annual leave and are forced to take leave without pay or terminate their employment. Therefore, the legislature intends to provide for the establishment of a leave sharing program. [1989 c 93 § 1.]

Severability—1989 c 93: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 93 § 8.]

41.04.655 Leave sharing program—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 41.04.650 through 41.04.670, 28A.400.380, and section 7, chapter 93, Laws of 1989.

(1) "Employee" means any employee of the state, including employees of school districts and educational service districts, who are entitled to accrue sick leave or annual leave and for whom accurate leave records are maintained.

(2) "State agency" or "agency" means departments, offices, agencies, or institutions of state government, the legislature, institutions of higher education, school districts, and educational service districts.

(3) "Program" means the leave sharing program established in RCW 41.04.660. [1990 c 33 § 569; 1989 c 93 § 2.]

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

Severability—1989 c 93: See note following RCW 41.04.650.

41.04.660 Leave sharing program—Created. The Washington state leave sharing program is hereby created. The purpose of the program is to permit state employees, at no significantly increased cost to the state of providing annual leave, sick leave, or personal holidays, to come to the aid of a fellow state employee who is suffering from or has a relative or household member suffering from an extraordinary or severe illness, injury, impairment, or physical or mental condition which has caused or is likely to cause the employee to take leave without pay or terminate his or her

employment. [1996 c 176 § 2; 1990 c 23 § 1; 1989 c 93 § 3.]

Severability—1989 c 93: See note following RCW 41.04.650.

41.04.665 Leave sharing program—When employee may receive leave—When employee may transfer accrued leave—Transfer of leave between employees of different agencies. (1) An agency head may permit an employee to receive leave under this section if:

(a) The employee suffers from, or has a relative or household member suffering from, an illness, injury, impairment, or physical or mental condition which is of an extraordinary or severe nature and which has caused, or is likely to cause, the employee to:

- (i) Go on leave without pay status; or
- (ii) Terminate state employment;

(b) The employee's absence and the use of shared leave are justified;

(c) The employee has depleted or will shortly deplete his or her annual leave and sick leave reserves;

(d) The employee has abided by agency rules regarding sick leave use; and

(e) The employee has diligently pursued and been found to be ineligible for benefits under chapter 51.32 RCW.

(2) The agency head shall determine the amount of leave, if any, which an employee may receive under this section. However, an employee shall not receive a total of more than two hundred sixty-one days of leave.

(3) An employee may transfer annual leave, sick leave, and his or her personal holiday, as follows:

(a) An employee who has an accrued annual leave balance of more than ten days may request that the head of the agency for which the employee works transfer a specified amount of annual leave to another employee authorized to receive leave under subsection (1) of this section. In no event may the employee request a transfer of an amount of leave that would result in his or her annual leave account going below ten days. For purposes of this subsection (3)(a), annual leave does not accrue if the employee receives compensation in lieu of accumulating a balance of annual leave.

(b) An employee may transfer a specified amount of sick leave to an employee requesting shared leave only when the donating employee retains a minimum of four hundred eighty hours of sick leave after the transfer. In no event may such an employee request a transfer of more than six days of sick leave during any twelve-month period.

(c) An employee may transfer all or part of his or her personal holiday, as that term is defined under RCW 1.16.050, under the provisions of this section relating to the transfer of leave.

(4) An employee of an institution of higher education under RCW 28B.10.016, school district, or educational service district who does not accrue annual leave but does accrue sick leave and who has an accrued sick leave balance of more than sixty days may request that the head of the agency for which the employee works transfer a specified amount of sick leave to another employee authorized to receive leave under subsection (1) of this section. In no event may such an employee request a transfer of more than six days of sick leave during any twelve month period, or

request a transfer that would result in his or her sick leave account going below sixty days. Transfers of sick leave under this subsection are limited to transfers from employees who do not accrue annual leave. Under this subsection, "sick leave" also includes leave accrued pursuant to RCW 28A.400.300(2) or 28A.310.240(1) with compensation for illness, injury, and emergencies.

(5) Transfers of leave made by an agency head under subsections (3) and (4) of this section shall not exceed the requested amount.

(6) Leave transferred under this section may be transferred from employees of one agency to an employee of the same agency or, with the approval of the heads of both agencies, to an employee of another state agency. However, leave transferred to or from employees of school districts or educational service districts is limited to transfers to or from employees within the same employing district.

(7) While an employee is on leave transferred under this section, he or she shall continue to be classified as a state employee and shall receive the same treatment in respect to salary, wages, and employee benefits as the employee would normally receive if using accrued annual leave or sick leave.

(a) All salary and wage payments made to employees while on leave transferred under this section shall be made by the agency employing the person receiving the leave. The value of leave transferred shall be based upon the leave value of the person receiving the leave.

(b) In the case of leave transferred by an employee of one agency to an employee of another agency, the agencies involved shall arrange for the transfer of funds and credit for the appropriate value of leave.

(i) Pursuant to rules adopted by the office of financial management, funds shall not be transferred under this section if the transfer would violate any constitutional or statutory restrictions on the funds being transferred.

(ii) The office of financial management may adjust the appropriation authority of an agency receiving funds under this section only if and to the extent that the agency's existing appropriation authority would prevent it from expending the funds received.

(iii) Where any questions arise in the transfer of funds or the adjustment of appropriation authority, the director of financial management shall determine the appropriate transfer or adjustment.

(8) Leave transferred under this section shall not be used in any calculation to determine an agency's allocation of full time equivalent staff positions.

(9) The value of any leave transferred under this section which remains unused shall be returned at its original value to the employee or employees who transferred the leave when the agency head finds that the leave is no longer needed or will not be needed at a future time in connection with the illness or injury for which the leave was transferred. To the extent administratively feasible, the value of unused leave which was transferred by more than one employee shall be returned on a pro rata basis.

(10) An employee who uses leave that is transferred to him or her under this section may not be required to repay the value of the leave that he or she used. [1996 c 176 § 1; 1990 c 23 § 2; 1989 c 93 § 4.]

Severability—1989 c 93: See note following RCW 41.04.650.

41.04.670 Leave sharing program—Adoption of rules. The Washington personnel resources board and other personnel authorities shall each adopt rules applicable to employees under their respective jurisdictions: (1) Establishing appropriate parameters for the program which are consistent with the provisions of RCW 41.04.650 through 41.04.665; (2) providing for equivalent treatment of employees between their respective jurisdictions and allowing transfers of leave in accordance with RCW 41.04.665(5); (3) establishing procedures to ensure that the program does not significantly increase the cost of providing leave; and (4) providing for the administration of the program and providing for maintenance and collection of sufficient information on the program to allow a thorough legislative review. [1993 c 281 § 18; 1990 c 23 § 3; 1989 c 93 § 5.]

Effective date—1993 c 281: See note following RCW 41.06.022.

Temporary policies—1989 c 93: "School districts, the department of personnel, the higher education personnel board, and other personnel authorities may adopt temporary emergency policies and procedures to implement the program on April 20, 1989, so that donated leave may be used in lieu of leave without pay taken after April 20, 1989." [1989 c 93 § 7.]

Severability—1989 c 93: See note following RCW 41.04.650.

41.04.700 Employee assistance program—Intent.

The legislature finds that:

(1) Assisting employees in resolving personal problems that impair their performance will result in a more productive work force, better morale, reduced stress, reduced use of medical benefits, reduced absenteeism, lower turnover rates, and fewer accidents;

(2) A substantial number of employee problems can be identified and the employees referred to treatment by an employee assistance program;

(3) The state, as an employer, desires to foster a working environment that promotes safety and productivity as well as the health and well-being of its employees.

Therefore, it is the purpose of RCW 41.04.710 through 41.04.730 to assist state employees by establishing a state employee assistance program. [1990 c 60 § 301.]

Severability—Subheadings not law—1990 c 60: See notes following RCW 41.06.070.

41.04.710 Employee assistance program—Created.

The employee assistance program is hereby created to provide support and services to state employees who have personal problems that impair their performance in the work place. The goal of the program is to help promote a safe, productive, and healthy state work force by assisting state employees and their supervisors to identify and deal with such personal problems. However, nothing in this chapter relieves employees from the responsibility of performing their jobs in an acceptable manner. [1990 c 60 § 302.]

Severability—Subheadings not law—1990 c 60: See notes following RCW 41.06.070.

41.04.720 Employee assistance program—*Director of human resources—Duties. The *director of human resources shall:

(1) Administer the state employee assistance program to assist employees who have personal problems that adversely

affect their job performance or have the potential of doing so;

(2) Develop policies, procedures, and activities for the program;

(3) Encourage and promote the voluntary use of the employee assistance program by increasing employee awareness and disseminating educational materials;

(4) Provide technical assistance and training to agencies on how to use the employee assistance program;

(5) Assist and encourage supervisors to identify and refer employees with problems that impair their performance by incorporating proper use of the program in management training, management performance criteria, ongoing communication with agencies, and other appropriate means;

(6) Offer substance abuse prevention and awareness activities to be provided through the employee assistance program and the state employee wellness program;

(7) Monitor and evaluate the effectiveness of the program, including the collection, analysis, and publication of relevant statistical information; and

(8) Consult with state agencies, institutions of higher education, and employee organizations in carrying out the purposes of RCW 41.04.700 through 41.04.730. [1990 c 60 § 303.]

***Reviser's note:** The reference to the "director of human resources" is erroneous. In the final version of House Bill No. 2567, all other references were changed to the "director of personnel."

Severability—Subheadings not law—1990 c 60: See notes following RCW 41.06.070.

41.04.730 Employee assistance program—Information confidential—Exceptions. Individual employees' participation in the employee assistance program and all individually identifiable information gathered in the process of conducting the program shall be held in strict confidence; except that agency management may be provided with the following information about employees referred by that agency management due to poor job performance:

(1) Whether or not the referred employee made an appointment;

(2) The date and time the employee arrived and departed;

(3) Whether the employee agreed to follow the advice of counselors; and

(4) Whether further appointments were scheduled.

Participation or nonparticipation by any employee in the employee assistance program shall not be a factor in any decision affecting an employee's job security, promotional opportunities, corrective or disciplinary action, or other employment rights. [1990 c 60 § 304.]

Severability—Subheadings not law—1990 c 60: See notes following RCW 41.06.070.

41.04.750 Supported employment—Definitions. Unless the context clearly requires otherwise the definitions in this section apply throughout RCW 41.04.760 through 41.04.780.

(1) "Developmental disability" means a disability as defined in RCW 71A.10.020.

(2) "Supported employment" means employment for individuals with developmental disabilities who may require on-the-job training and long-term support in order to fulfill

their job duties successfully. Supported employment offers the same wages and benefits as similar nonsupported employment positions.

(3) "State agency" means any office, department, division, bureau, board, commission, community college or institution of higher education, or agency of the state of Washington. [1997 c 287 § 2.]

Finding—1997 c 287: "The legislature finds that the rate of unemployment among persons with developmental disabilities is high due to the limited employment opportunities available to disabled persons. Given that persons with disabilities are capable of filling employment positions in the general work force population, supported employment is an effective way of integrating such individuals into the general work force population. The creation of supported employment programs can increase the types and availability of employment positions for persons with developmental disabilities." [1997 c 287 § 1.]

41.04.760 Supported employment—State agency participation. State agencies are encouraged to participate in supported employment activities. The department of social and health services, in conjunction with the department of personnel and the office of financial management, shall identify agencies that have positions and funding conducive to implementing supported employment. An agency may only participate in supported employment activities pursuant to this section if the agency is able to operate the program within its existing budget. These agencies shall:

(1) Designate a coordinator who will be responsible for information and resource referral regarding the agency's supported employment program. The coordinator shall serve as a liaison between the agency and the department of personnel regarding supported employment;

(2) Submit an annual update to the department of social and health services, the department of personnel, and the office of financial management. The annual update shall include: A description of the agency's supported employment efforts, the number of persons placed in supported employment positions, recommendations concerning expanding the supported employment program to include people with mental disabilities or other disabilities, and an overall evaluation of the effectiveness of supported employment for the agency. [1997 c 287 § 3.]

Finding—1997 c 287: See note following RCW 41.04.750.

41.04.770 Supported employment—Implementation. The department of social and health services and the department of personnel shall, after consultation with supported employment provider associations and other interested parties, encourage, educate, and assist state agencies in implementing supported employment programs. The department of personnel shall provide human resources technical assistance to agencies implementing supported employment programs. The department of personnel shall make available, upon request of the legislature, an annual report that evaluates the overall progress of supported employment in state government. [1997 c 287 § 4.]

Finding—1997 c 287: See note following RCW 41.04.750.

41.04.780 Supported employment—Impact on other employment positions. The creation of supported employment positions under RCW 41.04.760 and 41.04.770 shall

not count against an agency's allotted full-time equivalent employee positions. Supported employment programs are not intended to displace employees or abrogate any reduction-in-force rights. [1997 c 287 § 5.]

Finding—1997 c 287: See note following RCW 41.04.750.

41.04.800 Chapter not applicable to officers and employees of state convention and trade center. The provisions of this chapter shall not be applicable to the officers and employees of the nonprofit corporation formed under chapter 67.40 RCW. [1984 c 210 § 5.]

Savings—Severability—1984 c 210: See notes following RCW 67.40.020.

Chapter 41.05

STATE HEALTH CARE AUTHORITY

(Formerly: State employees' insurance and health care)

Sections

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 41.05.901 Implementation—Effective dates—1988 c 107.

Hospitalization and health care for county, municipal and other political subdivision employees: RCW 41.04.180.

Monitoring enrollee level in basic health plan and medicaid caseload of children—Funding levels adjustment: RCW 43.41.260.

Prepaid chiropractic, pilot projects: RCW 18.25.200.

Requirement to seek federal waivers and state law changes to medicaid assistance program: RCW 43.20A.860.

41.05.006 Purpose. (1) The legislature recognizes that (a) the state is a major purchaser of health care services, (b) the increasing costs of such health care services are posing and will continue to pose a great financial burden on the state, (c) it is the state's policy, consistent with the best interests of the state, to provide comprehensive health care as an employer, to state employees and officials and their dependents and to those who are dependent on the state for necessary medical care, and (d) it is imperative that the state begin to develop effective and efficient health care delivery systems and strategies for procuring health care services in order for the state to continue to purchase the most comprehensive health care possible.

(2) It is therefore the purpose of this chapter to establish the Washington state health care authority whose purpose shall be to (a) develop health care benefit programs, funded to the fullest extent possible by the employer, that provide comprehensive health care for eligible state employees, officials, and their dependents, and (b) study all state-purchased health care, alternative health care delivery systems, and strategies for the procurement of health care services and make recommendations aimed at minimizing the financial burden which health care poses on the state, its employees, and its charges, while at the same time allowing the state to provide the most comprehensive health care possible. [1988 c 107 § 2.]

41.05.011 Definitions. (*Effective until September 1, 2000.*) Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Administrator" means the administrator of the authority.

(2) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, the department of health, the basic health plan, the state health care authority, the department of labor and industries, the department of corrections, the department of veterans affairs, and local school districts.

(3) "Authority" means the Washington state health care authority.

(4) "Insuring entity" means an insurer as defined in chapter 48.01 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW.

(5) "Flexible benefit plan" means a benefit plan that allows employees to choose the level of health care coverage provided and the amount of employee contributions from among a range of choices offered by the authority.

(6) "Employee" includes all full-time and career seasonal employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; and includes any or all part-time and temporary employees under the terms and conditions established under this chapter by the authority; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature or of the legislative authority of any county, city, or town who are elected to office after February 20, 1970. "Employee" also includes: (a) Employees of a county, municipality, or other political subdivision of the state if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205; (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; and (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350.

(7) "Board" means the public employees' benefits board established under RCW 41.05.055.

(8) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiving a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district or educational service district on or after October 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32 or 41.40 RCW;

(c) Persons who separate from employment with a school district or educational service district due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32 or 41.40 RCW.

(9) "Benefits contribution plan" means a premium only contribution plan, a medical flexible spending arrangement, or a cafeteria plan whereby state and public employees may agree to a contribution to benefit costs which will allow the employee to participate in benefits offered pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(10) "Salary" means a state employee's monthly salary or wages.

(11) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the benefits contribution plan.

(12) "Plan year" means the time period established by the authority.

(13) "Separated employees" means persons who separate from employment with an employer as defined in RCW 41.32.010(11) on or after July 1, 1996, and who are at least age fifty-five and have at least ten years of service under the teachers' retirement system plan III as defined in RCW

41.32.010(40). [1996 c 39 § 21; 1995 1st sp.s. c 6 § 2; 1994 c 153 § 2. Prior: 1993 c 492 § 214; 1993 c 386 § 5; 1990 c 222 § 2; 1988 c 107 § 3.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410

Intent—1994 c 153: "It is the intent of the legislature to increase access to health insurance for retired and disabled state and school district employees and to increase equity between state and school employees and between state and school retirees." [1994 c 153 § 1.]

Effective dates—1994 c 153: "This act shall take effect January 1, 1995, except section 15 of this act, which takes effect October 1, 1995." [1994 c 153 § 16.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Intent—1993 c 386: See note following RCW 28A.400.391.

Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16: See note following RCW 28A.400.391.

41.05.011 Definitions. (Effective September 1, 2000.)

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Administrator" means the administrator of the authority.

(2) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, the department of health, the basic health plan, the state health care authority, the department of labor and industries, the department of corrections, the department of veterans affairs, and local school districts.

(3) "Authority" means the Washington state health care authority.

(4) "Insuring entity" means an insurer as defined in chapter 48.01 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW.

(5) "Flexible benefit plan" means a benefit plan that allows employees to choose the level of health care coverage provided and the amount of employee contributions from among a range of choices offered by the authority.

(6) "Employee" includes all full-time and career seasonal employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; and includes any or all part-time and temporary employees under the terms and conditions established under this chapter by the authority; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature or of the legislative authority of any county, city, or town who are elected to office after February 20, 1970. "Employee" also includes: (a) Employees of a county, municipality, or other political subdivision of the state if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205; (b) employees of employee organizations representing state civil service employees, at the option of each

such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; and (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350.

(7) "Board" means the public employees' benefits board established under RCW 41.05.055.

(8) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiving a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district or educational service district on or after October 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32 or 41.40 RCW;

(c) Persons who separate from employment with a school district or educational service district due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32 or 41.40 RCW.

(9) "Benefits contribution plan" means a premium only contribution plan, a medical flexible spending arrangement, or a cafeteria plan whereby state and public employees may agree to a contribution to benefit costs which will allow the employee to participate in benefits offered pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(10) "Salary" means a state employee's monthly salary or wages.

(11) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the benefits contribution plan.

(12) "Plan year" means the time period established by the authority.

(13) "Separated employees" means persons who separate from employment with an employer as defined in:

(a) RCW 41.32.010(11) on or after July 1, 1996; or

(b) RCW 41.35.010 on or after September 1, 2000;

and who are at least age fifty-five and have at least ten years of service under the teachers' retirement system plan III as defined in RCW 41.32.010(40) or the Washington school employees' retirement system plan III as defined in RCW 41.35.010. [1998 c 341 § 706; 1996 c 39 § 21; 1995 1st sp.s. c 6 § 2; 1994 c 153 § 2. Prior: 1993 c 492 § 214; 1993 c 386 § 5; 1990 c 222 § 2; 1988 c 107 § 3.]

Effective date—1998 c 341: See RCW 41.35.901.

Effective dates—1996 c 39: See note following RCW 41.32.010.

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Intent—1994 c 153: "It is the intent of the legislature to increase access to health insurance for retired and disabled state and school district employees and to increase equity between state and school employees and between state and school retirees." [1994 c 153 § 1.]

Effective dates—1994 c 153: "This act shall take effect January 1, 1995, except section 15 of this act, which takes effect October 1, 1995." [1994 c 153 § 16.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Intent—1993 c 386: See note following RCW 28A.400.391.

Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16: See note following RCW 28A.400.391.

41.05.021 State health care authority—Administrator—Cost control and delivery strategies—Managed competition. (1) The Washington state health care authority is created within the executive branch. The authority shall have an administrator appointed by the governor, with the consent of the senate. The administrator shall serve at the pleasure of the governor. The administrator may employ up to seven staff members, who shall be exempt from chapter 41.06 RCW, and any additional staff members as are necessary to administer this chapter. The administrator may delegate any power or duty vested in him or her by this chapter, including authority to make final decisions and enter final orders in hearings conducted under chapter 34.05 RCW. The primary duties of the authority shall be to: Administer state employees' insurance benefits and retired or disabled school employees' insurance benefits; administer the basic health plan pursuant to chapter 70.47 RCW; study state-purchased health care programs in order to maximize cost containment in these programs while ensuring access to quality health care; and implement state initiatives, joint purchasing strategies, and techniques for efficient administration that have potential application to all state-purchased health services. The authority's duties include, but are not limited to, the following:

(a) To administer health care benefit programs for employees and retired or disabled school employees as specifically authorized in RCW 41.05.065 and in accordance with the methods described in RCW 41.05.075, 41.05.140, and other provisions of this chapter;

(b) To analyze state-purchased health care programs and to explore options for cost containment and delivery alternatives for those programs that are consistent with the purposes of those programs, including, but not limited to:

(i) Creation of economic incentives for the persons for whom the state purchases health care to appropriately utilize and purchase health care services, including the development of flexible benefit plans to offset increases in individual financial responsibility;

(ii) Utilization of provider arrangements that encourage cost containment, including but not limited to prepaid delivery systems, utilization review, and prospective payment methods, and that ensure access to quality care, including assuring reasonable access to local providers, especially for employees residing in rural areas;

(iii) Coordination of state agency efforts to purchase drugs effectively as provided in RCW 70.14.050;

(iv) Development of recommendations and methods for purchasing medical equipment and supporting services on a volume discount basis; and

(v) Development of data systems to obtain utilization data from state-purchased health care programs in order to identify cost centers, utilization patterns, provider and hospital practice patterns, and procedure costs, utilizing the information obtained pursuant to RCW 41.05.031;

(c) To analyze areas of public and private health care interaction;

(d) To provide information and technical and administrative assistance to the board;

(e) To review and approve or deny applications from counties, municipalities, and other political subdivisions of the state to provide state-sponsored insurance or self-insurance programs to their employees in accordance with the provisions of RCW 41.04.205, setting the premium contribution for approved groups as outlined in RCW 41.05.050;

(f) To appoint a health care policy technical advisory committee as required by RCW 41.05.150;

(g) To establish billing procedures and collect funds from school districts and educational service districts under *RCW 28A.400.400 in a way that minimizes the administrative burden on districts; and

(h) To promulgate and adopt rules consistent with this chapter as described in RCW 41.05.160.

(2) On and after January 1, 1996, the public employees' benefits board may implement strategies to promote managed competition among employee health benefit plans. Strategies may include but are not limited to:

(a) Standardizing the benefit package;

(b) Soliciting competitive bids for the benefit package;

(c) Limiting the state's contribution to a percent of the lowest priced qualified plan within a geographical area;

(d) Monitoring the impact of the approach under this subsection with regards to: Efficiencies in health service delivery, cost shifts to subscribers, access to and choice of managed care plans state-wide, and quality of health services. The health care authority shall also advise on the value of administering a benchmark employer-managed plan to promote competition among managed care plans. The health care authority shall report its findings and recommendations to the legislature by January 1, 1997.

(3) The health care authority shall, no later than July 1, 1996, submit to the appropriate committees of the legislature, proposed methods whereby, through the use of a voucher-type process, state employees may enroll with any health carrier to receive employee benefits. Such methods shall include the employee option of participating in a health care savings account, as set forth in Title 48 RCW. [1997 c 274 § 1; 1995 1st sp.s. c 6 § 7; 1994 c 309 § 1. Prior: 1993 c 492 § 215; 1993 c 386 § 6; 1990 c 222 § 3; 1988 c 107 § 4.]

***Reviser's note:** RCW 28A.400.400 was repealed by 1994 c 153 § 15, effective October 1, 1995.

Effective date—1997 c 274: "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 July 1, 1997." [1997 c 274 § 10.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Intent—1993 c 386: See note following RCW 28A.400.391.

Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16: See note following RCW 28A.400.391.

41.05.022 State agent for purchasing health services—Single community-rated risk pool. (1) The health care

authority is hereby designated as the single state agent for purchasing health services.

(2) On and after January 1, 1995, at least the following state-purchased health services programs shall be merged into a single, community-rated risk pool: Health benefits for groups of employees of school districts and educational service districts that voluntarily purchase health benefits as provided in RCW 41.05.011; health benefits for state employees; health benefits for eligible retired or disabled school employees not eligible for parts A and B of medicare; and health benefits for eligible state retirees not eligible for parts A and B of medicare.

(3) At a minimum, and regardless of other legislative enactments, the state health services purchasing agent shall:

(a) Require that a public agency that provides subsidies for a substantial portion of services now covered under the basic health plan use uniform eligibility processes, insofar as may be possible, and ensure that multiple eligibility determinations are not required;

(b) Require that a health care provider or a health care facility that receives funds from a public program provide care to state residents receiving a state subsidy who may wish to receive care from them, and that an insuring entity that receives funds from a public program accept enrollment from state residents receiving a state subsidy who may wish to enroll with them;

(c) Strive to integrate purchasing for all publicly sponsored health services in order to maximize the cost control potential and promote the most efficient methods of financing and coordinating services;

(d) Consult regularly with the governor, the legislature, and state agency directors whose operations are affected by the implementation of this section; and

(e) Ensure the control of benefit costs under managed competition by adopting rules to prevent employers from entering into an agreement with employees or employee organizations when the agreement would result in increased utilization in public employees' benefits board plans or reduce the expected savings of managed competition. [1995 1st sp.s. c 6 § 3; 1994 c 153 § 3; 1993 c 492 § 227.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

41.05.026 Contracts—Proprietary data, trade secrets, actuarial formulas, statistics, cost and utilization data—Exemption from public inspection—Executive sessions. (1) When soliciting proposals for the purpose of awarding contracts for goods or services, the administrator shall, upon written request by the bidder, exempt from public inspection and copying such proprietary data, trade secrets, or other information contained in the bidder's proposal that relate to the bidder's unique methods of conducting business or of determining prices or premium rates to be charged for services under terms of the proposal.

(2) Actuarial formulas, statistics, cost and utilization data, or other proprietary information submitted upon request

of the administrator or board by a contracting insurer, health care service contractor, health maintenance organization, or vendor may be withheld at any time from public inspection when necessary to preserve trade secrets or prevent unfair competition.

(3) The board may hold an executive session during any regular or special meeting to discuss information submitted in accordance with subsection (1) or (2) of this section. [1991 c 79 § 1; 1990 c 222 § 6.]

41.05.031 Agencies to establish health care information systems. The following state agencies are directed to cooperate with the authority to establish appropriate health care information systems in their programs: The department of social and health services, the department of health, the department of labor and industries, the basic health plan, the department of veterans affairs, the department of corrections, and the superintendent of public instruction.

The authority, in conjunction with these agencies, shall determine:

- (1) Definitions of health care services;
- (2) Health care data elements common to all agencies;
- (3) Health care data elements unique to each agency;

and

- (4) A mechanism for program and budget review of health care data. [1990 c 222 § 4; 1988 c 107 § 5.]

41.05.050 Contributions for employees and dependents. (1) Every department, division, or separate agency of state government, and such county, municipal, school district, educational service district, or other political subdivisions as are covered by this chapter, shall provide contributions to insurance and health care plans for its employees and their dependents, the content of such plans to be determined by the authority. Contributions, paid by the county, the municipality, school district, educational service district, or other political subdivision for their employees, shall include an amount determined by the authority to pay such administrative expenses of the authority as are necessary to administer the plans for employees of those groups. Until October 1, 1995, contributions to be paid by school districts or educational service districts shall be adjusted by the authority to reflect the remittance provided under RCW 28A.400.400.

(2) The contributions of any department, division, or separate agency of the state government, and such county, municipal, or other political subdivisions as are covered by this chapter, shall be set by the authority, subject to the approval of the governor for availability of funds as specifically appropriated by the legislature for that purpose. Insurance and health care contributions for ferry employees shall be governed by RCW 47.64.270.

(3) The authority shall transmit a recommendation for the amount of the employer contribution to the governor and the director of financial management for inclusion in the proposed budgets submitted to the legislature. [1995 1st sp.s. c 6 § 22; 1994 c 309 § 2; 1994 c 153 § 4. Prior: 1993 c 492 § 216; 1993 c 386 § 7; 1988 c 107 § 18; 1987 c 122 § 4; 1984 c 107 § 1; 1983 c 15 § 20; 1983 c 2 § 9; prior: 1982 1st ex.s. c 34 § 2; 1981 c 344 § 6; 1979 c 151 § 55; 1977 ex.s. c 136 § 4; 1975-'76 2nd ex.s. c 106 § 4; 1975 1st

ex.s. c 38 § 2; 1973 1st ex.s. c 147 § 3; 1970 ex.s. c 39 § 5.]

Reviser's note: This section was amended by 1995 1st sp.s. c 6 § 22 without cognizance of its amendment by 1994 c 153 § 4. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective date—1993 c 386 §§ 3, 7, and 11: See note following RCW 41.04.205.

Intent—1993 c 386: See note following RCW 28A.400.391.

Severability—1983 c 15: See RCW 47.64.910.

Severability—1983 c 2: See note following RCW 18.71.030.

Severability—1981 c 344: See note following RCW 47.60.326.

Effective date—Conditions prerequisite to implementing sections—1977 ex.s. c 136: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1977: PROVIDED, That if the state operating budget appropriations act does not contain the funds necessary for the implementation of this 1977 amendatory act in an appropriated amount sufficient to fully fund the employer's contribution to the state employee insurance benefits program which is established by the board in accordance with RCW 41.05.050 (2) and (3) as now or hereafter amended, sections 1, 5, and 6 of this 1977 amendatory act shall be null and void." [1977 ex.s. c 136 § 8.] For codification of 1977 ex.s. c 136, see Codification Tables, Volume 0.

Effective date—Effect of veto—1973 1st ex.s. c 147: "This bill shall not take effect until the funds necessary for its implementation have been specifically appropriated by the legislature and such appropriation itself has become law. It is the intention of the legislature that if the governor shall veto this section or any item thereof, none of the provisions of this bill shall take effect." [1973 1st ex.s. c 147 § 10.]

Savings—1973 1st ex.s. c 147: "Nothing contained in this 1973 amendatory act shall be deemed to amend, alter or affect the provisions of Chapter 23, Laws of 1972, Extraordinary Session, and RCW 28B.10.840 through 28B.10.844 as now or hereafter amended." [1973 1st ex.s. c 147 § 13.]

Severability—1973 1st ex.s. c 147: "If any provision of this 1973 amendatory act, or its application to any person or circumstances is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 147 § 9.]

Severability—1970 ex.s. c 39: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 39 § 14.]

41.05.055 Public employees' benefits board—Members. (1) The public employees' benefits board is created within the authority. The function of the board is to design and approve insurance benefit plans for state employees and school district employees.

(2) The board shall be composed of nine members appointed by the governor as follows:

(a) Two representatives of state employees, one of whom shall represent an employee union certified as exclusive representative of at least one bargaining unit of classified employees, and one of whom is retired, is covered by a program under the jurisdiction of the board, and represents an organized group of retired public employees;

(b) Two representatives of school district employees, one of whom shall represent an association of school

employees and one of whom is retired, and represents an organized group of retired school employees;

(c) Four members with experience in health benefit management and cost containment; and

(d) The administrator.

(3) The member who represents an association of school employees and one member appointed pursuant to subsection (2)(c) of this section shall be nonvoting members until such time that there are no less than twelve thousand school district employee subscribers enrolled with the authority for health care coverage.

(4) The governor shall appoint the initial members of the board to staggered terms not to exceed four years. Members appointed thereafter shall serve two-year terms. Members of the board shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for their travel expenses while on official business in accordance with RCW 43.03.050 and 43.03.060. The board shall prescribe rules for the conduct of its business. The administrator shall serve as chair of the board. Meetings of the board shall be at the call of the chair. [1995 1st sp.s. c 6 § 4; 1994 c 36 § 1; 1993 c 492 § 217; 1989 c 324 § 1; 1988 c 107 § 7.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Effective date—1994 c 36: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1994]." [1994 c 36 § 2.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

41.05.065 Public employees' benefits board—Duties.

(1) The board shall study all matters connected with the provision of health care coverage, life insurance, liability insurance, accidental death and dismemberment insurance, and disability income insurance or any of, or a combination of, the enumerated types of insurance for employees and their dependents on the best basis possible with relation both to the welfare of the employees and to the state. However, liability insurance shall not be made available to dependents.

(2) The board shall develop employee benefit plans that include comprehensive health care benefits for all employees. In developing these plans, the board shall consider the following elements:

(a) Methods of maximizing cost containment while ensuring access to quality health care;

(b) Development of provider arrangements that encourage cost containment and ensure access to quality care, including but not limited to prepaid delivery systems and prospective payment methods;

(c) Wellness incentives that focus on proven strategies, such as smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education;

(d) Utilization review procedures including, but not limited to a cost-efficient method for prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and second opinions for

surgeries, review of invoices or claims submitted by service providers, and performance audit of providers;

- (e) Effective coordination of benefits;
- (f) Minimum standards for insuring entities; and

(g) Minimum scope and content of public employee benefit plans to be offered to enrollees participating in the employee health benefit plans. To maintain the comprehensive nature of employee health care benefits, employee eligibility criteria related to the number of hours worked and the benefits provided to employees shall be substantially equivalent to the state employees' health benefits plan and eligibility criteria in effect on January 1, 1993. Nothing in this subsection (2)(g) shall prohibit changes or increases in employee point-of-service payments or employee premium payments for benefits.

(3) The board shall design benefits and determine the terms and conditions of employee participation and coverage, including establishment of eligibility criteria.

(4) The board may authorize premium contributions for an employee and the employee's dependents in a manner that encourages the use of cost-efficient managed health care systems.

(5) Employees shall choose participation in one of the health care benefit plans developed by the board and may be permitted to waive coverage under terms and conditions established by the board.

(6) The board shall review plans proposed by insuring entities that desire to offer property insurance and/or accident and casualty insurance to state employees through payroll deduction. The board may approve any such plan for payroll deduction by insuring entities holding a valid certificate of authority in the state of Washington and which the board determines to be in the best interests of employees and the state. The board shall promulgate rules setting forth criteria by which it shall evaluate the plans.

(7) Before January 1, 1998, the public employees' benefits board shall make available one or more fully insured long-term care insurance plans that comply with the requirements of chapter 48.84 RCW. Such programs shall be made available to eligible employees, retired employees, and retired school employees as well as eligible dependents which, for the purpose of this section, includes the parents of the employee or retiree and the parents of the spouse of the employee or retiree. Employees of local governments and employees of political subdivisions not otherwise enrolled in the public employees' benefits board sponsored medical programs may enroll under terms and conditions established by the administrator, if it does not jeopardize the financial viability of the public employees' benefits board's long-term care offering.

(a) Participation of eligible employees or retired employees and retired school employees in any long-term care insurance plan made available by the public employees' benefits board is voluntary and shall not be subject to binding arbitration under chapter 41.56 RCW. Participation is subject to reasonable underwriting guidelines and eligibility rules established by the public employees' benefits board and the health care authority.

(b) The employee, retired employee, and retired school employee are solely responsible for the payment of the premium rates developed by the health care authority. The health care authority is authorized to charge a reasonable

administrative fee in addition to the premium charged by the long-term care insurer, which shall include the health care authority's cost of administration, marketing, and consumer education materials prepared by the health care authority and the office of the insurance commissioner.

(c) To the extent administratively possible, the state shall establish an automatic payroll or pension deduction system for the payment of the long-term care insurance premiums.

(d) The public employees' benefits board and the health care authority shall establish a technical advisory committee to provide advice in the development of the benefit design and establishment of underwriting guidelines and eligibility rules. The committee shall also advise the board and authority on effective and cost-effective ways to market and distribute the long-term care product. The technical advisory committee shall be comprised, at a minimum, of representatives of the office of the insurance commissioner, providers of long-term care services, licensed insurance agents with expertise in long-term care insurance, employees, retired employees, retired school employees, and other interested parties determined to be appropriate by the board.

(e) The health care authority shall offer employees, retired employees, and retired school employees the option of purchasing long-term care insurance through licensed agents or brokers appointed by the long-term care insurer. The authority, in consultation with the public employees' benefits board, shall establish marketing procedures and may consider all premium components as a part of the contract negotiations with the long-term care insurer.

(f) In developing the long-term care insurance benefit designs, the public employees' benefits board shall include an alternative plan of care benefit, including adult day services, as approved by the office of the insurance commissioner.

(g) The health care authority, with the cooperation of the office of the insurance commissioner, shall develop a consumer education program for the eligible employees, retired employees, and retired school employees designed to provide education on the potential need for long-term care, methods of financing long-term care, and the availability of long-term care insurance products including the products offered by the board.

(h) By December 1998, the health care authority, in consultation with the public employees' benefits board, shall submit a report to the appropriate committees of the legislature, including an analysis of the marketing and distribution of the long-term care insurance provided under this section. [1996 c 140 § 1; 1995 1st sp.s. c 6 § 5; 1994 c 153 § 5. Prior: 1993 c 492 § 218; 1993 c 386 § 9; 1988 c 107 § 8.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Intent—1993 c 386: See note following RCW 28A.400.391

Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16: See note following RCW 28A.400.391.

41.05.075 Employee benefit plans—Contracts with insuring entities. (1) The administrator shall provide benefit plans designed by the board through a contract or contracts with insuring entities, through self-funding, self-insurance, or other methods of providing insurance coverage authorized by RCW 41.05.140.

(2) The administrator shall establish a contract bidding process that:

(a) Encourages competition among insuring entities;

(b) Maintains an equitable relationship between premiums charged for similar benefits and between risk pools including premiums charged for retired state and school district employees under the separate risk pools established by RCW 41.05.022 and 41.05.080 such that insuring entities may not avoid risk when establishing the premium rates for retirees eligible for medicare;

(c) Is timely to the state budgetary process; and

(d) Sets conditions for awarding contracts to any insuring entity.

(3) The administrator shall establish a requirement for review of utilization and financial data from participating insuring entities on a quarterly basis.

(4) The administrator shall centralize the enrollment files for all employee and retired or disabled school employee health plans offered under chapter 41.05 RCW and develop enrollment demographics on a plan-specific basis.

(5) All claims data shall be the property of the state. The administrator may require of any insuring entity that submits a bid to contract for coverage all information deemed necessary including subscriber or member demographic and claims data necessary for risk assessment and adjustment calculations in order to fulfill the administrator's duties as set forth in this chapter.

(6) All contracts with insuring entities for the provision of health care benefits shall provide that the beneficiaries of such benefit plans may use on an equal participation basis the services of practitioners licensed pursuant to chapters 18.22, 18.25, 18.32, 18.53, 18.57, 18.71, 18.74, 18.83, and 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners. However, nothing in this subsection may preclude the administrator from establishing appropriate utilization controls approved pursuant to RCW 41.05.065(2) (a), (b), and (d).

(7) Beginning in January 1990, and each January thereafter until January 1996, the administrator shall publish and distribute to each school district a description of health care benefit plans available through the authority and the estimated cost if school district employees were enrolled. [1994 sp.s. c 9 § 724; 1994 c 309 § 3; 1994 c 153 § 6; 1993 c 386 § 10; 1988 c 107 § 9.]

Reviser's note: This section was amended by 1994 c 153 § 6, 1994 c 309 § 3, and by 1994 sp.s. c 9 § 724, each without reference to the other. All amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011

Intent—1993 c 386: See note following RCW 28A.400.391.

Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16: See note following RCW 28A.400.391.

41.05.080 Participation by retired or disabled employees. (1) Under the qualifications, terms, conditions, and benefits set by the board:

(a) Retired or disabled state employees, retired or disabled school employees, or employees of county, municipal, or other political subdivisions covered by this chapter who are retired may continue their participation in insurance plans and contracts after retirement or disablement;

(b) Separated employees may continue their participation in insurance plans and contracts if participation is selected immediately upon separation from employment.

(2) Rates charged retired or disabled employees, separated employees, spouses, or dependent children who are not eligible for parts A and B of medicare shall be based on the experience of the community rated risk pool established under RCW 41.05.022.

(3) Rates charged to retired or disabled employees, separated employees, spouses, or children who are eligible for parts A and B of medicare shall be calculated from a separate experience risk pool comprised only of individuals eligible for parts A and B of medicare; however, the premiums charged to medicare-eligible retirees and disabled employees shall be reduced by the amount of the subsidy provided under RCW 41.05.085.

(4) Retired or disabled and separated employees shall be responsible for payment of premium rates developed by the authority which shall include the cost to the authority of providing insurance coverage including any amounts necessary for reserves and administration in accordance with this chapter. These self pay rates will be established based on a separate rate for the employee, the spouse, and the children.

(5) The term "retired state employees" for the purpose of this section shall include but not be limited to members of the legislature whether voluntarily or involuntarily leaving state office. [1996 c 39 § 22; 1994 c 153 § 7; 1993 c 386 § 11; 1977 ex.s. c 136 § 6; 1975-'76 2nd ex.s. c 106 § 6; 1973 1st ex.s. c 147 § 7; 1970 ex.s. c 39 § 8.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Effective date—1993 c 386 §§ 3, 7, and 11: See note following RCW 41.04.205.

Intent—1993 c 386: See note following RCW 28A.400.391.

Effective date—Conditions prerequisite to implementing sections—1977 ex.s. c 136: See note following RCW 41.05.050.

Effective date—Effect of veto—Savings—Severability—1973 1st ex.s. c 147: See notes following RCW 41.05.050.

Severability—1970 ex.s. c 39: See note following RCW 41.05.050.

41.05.085 Retired or disabled school employee health insurance subsidy. Beginning with the appropriations act for the 1995-1997 biennium, the legislature shall establish as part of both the state employees' and the school and educational service district employees' insurance benefit allocation the portion of the allocation to be used to provide a subsidy to reduce the health care insurance premiums charged to retired or disabled school district and educational service district employees, or retired state employees, who are eligible for parts A and B of medicare. The amount of any premium reduction shall be established by the board, but shall not result in a premium reduction of more than fifty percent. The board may also determine the amount of any

subsidy to be available to spouses and dependents. [1994 c 153 § 8.]

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

41.05.090 Continuation of coverage of employee, spouse, or covered dependent ineligible under state plan—Exceptions. (1) When an employee, spouse, or covered dependent becomes ineligible under the state plan and wishes to continue coverage on an individual basis with the same provider under the state plan, such employee, spouse, or covered dependent shall be entitled to immediately transfer and shall not be required to undergo any waiting period before obtaining individual coverage.

(2) Entitlement to a conversion contract under the terms of this section shall not apply to any employee, spouse, or covered dependent who is:

(a) Eligible for federal medicare coverage; or

(b) Covered under another group plan, policy, contract, or agreement providing benefits for hospital or medical care.

(3) Entitlement to conversion under the terms of this section shall not apply to any employee terminated for misconduct, except that conversion shall be offered to the spouse and covered dependents of the terminated employee. [1990 c 222 § 5; 1979 c 125 § 3.]

41.05.100 Chapter not applicable to certain employees of Cooperative Extension Service. The provisions of this chapter shall not be applicable to any employee of the Washington State University Cooperative Extension Service who holds a federal civil service appointment and is thereby eligible for insurance coverage under the regulations of the United States Department of Agriculture and the United States Civil Service Commission, and which employee elects participation in the federal programs in lieu of the programs established pursuant to this chapter. Such election may be made only once. [1979 ex.s. c 9 § 1.]

41.05.110 Chapter not applicable to officers and employees of state convention and trade center. The provisions of this chapter shall not be applicable to the officers and employees of the nonprofit corporation formed under chapter 67.40 RCW. [1984 c 210 § 3.]

Savings—Severability—1984 c 210: See notes following RCW 67.40.020

41.05.120 Public employees' and retirees' insurance account. (1) The public employees' and retirees' insurance account is hereby established in the custody of the state treasurer, to be used by the administrator for the deposit of contributions, the remittance paid by school districts and educational service districts under *RCW 28A.400.400, reserves, dividends, and refunds, and for payment of premiums for employee and retiree insurance benefit contracts and subsidy amounts provided under RCW 41.05.085. Moneys from the account shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the administrator.

(2) The state treasurer and the state investment board may invest moneys in the public employees' and retirees' insurance account. All such investments shall be in accordance with RCW 43.84.080 or 43.84.150, whichever is

applicable. The administrator shall determine whether the state treasurer or the state investment board or both shall invest moneys in the public employees' insurance account. [1994 c 153 § 9; 1993 c 492 § 219; 1991 sp.s. c 13 § 100; 1988 c 107 § 10.]

***Reviser's note:** RCW 28A.400.400 was repealed by 1994 c 153 § 15, effective October 1, 1995.

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

41.05.130 State health care authority administrative account. The state health care authority administrative account is hereby created in the state treasury. Moneys in the account, including unanticipated revenues under RCW 43.79.270, may be spent only after appropriation by statute, and may be used only for operating expenses of the authority. [1988 c 107 § 11.]

41.05.140 Payment of claims—Self-insurance—Insurance reserve funds created. (1) The authority may self-fund, self-insure, or enter into other methods of providing insurance coverage for insurance programs under its jurisdiction except property and casualty insurance. The authority shall contract for payment of claims or other administrative services for programs under its jurisdiction. If a program does not require the prepayment of reserves, the authority shall establish such reserves within a reasonable period of time for the payment of claims as are normally required for that type of insurance under an insured program.

(2) Reserves established by the authority for employee and retiree benefit programs shall be held in a separate trust fund by the state treasurer and shall be known as the public employees' and retirees' insurance reserve fund. The state investment board shall act as the investor for the funds and, except as provided in RCW 43.33A.160, one hundred percent of all earnings from these investments shall accrue directly to the public employees' and retirees' insurance reserve fund.

(3) Any savings realized as a result of a program created for employees and retirees under this section shall not be used to increase benefits unless such use is authorized by statute.

(4) Any program created under this section shall be subject to the examination requirements of chapter 48.03 RCW as if the program were a domestic insurer. In conducting an examination, the commissioner shall determine the adequacy of the reserves established for the program.

(5) The authority shall keep full and adequate accounts and records of the assets, obligations, transactions, and affairs of any program created under this section.

(6) The authority shall file a quarterly statement of the financial condition, transactions, and affairs of any program created under this section in a form and manner prescribed by the insurance commissioner. The statement shall contain information as required by the commissioner for the type of insurance being offered under the program. A copy of the

annual statement shall be filed with the speaker of the house of representatives and the president of the senate. [1994 c 153 § 10. Prior: 1993 c 492 § 220; 1993 c 386 § 12; 1988 c 107 § 12.]

Intent—Effective dates—1994 c 153: See notes following RCW 41.05.011.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Intent—1993 c 386: See note following RCW 28A.400.391.

Effective date—1993 c 386 §§ 1, 2, 4-6, 8-10, and 12-16: See note following RCW 28A.400.391.

41.05.150 Health care policy technical advisory committee. (1) The administrator shall appoint a health care policy technical advisory committee. Its function is to advise the authority on effective approaches to cost control, quality assurance, and access to health care.

(2) The committee shall be composed of persons who have a demonstrated interest and expertise in one or more of the following areas: Health care purchasing; health care delivery; health administration; health care research and analysis; and ethics of health care. Board members shall include representatives of the following entities: Private health care purchasers; health care providers; insurance carriers; health care service contractors; health maintenance organizations; state agencies that purchase health care; the insurance commissioner; and health care consumers.

(3) The initial members of the committee shall be appointed for intervals of one to three years. Thereafter, all committee members shall serve a term of three years. Committee members shall receive no compensation, but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [1988 c 107 § 14.]

41.05.160 Rules. The administrator may promulgate and adopt rules consistent with this chapter to carry out the purposes of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [1988 c 107 § 15.]

41.05.165 Rules—Insurance benefit reimbursement. The authority shall adopt rules that provide for members of the legislature who choose reimbursement under RCW 44.04.230 in lieu of insurance benefits under this chapter. [1998 c 62 § 2.]

Effective date—1998 c 62: See note following RCW 44.04.230.

41.05.170 Neurodevelopmental therapies—Employer-sponsored group contracts. (1) Each health plan offered to public employees and their covered dependents under this chapter which is not subject to the provisions of Title 48 RCW and is established or renewed on or after twelve months after July 23, 1989, shall include coverage for neurodevelopmental therapies for covered individuals age six and under.

(2) Benefits provided under this section shall cover the services of those authorized to deliver occupational therapy, speech therapy, and physical therapy. Benefits shall be payable only where the services have been delivered pursuant to the referral and periodic review of a holder of a

license issued pursuant to chapter 18.71 or 18.57 RCW or where covered services have been rendered by such licensee. Nothing in this section shall preclude a self-funded plan authorized under this chapter from negotiating rates with qualified providers.

(3) Benefits provided under this section shall be for medically necessary services as determined by the self-funded plan authorized under this chapter. Benefits shall be payable for services for the maintenance of a covered individual in cases where significant deterioration in the patient's condition would result without the service. Benefits shall be payable to restore and improve function.

(4) It is the intent of this section that the state, as an employer providing comprehensive health coverage including the benefits required by this section, retains the authority to design and employ utilization and cost controls. Therefore, benefits delivered under this section may be subject to contractual provisions regarding deductible amounts and/or copayments established by the self-funded plan authorized under this chapter. Benefits provided under this section may be subject to standard waiting periods for preexisting conditions, and may be subject to the submission of written treatment plans.

(5) In recognition of the intent expressed in subsection (4) of this section, benefits provided under this section may be subject to contractual provisions establishing annual and/or lifetime benefit limits. Such limits may define the total dollar benefits available, or may limit the number of services delivered as established by the self-funded plan authorized under this chapter. [1989 c 345 § 4.]

41.05.180 Mammograms—Insurance coverage. Each health plan offered to public employees and their covered dependents under this chapter that is not subject to the provisions of Title 48 RCW and is established or renewed after January 1, 1990, and that provides benefits for hospital or medical care shall provide benefits for screening or diagnostic mammography services, provided that such services are delivered upon the recommendation of the patient's physician or advanced registered nurse practitioner as authorized by the nursing care quality assurance commission pursuant to chapter 18.79 RCW or physician assistant pursuant to chapter 18.71A RCW.

This section shall not be construed to prevent the application of standard health plan provisions applicable to other benefits such as deductible or copayment provisions. This section does not limit the authority of the state health care authority to negotiate rates and contract with specific providers for the delivery of mammography services. This section shall not apply to medicare supplement policies or supplemental contracts covering a specified disease or other limited benefits. [1994 sp.s. c 9 § 725; 1989 c 338 § 5.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

41.05.185 Diabetes benefits—State-purchased health care. The legislature finds that diabetes imposes a significant health risk and tremendous financial burden on the citizens and government of the state of Washington, and that access to the medically accepted standards of care for diabetes, its treatment and supplies, and self-management

training and education is crucial to prevent or delay the short and long-term complications of diabetes and its attendant costs.

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

(a) "Person with diabetes" means a person diagnosed by a health care provider as having insulin using diabetes, noninsulin using diabetes, or elevated blood glucose levels induced by pregnancy; and

(b) "Health care provider" means a health care provider as defined in RCW 48.43.005.

(2) All state-purchased health care purchased or renewed after January 1, 1998, except the basic health plan described in chapter 70.47 RCW, shall provide benefits for at least the following services and supplies for persons with diabetes:

(a) For state-purchased health care that includes coverage for pharmacy services, appropriate and medically necessary equipment and supplies, as prescribed by a health care provider, that includes but is not limited to insulin, syringes, injection aids, blood glucose monitors, test strips for blood glucose monitors, visual reading and urine test strips, insulin pumps and accessories to the pumps, insulin infusion devices, prescriptive oral agents for controlling blood sugar levels, foot care appliances for prevention of complications associated with diabetes, and glucagon emergency kits; and

(b) For all state-purchased health care, outpatient self-management training and education, including medical nutrition therapy, as ordered by the health care provider. Diabetes outpatient self-management training and education may be provided only by health care providers with expertise in diabetes. Nothing in this section prevents any state agency purchasing health care according to this section from restricting patients to seeing only health care providers who have signed participating provider agreements with that state agency or an insuring entity under contract with that state agency.

(3) Coverage required under this section may be subject to customary cost-sharing provisions established for all other similar services or supplies within a policy.

(4) Health care coverage may not be reduced or eliminated due to this section.

(5) Services required under this section shall be covered when deemed medically necessary by the medical director, or his or her designee, subject to any referral and formulary requirements. [1997 c 276 § 1.]

Reviser's note—Sunset Act application: The diabetes cost reduction act is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.391. RCW 41.05.185, 48.20.391, 48.21.143, 48.44.315, and 48.46.272 are scheduled for future repeal under RCW 43.131.392.

Effective date—1997 c 276: "This act takes effect January 1, 1998." [1997 c 276 § 6.]

41.05.190 Medicare supplemental insurance plan.

The administrator, in consultation with the public employees' benefits board, shall design a self-insured medicare supplemental insurance plan for retired and disabled employees eligible for medicare. For the purpose of determining the appropriate scope of the self-funded medicare supplemental plan, the administrator shall consider the differences in the scope of health services available under the uniform benefits

package and the medicare program. [1998 c 245 § 37; 1993 c 492 § 221.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

41.05.195 Medicare supplemental insurance policies.

Notwithstanding any other provisions of this title or rules or procedures adopted by the authority, the authority shall make available to retired or disabled employees who are eligible for medicare at least two medicare supplemental insurance policies that conform to the requirements of chapter 48.66 RCW. One policy shall include coverage for prescription drugs. The policies shall be chosen in consultation with the public employees' benefits board. These policies shall be made available to retired or disabled employees, or employees of county, municipal, or other political subdivisions eligible for coverage available under the authority. All offerings shall be made available not later than January 1, 1994. [1993 c 492 § 222.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

41.05.197 Medicare supplemental insurance policies—January 1995 federal waiver threshold.

If a waiver of the medicare statute, Title XVIII of the federal social security act, sufficient to meet the requirements of chapter 492, Laws of 1993 is not granted on or before January 1, 1995, the medicare supplemental insurance policies authorized under RCW 41.05.195 shall be made available to any resident of the state eligible for medicare benefits. Except for those retired state or school district employees eligible to purchase medicare supplemental benefits through the authority, persons purchasing a medicare supplemental insurance policy under this section shall be required to pay the full cost of any such policy. [1993 c 492 § 223.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

41.05.220 Community and migrant health centers—Maternity health care centers—People of color—Underserved populations.

(1) State general funds appropriated to the department of health for the purposes of funding community health centers to provide primary health and dental care services, migrant health services, and maternity health care services shall be transferred to the state health care authority. Any related administrative funds expended by the department of health for this purpose shall also be transferred to the health care authority. The health care authority shall exclusively expend these funds through contracts with community health centers to provide primary health and dental care services, migrant health services, and maternity health care services. The administrator of the health care authority shall establish requirements necessary to assure community health centers provide quality health care services that are appropriate and effective and are delivered in a cost-efficient manner. The administrator shall

further assure that community health centers have appropriate referral arrangements for acute care and medical specialty services not provided by the community health centers.

(2) The authority, in consultation with the department of health, shall work with community and migrant health clinics and other providers of care to underserved populations, to ensure that the number of people of color and underserved people receiving access to managed care is expanded in proportion to need, based upon demographic data. [1998 c 245 § 38; 1993 c 492 § 232.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

41.05.230 Multicultural health care technical assistance program. (1) Consistent with funds appropriated specifically for this purpose, the authority shall provide matching grants to support community-based multicultural health care technical assistance programs. The purpose of the programs shall be to promote technical assistance through community and migrant health clinics and other appropriate health care providers who serve underserved populations and persons of color.

The technical assistance provided shall include, but is not limited to: (a) Collaborative research and data analysis on health care outcomes that disproportionately affect persons of color; (b) design and development of model health education and promotion strategies aimed at modifying unhealthy health behaviors or enhancing the use of the health care delivery system by persons of color; (c) provision of technical information and assistance on program planning and financial management; (d) administration, public policy development, and analysis in health care issues affecting people of color; and (e) enhancement and promotion of health care career opportunities for persons of color.

(2) Consistent with appropriated funds, the programs shall be available on a state-wide basis. [1993 c 492 § 272.]

Finding—1993 c 492: See note following RCW 28B.125.010.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

41.05.240 American Indian health care delivery plan. [1993 c 492 § 468.] Recodified as RCW 43.70.590 pursuant to 1995 c 43 § 5; and also repealed by 1995 1st sp.s. c 6 § 9.

Reviser's note: RCW 41.05.240 was recodified as RCW 43.70.590 pursuant to 1995 c 43 § 5 and amended by 1995 c 43 § 4, without cognizance of its repeal by 1995 1st sp.s. c 6 § 9. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

41.05.280 Department of corrections—Inmate health care. The department of corrections shall consult with the state health care authority to identify how the department of corrections shall develop a working plan to correspond to the health care reform measures that require all departments to place all state purchased health services in a community-rated, single risk pool under the direct adminis-

trative authority of the state purchasing agent by July 1, 1997. [1998 c 245 § 39; 1993 c 504 § 3.]

Findings—1993 c 504: "The legislature finds that Washington state government purchases approximately one-fourth of all the health care state-wide. In addition to this huge expenditure, the state also faces health care inflation rates, far exceeding the growth rate of the economy as a whole and the general inflationary rate. Together these factors are straining state resources beyond our capability to pay.

The legislature finds that the department of corrections is responsible for providing health care to a large and growing number of offenders. It is also facing rapidly escalating medical, dental, and mental health care expenditures. As a result of this, the department must review its entire inmate health care system and take steps to reduce health care expenditures.

The legislature further finds that efforts to achieve state-wide health care reform should also include the department of correction's health care facilities. In this light, the department must develop an appropriate plan that will correspond to the changing health care environment." [1993 c 504 § 1.]

Effective date—1993 c 504: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 18, 1993]." [1993 c 504 § 4.]

41.05.300 Benefits contribution plan—Authorized.

(1) The state of Washington may enter into benefits contribution plans with employees of the state pursuant to the internal revenue code, 26 U.S.C. Sec. 125, for the purpose of making it possible for employees of the state to select on a "before-tax basis" certain taxable and nontaxable benefits pursuant to 26 U.S.C. Sec. 125. The purpose of the benefits contribution plan established in this chapter is to attract and retain individuals in governmental service by permitting them to enter into agreements with the state to provide for benefits pursuant to 26 U.S.C. Sec. 125 and other applicable sections of the internal revenue code.

(2) Nothing in the benefits contribution plan constitutes an employment agreement between the participant and the state, and nothing contained in the participant's benefits contribution agreement, the plan, this section, or RCW 41.05.310 through 41.05.360 gives a participant any right to be retained in state employment. [1995 1st sp.s. c 6 § 11.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

41.05.310 Benefits contribution plan—Policies and procedures—Plan document. The authority shall have responsibility for the formulation and adoption of a plan, policies, and procedures designed to guide, direct, and administer the benefits contribution plan. For the plan year beginning January 1, 1996, the administrator may establish a premium only contribution plan. Expansion of the benefits contribution plan to a medical flexible spending arrangement or cafeteria plan during subsequent plan years shall be subject to approval by the director of the office of financial management.

(1) A plan document describing the benefits contribution plan shall be adopted and administered by the authority. The authority shall represent the state in all matters concerning the administration of the plan. The state, through the authority, may engage the services of a professional consultant or administrator on a contractual basis to serve as an agent to assist the authority or perform the administrative functions necessary in carrying out the purposes of RCW 41.05.300 through 41.05.350.

(2) The authority shall formulate and establish policies and procedures for the administration of the benefits contribution plan that are consistent with existing state law, the internal revenue code, and the regulations adopted by the internal revenue service as they may apply to the benefits offered to participants under the plan.

(3) Every action taken by the authority in administering RCW 41.05.300 through 41.05.350 shall be presumed to be a fair and reasonable exercise of the authority vested in or the duties imposed upon it. The authority shall be presumed to have exercised reasonable care, diligence, and prudence and to have acted impartially as to all persons interested unless the contrary be proved by clear and convincing affirmative evidence. [1995 1st sp.s. c 6 § 12.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

41.05.320 Benefits contribution plan—Eligibility—Participation, withdrawal. (1) Elected officials and all permanent employees of the state are eligible to participate in the benefits contribution plan and contribute amount(s) by agreement with the authority. The authority may adopt rules to permit participation in the plan by temporary employees of the state.

(2) Persons eligible under subsection (1) of this section may enter into benefits contribution agreements with the state.

(3)(a) In the initial year of the medical flexible spending arrangement or cafeteria plan, if authorized, an eligible person may become a participant after the adoption of the plan and before its effective date by agreeing to have a portion of his or her gross salary contributed and deposited into a health care and other benefits account to be used for reimbursement of expenses covered by the plan.

(b) After the initial year of the medical flexible spending arrangement or cafeteria plan, if authorized, an eligible person may become a participant for a full plan year, with annual benefit selection for each new plan year made before the beginning of the plan year, as determined by the authority, or upon becoming eligible.

(c) Once an eligible person elects to participate and the amount of gross salary that he or she shall contribute and the benefit for which the funds are to be used during the plan year is determined, the agreement shall be irrevocable and may not be amended during the plan year except as provided in (d) of this subsection. Prior to making an election to participate in the benefit[s] contribution plan, the eligible person shall be informed in writing of all the benefits and contributions that will occur as a result of such election.

(d) The authority shall provide in the benefits contribution plan that a participant may enroll, terminate, or change his or her election after the plan year has begun if there is a significant change in a participant's status, as provided by 26 U.S.C. Sec. 125 and the regulations adopted under that section and defined by the authority.

(4) The authority shall establish as part of the benefits contribution plan the procedures for and effect of withdrawal from the plan by reason of retirement, death, leave of absence, or termination of employment. To the extent possible under federal law, the authority shall protect participants from forfeiture of rights under the plan.

(5) Any contribution under the benefits contribution plan shall continue to be included as reportable compensation for the purpose of computing the state retirement and pension benefits earned by the employee pursuant to chapters 41.26, 41.32, 41.40, and 43.43 RCW. [1995 1st sp.s. c 6 § 13.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

41.05.330 Benefits contribution plan—Accounts and records. The authority shall keep or cause to be kept full and adequate accounts and records of the assets, obligations, transactions, and affairs of a benefits contribution plan created under RCW 41.05.300. [1995 1st sp.s. c 6 § 14.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

41.05.340 Benefits contribution plan—Termination—Amendment. (1) The state may terminate the benefits contribution plan at the end of the plan year or upon notification of federal action affecting the status of the plan.

(2) The authority may amend the benefits contribution plan at any time if the amendment does not affect the rights of the participants to receive eligible reimbursement from the participants' benefits contribution accounts. [1995 1st sp.s. c 6 § 15.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

41.05.350 Benefits contribution plan—Rules. The authority shall adopt rules necessary to implement RCW 41.05.300 through 41.05.340. [1995 1st sp.s. c 6 § 16.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

41.05.360 Benefits contribution plan—Construction. RCW 41.05.300 through 41.05.350 shall be construed to effectuate the purposes of 26 U.S.C. Sec. 125 and other applicable sections of the internal revenue code as required. [1995 1st sp.s. c 6 § 17.]

Effective date—1995 1st sp.s. c 6: See note following RCW 28A.400.410.

41.05.900 Short title. This chapter shall be known as the Washington state health care reform act of 1988. [1988 c 107 § 1.]

41.05.901 Implementation—Effective dates—1988 c 107. (1) The state health care authority shall be established and shall take such steps as are necessary to ensure that this act is fully implemented on October 1, 1988.

There is hereby appropriated for the biennium ending June 30, 1989, the sum of one million three hundred thousand dollars, or as much thereof as is necessary, to the office of the governor from the state employees' insurance administrative account, for the purposes of implementing this subsection.

(2) Subsection (1) of this section, RCW 48.14.027 and 82.04.4331, and sections 13 and 31, chapter 107, Laws of 1988 are necessary for the immediate preservation of the public peace, health, and safety, the support of the state

government and its existing public institutions, and shall take effect March 16, 1988.

(3) The remainder of this act shall take effect on October 1, 1988. [1988 c 107 § 36.]

Chapter 41.06

STATE CIVIL SERVICE LAW

Sections

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- 41.06.911 Severability—1975-'76 2nd ex.s. c 43.

Personnel appeals board: Chapter 41.64 RCW.

Qualifications for persons assessing real property—Examination: RCW 36.21.015.

41.06.010 Declaration of purpose. The general purpose of this chapter is to establish for the state a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, recruitment, retention, classification and pay plan, removal, discipline, training and career development, and welfare of its civil employees, and other incidents of state employment. All appointments and promotions to positions, and retention therein, in the state service, shall be

made on the basis of policies hereinafter specified. [1980 c 118 § 1; 1961 c 1 § 1 (Initiative Measure No. 207, approved November 8, 1960).]

Severability—1980 c 118: "If any provision of this 1980 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1980 c 118 § 10.]

41.06.020 Definitions. Unless the context clearly indicates otherwise, the words used in this chapter have the meaning given in this section.

(1) "Agency" means an office, department, board, commission, or other separate unit or division, however designated, of the state government and all personnel thereof; it includes any unit of state government established by law, the executive officer or members of which are either elected or appointed, upon which the statutes confer powers and impose duties in connection with operations of either a governmental or proprietary nature.

(2) "Board" means the Washington personnel resources board established under the provisions of RCW 41.06.110, except that this definition does not apply to the words "board" or "boards" when used in RCW 41.06.070.

(3) "Classified service" means all positions in the state service subject to the provisions of this chapter.

(4) "Competitive service" means all positions in the classified service for which a competitive examination is required as a condition precedent to appointment.

(5) "Comparable worth" means the provision of similar salaries for positions that require or impose similar responsibilities, judgments, knowledge, skills, and working conditions.

(6) "Noncompetitive service" means all positions in the classified service for which a competitive examination is not required.

(7) "Department" means an agency of government that has as its governing officer a person, or combination of persons such as a commission, board, or council, by law empowered to operate the agency responsible either to (a) no other public officer or (b) the governor.

(8) "Career development" means the progressive development of employee capabilities to facilitate productivity, job satisfaction, and upward mobility through work assignments as well as education and training that are both state-sponsored and are achieved by individual employee efforts, all of which shall be consistent with the needs and obligations of the state and its agencies.

(9) "Training" means activities designed to develop job-related knowledge and skills of employees.

(10) "Director" means the director of personnel appointed under the provisions of RCW 41.06.130.

(11) "Affirmative action" means a procedure by which racial minorities, women, persons in the protected age category, persons with disabilities, Vietnam-era veterans, and disabled veterans are provided with increased employment opportunities. It shall not mean any sort of quota system.

(12) "Institutions of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges.

(13) "Related boards" means the state board for community and technical colleges; and such other boards, councils, and commissions related to higher education as may be established. [1993 c 281 § 19. Prior: 1985 c 461 § 1; 1985 c 365 § 3; 1983 1st ex.s. c 75 § 4; 1982 1st ex.s. c 53 § 1; 1980 c 118 § 2; 1970 ex.s. c 12 § 1; prior: 1969 ex.s. c 36 § 21; 1969 c 45 § 6; 1967 ex.s. c 8 § 48; 1961 c 1 § 2 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—1993 c 281: See note following RCW 41.06.022.

Severability—1985 c 461: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 461 § 17.]

Severability—1982 1st ex.s. c 53: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 1st ex.s. c 53 § 32.]

Severability—1980 c 118: See note following RCW 41.06.010.

41.06.022 "Manager"—Definition. For purposes of this chapter, "manager" means any employee who:

(1) Formulates state-wide policy or directs the work of an agency or agency subdivision;

(2) Is responsible to administer one or more state-wide policies or programs of an agency or agency subdivision;

(3) Manages, administers, and controls a local branch office of an agency or agency subdivision, including the physical, financial, or personnel resources;

(4) Has substantial responsibility in personnel administration, legislative relations, public information, or the preparation and administration of budgets; or

(5) Functionally is above the first level of supervision and exercises authority that is not merely routine or clerical in nature and requires the consistent use of independent judgment. [1993 c 281 § 8.]

Effective date—1993 c 281: "Sections 1 through 66 and 68 through 71 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 281 § 74.]

41.06.030 Department of personnel established. A department of personnel, governed by the Washington personnel resources board and administered by a director of personnel, is hereby established as a separate agency within the state government. [1993 c 281 § 20; 1961 c 1 § 3 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—1993 c 281: See note following RCW 41.06.022.

41.06.040 Scope of chapter. The provisions of this chapter apply to:

(1) Each board, commission or other multimember body, including, but not limited to, those consisting in whole or in part of elective officers;

(2) Each agency, and each employee and position therein, not expressly excluded or exempted under the provisions of RCW 41.06.070. [1969 ex.s. c 36 § 22; 1961 c 1 § 4 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.070 Exemptions—Right of reversion to civil service status—Exception—Expiration of subsection. (1) The provisions of this chapter do not apply to:

(a) The members of the legislature or to any employee of, or position in, the legislative branch of the state government including members, officers, and employees of the legislative council, joint legislative audit and review committee, statute law committee, and any interim committee of the legislature;

(b) The justices of the supreme court, judges of the court of appeals, judges of the superior courts or of the inferior courts, or to any employee of, or position in the judicial branch of state government;

(c) Officers, academic personnel, and employees of technical colleges;

(d) The officers of the Washington state patrol;

(e) Elective officers of the state;

(f) The chief executive officer of each agency;

(g) In the departments of employment security and social and health services, the director and the director's confidential secretary; in all other departments, the executive head of which is an individual appointed by the governor, the director, his or her confidential secretary, and his or her statutory assistant directors;

(h) In the case of a multimember board, commission, or committee, whether the members thereof are elected, appointed by the governor or other authority, serve ex officio, or are otherwise chosen:

(i) All members of such boards, commissions, or committees;

(ii) If the members of the board, commission, or committee serve on a part-time basis and there is a statutory executive officer: The secretary of the board, commission, or committee; the chief executive officer of the board, commission, or committee; and the confidential secretary of the chief executive officer of the board, commission, or committee;

(iii) If the members of the board, commission, or committee serve on a full-time basis: The chief executive officer or administrative officer as designated by the board, commission, or committee; and a confidential secretary to the chair of the board, commission, or committee;

(iv) If all members of the board, commission, or committee serve ex officio: The chief executive officer; and the confidential secretary of such chief executive officer;

(i) The confidential secretaries and administrative assistants in the immediate offices of the elective officers of the state;

(j) Assistant attorneys general;

(k) Commissioned and enlisted personnel in the military service of the state;

(l) Inmate, student, part-time, or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board;

(m) The public printer or to any employees of or positions in the state printing plant;

(n) Officers and employees of the Washington state fruit commission;

(o) Officers and employees of the Washington state apple advertising commission;

(p) Officers and employees of the Washington state dairy products commission;

(q) Officers and employees of the Washington tree fruit research commission;

(r) Officers and employees of the Washington state beef commission;

(s) Officers and employees of any commission formed under chapter 15.66 RCW;

(t) Officers and employees of the state wheat commission formed under *chapter 15.63 RCW;

(u) Officers and employees of agricultural commissions formed under chapter 15.65 RCW;

(v) Officers and employees of the nonprofit corporation formed under chapter 67.40 RCW;

(w) Executive assistants for personnel administration and labor relations in all state agencies employing such executive assistants including but not limited to all departments, offices, commissions, committees, boards, or other bodies subject to the provisions of this chapter and this subsection shall prevail over any provision of law inconsistent herewith unless specific exception is made in such law;

(x) In each agency with fifty or more employees: Deputy agency heads, assistant directors or division directors, and not more than three principal policy assistants who report directly to the agency head or deputy agency heads;

(y) All employees of the marine employees' commission;

(z) Up to a total of five senior staff positions of the western library network under **chapter 27.26 RCW responsible for formulating policy or for directing program management of a major administrative unit. This subsection (1)(z) shall expire on June 30, 1997;

(aa) Staff employed by the department of community, trade, and economic development to administer energy policy functions and manage energy site evaluation council activities under RCW 43.21F.045(2)(m);

(bb) Staff employed by Washington State University to administer energy education, applied research, and technology transfer programs under RCW 43.21F.045 as provided in RCW 28B.30.900(5).

(2) The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:

(a) Members of the governing board of each institution of higher education and related boards, all presidents, vice-presidents, and their confidential secretaries, administrative, and personal assistants; deans, directors, and chairs; academic personnel; and executive heads of major administrative or academic divisions employed by institutions of higher education; principal assistants to executive heads of major administrative or academic divisions; other managerial or professional employees in an institution or related board having substantial responsibility for directing or controlling program operations and accountable for allocation of resources and program results, or for the formulation of institutional policy, or for carrying out personnel administration or labor relations functions, legislative relations, public information, development, senior computer systems and network programming, or internal audits and investigations; and any employee of a community college district whose place of work is one which is physically located outside the state of Washington and who is employed pursuant to RCW 28B.50.092 and assigned to an educational program operating outside of the state of Washington;

(b) Student, part-time, or temporary employees, and part-time professional consultants, as defined by the Wash-

ington personnel resources board, employed by institutions of higher education and related boards;

(c) The governing board of each institution, and related boards, may also exempt from this chapter classifications involving research activities, counseling of students, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training as determined by the board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trade services may be exempted by the board under this provision;

(d) Printing craft employees in the department of printing at the University of Washington.

(3) In addition to the exemptions specifically provided by this chapter, the Washington personnel resources board may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the Washington personnel resources board stating the reasons for requesting such exemptions. The Washington personnel resources board shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the board determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, the Washington personnel resources board shall grant the request and such determination shall be final as to any decision made before July 1, 1993. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor.

The salary and fringe benefits of all positions presently or hereafter exempted except for the chief executive officer of each agency, full-time members of boards and commissions, administrative assistants and confidential secretaries in the immediate office of an elected state official, and the personnel listed in subsections (1)(j) through (v), (y), (z), and (2) of this section, shall be determined by the Washington personnel resources board. However, beginning with changes proposed for the 1997-99 fiscal biennium, changes to the classification plan affecting exempt salaries must meet the same provisions for classified salary increases resulting from adjustments to the classification plan as outlined in RCW 41.06.152.

Any person holding a classified position subject to the provisions of this chapter shall, when and if such position is subsequently exempted from the application of this chapter, be afforded the following rights: If such person previously held permanent status in another classified position, such person shall have a right of reversion to the highest class of position previously held, or to a position of similar nature and salary.

Any classified employee having civil service status in a classified position who accepts an appointment in an exempt position shall have the right of reversion to the highest class

of position previously held, or to a position of similar nature and salary.

A person occupying an exempt position who is terminated from the position for gross misconduct or malfeasance does not have the right of reversion to a classified position as provided for in this section. [1998 c 245 § 40. Prior: 1996 c 319 § 3; 1996 c 288 § 33; 1996 c 186 § 109; 1995 c 163 § 1; 1994 c 264 § 13; prior: 1993 sp.s. c 2 § 15; 1993 c 379 § 306; 1993 c 281 § 21; 1990 c 60 § 101; 1989 c 96 § 8; 1987 c 389 § 2; 1985 c 221 § 1; 1984 c 210 § 2; 1983 c 15 § 21; 1982 1st ex.s. c 53 § 2; 1981 c 225 § 2; 1980 c 87 § 14; 1973 1st ex.s. c 133 § 1; 1972 ex.s. c 11 § 1; prior: 1971 ex.s. c 209 § 1; 1971 ex.s. c 59 § 1; 1971 c 81 § 100; 1969 ex.s. c 36 § 23; 1967 ex.s. c 8 § 47; 1961 c 179 § 1; 1961 c 1 § 7 (Initiative Measure No. 207, approved November 8, 1960).]

Reviser's note: *(1) Chapter 15.63 RCW was repealed by 1998 c 11 § 1.

** (2) Chapter 27.26 RCW was repealed and/or decodified pursuant to 1989 c 96 § 10, effective June 30, 1997.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Effective date—1995 c 163: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 1, 1995]." [1995 c 163 § 2.]

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Effective date—1993 c 281: See note following RCW 41.06.022.

Severability—1990 c 60: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 60 § 403.]

Subheadings not law—1990 c 60: "Subheadings as used in this act do not constitute any part of the law." [1990 c 60 § 401.]

Severability—1987 c 389: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 389 § 8.]

Effective date—1987 c 389: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1987." [1987 c 389 § 9.]

Savings—Severability—1984 c 210: See notes following RCW 67.40.020.

Severability—1983 c 15: See RCW 47.64.910.

Severability—1982 1st ex.s. c 53: See note following RCW 41.06.020.

Severability—1967 ex.s. c 8: See RCW 28B.50.910.

County road administration board: RCW 36.78.060.

State agencies and departments—Certain personnel exempted from chapter basic health plan: RCW 70.47.040.

board of health: RCW 43.20.030.

caseload forecast supervisor and staff: RCW 41.06.087.

center for volunteerism and citizen service: RCW 43.150.040.

Columbia River Gorge commission: RCW 43.97.015.

commission on judicial conduct: RCW 2.64.050.

council for the prevention of child abuse and neglect: RCW 43.121.040.

department of agriculture: RCW 41.06.084.

corrections: RCW 41.06.071.

ecology: RCW 41.06.073, 43.21A.100.

general administration, supervisor of motor transport: RCW 43.19.585.

health: RCW 43.70.020.

information services: RCW 41.06.094.

retirement systems: RCW 41.50.070.

services for the blind: RCW 74.18.050.

social and health services: RCW 41.06.076, 43.20A.090.

transportation: RCW 41.06.079, 47.01.081.

veterans affairs: RCW 41.06.077.

economic and revenue forecast supervisor and staff: RCW 41.06.087.

gambling commission: RCW 9.46.080.

law revision commission: RCW 41.06.083.

office of

administrative hearings: RCW 34.12.030.

financial management: RCW 41.06.075, 43.41.080.

minority and women's business enterprises: RCW 39.19.030.

personnel appeals board: RCW 41.64.050.

state actuary: RCW 44.44.030.

state convention and trade center: RCW 67.40.020.

state internship program: RCW 41.06.088.

state investment board: RCW 43.33A.100.

state lottery commission: RCW 67.70.050.

state school directors' association: RCW 41.06.086.

state treasurer: RCW 43.08.120.

state veterinarian: RCW 41.06.084.

superintendent of public instruction: RCW 28A.300.020.

Washington conservation corps: RCW 43.220.070.

Washington service corps: RCW 50.65.110.

Washington state patrol, drug control assistance unit: RCW 43.43.640.

world fair commission: RCW 41.06.085.

youth development and conservation corps: RCW 43.51.550.

41.06.071 Department of corrections—Certain personnel exempted from chapter. In addition to the exemptions provided under RCW 41.06.070, the provisions of this chapter shall not apply in the department of corrections to the secretary, the secretary's personal secretary, the deputy secretary, all division directors and assistant directors, all facility superintendents and associate superintendents for facilities with a resident capacity of fifty or more and all management and sales staff of correctional industries. [1989 c 185 § 1; 1983 c 175 § 1; 1981 c 136 § 28.]

Effective date—1981 c 136: See RCW 72.09.900.

41.06.072 Department of community, trade, and economic development—Certain personnel exempted from chapter. In addition to the exemptions set forth in this chapter, this chapter shall not apply within the department of community, trade, and economic development to the director, one confidential secretary, the deputy directors, all assistant directors, the state historic preservation officer, and up to two professional staff members within the emergency management program. [1995 c 399 § 59; 1986 c 266 § 8.]

Severability—1986 c 266: See note following RCW 38.52.005

41.06.073 Department of ecology—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of ecology to the director, his confidential secretary, his deputy director, and not to exceed six assistant directors. [1970 ex.s. c 62 § 11.]

Savings—Severability—Effective date—1970 ex.s. c 62: See notes following RCW 43.21A.010.

41.06.074 Department of health—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, the provisions of this chapter shall not apply in the department of health to any deputy secre-

tary, assistant secretary, or person who administers the necessary divisions, offices, bureaus, and programs and five additional positions involved in policy or program direction. [1989 1st ex.s. c 9 § 813.]

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

41.06.075 Office of financial management—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the office of financial management to the director, his confidential secretary, not to exceed two deputy directors and not to exceed seven assistant directors. [1979 c 151 § 56; 1969 ex.s. c 239 § 7.]

Office of financial management: Chapter 43.41 RCW.

41.06.076 Department of social and health services—Certain personnel exempted from chapter. (*Expires June 30, 2005.*) In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of social and health services to the secretary; the secretary's executive assistant, if any; not to exceed six assistant secretaries, thirteen division directors, six regional directors; one confidential secretary for each of the above-named officers; not to exceed six bureau chiefs; all social worker V positions; and all superintendents of institutions of which the average daily population equals or exceeds one hundred residents: PROVIDED, That each such confidential secretary must meet the minimum qualifications for the class of secretary II as determined by the Washington personnel resources board.

This section expires June 30, 2005. [1997 c 386 § 1; 1993 c 281 § 22; 1980 c 73 § 1; 1970 ex.s. c 18 § 8.]

Effective date—1993 c 281: See note following RCW 41.06.022.

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

41.06.077 Department of veterans affairs—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of veterans affairs to the director, the deputy director, and to no more than two assistants. [1975-'76 2nd ex.s. c 115 § 7.]

Severability—1975-'76 2nd ex.s. c 115: See RCW 43.60A.908.

41.06.079 Department of transportation—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of transportation to the secretary, a deputy secretary, an administrative assistant to the secretary, if any, one assistant secretary for each division designated pursuant to RCW 47.01.081, one confidential secretary for each of the above-named officers, up to six transportation district administrators and one confidential secretary for each district administrator, up to six additional new administrators or confidential secretaries designated by the secretary of the department of transportation and approved by the Washington personnel resources board pursuant to the provisions of *RCW 41.06.070(1)(z), the legislative liaison for the department, the state construction engineer, the state aid engineer, the

personnel manager, the state project development engineer, the state maintenance and operations engineer, one confidential secretary for each of the last-named five positions, and a confidential secretary for the public affairs administrator. The individuals appointed under this section shall be exempt from the provisions of the state civil service law, and shall be paid salaries to be fixed by the governor in accordance with the procedure established by law for the fixing of salaries for individuals exempt from the operation of the state civil service law. [1993 c 281 § 23; 1985 c 178 § 1; 1977 ex.s. c 151 § 13.]

***Reviser's note:** RCW 41.06.070 was amended by 1995 c 163 § 1, changing subsection (1)(z) to subsection (1)(y).

Effective date—1993 c 281: See note following RCW 41.06.022.

Exempt positions filled pending permanent appointment—1977 ex.s. c 151: "If on *the effective date of this 1977 amendatory act, any exempt position designated hereinabove has not been filled by appointment, the person serving in the comparable exempt position, if any, in an agency whose functions are by **section 3 of this 1977 amendatory act transferred to the department of transportation shall fill such exempt position until a permanent appointment thereto has been made." [1977 ex.s. c 151 § 14.]

Reviser's note: *(1) "the effective date of this 1977 amendatory act" was September 21, 1977.

** (2) "section 3 of this 1977 amendatory act" is codified as RCW 47.01.031.

Federal requirements—Severability—1977 ex.s. c 151: See RCW 47.98.070 and 47.98.080.

41.06.080 Department of personnel's services available on request to certain governmental entities—Reimbursement. Notwithstanding the provisions of this chapter, the department of personnel may make its services available on request, on a reimbursable basis, to:

(1) Either the legislative or the judicial branch of the state government;

(2) Any county, city, town, or other municipal subdivision of the state;

(3) The institutions of higher learning;

(4) Any agency, class, or position set forth in RCW 41.06.070. [1970 ex.s. c 12 § 2. Prior: 1969 ex.s. c 152 § 2; 1969 c 45 § 5; 1961 c 1 § 8 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.082 Office of minority and women's business enterprises—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, this chapter shall not apply in the office of minority and women's business enterprises to the director, the director's confidential secretary, and the deputy director. [1983 c 120 § 14.]

Effective date—Applicability—Severability—Conflict with federal requirements—1983 c 120: See RCW 39.19.910, 39.19.920.

41.06.083 Law revision commission—Personnel exempted from chapter. The provisions of this chapter do not apply to any position in or employee of the Washington law revision commission. [1982 c 183 § 10.]

41.06.084 Department of agriculture—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the department of agriculture to the director, the director's confidential secretary, the

deputy director, not more than eight assistant directors, the state veterinarian, and the milk pooling administrator employed under RCW 15.35.100. [1992 c 58 § 3; 1990 c 37 § 2; 1983 c 248 § 11.]

41.06.085 World fair commission—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply to the executive director and one confidential secretary of the world fair commission created in *this 1983 act. [1983 c 177 § 6.]

***Reviser's note:** "This 1983 act" consists of the enactment of chapter 43.96D RCW and RCW 41.06.085

41.06.086 Washington state school directors' association—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply to officers and employees of the Washington state school directors' association. [1983 c 187 § 5.]

Termination—Sunset review—Expiration date—Effective date—1983 c 187: See RCW 28A.345.900, 28A.345.902.

41.06.087 Economic and revenue forecast supervisor and staff—Caseload forecast supervisor and staff—Exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, this chapter does not apply to the economic and revenue forecast supervisor and staff employed under RCW 82.33.010 or the caseload forecast supervisor and staff employed under RCW 43.88C.010. [1997 c 168 § 4; 1990 c 229 § 3; 1984 c 138 § 2.]

Effective date—1997 c 168: See RCW 43.88C.900.

Effective date—1990 c 229: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1990." [1990 c 229 § 12.]

41.06.088 State internship program—Positions exempt from chapter. This chapter does not apply to positions under the state internship program established under RCW 43.06.410. [1985 c 442 § 8.]

Construction—Severability—1985 c 442: See notes following RCW 43.06.410.

41.06.093 Washington state patrol—Certain personnel exempted from chapter. In addition to the exemptions set forth in RCW 41.06.070, the provisions of this chapter shall not apply in the Washington state patrol to confidential secretaries of agency bureau chiefs, or their functional equivalent, and a confidential secretary for the chief of staff: PROVIDED, That each confidential secretary must meet the minimum qualifications for the class of secretary II as determined by the Washington personnel resources board. [1993 c 281 § 24; 1990 c 14 § 1.]

Effective date—1993 c 281: See note following RCW 41.06.022.

41.06.094 Department of information services—Certain personnel exempted from chapter. In addition to the exemptions under RCW 41.06.070, the provisions of this chapter shall not apply in the department of information services to up to twelve positions in the planning component

involved in policy development and/or senior professionals. [1987 c 504 § 7.]

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

41.06.110 Washington personnel resources board—Created—Term—Qualifications, conditions—Compensation, travel expenses—Officers, quorum, records. (1) There is hereby created a Washington personnel resources board composed of three members appointed by the governor, subject to confirmation by the senate. The members of the personnel board serving June 30, 1993, shall be the members of the Washington personnel resources board, and they shall complete their terms as under the personnel board. Each odd-numbered year thereafter the governor shall appoint a member for a six-year term. Each member shall continue to hold office after the expiration of the member's term until a successor has been appointed. Persons so appointed shall have clearly demonstrated an interest and belief in the merit principle, shall not hold any other employment with the state, shall not have been an officer of a political party for a period of one year immediately prior to such appointment, and shall not be or become a candidate for partisan elective public office during the term to which they are appointed;

(2) Each member of the board shall be compensated in accordance with RCW 43.03.250. The members of the board may receive any number of daily payments for official meetings of the board actually attended. Members of the board shall also be reimbursed for travel expenses incurred in the discharge of their official duties in accordance with RCW 43.03.050 and 43.03.060.

(3) At its first meeting following the appointment of all of its members, and annually thereafter, the board shall elect a chair and vice-chair from among its members to serve one year. The presence of at least two members of the board shall constitute a quorum to transact business. A written public record shall be kept by the board of all actions of the board. The director shall serve as secretary.

(4) The board may appoint and compensate hearing officers to hear and conduct appeals until December 31, 1982. Such compensation shall be paid on a contractual basis for each hearing, in accordance with the provisions of chapter 43.88 RCW and rules adopted pursuant thereto, as they relate to personal service contracts. [1993 c 281 § 25; 1984 c 287 § 69; 1982 c 10 § 8. Prior: 1981 c 338 § 20; 1981 c 311 § 16; 1977 c 6 § 2; prior: 1975-'76 2nd ex.s. c 43 § 1; 1975-'76 2nd ex.s. c 34 § 86; 1961 c 1 § 11 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—1993 c 281: See note following RCW 41.06.022.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Severability—1982 c 10: See note following RCW 6.13.080.

Severability—1981 c 311: See RCW 41.64.910.

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

Adoption of rules for leave sharing program: RCW 41.04.670.

Appointment and compensation of institutional chaplains: RCW 72.01.210.

Personnel appeals board: Chapter 41.64 RCW.

41.06.120 Meetings of board—Hearings authorized, notice—Majority to approve release of findings—Administration of oaths. (1) In the necessary conduct of its work, the board shall meet monthly unless there is no pending business requiring board action and may hold hearings, such hearings to be called by (a) the chairman of the board, or (b) a majority of the members of the board. An official notice of the calling of the hearing shall be filed with the secretary, and all members shall be notified of the hearing within a reasonable period of time prior to its convening.

(2) No release of material or statement of findings shall be made except with the approval of a majority of the board;

(3) In the conduct of hearings or investigations, a member of the board or the director of personnel, or the hearing officer, may administer oaths. [1981 c 311 § 17; 1975-'76 2nd ex.s. c 43 § 2; 1961 c 1 § 12 (Initiative Measure No. 207, approved November 8, 1960).]

Severability—1981 c 311: See RCW 41.64.910.

41.06.130 Director of personnel—Appointment—Rules—Powers and duties—Delegation of authority. The office of director of personnel is hereby established.

(1) The director of personnel shall be appointed by the governor. The governor shall consult with, but shall not be obligated by recommendations of the board. The director's appointment shall be subject to confirmation by the senate.

(2) The director of personnel shall serve at the pleasure of the governor.

(3) The director of personnel shall direct and supervise all the department of personnel's administrative and technical activities in accordance with the provisions of this chapter and the rules adopted under it. The director shall prepare for consideration by the board proposed rules required by this chapter. The director's salary shall be fixed by the governor.

(4) The director of personnel may delegate to any agency the authority to perform administrative and technical personnel activities if the agency requests such authority and the director of personnel is satisfied that the agency has the personnel management capabilities to effectively perform the delegated activities. The director of personnel shall prescribe standards and guidelines for the performance of delegated activities. If the director of personnel determines that an agency is not performing delegated activities within the prescribed standards and guidelines, the director shall withdraw the authority from the agency to perform such activities. [1993 c 281 § 26; 1982 1st ex.s. c 53 § 3; 1961 c 1 § 13 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—1993 c 281: See note following RCW 41.06.022.

Severability—1982 1st ex.s. c 53: See note following RCW 41.06.020.

41.06.140 Employee participation in policy and rule making, administration, etc.—Publication of board rules. It shall be the duty of the board to make rules and regulations providing for employee participation in the development and administration of personnel policies. To assure this right, personnel policies, rules, classification and pay plans, and amendments thereto, shall be acted on only after the board has given twenty days notice to, and considered

proposals from, employee representatives and agencies affected. Complete and current compilations of all rules and regulations of the board in printed, mimeographed or multigraphed form shall be available to the public in the office of the director of personnel free of charge. [1961 c 1 § 14 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.150 Rules of board—Mandatory subjects—Veterans' preference—Affirmative action. The board shall adopt rules, consistent with the purposes and provisions of this chapter, as now or hereafter amended, and with the best standards of personnel administration, regarding the basis and procedures to be followed for:

(1) The reduction, dismissal, suspension, or demotion of an employee;

(2) Certification of names for vacancies, including departmental promotions, with the number of names equal to six more names than there are vacancies to be filled, such names representing applicants rated highest on eligibility lists: PROVIDED, That when other applicants have scores equal to the lowest score among the names certified, their names shall also be certified;

(3) Examinations for all positions in the competitive and noncompetitive service;

(4) Appointments;

(5) Training and career development;

(6) Probationary periods of six to twelve months and rejections of probationary employees, depending on the job requirements of the class, except that entry level state park rangers shall serve a probationary period of twelve months;

(7) Transfers;

(8) Sick leaves and vacations;

(9) Hours of work;

(10) Layoffs when necessary and subsequent reemployment, both according to seniority;

(11) Determination of appropriate bargaining units within any agency: PROVIDED, That in making such determination the board shall consider the duties, skills, and working conditions of the employees, the history of collective bargaining by the employees and their bargaining representatives, the extent of organization among the employees, and the desires of the employees;

(12) Certification and decertification of exclusive bargaining representatives: PROVIDED, That after certification of an exclusive bargaining representative and upon the representative's request, the director shall hold an election among employees in a bargaining unit to determine by a majority whether to require as a condition of employment membership in the certified exclusive bargaining representative on or after the thirtieth day following the beginning of employment or the date of such election, whichever is the later, and the failure of an employee to comply with such a condition of employment constitutes cause for dismissal: PROVIDED FURTHER, That no more often than once in each twelve-month period after expiration of twelve months following the date of the original election in a bargaining unit and upon petition of thirty percent of the members of a bargaining unit the director shall hold an election to determine whether a majority wish to rescind such condition of employment: PROVIDED FURTHER, That for purposes of

this clause, membership in the certified exclusive bargaining representative is satisfied by the payment of monthly or other periodic dues and does not require payment of initiation, reinstatement, or any other fees or fines and includes full and complete membership rights: AND PROVIDED FURTHER, That in order to safeguard the right of nonassociation of public employees, based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member, such public employee shall pay to the union, for purposes within the program of the union as designated by such employee that would be in harmony with his or her individual conscience, an amount of money equivalent to regular union dues minus any included monthly premiums for union-sponsored insurance programs, and such employee shall not be a member of the union but is entitled to all the representation rights of a union member;

(13) Agreements between agencies and certified exclusive bargaining representatives providing for grievance procedures and collective negotiations on all personnel matters over which the appointing authority of the appropriate bargaining unit of such agency may lawfully exercise discretion;

(14) Written agreements may contain provisions for payroll deductions of employee organization dues upon authorization by the employee member and for the cancellation of such payroll deduction by the filing of a proper prior notice by the employee with the appointing authority and the employee organization: PROVIDED, That nothing contained herein permits or grants to any employee the right to strike or refuse to perform his or her official duties;

(15) Adoption and revision of a comprehensive classification plan for all positions in the classified service, based on investigation and analysis of the duties and responsibilities of each such position.

(a) The board shall not adopt job classification revisions or class studies unless implementation of the proposed revision or study will result in net cost savings, increased efficiencies, or improved management of personnel or services, and the proposed revision or study has been approved by the director of financial management in accordance with chapter 43.88 RCW.

(b) Beginning July 1, 1995, through June 30, 1997, in addition to the requirements of (a) of this subsection:

(i) The board may approve the implementation of salary increases resulting from adjustments to the classification plan during the 1995-97 fiscal biennium only if:

(A) The implementation will not result in additional net costs and the proposed implementation has been approved by the director of financial management in accordance with chapter 43.88 RCW;

(B) The implementation will take effect on July 1, 1996, and the total net cost of all such actions approved by the board for implementation during the 1995-97 fiscal biennium does not exceed the amounts specified by the legislature specifically for this purpose; or

(C) The implementation is a result of emergent conditions. Emergent conditions are defined as emergency situations requiring the establishment of positions necessary for the preservation of the public health, safety, or general welfare, which do not exceed \$250,000 of the moneys

identified in section 718(2), chapter 18, Laws of 1995 2nd sp. sess.

(ii) The board shall approve only those salary increases resulting from adjustments to the classification plan if they are due to documented recruitment and retention difficulties, salary compression or inversion, increased duties and responsibilities, or inequities. For these purposes, inequities are defined as similar work assigned to different job classes with a salary disparity greater than 7.5 percent.

(iii) Adjustments made to the higher education hospital special pay plan are exempt from (b)(i) through (ii) of this subsection.

(c) Reclassifications, class studies, and salary adjustments to be implemented during the 1997-99 and subsequent fiscal biennia are governed by (a) of this subsection and RCW 41.06.152;

(16) Allocation and reallocation of positions within the classification plan;

(17) Adoption and revision of a state salary schedule to reflect the prevailing rates in Washington state private industries and other governmental units but the rates in the salary schedules or plans shall be increased if necessary to attain comparable worth under an implementation plan under RCW 41.06.155 and that, for institutions of higher education and related boards, shall be competitive for positions of a similar nature in the state or the locality in which an institution of higher education or related board is located, such adoption and revision subject to approval by the director of financial management in accordance with the provisions of chapter 43.88 RCW;

(18) Increment increases within the series of steps for each pay grade based on length of service for all employees whose standards of performance are such as to permit them to retain job status in the classified service;

(19) Providing for veteran's preference as required by existing statutes, with recognition of preference in regard to layoffs and subsequent reemployment for veterans and their surviving spouses by giving such eligible veterans and their surviving spouses additional credit in computing their seniority by adding to their unbroken state service, as defined by the board, the veteran's service in the military not to exceed five years. For the purposes of this section, "veteran" means any person who has one or more years of active military service in any branch of the armed forces of the United States or who has less than one year's service and is discharged with a disability incurred in the line of duty or who is discharged at the convenience of the government and who, upon termination of such service has received an honorable discharge, a discharge for physical reasons with an honorable record, or a release from active military service with evidence of service other than that for which an undesirable, bad conduct, or dishonorable discharge shall be given: PROVIDED, HOWEVER, That the surviving spouse of a veteran is entitled to the benefits of this section regardless of the veteran's length of active military service: PROVIDED FURTHER, That for the purposes of this section "veteran" does not include any person who has voluntarily retired with twenty or more years of active military service and whose military retirement pay is in excess of five hundred dollars per month;

(20) Permitting agency heads to delegate the authority to appoint, reduce, dismiss, suspend, or demote employees

within their agencies if such agency heads do not have specific statutory authority to so delegate: PROVIDED, That the board may not authorize such delegation to any position lower than the head of a major subdivision of the agency;

(21) Assuring persons who are or have been employed in classified positions before July 1, 1993, will be eligible for employment, reemployment, transfer, and promotion in respect to classified positions covered by this chapter;

(22) Affirmative action in appointment, promotion, transfer, recruitment, training, and career development; development and implementation of affirmative action goals and timetables; and monitoring of progress against those goals and timetables.

The board shall consult with the human rights commission in the development of rules pertaining to affirmative action. The department of personnel shall transmit a report annually to the human rights commission which states the progress each state agency has made in meeting affirmative action goals and timetables. [1996 c 319 § 2; 1995 2nd sp.s. c 18 § 911. Prior: 1993 sp.s. c 24 § 913; 1993 c 281 § 27; 1990 c 60 § 103; prior: 1985 c 461 § 2; 1985 c 365 § 5; 1983 1st ex.s. c 75 § 5; 1982 1st ex.s. c 53 § 4; prior: 1982 c 79 § 1; 1981 c 311 § 18; 1980 c 118 § 3; 1979 c 151 § 57; 1977 ex.s. c 152 § 1; 1973 1st ex.s. c 75 § 1; 1973 c 154 § 1; 1971 ex.s. c 19 § 2; 1967 ex.s. c 108 § 13; 1961 c 1 § 15 (Initiative Measure No. 207, approved November 8, 1960).]

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.165.070.

Effective date—1993 c 281: See note following RCW 41.06.022.

Severability—Subheadings not law—1990 c 60: See notes following RCW 41.06.070.

Severability—1985 c 461: See note following RCW 41.06.020.

Severability—1982 1st ex.s. c 53: See note following RCW 41.06.020.

Severability—1981 c 311: See RCW 41.64.910.

Severability—1980 c 118: See note following RCW 41.06.010.

Severability—1977 ex.s. c 152: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 152 § 14.]

Effective date—1973 1st ex.s. c 75: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect midnight June 6, 1973." [1973 1st ex.s. c 75 § 3.]

Leaves for public employees

military: RCW 38.40.060.

vacation: RCW 43.01.040.

Public employees' collective bargaining: Chapter 41.56 RCW.

41.06.152 Job classification revisions, class studies, salary adjustments—Limitations. (1) The board shall adopt only those job classification revisions, class studies, and salary adjustments under RCW 41.06.150(15) that:

(a) Are due to documented recruitment and retention difficulties, salary compression or inversion, increased duties and responsibilities, or inequities. For these purposes, inequities are defined as similar work assigned to different job classes with a salary disparity greater than 7.5 percent; and

(b) Are such that the office of financial management has reviewed the agency's fiscal impact statement and has concurred that the agency can absorb the biennialized cost of the reclassification, class study, or salary adjustment within the agency's current authorized level of funding for the current fiscal biennium and subsequent fiscal biennia.

(2) In addition to reclassifications, class studies, and salary adjustments under subsection (1)(b) of this section, the board may approve other reclassifications, class studies, and salary adjustments that meet the requirements of subsection (1)(a) of this section and have been approved under the procedures established under this subsection.

Before the department of personnel's biennial budget request is due to the office of financial management, the board shall prioritize requests for reclassifications, class studies, and salary adjustments for the next fiscal biennium. The board shall prioritize according to such criteria as are developed by the board consistent with RCW 41.06.150(15)(a).

The board shall submit the prioritized list to the governor's office and the fiscal committees of the house of representatives and senate at the same time the department of personnel's biennial budget request is submitted. The office of financial management shall review the biennial cost of each proposed salary adjustment on the board's prioritized list.

In the biennial appropriations acts, the legislature may establish a level of funding, from the state general fund and other accounts, to be applied by the board to the prioritized list. Upon enactment of the appropriations act, the board may approve reclassifications, class studies, and salary adjustments only to the extent that the total cost does not exceed the level of funding established in the appropriations acts and the board's actions are consistent with the priorities established in the list. The legislature may also specify or otherwise limit in the appropriations act the implementation dates for actions approved by the board under this section.

(3) This section does not apply to the higher education hospital special pay plan or to any adjustments to the classification plan under RCW 41.06.150(15) that are due to emergent conditions. Emergent conditions are defined as emergency conditions requiring the establishment of positions necessary for the preservation of the public health, safety, or general welfare. [1996 c 319 § 1.]

41.06.155 Salaries—Implementation of changes to achieve comparable worth. Salary changes necessary to achieve comparable worth shall be implemented during the 1983-85 biennium under a schedule developed by the department. Increases in salaries and compensation solely for the purpose of achieving comparable worth shall be made at least annually. Comparable worth for the jobs of all employees under this chapter shall be fully achieved not later than June 30, 1993. [1993 c 281 § 28; 1983 1st ex.s. c 75 § 6.]

Effective date—1993 c 281: See note following RCW 41.06.022.

41.06.160 Classification and salary schedules to consider rates in other public and private employment—Wage and fringe benefits surveys—Recommendations to governor, standing committees on appropriations of the

legislature, and the director of financial management—Data required. In preparing classification and salary schedules as set forth in RCW 41.06.150 as now or hereafter amended the department of personnel shall give full consideration to prevailing rates in other public employment and in private employment in this state. For this purpose the department shall undertake comprehensive salary and fringe benefit surveys, with such surveys to be conducted in the year prior to the convening of every other one hundred five day regular session of the state legislature. In the year prior to the convening of each one hundred five day regular session during which a comprehensive salary and fringe benefit survey is not conducted, the department shall plan and conduct a trend salary and fringe benefit survey. This survey shall measure average salary and fringe benefit movement for broad occupational groups which has occurred since the last comprehensive salary and fringe benefit survey was conducted. The results of each comprehensive and trend salary and fringe benefit survey shall be completed and forwarded by September 30 with a recommended state salary schedule to the governor and director of financial management for their use in preparing budgets to be submitted to the succeeding legislature. A copy of the data and supporting documentation shall be furnished by the department of personnel to the standing committees for appropriations of the senate and house of representatives.

In the case of comprehensive salary and fringe benefit surveys, the department shall furnish the following supplementary data in support of its recommended salary schedule:

(1) A total dollar figure which reflects the recommended increase or decrease in state salaries as a direct result of the specific salary and fringe benefit survey that has been conducted and which is categorized to indicate what portion of the increase or decrease is represented by salary survey data and what portion is represented by fringe benefit survey data;

(2) An additional total dollar figure which reflects the impact of recommended increases or decreases to state salaries based on other factors rather than directly on prevailing rate data obtained through the survey process and which is categorized to indicate the sources of the requests for deviation from prevailing rates and the reasons for the changes;

(3) A list of class codes and titles indicating recommended monthly salary ranges for all state classes under the control of the department of personnel with those salary ranges which do not substantially conform to the prevailing rates developed from the salary and fringe benefit survey distinctly marked and an explanation of the reason for the deviation included;

(4) A supplemental salary schedule which indicates the additional salary to be paid state employees for hazardous duties or other considerations requiring extra compensation under specific circumstances. Additional compensation for these circumstances shall not be included in the basic salary schedule but shall be maintained as a separate pay schedule for purposes of full disclosure and visibility; and

(5) A supplemental salary schedule which indicates those cases where the board determines that prevailing rates do not provide similar salaries for positions that require or impose similar responsibilities, judgment, knowledge, skills, and working conditions. This supplementary salary schedule

shall contain proposed salary adjustments necessary to eliminate any such dissimilarities in compensation. Additional compensation needed to eliminate such salary dissimilarities shall not be included in the basic salary schedule but shall be maintained as a separate salary schedule for purposes of full disclosure and visibility.

It is the intention of the legislature that requests for funds to support recommendations for salary deviations from the prevailing rate survey data shall be kept to a minimum, and that the requests be fully documented when forwarded by the department of personnel.

Salary and fringe benefit survey information collected from private employers which identifies a specific employer with the salary and fringe benefit rates which that employer pays to its employees shall not be subject to public disclosure under chapter 42.17 RCW.

The first comprehensive salary and fringe benefit survey required by this section shall be completed and forwarded to the governor and the director of financial management by September 30, 1986. The first trend salary and fringe benefit survey required by this section shall be completed and forwarded to the governor and the director of financial management by September 30, 1988. [1993 c 281 § 29; 1985 c 94 § 2; 1980 c 11 § 1; 1979 c 151 § 58; 1977 ex.s. c 152 § 2; 1961 c 1 § 16 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—1993 c 281: See note following RCW 41.06.022.

Severability—1977 ex.s. c 152: See note following RCW 41.06.150.

41.06.163 Comprehensive salary and fringe benefit survey plan required—Contents. (1) In the conduct of salary and fringe benefit surveys under RCW 41.06.160 as now or hereafter amended, it is the intention of the legislature that the surveys be undertaken in a manner consistent with statistically accurate sampling techniques. For this purpose, a comprehensive salary and fringe benefit survey plan shall be submitted to the director of financial management, employee organizations, and the standing committees for appropriations of the senate and house of representatives six months before the beginning of each periodic survey required before regular legislative sessions. This comprehensive plan shall include but not be limited to the following:

(a) A complete explanation of the technical, statistical process to be used in the salary and fringe benefit survey including the percentage of accuracy expected from the planned statistical sample chosen for the survey and a definition of the term "prevailing rates" which is to be used in the planned survey;

(b) A comprehensive salary and fringe benefit survey model based on scientific statistical principles which:

(i) Encompasses the interrelationships among the various elements of the survey sample including sources of salary and fringe benefit data by organization type, size, and regional location;

(ii) Is representative of private and public employment in this state;

(iii) Ensures that, wherever practical, data from smaller, private firms are included and proportionally weighted in the survey sample; and

(iv) Indicates the methodology to be used in application of survey data to job classes used by state government;

(c) A prediction of the increase or decrease in total funding requirements expected to result from the pending salary and fringe benefit survey based on consumer price index information and other available trend data pertaining to Washington state salaries and fringe benefits.

(2) Every comprehensive survey plan shall fully consider fringe benefits as an element of compensation in addition to basic salary data.

(3) Interim or special surveys conducted under RCW 41.06.160 as now or hereafter amended shall conform when possible to the statistical techniques and principles developed for regular periodic surveys under this section.

(4) The term "fringe benefits" as used in this section and in conjunction with salary surveys shall include but not be limited to compensation for:

(a) Leave time, including vacation, holiday, civil, and personal leave;

(b) Employer retirement contributions;

(c) Health and insurance payments, including life, accident, and health insurance, workers' compensation, and sick leave; and

(d) Stock options, bonuses, and purchase discounts where appropriate. [1993 c 281 § 30; 1987 c 185 § 9; 1986 c 158 § 6; 1979 c 151 § 59; 1977 ex.s. c 152 § 3.]

Effective date—1993 c 281: See note following RCW 41.06.022.

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Severability—1977 ex.s. c 152: See note following RCW 41.06.150.

41.06.165 Salary surveys—Criteria. Salary surveys shall be conducted according to the following criteria in addition to any other provisions under this chapter:

(1) Adjustments of state salaries to prevailing rates in Washington state private industries and other governmental units shall be determined by comparisons of weighted averages of salaries, including weighted averages of salaries from out-of-state sources when necessary to obtain statistically valid salary surveys; and

(2) Determination of state salary changes from prevailing rate data collected in salary surveys shall be based on occupational group averages containing related job classes where appropriate rather than on comparisons of survey data to individual state job classes. [1977 ex.s. c 152 § 4.]

Severability—1977 ex.s. c 152: See note following RCW 41.06.150.

41.06.167 Compensation surveys required for officers and officer candidates of the Washington state patrol—Comprehensive compensation survey plan and recommendations of chief required. The department of personnel shall undertake comprehensive compensation surveys for officers and entry-level officer candidates of the Washington state patrol, with such surveys to be conducted in the year prior to the convening of every other one hundred five day regular session of the state legislature. In the year prior to the convening of each one hundred five day regular session during which a comprehensive compensation survey is not conducted, the department shall conduct a trend compensation survey. This survey shall measure average compensation movement which has occurred since the last

comprehensive compensation survey was conducted. The results of each comprehensive and trend survey shall be completed and forwarded by September 30th, after review and preparation of recommendations by the chief of the Washington state patrol, to the governor and director of financial management for their use in preparing budgets to be submitted to the succeeding legislature. A copy of the data and supporting documentation shall be furnished by the department of personnel to the legislative transportation committee and the standing committees for appropriations of the senate and house of representatives. The office of financial management shall analyze the survey results and conduct investigations which may be necessary to arbitrate differences between interested parties regarding the accuracy of collected survey data and the use of such data for salary adjustment.

Surveys conducted by the department of personnel for the Washington state patrol shall be undertaken in a manner consistent with statistically accurate sampling techniques, including comparisons of medians, base ranges, and weighted averages of salaries. The surveys shall compare competitive labor markets of law enforcement officers. This service performed by the department of personnel shall be on a reimbursable basis in accordance with the provisions of RCW 41.06.080.

A comprehensive compensation survey plan and the recommendations of the chief of the Washington state patrol shall be submitted jointly by the department of personnel and the Washington state patrol to the director of financial management, the legislative transportation committee, the committee on ways and means of the senate, and the committee on appropriations of the house of representatives six months before the beginning of each periodic survey. [1991 c 196 § 1; 1986 c 158 § 7; 1985 c 94 § 3; 1980 c 11 § 2; 1979 c 151 § 60; 1977 ex.s. c 152 § 5.]

Severability—1977 ex.s. c 152: See note following RCW 41.06.150.

41.06.169 Employee performance evaluations—Standardized procedures and forms required to be developed. After consultation with state agency heads, employee organizations, and other interested parties, the state personnel director shall develop standardized employee performance evaluation procedures and forms which shall be used by state agencies for the appraisal of employee job performance at least annually. These procedures shall include means whereby individual agencies may supplement the standardized evaluation process with special performance factors peculiar to specific organizational needs. Performance evaluation procedures shall place primary emphasis on recording how well the employee has contributed to efficiency, effectiveness, and economy in fulfilling state agency and job objectives. [1985 c 461 § 3; 1982 1st ex.s. c 53 § 5; 1977 ex.s. c 152 § 6.]

Severability—1985 c 461: See note following RCW 41.06.020.

Severability—1982 1st ex.s. c 53: See note following RCW 41.06.020.

Severability—1977 ex.s. c 152: See note following RCW 41.06.150.

41.06.170 Suspension, dismissal, demotion of employee—Appeal to personnel appeals board. (1) The board or director, in the adoption of rules governing suspen-

sions for cause, shall not authorize an appointing authority to suspend an employee for more than fifteen calendar days as a single penalty or more than thirty calendar days in any one calendar year as an accumulation of several penalties. The board or director shall require that the appointing authority give written notice to the employee not later than one day after the suspension takes effect, stating the reasons for and the duration thereof.

(2) Any employee who is reduced, dismissed, suspended, or demoted, after completing his or her probationary period of service as provided by the rules of the board, or any employee who is adversely affected by a violation of the state civil service law, chapter 41.06 RCW, or rules adopted under it, shall have the right to appeal to the personnel appeals board created by RCW 41.64.010 not later than thirty days after the effective date of such action. The employee shall be furnished with specified charges in writing when a reduction, dismissal, suspension, or demotion action is taken. Such appeal shall be in writing.

(3) Any employee whose position has been exempted after July 1, 1993, shall have the right to appeal to the personnel appeals board created by RCW 41.64.010 not later than thirty days after the effective date of such action.

(4) An employee incumbent in a position at the time of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or reallocation to the personnel appeals board created by RCW 41.64.010. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken. [1993 c 281 § 31; 1981 c 311 § 19; 1975-'76 2nd ex.s. c 43 § 3; 1961 c 1 § 17 (Initiative Measure No. 207, approved November 8, 1960).]

Effective date—1993 c 281: See note following RCW 41.06.022.

Severability—1981 c 311: See RCW 41.64.910.

Decision of Washington personnel resources board under RCW 41.06.170(4) not subject to judicial review: RCW 41.64.100.

41.06.176 Employee performance evaluations—Written notification of deficiencies. Each employee whose work is judged unsatisfactory shall be notified in writing of the areas in which the work is considered deficient. Unless the deficiency is extreme, the employee shall be given an opportunity to demonstrate improvement. [1985 c 461 § 4.]

Severability—1985 c 461: See note following RCW 41.06.020.

41.06.186 Employee performance evaluations—Termination of employment—Rules. The Washington personnel resources board shall adopt rules designed to terminate the state employment of any employee whose performance is so inadequate as to warrant termination. [1993 c 281 § 32; 1985 c 461 § 5.]

Effective date—1993 c 281: See note following RCW 41.06.022.

Severability—1985 c 461: See note following RCW 41.06.020.

41.06.196 Employee performance evaluations—Termination of supervisors tolerating deficient employees. The Washington personnel resources board shall adopt rules designed to remove from supervisory positions those supervisors who in violation of the rules adopted under RCW 41.06.186 have tolerated the continued employment of employees under their supervision whose performance has

warranted termination from state employment. [1993 c 281 § 33; 1985 c 461 § 6.]

Effective date—1993 c 281: See note following RCW 41.06.022.

Severability—1985 c 461: See note following RCW 41.06.020.

Duty of state officers to identify employees whose performance warrants termination from state employment: RCW 43.01.125.

41.06.220 Reemployment list—Reinstatement after appeal, guaranteed rights and benefits. (1) An employee who is terminated from state service may request the board to place his name on an appropriate reemployment list and the board shall grant this request where the circumstances are found to warrant reemployment.

(2) Any employee, when fully reinstated after appeal, shall be guaranteed all employee rights and benefits, including back pay, sick leave, vacation accrual, retirement and OASDI credits. [1961 c 1 § 22 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.250 Political activities. (1) Solicitation for or payment to any partisan, political organization or for any partisan, political purpose of any compulsory assessment or involuntary contribution is prohibited: PROVIDED, HOWEVER, That officers of employee associations shall not be prohibited from soliciting dues or contributions from members of their associations. No person shall solicit on state property or property of a political subdivision of this state any contribution to be used for partisan, political purposes.

(2) Employees of the state or any political subdivision thereof shall have the right to vote and to express their opinions on all political subjects and candidates and to hold any political party office or participate in the management of a partisan, political campaign. Nothing in this section shall prohibit an employee of the state or any political subdivision thereof from participating fully in campaigns relating to constitutional amendments, referendums, initiatives, and issues of a similar character, and for nonpartisan offices.

(3) A classified civil service employee shall not hold a part time public office in a political subdivision of the state when the holding of such office is incompatible with, or substantially interferes with, the discharge of official duties in state employment.

(4) For persons employed in state agencies or agencies of any political subdivision of the state the operation of which is financed in total or primarily by federal grant-in-aid funds political activity will be regulated by the rules and regulations of the United States civil service commission.

(5) The provisions of this section shall supersede all statutes, charter provisions, ordinances, resolutions, regulations, and requirements promulgated by the state or any subdivision thereof, including any provision of any county charter, insofar as they may be in conflict with the provisions of this section. [1974 ex.s. c 136 § 1; 1961 c 1 § 25 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.260 Conflict with federal requirements—Effect—Rules to conform chapter. If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, such conflicting part of this

chapter is hereby declared to be inoperative solely to the extent of such conflict and with respect to the agencies directly affected, and such findings or determination shall not affect the operation of the remainder of this chapter in its application to the agencies concerned. The board shall make such rules and regulations as may be necessary to meet federal requirements which are a condition precedent to the receipt of federal funds by the state. [1961 c 1 § 26 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.270 Salary withheld unless employment is in accord with chapter—Certification of payrolls, procedures. A disbursing officer shall not pay any employee holding a position covered by this chapter unless the employment is in accordance with this chapter or the rules, regulations and orders issued hereunder. The board and the director of financial management shall jointly establish procedures for the certification of payrolls. [1979 c 151 § 61; 1961 c 1 § 27 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.280 Department of personnel service fund—Created—Charges to agencies, payment—Use, disbursement. There is hereby created a fund within the state treasury, designated as the "department of personnel service fund," to be used by the board as a revolving fund for the payment of salaries, wages, and operations required for the administration of the provisions of this chapter, applicable provisions of chapter 41.04 RCW, and chapter 41.60 RCW. An amount not to exceed one and one-half percent of the approved allotments of salaries and wages for all positions in the classified service in each of the agencies subject to this chapter, except the institutions of higher education, shall be charged to the operations appropriations of each agency and credited to the department of personnel service fund as the allotments are approved pursuant to chapter 43.88 RCW. Subject to the above limitations, the amount shall be charged against the allotments pro rata, at a rate to be fixed by the director from time to time which, together with income derived from services rendered under RCW 41.06.080, will provide the department with funds to meet its anticipated expenditures during the allotment period, including the training requirements in RCW 41.06.500 and 41.06.530.

The director of personnel shall fix the terms and charges for services rendered by the department of personnel pursuant to RCW 41.06.080, which amounts shall be credited to the department of personnel service fund and charged against the proper fund or appropriation of the recipient of such services on a quarterly basis. Payment for services so rendered under RCW 41.06.080 shall be made on a quarterly basis to the state treasurer and deposited by him in the department of personnel service fund.

Moneys from the department of personnel service fund shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the board. [1993 c 379 § 309; 1993 c 281 § 34; 1987 c 248 § 4; 1984 c 7 § 45; 1982 c 167 § 13; 1963 c 215 § 1; 1961 c 1 § 28 (Initiative Measure No. 207, approved November 8, 1960).]

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Effective date—1993 c 281: See note following RCW 41.06.022.

Legislative findings—Purpose—1987 c 248: See note following RCW 41.04.362.

Severability—1984 c 7: See note following RCW 47.01.141.

Severability—1982 c 167: See note following RCW 41.60.015.

41.06.285 Higher education personnel service fund.

(1) There is hereby created a fund within the state treasury, designated as the "higher education personnel service fund," to be used by the board as a revolving fund for the payment of salaries, wages, and operations required for the administration of institutions of higher education and related boards, the budget for which shall be subject to review and approval and appropriation by the legislature. Subject to the requirements of subsection (2) of this section, an amount not to exceed one-half of one percent of the salaries and wages for all positions in the classified service shall be contributed from the operations appropriations of each institution and the state board for community and technical colleges and credited to the higher education personnel service fund as such allotments are approved pursuant to chapter 43.88 RCW. Subject to the above limitations, such amount shall be charged against the allotments pro rata, at a rate to be fixed by the director of financial management from time to time, which will provide the board with funds to meet its anticipated expenditures during the allotment period.

(2) If employees of institutions of higher education cease to be classified under this chapter pursuant to an agreement authorized by RCW 41.56.201, each institution of higher education and the state board for community and technical colleges shall continue, for six months after the effective date of the agreement, to make contributions to the higher education personnel service fund based on employee salaries and wages that includes the employees under the agreement. At the expiration of the six-month period, the director of financial management shall make across-the-board reductions in allotments of the higher education personnel service fund for the remainder of the biennium so that the charge to the institutions of higher education and state board for community and technical colleges based on the salaries and wages of the remaining employees of institutions of higher education and related boards classified under this chapter does not increase during the biennium, unless an increase is authorized by the legislature.

(3) Moneys from the higher education personnel service fund shall be disbursed by the state treasurer by warrants on vouchers duly authorized by the board. [1998 c 245 § 41; 1993 c 379 § 308.]

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

41.06.290 Personnel subject to chapter 47.64 RCW not affected. Nothing in this chapter shall be interpreted as changing the provisions of or affecting the conditions of employment for personnel covered by chapter 47.64 RCW. [1961 c 1 § 29 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.340 Unfair labor practices provisions applicable to chapter. Each and every provision of RCW 41.56.140 through 41.56.190 shall be applicable to this chapter as it relates to state civil service employees and the

Washington personnel resources board, or its designee, whose final decision shall be appealable to the Washington personnel resources board, which is granted all powers and authority granted to the department of labor and industries by RCW 41.56.140 through 41.56.190. [1993 c 281 § 35; 1969 ex.s. c 215 § 13.]

Effective date—1993 c 281: See note following RCW 41.06.022.

41.06.350 Acceptance of federal funds authorized.

The Washington personnel resources board is authorized to receive federal funds now available or hereafter made available for the assistance and improvement of public personnel administration, which may be expended in addition to the department of personnel service fund established by RCW 41.06.280. [1993 c 281 § 36; 1969 ex.s. c 152 § 1.]

Effective date—1993 c 281: See note following RCW 41.06.022.

41.06.380 Purchasing services by contract not prohibited—Limitations.

Nothing contained in this chapter shall prohibit any department, as defined in RCW 41.06.020, from purchasing services by contract with individuals or business entities if such services were regularly purchased by valid contract by such department prior to April 23, 1979: PROVIDED, That no such contract may be executed or renewed if it would have the effect of terminating classified employees or classified employee positions existing at the time of the execution or renewal of the contract. [1979 ex.s. c 46 § 2.]

41.06.382 Purchasing services by contract not prohibited—Limitations.

Nothing contained in this chapter shall prohibit any institution of higher education, as defined in RCW 28B.10.016, or related board from purchasing services by contract with individuals or business entities if such services were regularly purchased by valid contract at such institution prior to April 23, 1979: PROVIDED, That no such contract may be executed or renewed if it would have the effect of terminating classified employees or classified employee positions existing at the time of the execution or renewal of the contract. [1979 ex.s. c 46 § 1. Formerly RCW 28B.16.240.]

41.06.400 Training and career development programs—Powers and duties of director.

(1) In addition to other powers and duties specified in this chapter, the board shall, by rule, prescribe the purpose and minimum standards for training and career development programs and, in so doing, regularly consult with and consider the needs of individual agencies and employees.

(2) In addition to other powers and duties specified in this chapter, the director shall:

(a) Provide for the evaluation of training and career development programs and plans of agencies based on minimum standards established by the board. The director shall report the results of such evaluations to the agency which is the subject of the evaluation;

(b) Provide training and career development programs which may be conducted more efficiently and economically on an interagency basis;

(c) Promote interagency sharing of resources for training and career development;

(d) Monitor and review the impact of training and career development programs to ensure that the responsibilities of the state to provide equal employment opportunities are diligently carried out. The director shall report to the board the impact of training and career development programs on the fulfillment of such responsibilities.

(3) At an agency's request, the director may provide training and career development programs for an agency's internal use which may be conducted more efficiently and economically by the department of personnel. [1980 c 118 § 4.]

Severability—1980 c 118: See note following RCW 41.06.010.

41.06.410 Training and career development programs—Agency plan—Report—Budget. Each agency subject to the provisions of this chapter shall:

(1) Prepare an employee training and career development plan which shall at least meet minimum standards established by the board. A copy of such plan shall be submitted to the director for purposes of administering the provisions of RCW 41.06.400(2);

(2) Provide for training and career development for its employees in accordance with the agency plan;

(3) Report on its training and career development program operations and costs to the director in accordance with reporting procedures adopted by the board;

(4) Budget for training and career development in accordance with procedures of the office of financial management. [1980 c 118 § 5.]

Severability—1980 c 118: See note following RCW 41.06.010.

41.06.420 Entry-level management training course—Requirements—Suspension—Waiver—Designation of supervisory or management positions. (1) The board, by rule, shall prescribe the conditions under which an employee appointed to a supervisory or management position after June 12, 1980, shall be required to successfully complete an entry-level management training course as approved by the director. Such training shall not be required of any employee who has completed a management training course prior to the employee's appointment which is, in the judgment of the director, at least equivalent to the entry-level course required by this section.

(2) The board, by rule, shall establish procedures for the suspension of the entry-level training requirement in cases where the ability of an agency to perform its responsibilities is adversely affected, or for the waiver of this requirement in cases where a person has demonstrated experience as a substitute for training.

(3) Agencies subject to the provisions of this chapter, in accordance with rules prescribed by the board, shall designate individual positions, or groups of positions, as being "supervisory" or "management" positions. Such designations shall be subject to review by the director as part of the director's evaluation of training and career development programs prescribed by RCW 41.06.400(2). [1980 c 118 § 6.]

Severability—1980 c 118: See note following RCW 41.06.010.

41.06.450 Destruction or retention of information relating to employee misconduct. (1) By January 1, 1983,

the Washington personnel resources board shall adopt rules applicable to each agency to ensure that information relating to employee misconduct or alleged misconduct is destroyed or maintained as follows:

(a) All such information determined to be false and all such information in situations where the employee has been fully exonerated of wrongdoing, shall be promptly destroyed;

(b) All such information having no reasonable bearing on the employee's job performance or on the efficient and effective management of the agency, shall be promptly destroyed;

(c) All other information shall be retained only so long as it has a reasonable bearing on the employee's job performance or on the efficient and effective management of the agency.

(2) Notwithstanding subsection (1) of this section, an agency may retain information relating to employee misconduct or alleged misconduct if:

(a) The employee requests that the information be retained; or

(b) The information is related to pending legal action or legal action may be reasonably expected to result.

(3) In adopting rules under this section, the Washington personnel resources board shall consult with the public disclosure commission to ensure that the public policy of the state, as expressed in chapter 42.17 RCW, is adequately protected. [1993 c 281 § 37; 1982 c 208 § 10.]

Effective date—1993 c 281: See note following RCW 41.06.022.

Legislative finding—Purpose—RCW 41.06.450: "The legislature finds that, under some circumstances, maintaining information relating to state employee misconduct or alleged misconduct is unfair to employees and serves no useful function to the state. The purpose of RCW 41.06.450 is to direct the personnel board to adopt rules governing maintenance of employee records so that the records are maintained in a manner which is fair to employees, which ensures proper management of state governmental affairs, and which adequately protects the public interest." [1982 c 208 § 9.]

Severability—1982 c 208: See RCW 42.40.900.

Application of public disclosure law to information relating to employee misconduct: RCW 42.17.295.

Employee inspection of personnel file: RCW 49.12.240 through 49.12.260.

41.06.455 Destruction of employee records authorized if consistent with other laws. RCW 41.06.450 does not prohibit an agency from destroying identifying information in records relating to employee misconduct or alleged misconduct if the agency deems the action is consistent with the policy expressed in RCW 41.06.450 and in chapter 42.17 RCW. [1982 c 208 § 11.]

Severability—1982 c 208: See RCW 42.40.900.

41.06.460 Application of RCW 41.06.450 and 41.06.455 to classified and exempt employees. Notwithstanding RCW 41.06.040, 41.06.450 and 41.06.455 apply to all classified and exempt employees of the state, including employees of the institutions of higher education. [1982 c 208 § 12.]

Severability—1982 c 208: See RCW 42.40.900.

41.06.475 State employment in the supervision, care, or treatment of children or developmentally disabled persons—Rules on background investigation. The

Washington personnel resources board shall adopt rules, in cooperation with the secretary of social and health services, for the background investigation of persons being considered for state employment in positions directly responsible for the supervision, care, or treatment of children or developmentally disabled persons. [1993 c 281 § 38; 1986 c 269 § 2.]

Effective date—1993 c 281: See note following RCW 41.06.022.

Children and vulnerable adults: RCW 43.43.830 through 43.43.842.

Children, mentally ill, or developmentally disabled persons: RCW 43.20A.710.

State employment in the supervision, care, or treatment of children or developmentally disabled persons—Investigation of conviction records or pending charges: RCW 43.20A.710.

State hospitals: RCW 72.23.035.

41.06.490 State employee return-to-work program.

(1) In addition to the rules adopted under RCW 41.06.150, the board shall adopt rules establishing a state employee return-to-work program. The program shall, at a minimum:

(a) Direct each agency to adopt a return-to-work policy. The program shall allow each agency program to take into consideration the special nature of employment in the agency;

(b) Provide for eligibility in the return-to-work program, for a minimum of two years from the date the temporary disability commenced, for any permanent employee who is receiving compensation under RCW 51.32.090 and who is, by reason of his or her temporary disability, unable to return to his or her previous work, but who is physically capable of carrying out work of a lighter or modified nature;

(c) Allow opportunity for return-to-work state-wide when appropriate job classifications are not available in the agency that is the appointing authority at the time of injury;

(d) Require each agency to name an agency representative responsible for coordinating the return-to-work program of the agency;

(e) Provide that applicants receiving appointments for classified service receive an explanation of the return-to-work policy;

(f) Require training of supervisors on implementation of the return-to-work policy, including but not limited to assessment of the appropriateness of the return-to-work job for the employee; and

(g) Coordinate participation of applicable employee assistance programs, as appropriate.

(2) The agency full-time equivalents necessary to implement the return-to-work program established under this section shall be used only for the purposes of the return-to-work program and the net increase in full-time equivalents shall be temporary. [1990 c 204 § 3.]

Findings—Purpose—1990 c 204: See note following RCW 51.44.170.

41.06.500 Managers—Rules—Goals. (1) Except as provided in RCW 41.06.070, notwithstanding any other provisions of this chapter, the director is authorized to adopt, after consultation with state agencies and employee organizations, rules for managers as defined in RCW 41.06.022. These rules shall not apply to managers employed by institutions of higher education or related boards or whose positions are exempt. The rules shall govern recruitment, appointment, classification and allocation of positions,

examination, training and career development, hours of work, probation, certification, compensation, transfer, affirmative action, promotion, layoff, reemployment, performance appraisals, discipline, and any and all other personnel practices for managers. These rules shall be separate from rules adopted by the board for other employees, and to the extent that the rules adopted apply only to managers shall take precedence over rules adopted by the board, and are not subject to review by the board.

(2) In establishing rules for managers, the director shall adhere to the following goals:

(a) Development of a simplified classification system that facilitates movement of managers between agencies and promotes upward mobility;

(b) Creation of a compensation system consistent with the policy set forth in RCW 41.06.150(17). The system shall provide flexibility in setting and changing salaries, and shall require review and approval by the director in the case of any salary changes greater than five percent proposed for any group of employees;

(c) Establishment of a performance appraisal system that emphasizes individual accountability for program results and efficient management of resources; effective planning, organization, and communication skills; valuing and managing workplace diversity; development of leadership and interpersonal abilities; and employee development;

(d) Strengthening management training and career development programs that build critical management knowledge, skills, and abilities; focusing on managing and valuing workplace diversity; empowering employees by enabling them to share in workplace decision making and to be innovative, willing to take risks, and able to accept and deal with change; promoting a workplace where the overall focus is on the recipient of the government services and how these services can be improved; and enhancing mobility and career advancement opportunities;

(e) Permitting flexible recruitment and hiring procedures that enable agencies to compete effectively with other employers, both public and private, for managers with appropriate skills and training; allowing consideration of all qualified candidates for positions as managers; and achieving affirmative action goals and diversity in the workplace;

(f) Providing that managers may only be reduced, dismissed, suspended, or demoted for cause; and

(g) Facilitating decentralized and regional administration. [1996 c 319 § 4; 1993 c 281 § 9.]

Effective date—1993 c 281: See note following RCW 41.06.022.

41.06.510 Institutions of higher education—Designation of personnel officer. Each institution of higher education and each related board shall designate an officer who shall perform duties as personnel officer. The personnel officer at each institution or related board shall direct, supervise, and manage administrative and technical personnel activities for the classified service at the institution or related board consistent with policies established by the institution or related board and in accordance with the provisions of this chapter and the rules adopted under this chapter. Institutions may undertake jointly with one or more other institutions to appoint a person qualified to perform the duties of personnel officer, provide staff and financial

support and may engage consultants to assist in the performance of specific projects. The services of the department of personnel may also be used by the institutions or related boards pursuant to RCW 41.06.080.

The state board for community and technical colleges shall have general supervision and control over activities undertaken by the various community colleges pursuant to this section. [1993 c 281 § 10.]

Effective date—1993 c 281: See note following RCW 41.06.022.

41.06.520 Administration, management of institutions of higher education—Rules—Audit and review by board. Rules adopted by the board shall provide for local administration and management by the institutions of higher education and related boards, subject to periodic audit and review by the board, of the following:

- (1) Appointment, promotion, and transfer of employees;
- (2) Dismissal, suspension, or demotion of an employee;
- (3) Examinations for all positions in the competitive and noncompetitive service;
- (4) Probationary periods of six to twelve months and rejection of probationary employees;
- (5) Sick leaves and vacations;
- (6) Hours of work;
- (7) Layoffs when necessary and subsequent reemployment;
- (8) Allocation and reallocation of positions within the classification plans;
- (9) Training programs; and
- (10) Maintenance of personnel records. [1993 c 281 § 11.]

Effective date—1993 c 281: See note following RCW 41.06.022.

41.06.530 Personnel resource and management policy—Implementation. (1) The legislature recognizes that:

(a) The labor market and the state government work force are diverse in terms of gender, race, ethnicity, age, and the presence of disabilities.

(b) The state's personnel resource and management practices must be responsive to the diverse nature of its work force composition.

(c) Managers in all agencies play a key role in the implementation of all critical personnel policies.

It is therefore the policy of the state to create an organizational culture in state government that respects and values individual differences and encourages the productive potential of every employee.

(2) To implement this policy, the department shall:

(a) In consultation with agencies, employee organizations, employees, institutions of higher education, and related boards, review civil service rules and related policies to ensure that they support the state's policy of valuing and managing diversity in the workplace;

(b) In consultation with agencies, employee organizations, and employees, institutions of higher education, and related boards, develop model policies, procedures, and technical information to be made available to such entities for the support of workplace diversity programs, including, but not limited to:

- (i) Voluntary mentorship programs;

(ii) Alternative testing practices for persons of disability where deemed appropriate;

(iii) Career counseling;

(iv) Training opportunities, including management and employee awareness and skills training, English as a second language, and individual tutoring;

(v) Recruitment strategies;

(vi) Management performance appraisal techniques that focus on valuing and managing diversity in the workplace; and

(vii) Alternative work arrangements;

(c) In consultation with agencies, employee organizations, and employees, institutions of higher education, and related boards, develop training programs for all managers to enhance their ability to implement diversity policies and to provide a thorough grounding in all aspects of the state civil service law and merit system rules, and how the proper implementation and application thereof can facilitate and further the mission of the agency.

(3) The department shall coordinate implementation of this section with the office of financial management and institutions of higher education and related boards to reduce duplication of effort. [1993 c 281 § 12.]

Effective date—1993 c 281: See note following RCW 41.06.022.

41.06.540 Joint employee-management committees.

Meaningful and effective involvement of employees and their representatives is essential to the efficient and effective delivery of state government services. To accomplish this, agencies shall use joint employee-management committees to collaborate on the desired goals of streamlined organizational structures, continuous improvement in all systems and processes, empowerment of line level employees to solve workplace and system delivery problems, managers functioning as coaches and facilitators, and employee training and development as an investment in the future. If employees are represented by an exclusive bargaining representative, the representative shall select the employee committee members and also be on the committee. In addition, the committees shall be used for improvement of the quality of work life for state employees resulting in more productive and efficient service delivery to the general public and customers of state government. Nothing in this section supplants any collective bargaining process or provision. [1993 c 281 § 13.]

Effective date—1993 c 281: See note following RCW 41.06.022.

41.06.900 Short title. This chapter shall be referred to as the state civil service law. [1961 c 1 § 34 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.910 Severability—1961 c 1. If any provision of this act or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end any section, sentence, or word is declared to be severable. [1961 c 1 § 35 (Initiative Measure No. 207, approved November 8, 1960).]

41.06.911 Severability—1975-'76 2nd ex.s. c 43. If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder

of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 43 § 5.]

Chapter 41.07

CENTRAL PERSONNEL-PAYROLL SYSTEM

Sections

- 41.07.010 Definitions.
- 41.07.020 Administration, maintenance and operation of system—Intent.
- 41.07.030 Costs.
- 41.07.900 Transfer of personnel, records, equipment, etc.
- 41.07.901 Effective date—1975 1st ex.s. c 239.

41.07.010 Definitions. (1) As used in this chapter "state agency" means all offices, departments, agencies, institutions, boards, and commissions of state government including those headed by an elected official and including institutions of higher education.

(2) As used in this chapter "central personnel-payroll system" means an automated data processing system capable of keeping records and processing necessary transactions in the process of employing persons, changing their employment status, and paying employees of any or all state agencies. Such system shall include production of reports and documents required or authorized by state or federal agencies. [1975 1st ex.s. c 239 § 1.]

41.07.020 Administration, maintenance and operation of system—Intent. The department of personnel is authorized to administer, maintain, and operate the central personnel-payroll system and to provide its services for any state agency designated jointly by the director of the department of personnel and the director of financial management.

The system shall be operated through state data processing centers. State agencies shall convert personnel and payroll processing to the central personnel-payroll system as soon as administratively and technically feasible as determined by the office of financial management and the department of personnel. It is the intent of the legislature to provide, through the central personnel-payroll system, for uniform reporting to the office of financial management and to the legislature regarding salaries and related costs, and to reduce present costs of manual procedures in personnel and payroll record keeping and reporting. [1979 c 151 § 62; 1975 1st ex.s. c 239 § 2.]

41.07.030 Costs. The costs of administering, maintaining, and operating the central personnel-payroll system shall be distributed to the using state agencies. In order to insure proper and equitable distribution of costs the department of personnel shall utilize cost accounting procedures to identify all costs incurred in the administration, maintenance, and operation of the central personnel-payroll system. In order to facilitate proper and equitable distribution of costs to the using state agencies the department of personnel is authorized to utilize the data processing revolving fund created by RCW 43.105.080 and the department of personnel service fund created by RCW 41.06.280. [1975 1st ex.s. c 239 § 3.]

41.07.900 Transfer of personnel, records, equipment, etc. On October 1, 1975, or at such earlier time as may be mutually agreed upon by the director of general administration and the director of personnel, the staff of the data processing service center engaged in payroll data control and payroll data entry along with such records, files, data, materials, equipment, supplies, and other assets as are directly associated with their function shall be transferred to the department of personnel. [1975 1st ex.s. c 239 § 4.]

41.07.901 Effective date—1975 1st ex.s. c 239. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975. [1975 1st ex.s. c 239 § 6.]

Chapter 41.08

CIVIL SERVICE FOR CITY FIREMEN

Sections

- 41.08.010 Application of chapter.
- 41.08.020 Excluded cities—Repeal of local law—Effect.
- 41.08.030 Civil service commission created—Appointment—Terms—Removal—Quorum.
- 41.08.040 Organization of commission—Secretary—Powers and duties of commission.
- 41.08.050 Persons included—Competitive examinations—Transfers, discharges, and reinstatements.
- 41.08.060 Existing firemen blanketed under civil service.
- 41.08.070 Qualifications of applicants.
- 41.08.075 Residency as condition of employment—Discrimination because of lack of residency—Prohibited.
- 41.08.080 Tenure of employment—Grounds for discharge, reduction, or deprivation of privileges.
- 41.08.090 Procedure for removal, suspension, demotion or discharge—Investigation—Hearing—Appeal.
- 41.08.100 Filling of vacancies—Probationary period.
- 41.08.110 Power to create offices, make appointments and fix salaries not infringed.
- 41.08.120 Approval of payrolls.
- 41.08.130 Leaves of absence—Notice—Filling vacancy.
- 41.08.140 Enforcement by civil action—Legal counsel.
- 41.08.150 Deceptive practices, false marks, etc., prohibited.
- 41.08.160 Political contributions and services—Not required—Solicitation and coercion prohibited.
- 41.08.170 Local legislation required—Penalty.
- 41.08.180 Office and supplies to be furnished—Penalty for not providing.
- 41.08.183 Time limit for creation of commission—Penalty.
- 41.08.185 Duty of commission to organize and function—Penalty for violation.
- 41.08.190 Cooperation of city officers and employees enjoined.
- 41.08.200 Appropriation for expenses.
- 41.08.210 Penalty—Jurisdiction.
- 41.08.220 Definitions.
- 41.08.900 Severability—1935 c 31.
- 41.08.910 Repeal.

Civil service for employees of fire protection districts: RCW 52.30.040.

41.08.010 Application of chapter. The provisions of this chapter shall have no application to cities and towns which at the present time have provided for civil service in the fire department or which shall subsequently provide for civil service in the fire department by local charter or other regulations which said local charter or regulations substantially accomplish the purpose of this chapter. [1935 c 31 § 1; RRS § 9558-1.]

41.08.020 Excluded cities—Repeal of local law—Effect. If any of the cities or towns referred to in RCW 41.08.010 shall at any time repeal the charter provisions or other local acts of said cities or towns providing for civil service for firemen as referred to in RCW 41.08.010, in that event this chapter shall apply to all of such cities and towns which have at any time abolished civil service for members of the fire department. [1935 c 31 § 2; RRS § 9558-2.]

41.08.030 Civil service commission created—Appointment—Terms—Removal—Quorum. There is hereby created in every city, town or municipality except those referred to in RCW 41.08.010, having a full paid fire department a civil service commission which shall be composed of three persons.

The members of such commission shall be appointed by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are vested by law with power and authority to select, appoint, or employ the chief of a fire department in any such city, prior to the enactment of this chapter. The members of such commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city for at least three years immediately preceding such appointment, and an elector of the county wherein he resides. The term of office of such commissioners shall be for six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. Any member of such commission may be removed from office for incompetency, incompatibility or dereliction of duty, or malfeasance in office, or other good cause: PROVIDED, HOWEVER, That no member of the commission shall be removed until charges have been preferred, in writing, due notice and a full hearing had. The members of such commission shall devote due time and attention to the performance of the duties hereinafter specified and imposed upon them by this chapter. Two members of such commission shall constitute a quorum and the votes of any two members of such commission concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission under or by virtue of the provisions of this chapter. Confirmation of said appointment or appointments of commissioners by any legislative body shall not be required. At the time of any appointment not more than two commissioners shall be adherents of the same political party. [1935 c 31 § 3; RRS § 9558-3.]

41.08.040 Organization of commission—Secretary—Powers and duties of commission. Immediately after appointment the commission shall organize by electing one of its members chair and hold regular meetings at least once a month, and such additional meetings as may be required for the proper discharge of their duties.

They shall appoint a secretary and chief examiner, who shall keep the records of the commission, preserve all reports made to it, superintend and keep a record of all examinations

held under its direction, and perform such other duties as the commission may prescribe.

The secretary and chief examiner shall be appointed as a result of competitive examination which examination may be either original and open to all properly qualified citizens of the city, town or municipality, or promotional and limited to persons already in the service of the fire department or of the fire department and other departments of said city, town or municipality, as the commission may decide. The secretary and chief examiner may be subject to suspension, reduction or discharge in the same manner and subject to the same limitations as are provided in the case of members of the fire department. It shall be the duty of the civil service commission:

(1) To make suitable rules and regulations not inconsistent with the provisions of this chapter. Such rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promotions, transfers, reinstatements, demotions, suspensions and discharges shall be made, and may also provide for any other matters connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of this chapter, or which may be found to be in the interest of good personnel administration. Such rules and regulations may be changed from time to time. The rules and regulations and any amendments thereof shall be printed, mimeographed or multigraphed for free public distribution. Such rules and regulations may be changed from time to time.

(2) All tests shall be practical, and shall consist only of subjects which will fairly determine the capacity of persons examined to perform duties of the position to which appointment is to be made, and may include tests of physical fitness and/or of manual skill.

(3) The rules and regulations adopted by the commission shall provide for a credit in accordance with RCW 41.04.010 in favor of all applicants for appointment under civil service, who, in time of war, or in any expedition of the armed forces of the United States, have served in and been honorably discharged from the armed forces of the United States, including the army, navy, and marine corps and the American Red Cross. These credits apply to entrance examinations only.

(4) The commission shall make investigations concerning and report upon all matters touching the enforcement and effect of the provisions of this chapter, and the rules and regulations prescribed hereunder; inspect all institutions, departments, offices, places, positions and employments affected by this chapter, and ascertain whether this chapter and all such rules and regulations are being obeyed. Such investigations may be made by the commission or by any commissioner designated by the commission for that purpose. Not only must these investigations be made by the commission as aforesaid, but the commission must make like investigation on petition of a citizen, duly verified, stating that irregularities or abuses exist, or setting forth in concise language, in writing, the necessity for such investigation. In the course of such investigation the commission or designated commissioner, or chief examiner, shall have the power to administer oaths, subpoena and require the attendance of witnesses and the production by them of books, papers, documents and accounts appertaining to the investigation and

also to cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior court; and the oaths administered hereunder and the subpoenas issued hereunder shall have the same force and effect as the oaths administered by a superior court judge in his or her judicial capacity; and the failure upon the part of any person so subpoenaed to comply with the provisions of this section shall be deemed a violation of this chapter, and punishable as such.

(5) All hearings and investigations before the commission, or designated commissioner, or chief examiner, shall be governed by this chapter and by rules of practice and procedure to be adopted by the commission, and in the conduct thereof neither the commission, nor designated commissioner shall be bound by the technical rules of evidence. No informality in any proceedings or hearing, or in the manner of taking testimony before the commission or designated commissioner, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission: PROVIDED, HOWEVER, That no order, decision, rule or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect whatsoever unless and until concurred in by at least one of the other two members.

(6) To hear and determine appeals or complaints respecting the administrative work of the personnel department; appeals upon the allocation of positions; the rejection of an examination, and such other matters as may be referred to the commission.

(7) Establish and maintain in card or other suitable form a roster of officers and employees.

(8) Provide for, formulate and hold competitive tests to determine the relative qualifications of persons who seek employment in any class or position and as a result thereof establish eligible lists for the various classes of positions, and to provide that persons laid off because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed.

(9) When a vacant position is to be filled, to certify to the appointing authority, on written request, the name of the person highest on the eligible list for the class. If there are no such lists, to authorize provisional or temporary appointment list of such class. Such temporary or provisional appointment shall not continue for a period longer than four months; nor shall any person receive more than one provisional appointment or serve more than four months as a provisional appointee in any one fiscal year.

(10) Keep such records as may be necessary for the proper administration of this chapter. [1993 c 47 § 4; 1973 1st ex.s. c 154 § 60; 1935 c 31 § 5; RRS § 9558-5.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030

Preferred rights in employment, examinations, appointments, etc., limited to actual members of armed forces: RCW 73.04.090.

Veterans' preference in examinations: RCW 41.04.010.

41.08.050 Persons included—Competitive examinations—Transfers, discharges, and reinstatements. The classified civil service and provisions of this chapter shall include all full paid employees of the fire department of each

city, town or municipality coming within its purview, except that individuals appointed as fire chief after July 1, 1987, may be excluded by the legislative body of the city, town, or municipality. All appointments to and promotions in said department shall be made solely on merit, efficiency and fitness, which shall be ascertained by open competitive examination and impartial investigation. No person shall be reinstated in, or transferred, suspended or discharged from any such place, position or employment contrary to the provisions of this chapter. [1987 c 339 § 1; 1935 c 31 § 4; RRS § 9558-4.]

Severability—Effective date—1987 c 339: See notes following RCW 35.21.333.

41.08.060 Existing firemen blanketed under civil service. For the benefit of the public service and to prevent delay, injury, or interruption therein by reason of the enactment of this chapter, all persons holding a position in the fire department of any such city, including the chief thereof, when this chapter takes effect, who shall have served in such position for a period of at least six months last past continuously, are hereby declared eligible for permanent appointment under civil service to the offices, places, positions or employments which they shall then hold, respectively, without examination or other act on their part, and not on probation; and every such person is hereby automatically adopted and inducted permanently into civil service, into such office, place, position or employment which such person then holds as completely and effectually to all intents and purposes as if such person had been permanently appointed thereto under civil service after examination and investigation. [1935 c 31 § 6; RRS § 9558-6.]

41.08.070 Qualifications of applicants. An applicant for a position of any kind under civil service, must be a citizen of the United States of America who can read and write the English language.

An applicant for a position of any kind under civil service must be of an age suitable for the position applied for, in ordinary good health, of good moral character and of temperate and industrious habits; these facts to be ascertained in such manner as the commission may deem advisable. [1972 ex.s. c 37 § 2; 1963 c 95 § 1; 1935 c 31 § 7; RRS § 9558-7.]

Purpose—1972 ex.s. c 37: "It is the purpose of this 1972 amendatory act to increase the availability of qualified applicants for employment in positions of public safety in municipal government; namely, firemen and policemen; and to eliminate present inequities that result from the application of residency requirements under existing statutes pertaining to such employment." [1972 ex.s. c 37 § 1.]

41.08.075 Residency as condition of employment—Discrimination because of lack of residency—Prohibited. No city, town, or municipality shall require any person applying for or holding an office, place, position, or employment under the provisions of this chapter or under any local charter or other regulations described in RCW 41.08.010 to reside within the limits of such municipal corporation as a condition of employment, or to discriminate in any manner against any such person because of his residence outside of

the limits of such city, town, or municipality. [1972 ex.s. c 37 § 4.]

Purpose—1972 ex.s. c 37: See note following RCW 41.08.070.

41.08.080 Tenure of employment—Grounds for discharge, reduction, or deprivation of privileges. The tenure of every one holding an office, place, position or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

(1) Incompetency, inefficiency or inattention to or dereliction of duty;

(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other wilful failure on the part of the employee to properly conduct himself; or any wilful violation of the provisions of this chapter or the rules and regulations to be adopted hereunder;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Dishonest, disgraceful, immoral or prejudicial conduct;

(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the functions and duties of any position under civil service;

(6) Conviction of a felony, or a misdemeanor, involving moral turpitude;

(7) Any other act or failure to act which in the judgment of the civil service commissioners is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service. [1935 c 31 § 8; RRS § 9558-8.]

41.08.090 Procedure for removal, suspension, demotion or discharge—Investigation—Hearing—Appeal. No person in the classified civil service who shall have been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted or discharged except for cause, and only upon the written accusation of the appointing power, or any citizen or taxpayer, a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, demoted or discharged may within ten days from the time of his removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not made for political or religious reasons and was or was not made in good faith [f]or cause. After such investigation the commission may affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office,

place, position or employment from which such person was removed, suspended, demoted or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, in lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or discharge by directing a suspension, without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay; the findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his defense. If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner: PROVIDED, HOWEVER, That such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds. [1935 c 31 § 9; RRS § 9558-9.]

41.08.100 Filling of vacancies—Probationary period. Whenever a position in the classified service becomes vacant, the appointing power, if it desires to fill the vacancy, shall make requisition upon the commission for the name and address of a person eligible for appointment thereto. The commission shall certify the name of the person highest on the eligible list for the class to which the vacant position has been allocated, who is willing to accept employment. If there is no appropriate eligible list for the class, the commission shall certify the name of the person standing highest on said list held appropriate for such class. If more than one vacancy is to be filled an additional name shall be certified for each additional vacancy. The appointing power shall forthwith appoint such person to such vacant position.

Whenever requisition is to be made, or whenever a position is held by a temporary appointee and an eligible list for the class of such position exists, the commission shall forthwith certify the name of the person eligible for appointment to the appointing power, and said appointing power shall forthwith appoint the person so certified to said

position. No person so certified shall be laid off, suspended, or given leave of absence from duty, transferred or reduced in pay or grade, except for reasons which will promote the good of the service, specified in writing, and after an opportunity to be heard by the commission and then only with its consent and approval.

To enable the appointing power to exercise a choice in the filling of positions, no appointment, employment or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of three to six months' probationary service, as may be provided in the rules of the civil service commission during which the appointing power may terminate the employment of the person certified to him, or it, if during the performance test thus afforded, upon observation or consideration of the performance of duty, the appointing power deems him unfit or unsatisfactory for service in the department. Whereupon the appointing power shall designate the person certified as standing next highest on any such list and such person shall likewise enter upon said duties until some person is found who is deemed fit for appointment, employment or promotion for the probationary period provided therefor, whereupon the appointment, employment or promotion shall be deemed to be complete. [1935 c 31 § 11; RRS § 9558-11.]

41.08.110 Power to create offices, make appointments and fix salaries not infringed. All offices, places, positions and employments coming within the purview of this chapter, shall be created by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, chief, common council, commission or otherwise, is or are vested by law with power and authority to select, appoint, or employ any person coming within the purview of this chapter, and nothing herein contained shall infringe upon the power and authority of any such person or group of persons, or appointing power, to fix the salaries and compensation of all employees employed hereunder. [1935 c 31 § 12; RRS § 9558-12.]

41.08.120 Approval of payrolls. No treasurer, auditor, comptroller or other officer or employee of any city, town or municipality in which this chapter is effective, shall approve the payment of or be in any manner concerned in paying, auditing or approving any salary, wage or other compensation for services, to any person subject to the jurisdiction and scope of this chapter, unless a payroll, estimate or account for such salary, wage or other compensation, containing the names of the persons to be paid, the amount to be paid to each such person, the services on account of which same is paid, and any other information which, in the judgment of the civil service commission, should be furnished on said payroll, bears the certificate of the civil service commission or of its secretary or other duly authorized agent, that the persons named in such payroll, estimate or account have been appointed or employed in compliance with the terms of this chapter and with the rules of the commission, and that the said payroll, estimate or account is, so far as known to the said commission, a true and accurate statement. The commission shall refuse to certify the pay of any public officer or employee whom it finds to be illegally or improperly appointed, and may

further refuse to certify the pay of any public officer or employee who shall wilfully or through culpable negligence violate or fail to comply with this chapter or with the rules of the commission. [1935 c 31 § 13; RRS § 9558-13.]

41.08.130 Leaves of absence—Notice—Filling vacancy. Leave of absence, without pay, may be granted by any appointing power to any person under civil service: **PROVIDED**, That such appointing power shall give notice of such leave to the commission. All temporary employment caused by leaves of absence shall be made from the eligible list of the classified civil service. [1935 c 31 § 14; RRS § 9558-14.]

41.08.140 Enforcement by civil action—Legal counsel. It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of this chapter and of the rules of the commission. The commission shall be represented in such suits by the chief legal officer of the city, but said commission may in any case be represented by special counsel appointed by it. [1935 c 31 § 15; RRS § 9558-15.]

41.08.150 Deceptive practices, false marks, etc., prohibited. No commissioner or any other person, shall, by himself or in cooperation with one or more persons, defeat, deceive, or obstruct any person in respect of his right of examination or registration according to the rules and regulations of this chapter, or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the provisions of this chapter, or aid in so doing, or make any false representation concerning the same, or concerning the person examined, or furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified, or to be examined, registered or certified or persuade any other person, or permit or aid in any manner any other person to personate him, in connection with any examination or registration or application or request to be examined or registered. [1935 c 31 § 16; RRS § 9558-16.]

41.08.160 Political contributions and services—Not required—Solicitation and coercion prohibited. No person holding any office, place, position or employment subject to civil service, is under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote or in any manner change the official rank, employment or compensation of any person under civil service, or promise or threaten so to do, for giving or withholding, or neglecting to make any contribution of money, or services, or any other valuable thing, for any political purpose. [1935 c 31 § 17; RRS § 9558-17.]

Political activities of public employees: RCW 41.06.250

41.08.170 Local legislation required—Penalty. The various cities affected by the provisions of this chapter, shall, immediately upon the taking effect thereof, enact appropriate legislation for carrying this chapter into effect, and the failure upon the part of the duly constituted authorities of any such city so to do shall be considered a violation of this chapter and be punishable as such. [1935 c 31 § 18; RRS § 9558-18.]

41.08.180 Office and supplies to be furnished—Penalty for not providing. The duly constituted authorities of each and every city coming within the purview of this chapter, shall provide the commission with suitable and convenient rooms and accommodations and cause the same to be furnished, heated and lighted and supplied with all office supplies and equipment necessary to carry on the business of the commission and with such clerical assistance as may be necessary, all of which is to be commensurate with the number of persons in each such city coming within the purview of this chapter; and the failure upon the part of the duly constituted authorities to do so, shall be considered a violation of this chapter and shall be punishable as such. [1935 c 31 § 19; RRS § 9558-19.]

41.08.183 Time limit for creation of commission—Penalty. In ninety days after the taking effect of this chapter, it shall be the duty of the duly constituted authorities in each such city, subject to the provisions of this chapter, to appoint and create a civil service commission as provided for in RCW 41.08.010, and the failure upon the part of said duly constituted authorities, or any of them, so to do, shall be deemed a violation of this chapter, and shall be punishable as such. [1935 c 31 § 20; RRS § 9558-20.]

41.08.185 Duty of commission to organize and function—Penalty for violation. It shall be the duty of each commission appointed subject to the provisions of this chapter, to immediately organize and see to it that the provisions thereof are carried into effect, and to this end to make suitable rules and regulations not inconsistent with the purpose of this chapter, for the purpose of carrying the provisions thereof into effect; and the failure upon the part of said commission, or any individual member thereof to do so, shall be deemed a violation of this chapter, and shall be punishable as such. [1935 c 31 § 21; RRS § 9558-21.]

41.08.190 Cooperation of city officers and employees enjoined. It shall be the duty of all officers and employees of any such city to aid in all proper ways of carrying out the provisions of this chapter, and such rules and regulations as may, from time to time, be prescribed by the commission thereunder and to afford the commission, its members and employees, all reasonable facilities and assistance to inspect all books, papers, documents and accounts applying or in any way appertaining to any and all offices, places, positions and employments, subject to civil service, and also to produce said books, papers, documents and accounts, and attend and testify, whenever required so to do by the commission or any commissioner. [1935 c 31 § 10; RRS § 9558-10.]

41.08.200 Appropriation for expenses. For the purpose of carrying out the provisions of this chapter, such city, town or municipality is hereby authorized to appropriate from the general fund not to exceed four-tenths of one percent of the total payroll of those included under the jurisdiction and scope of the chapter: PROVIDED, HOWEVER, That if the city council or other proper legislative body shall make an appropriation for the support of said commission equal to or more than the said continuing appropriation in any year, this section shall not be operative for said year but otherwise shall be in full force and effect. [1935 c 31 § 22; RRS § 9558-22.]

41.08.210 Penalty—Jurisdiction. Any person who shall wilfully violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars and by imprisonment in the county jail for not longer than thirty days, or by both such fine and imprisonment. The court of original and unlimited jurisdiction in civil suits shall have jurisdiction of all such offenses defined by this chapter. [1935 c 31 § 23; RRS § 9558-23.]

41.08.220 Definitions. As used in this chapter, the following mentioned terms shall have the following described meanings:

The term "commission" means the civil service commission herein created, and the term "commissioner" means any one of the three commissioners of that commission.

The term "appointing power" includes every person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are, vested by law with power and authority to select, appoint, or employ any person to hold any office, place, position or employment subject to civil service.

The term "appointment" includes all means of selection, appointing or employing any person to hold any office, place, position or employment subject to civil service.

The term "city" includes all cities, towns and municipalities having a full paid fire department.

The term "full paid fire department" means that the officers and firemen employed in such are paid regularly by the city and devote their whole time to fire fighting. [1935 c 31 § 24; RRS § 9558-24.]

41.08.900 Severability—1935 c 31. If any section, subsection, subdivision, sentence, clause or phrase of this chapter, shall for any reason be held to be unconstitutional such decision shall not affect the validity of the remaining portions of this chapter. [1935 c 31 § 25; RRS § 9558-25.]

41.08.910 Repeal. All acts and parts of acts in conflict with the provisions of this chapter are hereby repealed insofar as they conflict with the provisions of this chapter. [1935 c 31 § 26; RRS § 9558-26.]

Chapter 41.12

CIVIL SERVICE FOR CITY POLICE

Sections

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41.12.010 Application of chapter. The provisions of this chapter shall have no application to cities and towns which at the present time have provided for civil service in the police department or which shall subsequently provide for civil service in the police department by local charter or other regulations which said local charter or regulations substantially accomplish the purpose of this chapter, nor to cities having a police force of not more than two persons including the chief of police. [1937 c 13 § 1; RRS § 9558a-1.]

41.12.020 Excluded cities—Repeal of local law—Effect. If any of the cities or towns referred to in RCW 41.12.010 shall at any time repeal the charter provisions or other local acts of said cities or towns providing for civil service for policemen as referred to in RCW 41.12.010, in that event this chapter shall apply to all of such cities and towns which have at any time abolished civil service for members of the police department. [1937 c 13 § 2; RRS § 9558a-2.]

41.12.030 Civil service commission—Appointment—Terms—Removal—Quorum. There is hereby created in every city, town or municipality except those referred to in RCW 41.12.010, having fully paid policemen a civil service commission which shall be composed of three persons.

The members of such commission shall be appointed by the person or group of persons who, acting singly or in

conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are vested by law with the power and authority to select, appoint, or employ the chief of a police department in any such city, prior to the enactment of this chapter. The members of such commission shall serve without compensation. No person shall be appointed a member of such commission who is not a citizen of the United States, a resident of such city for at least three years immediately preceding such appointment, and an elector of the county wherein he resides. The term of office of such commissioners shall be for six years, except that the first three members of such commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. Any member of such commission may be removed from office for incompetency, incompatibility or dereliction of duty, or malfeasance in office, or other good cause: PROVIDED, HOWEVER, That no member of the commission shall be removed until charges have been preferred, in writing, due notice and a full hearing had. The members of such commission shall devote due time and attention to the performance of the duties hereinafter specified and imposed upon them by this chapter. Two members of such commission shall constitute a quorum and the votes of any two members of such commission concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission under or by virtue of the provisions of this chapter. Confirmation of said appointment or appointments of commissioners by any legislative body shall not be required. At the time of any appointment not more than two commissioners shall be adherents of the same political party. [1937 c 13 § 3; RRS § 9558a-3.]

41.12.040 Organization of commission—Secretary—Powers and duties of commission. Immediately after appointment the commission shall organize by electing one of its members chair and hold regular meetings at least once a month, and such additional meetings as may be required for the proper discharge of their duties.

They shall appoint a secretary and chief examiner, who shall keep the records for the commission, preserve all reports made to it, superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe.

The secretary and chief examiner shall be appointed as a result of competitive examination which examination may be either original and open to all properly qualified citizens of the city, town, or municipality, or promotional and limited to persons already in the service of the police department or of the police department and other departments of the city, town, or municipality, as the commission may decide. The secretary and chief examiner may be subject to suspension, reduction, or discharge in the same manner and subject to the same limitations as are provided in the case of members of the police department. It shall be the duty of the civil service commission:

(1) To make suitable rules and regulations not inconsistent with the provisions of this chapter. Such rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promotions,

transfers, reinstatements, demotions, suspensions, and discharges shall be made, and may also provide for any other matters connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of this chapter, or which may be found to be in the interest of good personnel administration. Such rules and regulations may be changed from time to time. The rules and regulations and any amendments thereof shall be printed, mimeographed, or multigraphed for free public distribution. Such rules and regulations may be changed from time to time;

(2) All tests shall be practical, and shall consist only of subjects which will fairly determine the capacity of persons examined to perform duties of the position to which appointment is to be made, and may include tests of physical fitness and/or of manual skill;

(3) The rules and regulations adopted by the commission shall provide for a credit in accordance with RCW 41.04.010 in favor of all applicants for appointment under civil service, who, in time of war, or in any expedition of the armed forces of the United States, have served in and been honorably discharged from the armed forces of the United States, including the army, navy, and marine corps and the American Red Cross. These credits apply to entrance examinations only;

(4) The commission shall make investigations concerning and report upon all matters touching the enforcement and effect of the provisions of this chapter, and the rules and regulations prescribed hereunder; inspect all institutions, departments, offices, places, positions, and employments affected by this chapter, and ascertain whether this chapter and all such rules and regulations are being obeyed. Such investigations may be made by the commission or by any commissioner designated by the commission for that purpose. Not only must these investigations be made by the commission, but the commission must make like investigation on petition of a citizen, duly verified, stating that irregularities or abuses exist, or setting forth in concise language, in writing, the necessity for such investigation. In the course of such investigation the commission or designated commissioner, or chief examiner, shall have the power to administer oaths, subpoena and require the attendance of witnesses and the production by them of books, papers, documents, and accounts appertaining to the investigation, and also to cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the superior court; and the oaths administered hereunder and the subpoenas issued hereunder shall have the same force and effect as the oaths administered by a superior court judge in his or her judicial capacity; and the failure upon the part of any person so subpoenaed to comply with the provisions of this section shall be deemed a violation of this chapter, and punishable as such;

(5) Hearings and Investigations: How conducted. All hearings and investigations before the commission, or designated commissioner, or chief examiner, shall be governed by this chapter and by rules of practice and procedure to be adopted by the commission, and in the conduct thereof neither the commission, nor designated commissioner shall be bound by the technical rules of evidence. No informality in any proceedings or hearing, or

in the manner of taking testimony before the commission or designated commissioner, shall invalidate any order, decision, rule or regulation made, approved or confirmed by the commission: PROVIDED, HOWEVER, That no order, decision, rule or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect whatsoever unless and until concurred in by at least one of the other two members;

(6) To hear and determine appeals or complaints respecting the administrative work of the personnel department; appeals upon the allocation of positions; the rejection of an examination, and such other matters as may be referred to the commission;

(7) Establish and maintain in card or other suitable form a roster of officers and employees;

(8) Provide for, formulate and hold competitive tests to determine the relative qualifications of persons who seek employment in any class or position and as a result thereof establish eligible lists for the various classes of positions, and to provide that persons laid off because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed;

(9) When a vacant position is to be filled, to certify to the appointing authority, on written request, the name of the person highest on the eligible list for the class. If there are no such lists, to authorize provisional or temporary appointment list of such class. Such temporary or provisional appointment shall not continue for a period longer than four months; nor shall any person receive more than one provisional appointment or serve more than four months as provisional appointee in any one fiscal year;

(10) Keep such records as may be necessary for the proper administration of this chapter. [1993 c 47 § 5; 1937 c 13 § 5; RRS § 9558a-5.]

Preferred rights in employment, examinations, appointments, etc., limited to actual members of armed forces: RCW 73.04.090.

Veterans' preference in examinations: RCW 41.04.010.

41.12.050 Persons included—Competitive examinations—Transfers, discharges, and reinstatements. The classified civil service and provisions of this chapter shall include all full paid employees of the police department of each city, town or municipality coming within its purview, except that individuals appointed as police chief after July 1, 1987, to a department with six or more commissioned officers, including the police chief, may be excluded by the legislative body of the city, town or municipality. All appointments to and promotions in the department shall be made solely on merit, efficiency and fitness except as provided in RCW 35.13.360 through 35.13.400, which shall be ascertained by open competitive examination and impartial investigation. No person shall be reinstated in or transferred, suspended or discharged from any such place, position or employment contrary to the provisions of this chapter. [1993 c 189 § 1; 1987 c 339 § 2; 1937 c 13 § 4; RRS § 9558a-4.]

Severability—Effective date—1987 c 339: See notes following RCW 35.21.333.

Chief of police or marshal—Eligibility requirements: RCW 35.21.333.

41.12.060 Existing police blanketed under civil service. For the benefit of the public service and to prevent delay, injury, or interruption therein by reason of the enactment of this chapter, all persons holding a position in the police department of any such city, including the chief thereof, when this chapter takes effect, who shall have served in such position for a period of at least six months last past continuously, are hereby declared eligible for permanent appointment under civil service to the offices, places, positions or employments which they shall then hold, respectively, without examination or other act on their part, and not on probation; and every such person is hereby automatically adopted and inducted permanently into civil service, into such office, place, position or employment which such person then holds as completely and effectually to all intents and purposes as if such person had been permanently appointed thereto under civil service after examination and investigation. [1937 c 13 § 6; RRS § 9558a-6.]

41.12.070 Qualifications of applicants. An applicant for a position of any kind under civil service, must be a citizen of the United States of America who can read and write the English language.

An applicant for a position of any kind under civil service must be of an age suitable for the position applied for, in ordinary good health, of good moral character and of temperate and industrious habits; these facts to be ascertained in such manner as the commission may deem advisable. [1972 ex.s. c 37 § 3; 1963 c 95 § 2; 1937 c 13 § 7; RRS § 9558a-7.]

Purpose—1972 ex.s. c 37: See note following RCW 41.08.070.

41.12.075 Residency as condition of employment—Discrimination because of lack of residency—Prohibited. No city, town, or municipality shall require any person applying for or holding an office, place, position, or employment under the provisions of this chapter or under any local charter or other regulations described in RCW 41.12.010 to reside within the limits of such municipal corporation as a condition of employment or to discriminate in any manner against any such person because of his residence outside of the limits of such city, town, or municipality. [1972 ex.s. c 37 § 5.]

Purpose—1972 ex.s. c 37: See note following RCW 41.08.070.

41.12.080 Tenure of employment—Grounds for discharge, reduction, or deprivation of privileges. The tenure of everyone holding an office, place, position or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

(1) Incompetency, inefficiency or inattention to or dereliction of duty;

(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other wilful failure on the part of the employee to properly conduct

himself; or any wilful violation of the provisions of this chapter or the rules and regulation to be adopted hereunder;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Dishonest, disgraceful, immoral or prejudicial conduct;

(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of any position under civil service;

(6) Conviction of a felony, or a misdemeanor, involving moral turpitude;

(7) Any other act or failure to act which in the judgment of the civil service commissioners is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service. [1937 c 13 § 8; RRS § 9558a-8.]

41.12.090 Procedure for removal, suspension, demotion or discharge—Investigation—Hearing—Appeal.

No person in the classified civil service who shall have been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted or discharged except for cause, and only upon written accusation of the appointing power, or any citizen or taxpayer; a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, demoted or discharged may within ten days from the time of his removal, suspension, demotion or discharge, file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. The investigation shall be confined to the determination of the question of whether such removal, suspension, demotion or discharge was or was not made for political or religious reasons and was or was not made in good faith [f]or cause. After such investigation the commission may affirm the removal, or if it shall find that the removal, suspension, or demotion was made for political or religious reasons, or was not made in good faith for cause, shall order the immediate reinstatement of [or] reemployment of such person in the office, place, position or employment from which such person was removed, suspended, demoted or discharged, which reinstatement shall, if the commission so provides in its discretion, be retroactive, and entitle such person to pay or compensation from the time of such removal, suspension, demotion or discharge. The commission upon such investigation, [in] lieu of affirming the removal, suspension, demotion or discharge may modify the order of removal, suspension, demotion or discharge by directing a suspension, without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay; the findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to the provisions of this section shall be had by public hearing, after reasonable notice to the accused of the time and place of such hearing, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel,

and presenting his defense. If such judgment or order be concurred in by the commission or a majority thereof, the accused may appeal therefrom to the court of original and unlimited jurisdiction in civil suits of the county wherein he resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of such judgment or order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to such judgment or order, be filed by the commission with such court. The commission shall, within ten days after the filing of such notice, make, certify and file such transcript with such court. The court of original and unlimited jurisdiction in civil suits shall thereupon proceed to hear and determine such appeal in a summary manner: PROVIDED, HOWEVER, That such hearing shall be confined to the determination of whether the judgment or order of removal, discharge, demotion or suspension made by the commission, was or was not made in good faith for cause, and no appeal to such court shall be taken except upon such ground or grounds. [1937 c 13 § 9; RRS § 9558a-9.]

41.12.100 Filling of vacancies—Probationary period.

Whenever a position in the classified service becomes vacant, the appointing power, if it desires to fill the vacancy, shall make requisition upon the commission for the name and address of a person eligible for appointment thereto. The commission shall certify the name of the person highest on the eligible list for the class to which the vacant position has been allocated, who is willing to accept employment. If there is no appropriate eligible list for the class, the commission shall certify the name of the person standing highest on said list held appropriate for such class. If more than one vacancy is to be filled an additional name shall be certified for each additional vacancy. The appointing power shall forthwith appoint such person to such vacant position.

Whenever requisition is to be made, or whenever a position is held by a temporary appointee and an eligible list for the class of such position exists, the commission shall forthwith certify the name of the person eligible for appointment to the appointing power, and said appointing power shall forthwith appoint the person so certified to said position. No person so certified shall be laid off, suspended, or given leave of absence from duty, transferred or reduced in pay or grade, except for reasons which will promote the good of the service, specified in writing, and after an opportunity to be heard by the commission and then only with its consent and approval.

To enable the appointing power to exercise a choice in the filling of positions, no appointment, employment or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of three to six months' probationary service, as may be provided in the rules of the civil service commission during which the appointing power may terminate the employment of the person certified to him, or it, if during the performance test thus afforded, upon observation or consideration of the performance of duty, the appointing power deems him unfit or unsatisfactory for service in the department, whereupon the appointing power shall designate the person certified as

standing next highest on any such list and such person shall likewise enter upon said duties until some person is found who is deemed fit for appointment, employment or promotion for the probationary period provided therefor, whereupon the appointment, employment or promotion shall be deemed to be complete. [1937 c 13 § 11; RRS § 9558a-11.]

41.12.110 Power to create offices, make appointments and fix salaries not infringed. All offices, places, positions and employments coming within the purview of this chapter, shall be created by the person or group of persons who, acting singly or in conjunction, as a mayor, city manager, chief, common council, commission or otherwise, it is vested by law with power and authority to select, appoint, or employ any person coming within the purview of this chapter, and nothing herein contained shall infringe upon the power and authority of any such person or group of persons, or appointing power, to fix the salaries and compensation of all employees employed hereunder. [1937 c 13 § 12; RRS § 9558a-12.]

41.12.120 Approval of payrolls. No treasurer, auditor, comptroller or other officer, or employee of any city, town or municipality in which this chapter is effective, shall approve the payment of or be in any manner concerned in paying, auditing or approving any salary, wage, or other compensation for services, to any person subject to the jurisdiction and scope of this chapter, unless a payroll, estimate or account for such salary, wage or other compensation, containing the names of the persons to be paid, the amount to be paid to each such person, the services on account of which same is paid, and any other information which, in the judgment of the civil service commission, should be furnished on said payroll, bears the certificate of the civil service commission or of its secretary or other duly authorized agent, that the persons named in such payroll, estimate or account have been appointed or employed in compliance with the terms of this chapter and with the rules of the commission, and that the said payroll, estimate or account is, so far as known to the said commission, a true and accurate statement. The commission shall refuse to certify the pay of any public officer or employee whom it finds to be illegally or improperly appointed, and may further refuse to certify the pay of any public officer or employee who shall wilfully or through culpable negligence violate or fail to comply with this chapter or with the rules of the commission. [1937 c 13 § 13; RRS § 9558a-13.]

41.12.130 Leaves of absence—Notice—Filling vacancy. Leave of absence, without pay, may be granted by any appointing power to any person under civil service: PROVIDED, That such appointing power shall give notice of such leave to the commission. All temporary employment caused by leaves of absence shall be made from the eligible list of the classified civil service. [1937 c 13 § 14; RRS § 9558a-14.]

41.12.140 Enforcement by civil action—Legal counsel. It shall be the duty of the commission to begin and conduct all civil suits which may be necessary for the proper enforcement of this chapter and of the rules of the commis-

sion. The commission shall be represented in such suits by the chief legal officer of the city, but said commission may in any case be represented by special counsel appointed by it. [1937 c 13 § 15; RRS § 9558a-15.]

41.12.150 Deceptive practices, false marks, etc., prohibited. No commissioner or any other person, shall, by himself or in cooperation with one or more persons, defeat, deceive, or obstruct any person in respect of his right of examination or registration according to the rules and regulations of this chapter, or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, registered or certified pursuant to the provisions of this chapter, or aid in so doing, or make any false representation concerning the same, or concerning the person examined, or furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified, or to be examined, registered or certified or persuade any other person, or permit or aid in any manner any other person to personate him, in connection with any examination or registration of application or request to be examined or registered. [1937 c 13 § 16; RRS § 9558a-16.]

41.12.160 Political contributions and services. No person holding any office, place, position or employment subject to civil service, is under any obligation to contribute to any political fund or to render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote, or in any manner change the official rank, employment or compensation of any person under civil service, or promise or threaten so to do, for giving or withholding, or neglecting to make any contribution of money, or services, or any other valuable thing, for any political purpose. [1937 c 13 § 17; RRS § 9558a-17.]

Political activities of public employees: RCW 41.06.250.

41.12.170 Local legislation required—Penalty. The various cities affected by the provisions of this chapter, shall immediately upon the taking effect thereof, enact appropriate legislation for carrying this chapter into effect, and the failure upon the part of the duly constituted authorities of any such city so to do shall be considered a violation of this chapter and be punishable as such. [1937 c 13 § 18; RRS § 9558a-18.]

41.12.180 Office and supplies to be furnished—Penalty for not providing. The duly constituted authorities of each and every city coming within the purview of this chapter, shall provide the commission with suitable and convenient rooms and accommodations and cause the same to be furnished, heated and lighted and supplied with all office supplies and equipment necessary to carry on the business of the commission and with such clerical assistance as may be necessary, all of which is to be commensurate with the number of persons in each such city coming within the purview of this chapter; and the failure upon the part of the duly constituted authorities to do so, shall be considered

a violation of this chapter and shall be punishable as such. [1937 c 13 § 19; RRS § 9558a-19.]

41.12.183 Time limit for creation of commission—Penalty. In ninety days after the taking effect of this chapter, it shall be the duty of the duly constituted authorities in each such city, subject to the provisions of this chapter, to appoint and create a civil service commission as provided for in RCW 41.12.010, and the failure upon the part of said duly constituted authorities, or any of them, so to do, shall be deemed a violation of this chapter, and shall be punishable as such. [1937 c 13 § 20; RRS § 9558a-20.]

41.12.185 Duty of commission to organize and function—Penalty for violation. It shall be the duty of each commission appointed subject to the provisions of this chapter, to immediately organize and see to it that the provisions thereof are carried into effect, and to this end to make suitable rules and regulations not inconsistent with the purpose of this chapter, for the purpose of carrying the provisions thereof into effect; and the failure upon the part of said commission, or any individual member thereof to do so, shall be deemed a violation of this chapter, and shall be punishable as such. [1937 c 13 § 21; RRS § 9558a-21.]

41.12.190 Cooperation of city officers and employees enjoined. It shall be the duty of all officers and employees of any such city to aid in all proper ways of carrying out the provisions of this chapter, and such rules and regulations as may, from time to time, be prescribed by the commission thereunder and to afford the commission, its members and employees, all reasonable facilities and assistance to inspect all books, papers, documents and accounts applying or in any way appertaining to any and all offices, places, positions and employments, subject to civil service, and also to produce said books, papers, documents and accounts, and attend and testify, whenever required so to do by the commission or any commissioner. [1937 c 13 § 10; RRS § 9558a-10.]

41.12.200 Appropriation for expenses. For the purpose of carrying out the provisions of this chapter, such city, town or municipality is hereby authorized to appropriate from the general fund not to exceed four-tenths of one percent of the total payroll of those included under the jurisdiction and scope of the chapter: PROVIDED, HOWEVER, That if the city council or other proper legislative body shall make an appropriation for the support of said commission equal to or more than the said continuing appropriation in any year, this section shall not be operative for said year but otherwise shall be in full force and effect. [1937 c 13 § 22; RRS § 9558a-22.]

41.12.210 Penalty—Jurisdiction. Any person who shall wilfully violate any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars and by imprisonment in the county jail for not longer than thirty days, or by both such fine and imprisonment. The court of original and unlimited jurisdiction

tion in civil suits shall have jurisdiction of all such offenses defined by this chapter. [1937 c 13 § 23; RRS § 9558a-23.]

41.12.220 Definitions. As used in this chapter, the following mentioned terms shall have the following described meanings:

The term "commission" means the civil service commission herein created, and the term "commissioner" means any one of the three commissioners of that commission.

The term "appointing power" includes every person or group of persons who, acting singly or in conjunction, as a mayor, city manager, council, common council, commission, or otherwise, is or are, invested by law with power and authority to select, appoint, or employ any person to hold any office, place, position or employment subject to civil service.

The term "appointment" includes all means of selection, appointing or employing any person to hold any office, place, position or employment subject to civil service.

The term "city" includes all cities, towns and municipalities having a full paid police department.

The term "full paid police department" means that the officers and policemen employed in such are paid regularly by the city and devote their whole time to police duty: PROVIDED, "full paid police department" whenever used in this chapter shall also mean "full paid policemen" [1937 c 13 § 24; RRS § 9558a-24.]

41.12.900 Severability—1937 c 13. If any section, subsection, subdivision, sentence, clause or phrase of this chapter, shall for any reason be held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this chapter. [1937 c 13 § 25; RRS § 9558a-25.]

41.12.910 Repeal. All acts and parts of acts in conflict with the provisions of this chapter are hereby repealed insofar as they conflict with the provisions of this chapter. [1937 c 13 § 26; RRS § 9558a-26.]

Chapter 41.14

CIVIL SERVICE FOR SHERIFF'S OFFICE

Sections

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41.14.010 Declaration of purpose. The general purpose of this chapter is to establish a merit system of employment for county deputy sheriffs and other employees of the office of county sheriff, thereby raising the standards and efficiency of such offices and law enforcement in general. [1987 c 251 § 1; 1985 c 429 § 3; 1959 c 1 § 1 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.020 Terms defined. Definition of terms:

(1) "Commission" means the civil service commission, or combined county civil service commission, herein created, and "commissioner" means any one of the three members of any such commission;

(2) "Appointing power" means the county sheriff who is invested by law with power and authority to select, appoint, or employ any deputy, deputies or other necessary employees subject to civil service;

(3) "Appointment" includes all means of selecting, appointing, or employing any person to any office, place, position, or employment subject to civil service;

(4) "County" means any county of the state, or any counties combined pursuant to RCW 41.14.040 for the purpose of carrying out the provisions of this chapter;

(5) "Deputy sheriff or other members of the office of county sheriff" means all persons regularly employed in the office of county sheriff either on a part time or full time basis. [1959 c 1 § 2 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.030 Civil service commission—Appointment, terms, qualifications, compensation, etc. There is created in each county and in each combination of counties, combined pursuant to RCW 41.14.040 to carry out the provisions of this chapter, a civil service commission which shall be composed of three persons. The commission members shall be appointed by the board of county commissioners, or boards of county commissioners of each combination of counties, within sixty days after December 4, 1958. No

person shall be appointed to the commission who is not a citizen of the United States, a resident of the county, or one of the counties combined, for at least two years immediately preceding his appointment, and an elector of the county wherein he resides. The term of office of the commissioners shall be six years, except that the first three members of the commission shall be appointed for different terms, as follows: One to serve for a period of two years, one to serve for a period of four years, and one to serve for a period of six years. Any member of the commission may be removed from office for incompetency, incompatibility, or dereliction of duty, or malfeasance in office, or other good cause: PROVIDED, That no member of the commission shall be removed until charges have been preferred, in writing, due notice, and a full hearing had. Any vacancy in the commission shall be filled by the county commissioners for the unexpired term. Two members of the commission shall constitute a quorum and the votes of any two members concurring shall be sufficient for the decision of all matters and the transaction of all business to be decided or transacted by the commission. Confirmation of the appointment of commissioners by any legislative body shall not be required. At the time of appointment not more than two commissioners shall be adherents of the same political party. No member after appointment shall hold any salaried public office or engage in county employment, other than his commission duties. The members of the commission shall serve without compensation. [1959 c 1 § 3 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.040 Combined system authorized in counties with populations of less than forty thousand. Any counties with populations of less than forty thousand, whether contiguous or not, are authorized to establish and operate a combined civil service system to serve all counties so combined. The combination of any such counties shall be effective whenever each board of county commissioners of the counties involved adopts a resolution declaring intention to participate in the operation of a combined county civil service system in accordance with agreements made between any such counties. Any such combined county civil service commission shall serve the employees of each county sheriff's office impartially and according to need.

All matters affecting the combined civil service commission, including the selection of commissioners, shall be decided by majority vote of all the county commissioners of the counties involved.

All the provisions of this chapter shall apply equally to any such combined civil service system. [1991 c 363 § 114; 1959 c 1 § 4 (Initiative Measure No. 23, approved November 4, 1958).]

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

41.14.050 Commission—Organization, meetings—Chief examiner, qualifications, duties. Immediately after appointment the commission shall organize by electing one of its members chairman and shall hold regular meetings at least once a month, and such additional meetings as may be required for the proper discharge of its duties.

It shall appoint a chief examiner who shall also serve as secretary of the commission and such assistants as may be necessary. The chief examiner shall keep the records for the commission, preserve all reports made to it, superintend and keep a record of all examinations held under its direction, and perform such other duties as the commission may prescribe.

The chief examiner shall be appointed as a result of competitive examination, which examination must be open to all properly qualified citizens of the county: PROVIDED, That no appointee of the commission, either as chief examiner or as an assistant to the chief examiner, shall be an employee of the sheriff's department. The chief examiner may be subject to suspension, reduction, or discharge in the same manner and subject to the same limitations as are provided in the case of members of the classified service. [1979 ex.s. c 153 § 1; 1959 c 1 § 5 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.060 Powers and duties of commission. It shall be the duty of the civil service commission:

(1) To make suitable rules and regulations not inconsistent with the provisions hereof. Such rules and regulations shall provide in detail the manner in which examinations may be held, and appointments, promotions, reallocations, transfers, reinstatements, demotions, suspensions, and discharges shall be made, and may also provide for any other matters connected with the general subject of personnel administration, and which may be considered desirable to further carry out the general purposes of this chapter, or which may be found to be in the interest of good personnel administration. The rules and regulations and any amendments thereof shall be printed, mimeographed, or multigraphed for free public distribution. Such rules and regulations may be changed from time to time.

(2) To give practical tests which shall consist only of subjects which will fairly determine the capacity of persons examined to perform duties of the position to which appointment is to be made. Such tests may include tests of physical fitness or manual skill or both.

(3) To make investigations concerning and report upon all matters touching the enforcement and effect of the provisions of this chapter, and the rules and regulations prescribed hereunder; to inspect all departments, offices, places, positions, and employments affected by this chapter, and ascertain whether this chapter and all such rules and regulations are being obeyed. Such investigations may be made by the commission or by any commissioner designated by the commission for that purpose. Not only must these investigations be made by the commission as aforesaid, but the commission must make like investigation on petition of a citizen, duly verified, stating that irregularities or abuses exist, or setting forth in concise language, in writing, the necessity for such investigation. In the course of such investigation the commission or designated commissioner, or chief examiner, may administer oaths, subpoena and require the attendance of witnesses and the production by them of books, papers, documents, and accounts appertaining to the investigation and also cause the deposition of witnesses residing within or without the state to be taken in the manner prescribed by law for like depositions in civil actions in the

superior court; and the oaths administered and the subpoenas issued hereunder shall have the same force and effect as the oaths administered and subpoenas issued by a superior court judge in his judicial capacity; and the failure of any person so subpoenaed to comply with the provisions of this section shall be deemed a violation of this chapter, and punishable as such.

(4) To conduct hearings and investigations in accordance with this chapter and by the rules of practice and procedure adopted by the commission, and in the conduct thereof neither the commission, nor designated commissioner shall be bound by technical rules of evidence. No informality in any proceedings or hearing, or in the manner of taking testimony before the commission or designated commissioner, shall invalidate any order, decision, rule, or regulation made, approved, or confirmed by the commission: PROVIDED, That no order, decision, rule, or regulation made by any designated commissioner conducting any hearing or investigation alone shall be of any force or effect whatsoever unless and until concurred in by at least one of the other two members.

(5) To hear and determine appeals or complaints respecting the allocation of positions, the rejection of an examinee, and such other matters as may be referred to the commission.

(6) To provide for, formulate, and hold competitive tests to determine the relative qualifications of persons who seek employment in any class or position and as a result thereof establish eligible lists for the various classes of positions, and provide that persons laid off, or who have accepted voluntary demotion in lieu of layoff, because of curtailment of expenditures, reduction in force, and for like causes, head the list in the order of their seniority, to the end that they shall be the first to be reemployed or reinstated in their former job class.

(7) To certify to the appointing authority, when a vacant position is to be filled, on written request, the names of the three persons highest on the eligible list for the class. If there is no such list, to authorize a provisional or temporary appointment list for such class. Such temporary provisional appointment shall not continue for a period longer than four months; nor shall any person receive more than one provisional appointment or serve more than four months as provisional appointee in any one fiscal year.

(8) To keep such records as may be necessary for the proper administration of this chapter. [1979 ex.s. c 153 § 2; 1959 c 1 § 6 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.065 Delegation of powers and duties of commission in county with a population of one million or more. Any county with a population of one million or more may assign the powers and duties of the commission to such county agencies or departments as may be designated by charter or ordinance: PROVIDED, That the powers and duties of the commission under RCW 41.14.120 shall not be assigned to any other body but shall continue to be vested in the commission, which shall exist to perform such powers and duties, together with such other adjudicative functions as may be designated by charter or ordinance. [1991 c 363 § 115; 1987 c 251 § 2.]

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

41.14.070 Classified and unclassified service designated—Procedures. (1) The classified civil service and provisions of this chapter shall include all deputy sheriffs and other employees of the office of sheriff in each county except the county sheriff in every county and an additional number of positions, designated the unclassified service, determined as follows:

Staff Personnel	Unclassified Position Appointments
1 through 10	2
11 through 20	3
21 through 50	4
51 through 100	5
101 and over	6

(2) The unclassified position appointments authorized by this section must include selections from the following positions up to the limit of the number of positions authorized: Undersheriff, inspector, chief criminal deputy, chief civil deputy, jail superintendent, and administrative assistant or administrative secretary. The initial selection of specific positions to be exempt shall be made by the sheriff, who shall notify the civil service commission of his or her selection. Subsequent changes in the designation of which positions are to be exempt may be made only with the concurrence of the sheriff and the civil service commission, and then only after the civil service commission has heard the issue in open meeting. Should the position or positions initially selected by the sheriff to be exempt (unclassified) pursuant to this section be under the classified civil service at the time of such selection, and should it (or they) be occupied, the employee(s) occupying said position(s) shall have the right to return to the next highest position or a like position under classified civil service.

(3) In counties with a sheriff's department that operates the 911 emergency communications system, in addition to the unclassified positions authorized in subsections (1), (2), and (4) of this section, the sheriff may designate one unclassified position for the 911 emergency communications system.

(4) The county legislative authority of any county with a population of five hundred thousand or more operating under a home rule charter may designate unclassified positions of administrative responsibility not to exceed twelve positions. [1997 c 62 § 1; 1991 c 363 § 116; 1979 ex.s. c 153 § 3; 1975 1st ex.s. c 186 § 1; 1959 c 1 § 7 (Initiative Measure No. 23, approved November 4, 1958).]

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

41.14.080 Classified service—Appointment, promotion, transfer, suspension, discharge. All appointments to and promotions to positions in the classified civil service of the office of county sheriff shall be made solely on merit, efficiency, and fitness, which shall be ascertained by open competitive examination and impartial investigation: PROVIDED, That before June 30, 1981, employees in an existing county personnel system may be transferred to newly created and classified positions within such county's

sheriff's office, in order to permanently transfer the functions of these positions, without meeting the open competitive examination requirements of this section if the transfer is approved by the civil service commission created in RCW 41.14.030. No person in the classified civil service shall be reinstated in or transferred, suspended, or discharged from any such place, position, or employment contrary to the provisions of this chapter. [1980 c 108 § 1; 1959 c 1 § 8 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.090 Status of existing employees in classified service. For the benefit of the public service and to prevent delay, injury, or interruption therein by reason of the enactment hereof, all persons holding a position which is deemed classified by RCW 41.14.070 for a continuous period of six months prior to *the effective date of this act, are eligible for permanent appointment under civil service to the offices, places, positions, or employments which they then held without examination or other act on their part, and not on probation; and every such person is automatically adopted and inducted permanently into civil service, into the office, place, position, or employment which he then held as completely and effectually to all intents and purposes as if such person had been permanently appointed thereto under civil service after examination and investigation. [1959 c 1 § 9 (Initiative Measure No. 23, approved November 4, 1958).]

*Reviser's note: "the effective date of this act" (Initiative Measure No. 23) was December 4, 1958.

41.14.100 Qualifications of applicants for position. An applicant for a position of any kind under civil service, must be a citizen of the United States who can read and write the English language. [1963 c 95 § 3; 1959 c 1 § 10 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.110 Tenure—Grounds for deprivation. The tenure of every person holding an office, place, position, or employment under the provisions of this chapter shall be only during good behavior, and any such person may be removed or discharged, suspended without pay, demoted, or reduced in rank, or deprived of vacation privileges or other special privileges for any of the following reasons:

(1) Incompetency, inefficiency, or inattention to, or dereliction of duty;

(2) Dishonesty, intemperance, immoral conduct, insubordination, discourteous treatment of the public, or a fellow employee, or any other act of omission or commission tending to injure the public service; or any other wilful failure on the part of the employee to properly conduct himself; or any wilful violation of the provisions of this chapter or the rules and regulations to be adopted hereunder;

(3) Mental or physical unfitness for the position which the employee holds;

(4) Dishonest, disgraceful, or prejudicial conduct;

(5) Drunkenness or use of intoxicating liquors, narcotics, or any other habit forming drug, liquid, or preparation to such extent that the use thereof interferes with the efficiency or mental or physical fitness of the employee, or which precludes the employee from properly performing the function and duties of any position under civil service;

(6) Conviction of a felony, or a misdemeanor involving moral turpitude;

(7) Any other act or failure to act which in the judgment of the civil service commission is sufficient to show the offender to be an unsuitable and unfit person to be employed in the public service. [1959 c 1 § 11 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.120 Removal, suspension, demotion, or discharge—Procedure—Appeal. No person in the classified civil service who has been permanently appointed or inducted into civil service under provisions of this chapter, shall be removed, suspended, demoted, or discharged except for cause, and only upon written accusation of the appointing power or any citizen or taxpayer; a written statement of which accusation, in general terms, shall be served upon the accused, and a duplicate filed with the commission. Any person so removed, suspended, discharged, or demoted may within ten days from the time of his removal, suspension, discharge, or demotion file with the commission a written demand for an investigation, whereupon the commission shall conduct such investigation. Upon receipt of the written demand for an investigation, the commission shall within ten days set a date for a public hearing which will be held within thirty days from the date of receipt. The investigation shall be confined to the determination of the question of whether the removal, suspension, demotion, or discharge was made in good faith for cause. After such investigation the commission shall render a written decision within ten days and may affirm the removal, suspension, demotion, or discharge, or if it finds that removal, suspension, demotion, or discharge was not made in good faith for cause, shall order the immediate reinstatement or reemployment of such person in the office, place, position, or employment from which he was removed, suspended, demoted, or discharged, which reinstatement shall, if the commission so provides, be retroactive, and entitle such person to pay or compensation from the time of the removal, suspension, demotion, or discharge. The commission upon such investigation, in lieu of affirming a removal, suspension, demotion, or discharge, may modify the order by directing the removal, suspension, demotion, or discharge without pay, for a given period, and subsequent restoration to duty, or demotion in classification, grade, or pay. The findings of the commission shall be certified, in writing to the appointing power, and shall be forthwith enforced by such officer.

All investigations made by the commission pursuant to this section shall be by public hearing, after reasonable notice to the accused of the time and place thereof, at which hearing the accused shall be afforded an opportunity of appearing in person and by counsel, and presenting his defense. If order of removal, suspension, demotion, or discharge is concurred in by the commission or a majority thereof, the accused may appeal therefrom to the superior court of the county wherein he resides. Such appeal shall be taken by serving the commission, within thirty days after the entry of its order, a written notice of appeal, stating the grounds thereof, and demanding that a certified transcript of the record and of all papers on file in the office of the commission affecting or relating to its order, be filed by the commission with the court. The commission shall, within

ten days after the filing of the notice, make, certify, and file such transcript with the court. The court shall thereupon proceed to hear and determine the appeal in a summary manner. Such hearing shall be confined to the determination of whether the order of removal, suspension, demotion, or discharge made by the commission, was or was not made in good faith for cause, and no appeal shall be taken except upon such ground or grounds. The decision of the superior court may be appealed to the supreme court or the court of appeals. [1984 c 199 § 1; 1982 c 133 § 1; 1971 c 81 § 102; 1959 c 1 § 12 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.130 Filling vacancies in classified service—Eligibility list—Probation. Whenever a position in the classified service becomes vacant, the appointing power, if it desires to fill the vacancy, shall requisition the commission for the names and addresses of persons eligible for appointment thereto. Before a requisition can be made, the appointing authority shall give employees of the appointing authority who are in layoff status or who have been notified of an intended layoff an opportunity to qualify for any class within the office of the appointing authority. The commission shall certify the names of the three persons highest on the eligible list for the class to which the vacant position has been allocated, who are willing to accept employment. If there is no appropriate eligible list for the class, the commission shall certify the names of the three persons standing highest on the list held appropriate for such class. If more than one vacancy is to be filled an additional name shall be certified for each additional vacancy. The appointing power shall forthwith appoint a person from those certified to the vacant position.

To enable the appointing power to exercise a greater degree of choice in the filling of positions, no appointment, employment, or promotion in any position in the classified service shall be deemed complete until after the expiration of a period of one year's probationary service, as may be provided in the rules of the civil service commission, during which the appointing power may terminate the employment of the person appointed, if during the performance test thus afforded, upon observation or consideration of the performance of duty, the appointing power deems such person unfit or unsatisfactory for service in the office of county sheriff. Thereupon the appointing power shall again requisition the commission for the names and addresses of persons eligible for appointment in the manner provided by this section and the person appointed in the manner provided by this section shall likewise enter upon said duties for the probationary period, until some person is found who is deemed fit for appointment, employment, or promotion whereupon the appointment, employment, or promotion shall be deemed complete. [1984 c 199 § 2; 1979 ex.s. c 153 § 4; 1959 c 1 § 13 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.140 Power to fill positions—Consent of county commissioners—Salaries and compensation. All offices, places, positions, and employments coming within the purview of this chapter, shall be filled by the appointing power with the consent of the board of county commissioners, and

nothing herein contained shall infringe upon such authority that an appointing power may have to fix the salaries and compensation of all employees employed hereunder. [1959 c 1 § 14 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.150 Procedure for payment of compensation—Refusal to pay. No treasurer, auditor or other officer, or employee of any county subject to this chapter shall approve the payment of or be in any manner concerned in paying, auditing, or approving any salary, wage, or other compensation for services, to any person subject to the jurisdiction and scope of this chapter, unless a payroll, estimate, or account for such salary, wage, or other compensation, containing the names of the persons to be paid, the amount to be paid to each such person, the services on account of which same is paid, and any other information which, in the judgment of the civil service commission, should be furnished on such payroll, bears the certificate of the civil service commission, or of its chief examiner or other duly authorized agent, that the persons named therein have been appointed or employed in compliance with the terms of this chapter and the rules of the commission, and that the payroll, estimate, or account is, insofar as known to the commission, a true and accurate statement. The commission shall refuse to certify the pay of any public officer or employee whom it finds to be illegally or improperly appointed, and may further refuse to certify the pay of any public officer or employee who wilfully or through culpable negligence, violates or fails to comply with this chapter or with the rules of the commission. [1959 c 1 § 15 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.160 Leaves of absence. Leave of absence, without pay, may be granted by any appointing power to any person under civil service: PROVIDED, That such appointing power gives notice of the leave to the commission. All temporary employment caused by leaves of absence shall be made from the eligible list of the classified civil service. [1959 c 1 § 16 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.170 Actions to enforce chapter—Duties of prosecuting attorneys. The commission shall begin and conduct all civil suits which may be necessary for the proper enforcement of this chapter and rules of the commission. The commission shall be represented in such suits by the prosecuting attorney of the county. In the case of combined counties any one or more of the prosecuting attorneys of each county so combined may be selected by the commission to represent it. [1959 c 1 § 17 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.180 Prohibited acts relating to registration, examination, certification—Discrimination prohibited. No commissioner or any other person, shall, by himself or in cooperation with others, defeat, deceive, or obstruct any person in respect of his right of examination or registration according to the rules and regulations, or falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined, registered, or certified

pursuant to this chapter, or aid in so doing, or make any false representation concerning the same, or concerning the person examined, or furnish any person any special or secret information for the purpose of improving or injuring the prospects or chances of any person so examined, registered or certified, or to be examined, registered, or certified, or persuade any other person, or permit or aid in any manner any other person to personate him, in connection with any examination or registration of application or request to be examined or registered.

The right of any person to an appointment or promotion to any position in a sheriff's office shall not be withheld because of his race, color, creed, national origin, political affiliation or belief, nor shall any person be dismissed, demoted, or reduced in grade for such reason. [1959 c 1 § 18 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.190 Political activities regulated. No person holding any office, place, position, or employment subject to civil service, shall contribute to any political fund or render any political service to any person or party whatsoever, and no person shall be removed, reduced in grade or salary, or otherwise prejudiced for refusing so to do. No public officer, whether elected or appointed, shall discharge, promote, demote, or in any manner change the official rank, employment, or compensation of any person under civil service or promise or threaten so to do for giving or withholding, or neglecting to make any contribution of money, or service, or any other valuable thing, for any political purpose. [1959 c 1 § 19 (Initiative Measure No. 23, approved November 4, 1958).]

Political activities of public employees: RCW 41.06.250.

41.14.200 Cooperation and aid by other county officers and employees. All officers and employees of each county shall aid in all proper ways in carrying out the provisions of this chapter, and such rules and regulations as may, from time to time, be prescribed by the commission and afford the commission, its members, and employees, all reasonable facilities and assistance in the inspection of books, papers, documents, and accounts applying or in any way appertaining to any and all offices, places, positions, and employments, subject to civil service, and also shall produce such books, papers, documents, and accounts, and attend and testify, whenever required so to do by the commission or any commissioner. [1959 c 1 § 20 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.210 Funds for commission in counties with populations of two hundred ten thousand or more—County budget—Surplus. The county legislative authority or [of] each county with a population of two hundred ten thousand or more may provide in the county budget for each fiscal year a sum equal to one percent of the preceding year's total payroll of those included under the jurisdiction and scope of this chapter. The funds so provided shall be used for the support of the commission. Any part of the funds so provided and not expended for the support of the commission during the fiscal year shall be placed in the general fund of the county, or counties according to the ratio

of contribution, on the first day of January following the close of such fiscal year. [1991 c 363 § 117; 1971 ex.s. c 214 § 3; 1959 c 1 § 21 (Initiative Measure No. 23, approved November 4, 1958).]

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

41.14.220 Penalty—Jurisdiction. Any person who wilfully violates any of the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine of not more than one hundred dollars and by imprisonment in the county jail for not longer than thirty days or by both such fine and imprisonment. The superior court shall have jurisdiction of all such offenses. [1959 c 1 § 22 (Initiative Measure No. 23, approved November 4, 1958).]

41.14.250 City contracts to obtain sheriff's office law enforcement services—Transfer of police department employees. When any city or town shall contract with the county sheriff's office to obtain law enforcement services to the city or town, any employee of the police department of such city or town who (1) was at the time such contract was entered into employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the county sheriff's office under such contract (2) will, as a direct consequence of such contract, be separated from the employ of the city or town, and (3) meets the minimum standards and qualifications of the county sheriff's office, then such employee may transfer his employment to the county sheriff's office as provided for in RCW 41.14.260 and 41.14.270. [1972 ex.s. c 48 § 1.]

41.14.260 City contracts to obtain sheriff's office law enforcement services—Transfer of police department employees into county civil service for sheriff's office—Seniority for employment. (1) An eligible employee may transfer into the county civil service system for the sheriff's office by filing a written request with the county civil service commission and by giving written notice thereof to the legislative authority of the city or town. Upon receipt of such request by the civil service commission the transfer of employment shall be made. The employee so transferring will (1) be on probation for the same period as are new employees of the sheriff's office, (2) be eligible for promotion after completion of the probationary period as completed, (3) receive a salary at least equal to that of other new employees of the sheriff's office, and (4) in all other matters, such as retirement, vacation, etc., have, within the county civil service system, all the rights, benefits, and privileges that he would have been entitled to had he been a member of the county sheriff's office from the beginning of his employment with the city or town police department. The city or town shall, upon receipt of such notice, transmit to the county civil service commission a record of the employee's service with the city or town which shall be credited to such member as a part of his period of employment in the county sheriff's office. The sheriff may appoint the transferring employee to whatever duties he feels are in the best interest of the department and the individual.

(2) If in the process of contracting for law enforcement services economies or efficiencies are achieved or if the city or town intends by such contract to curtail expenditures and the level of services to the city or town, then only so many of the transferring employees shall be placed upon the payroll of the sheriff's office as the sheriff determines are needed to provide the contracted services. These needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in RCW 41.14.250, 41.14.260, and 41.14.270 shall head the list of their respective class or job listing in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the county sheriff's office when appropriate positions become available. [1972 ex.s. c 48 § 2.]

41.14.270 City contracts to obtain sheriff's office law enforcement services—Lay offs—Notice—Time limitation for transfers. When a city or town shall contract with the county sheriff's office for law enforcement services and as a result thereof lays off any employee who is eligible to transfer to the county sheriff's office pursuant to RCW 41.14.250 and 41.14.260, the city or town shall notify such employee of his right to so transfer and such employee shall have ninety days to transfer his employment to the county sheriff's office: PROVIDED, That any employee layed off during the year prior to February 21, 1972 shall have ninety days after the effective date to transfer his employment. [1972 ex.s. c 48 § 3.]

41.14.280 City contracts to obtain sheriff's office law enforcement services—Rules and regulations. In addition to its other duties prescribed by law, the civil service commission shall make such rules and regulations as may be necessary to provide for the orderly integration of employees of a city or town who shall transfer to the county sheriff's office pursuant to RCW 41.14.250, 41.14.260, and 41.14.270. [1972 ex.s. c 48 § 4.]

41.14.290 Appointment of classified employee to exempt position—Return to regular position. Any classified employee having civil service status in a position may take an appointment in an exempt position in the same county and maintain the right to return to his or her regular position or to a like position at the conclusion of such appointment. Such employee must apply to return to classified service within thirty calendar days of:

- (1) Termination of employment in such exempt position; or
- (2) Termination of employment in any other exempt position in which the employee subsequently serves provided there was no break in service with the county of more than thirty calendar days. [1979 ex.s. c 153 § 5.]

41.14.900 Severability—1959 c 1. If any section, sentence, clause, or phrase of this chapter should be held to be invalid or unconstitutional, the validity or constitutionality thereof shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this chapter. [1959 c 1 § 23 (Initiative Measure No. 23, approved November 4, 1958).]

Chapter 41.16

FIREMEN'S RELIEF AND PENSIONS—1947 ACT

Sections

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 41.16.900 Severability—1947 c 91.
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 41.16.920 Construction—1959 c 5—Benefits retroactively authorized.
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Prior acts relating to firemen's relief and pensions: 1935 c 39; 1929 c 86; 1919 c 196; 1909 c 50 were repealed by 1947 c 91 § 12 (codified herein as RCW 41.16.230).

Firemen's relief and pensions—1955 act: Chapter 41.18 RCW.

Rights of fireman injured outside corporate limits of municipality: RCW 35.84.050.

Volunteer fire fighters' relief and pensions: Chapter 41.24 RCW.

41.16.010 Terms defined. For the purpose of this chapter, unless clearly indicated by the context, words and phrases shall have the following meaning:

(1) "Beneficiary" shall mean any person or persons designated by a fireman in a writing filed with the board, and who shall be entitled to receive any benefits of a deceased fireman under this chapter.

(2) "Board" shall mean the municipal firemen's pension board.

(3) "Child or children" shall mean a child or children unmarried and under eighteen years of age.

(4) "Contributions" shall mean and include all sums deducted from the salary of firemen and paid into the fund as hereinafter provided.

(5) "Disability" shall mean and include injuries or sickness sustained as a result of the performance of duty.

(6) "Fireman" shall mean any person regularly or temporarily, or as a substitute, employed and paid as a member of a fire department, who has passed a civil service

examination for fireman and who is actively employed as a fireman; and shall include any "prior fireman".

(7) "Fire department" shall mean the regularly organized, full time, paid, and employed force of firemen of the municipality.

(8) "Fund" shall mean the firemen's pension fund created herein.

(9) "Municipality" shall mean every city and town having a regularly organized full time, paid, fire department employing firemen.

(10) "Performance of duty" shall mean the performance of work and labor regularly required of firemen and shall include services of an emergency nature rendered while off regular duty, but shall not include time spent in traveling to work before answering roll call or traveling from work after dismissal at roll call.

(11) "Prior fireman" shall mean a fireman who was actively employed as a fireman of a fire department prior to the first day of January, 1947, and who continues such employment thereafter.

(12) "Retired fireman" shall mean and include a person employed as a fireman and retired under the provisions of chapter 50, Laws of 1909, as amended.

(13) "Widow or widower" means the surviving wife or husband of a retired fireman who was retired on account of length of service and who was lawfully married to such fireman; and whenever that term is used with reference to the wife or former wife or husband or former husband of a retired fireman who was retired because of disability, it shall mean his or her lawfully married wife or husband on the date he or she sustained the injury or contracted the illness that resulted in his or her disability. Said term shall not mean or include a surviving wife or husband who by process of law within one year prior to the retired fireman's death, collected or attempted to collect from him or her funds for the support of herself or himself or for his or her children. [1973 1st ex.s. c 154 § 61; 1947 c 91 § 1; Rem. Supp. 1947 § 9578-40.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

41.16.020 Pension board created—Members—Terms—Vacancies—Officers—Quorum. There is hereby created in each city and town a municipal firemen's pension board to consist of the following five members, ex officio, the mayor, or in a city of the first class, the mayor or his designated representative who shall be an elected official of the city, who shall be chairman of the board, the city comptroller or clerk, the chairman of finance of the city council, or if there is no chairman of finance, the city treasurer, and in addition, two regularly employed or retired firemen elected by secret ballot of the employed and retired firemen. Retired members who are subject to the jurisdiction of the pension board have both the right to elect and the right to be elected under this section. The members to be elected by the firemen shall be elected annually for a two year term. The two firemen elected members shall, in turn, select a third eligible member who shall serve as an alternate in the event of an absence of one of the regularly elected members. In case a vacancy occurs in the membership of the firemen or retired members, the members shall in the same manner elect a successor to serve his unexpired term.

The board may select and appoint a secretary who may, but need not be a member of the board. In case of absence or inability of the chairman to act, the board may select a chairman pro tempore who shall during such absence or inability perform the duties and exercise the powers of the chairman. A majority of the members of said board shall constitute a quorum and have power to transact business. [1988 c 164 § 2; 1973 1st ex.s. c 19 § 1; 1961 c 255 § 10; 1947 c 91 § 2; Rem. Supp. 1947 § 9578-41. Prior: 1935 c 39 § 1; 1919 c 196 § 3; 1909 c 50 §§ 1, 2.]

41.16.030 Meetings. The board shall meet at least once monthly, the date to be fixed by regulation of the board, at such other regular times as may be fixed by a regulation of the board; and at any time upon call of the chairman, of which due advance notice shall be given the other members of the board. [1947 c 91 § 3; Rem. Supp. 1947 § 9578-42. Prior: 1929 c 86 § 1; 1919 c 196 § 3; 1909 c 50 § 3.]

41.16.040 Powers and duties. The board shall have such general powers as are vested in it by the provisions of this chapter, and in addition thereto, the power to:

(1) Generally supervise and control the administration of this chapter and the firemen's pension fund created hereby.

(2) Pass upon and allow or disallow all applications for pensions or other benefits provided by this chapter.

(3) Provide for payment from said fund of necessary expenses of maintenance and administration of said pension system and fund.

(4) Invest the moneys of the fund in a manner consistent with the investment policies outlined in RCW 35.39.060. Authorized investments shall include investment grade securities issued by the United States, state, municipal corporations, other public bodies, corporate bonds, and other investments authorized by RCW 35.39.030, 35.58.510, 35.81.070, 35.82.070, 36.29.020, 39.58.020, 39.58.080, 39.58.130, 39.60.010, 39.60.020, 68.52.060, 68.52.065, and 72.19.120.

(5) Employ such agents, employees and other personnel as the board may deem necessary for the proper administration of this chapter.

(6) Compel witnesses to appear and testify before it, in the same manner as is or may be provided by law for the taking of depositions in the superior court. Any member of the board may administer oaths to witnesses who testify before the board of a nature and in a similar manner to oaths administered by superior courts of the state of Washington.

(7) Issue vouchers approved by the chairman and secretary and to cause warrants therefor to be issued and paid from said fund for the payment of claims allowed by it.

(8) Keep a record of all its proceedings, which record shall be public; and prepare and file with the city treasurer and city clerk or comptroller prior to the date when any payments are to be made from the fund, a list of all persons entitled to payment from the fund, stating the amount and purpose of such payment, said list to be certified to and signed by the chairman and secretary of the board and attested under oath.

(9) Make rules and regulations not inconsistent with this chapter for the purpose of carrying out and effecting the same.

(10) Appoint one or more duly licensed and practicing physicians who shall examine and report to the board upon all applications for relief and pension under this chapter. Such physicians shall visit and examine all sick and disabled firemen when, in their judgment, the best interests of the relief and pension fund require it or when ordered by the board. They shall perform all operations on such sick and injured firemen and render all medical aid and care necessary for the recovery of such firemen on account of sickness or disability received while in the performance of duty as defined in this chapter. Such physicians shall be paid from said fund, the amount of said fees or salary to be set and agreed upon by the board and the physicians. No physician not regularly appointed or specially appointed and employed, as hereinafter provided, shall receive or be entitled to any fees or compensation from said fund as attending physician to a sick or injured fireman. If any sick or injured fireman refuses the services of the appointed physicians, or the specially appointed and employed physician, he shall be personally liable for the fees of any other physician employed by him. No person shall have a right of action against the board or the municipality for negligence of any physician employed by it. The board shall have the power and authority to select and employ, besides the regularly appointed physician, such other physician, surgeon or specialist for consultation with, or assistance to the regularly appointed physician, or for the purpose of performing operations or rendering services and treatment in particular cases, as it shall deem advisable, and to pay fees for such services from said fund. Said board shall hear and decide all applications for such relief or pensions under this chapter, and its decisions on such applications shall be final and conclusive and not subject to revision or reversal except by the board. [1992 c 89 § 1; 1967 ex.s. c 91 § 1; 1947 c 91 § 4; Rem. Supp. 1947 § 9578-43. Prior: 1929 c 86 § 1; 1919 c 196 § 3; 1909 c 50 § 3.]

41.16.050 Firemen's pension fund—How constituted. There is hereby created and established in the treasury of each municipality a fund which shall be known and designated as the firemen's pension fund, which shall consist of: (1) All bequests, fees, gifts, emoluments, or donations given or paid thereto; (2) forty-five percent of all moneys received by the state from taxes on fire insurance premiums; (3) taxes paid pursuant to the provisions of RCW 41.16.060; (4) interest on the investments of the fund; and (5) contributions by fire fighters as provided for herein. The moneys received from the tax on fire insurance premiums under the provisions of this chapter shall be distributed in the proportion that the number of paid fire fighters in the city, town, or fire protection district bears to the total number of paid fire fighters throughout the state to be ascertained in the following manner: The secretary of the firemen's pension board of each city, town, and fire protection district now or hereafter coming under the provisions of this chapter shall within thirty days after June 7, 1961, and on or before the fifteenth day of January thereafter, certify to the state treasurer the number of paid fire fighters in the fire depart-

ment in such city, town, or fire protection district. For any city or town annexed by a fire protection district at any time before, on, or after June 9, 1994, the city or town shall continue to certify to the state treasurer the number of paid fire fighters in the city or town fire department immediately before annexation until all obligations against the firemen's pension fund in the city or town have been satisfied. For the purposes of the calculation in this section, the state treasurer shall subtract the number certified by the annexed city or town from the number of paid fire fighters certified by an annexing fire protection district. The state treasurer shall on or before the first day of June of each year deliver to the treasurer of each city, town, and fire protection district coming under the provisions of this chapter his or her warrant, payable to each city, town, or fire protection district for the amount due such city, town or fire protection district ascertained as herein provided and the treasurer of each such city, town, or fire protection district shall place the amount thereof to the credit of the firemen's pension fund of such city, town, or fire protection district. [1994 c 273 § 23; 1986 c 296 § 3; 1982 1st ex.s. c 35 § 16; 1967 c 42 § 1; 1961 c 255 § 8; 1949 c 45 § 1; 1947 c 91 § 5; Rem. Supp. 1949 § 9578-44. Prior: 1929 c 86 § 11; 1919 c 196 § 14.]

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Insurance premiums taxes: RCW 48.14.020.

41.16.060 Tax levy for fund. It shall be the duty of the legislative authority of each municipality, each year as a part of its annual tax levy, to levy and place in the fund a tax of twenty-two and one-half cents per thousand dollars of assessed value against all the taxable property of such municipality: **PROVIDED,** That if a report by a qualified actuary on the condition of the fund establishes that the whole or any part of said dollar rate is not necessary to maintain the actuarial soundness of the fund, the levy of said twenty-two and one-half cents per thousand dollars of assessed value may be omitted, or the whole or any part of said dollar rate may be levied and used for any other municipal purpose.

It shall be the duty of the legislative authority of each municipality, each year as a part of its annual tax levy and in addition to the city levy limit set forth in RCW 84.52.043, to levy and place in the fund an additional tax of twenty-two and one-half cents per thousand dollars of assessed value against all taxable property of such municipality: **PROVIDED,** That if a report by a qualified actuary establishes that all or any part of the additional twenty-two and one-half cents per thousand dollars of assessed value levy is unnecessary to meet the estimated demands on the fund under this chapter for the ensuing budget year, the levy of said additional twenty-two and one-half cents per thousand dollars of assessed value may be omitted, or the whole or any part of such dollar rate may be levied and used for any other municipal purpose: **PROVIDED FURTHER,** That cities that have annexed to library districts according to RCW 27.12.360 through 27.12.395 and/or fire protection districts according to RCW 52.04.061 through 52.04.081 shall not levy this additional tax to the extent that it causes the

combined levies to exceed the statutory or constitutional limits.

The amount of a levy under this section allocated to the pension fund may be reduced in the same proportion as the regular property tax levy of the municipality is reduced by chapter 84.55 RCW. [1987 c 319 § 2; 1980 c 155 § 4; 1973 1st ex.s. c 195 § 43; 1973 1st ex.s. c 195 § 144; 1970 ex.s. c 92 § 2; 1965 ex.s. c 45 § 1; 1961 c 255 § 9; 1951 c 72 § 1; 1947 c 91 § 6; Rem. Supp. 1947 § 9578-45. Prior: 1929 c 86 § 12; 1919 c 196 § 15; 1909 c 50 § 14.]

Effective date—Applicability—1980 c 155: See note following RCW 84.40.030.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

Effective date—Application—1970 ex.s. c 92: See note following RCW 84.52.010.

41.16.070 Contributions by firemen. (1) Every fireman employed on and after January 1, 1947, shall contribute to the fund and there shall be deducted from his pay and placed in the fund an amount in accordance with the following table:

Fireman whose age at last birthday at time of entry of service was:	Contributions and deductions from salary
21 and under	5.00%
22	5.24%
23	5.50%
24	5.77%
25	6.07%
26	6.38%
27	6.72%
28	7.09%
29	7.49%
30 and over	7.92%

(2) Every fireman employed prior to January 1, 1947, and continuing active employment shall contribute to the fund and there shall be deducted from his salary and placed in the fund, five percent of his salary.

(3) Every fireman actively employed and eligible for retirement and not retired shall contribute to the fund and there shall be deducted from his salary and placed in the fund, four percent of his salary. [1947 c 91 § 7; Rem. Supp. 1947 § 9578-46. Prior: 1929 c 86 § 14; 1919 c 196 § 18.]

41.16.080 Retirement for service. Any fireman employed in a fire department on and before the first day of January, 1947, hereinafter in this section and RCW 41.16.090 to 41.16.190 inclusive, referred to as "fireman", and who shall have served twenty-five or more years and having attained the age of fifty-five years, as a member of the fire department, shall be eligible for retirement and shall be retired by the board upon his written request. Upon his retirement any fireman shall be paid a pension based upon the average monthly salary drawn for the five calendar years before retirement, the number of years of his service and a percentage factor based upon his age on entering service, as follows:

Entrance age at last birthday	Salary percentage factor
20 and under	1.50%
21	1.55%
22	1.60%
23	1.65%
24	1.70%
25	1.75%
26	1.80%
27	1.85%
28	1.90%
29	1.95%
30 and over	2.00%

Said monthly pension shall be in the amount of his average monthly salary for the five calendar years before retirement, times the number of years of service, times the applicable percentage factor. [1959 c 5 § 2; 1957 c 82 § 2. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 4, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

41.16.090 Limit of pension. All pensioners receiving a pension under the provisions of this chapter as provided for in section 12, chapter 91, Laws of 1947 and RCW 41.16.230, shall from and after April 25, 1973 receive a minimum pension of three hundred dollars per month. [1973 1st ex.s. c 181 § 1; 1967 ex.s. c 91 § 2; 1959 c 5 § 3; 1957 c 82 § 3. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 4, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

41.16.100 Payment on death of retired fireman. The widow or widower, child, children or beneficiary of any fireman retired under this chapter shall receive an amount equal to his or her accumulated contributions to the fund, plus earned interest thereon compounded semiannually: PROVIDED, That there shall be deducted from said sum the amount paid to decedent in pensions and the remainder shall be paid to his or her widow or widower, child, children or beneficiary: PROVIDED FURTHER, That the amount paid shall not be less than one thousand dollars. [1973 1st ex.s. c 154 § 62; 1959 c 5 § 4; 1957 c 82 § 4. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 4, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

41.16.110 Payment on death of eligible pensioner before retirement. Whenever any fireman shall die while eligible to retirement on account of years of service, and shall not have been retired, benefits shall be paid in accordance with RCW 41.16.100. [1959 c 5 § 5; 1957 c 82 § 5. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 4, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

41.16.120 Payment on death in line of duty. Whenever any active fireman or fireman retired for disability shall die as the result of an accident or other fortuitous event

occurring while in the performance of his or her duty, his widow or her widower may elect to accept a monthly pension equal to one-half the deceased fireman's salary but in no case in excess of one hundred fifty dollars per month, or the sum of five thousand dollars cash. The right of election must be exercised within sixty days of the fireman's death. If not so exercised, the pension benefits shall become fixed and shall be paid from the date of death. Such pension shall cease if, and when, he or she remarries. If there is no widow or widower, then such pension benefits shall be paid to his or her child or children. [1973 1st ex.s. c 154 § 63; 1959 c 5 § 6; 1957 c 82 § 6. Prior: 1947 c 91 § 8, part; 1935 c 39 § 2, part; 1929 c 86 § 2, part; 1919 c 196 § 5, part; 1909 c 50 § 4, part; Rem. Supp. 1947 § 9578-47, part.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

41.16.130 Payment upon disablement in line of duty. (1) Any fireman who shall become disabled as a result of the performance of his duty or duties as defined in this chapter, may be retired at the expiration of six months from the date of his disability, upon his written request filed with his retirement board. The board may upon such request being filed, consult such medical advice as it sees fit, and may have the applicant examined by such physicians as it deems desirable. If from the reports of such physicians the board finds the applicant capable of performing his duties in the fire department, the board may refuse to recommend his retirement.

(2) If the board deems it for the good of the fire department or the pension fund, it may recommend the applicant's retirement without any request therefor by him, after giving him a thirty days notice. Upon his retirement he shall be paid a monthly disability pension in amount equal to one-half of his monthly salary at date of retirement, but which shall not exceed one hundred fifty dollars a month. If he recovers from his disability he shall thereupon be restored to active service, with the same rank he held when he retired.

(3) If the fireman dies during disability and not as a result thereof, RCW 41.16.160 shall apply. [1959 c 5 § 7; 1957 c 82 § 7. Prior: 1947 c 91 § 8, part; 1935 c 39 § 3, part; 1929 c 86 § 3, part; 1919 c 196 § 5, part; 1909 c 50 § 5, part; Rem. Supp. 1947 § 9578-47, part.]

41.16.140 Payment upon disablement not in line of duty. Any fireman who has served more than fifteen years and sustains a disability not in the performance of his or her duty which renders him or her unable to continue his or her service, shall within sixty days exercise his or her choice either to receive his or her contribution to the fund, plus earned interest compounded semiannually, or be retired and paid a monthly pension based on the factor of his or her age shown in RCW 41.16.080, times his or her average monthly salary as a member of the fire department of his or her municipality at the date of his or her retirement, times the number of years of service rendered at the time he or she sustained such disability. If such fireman shall die leaving surviving him a wife or surviving her a husband, or child or children, then such wife or husband, or if he leaves no wife or she leaves no husband, then his or her child or children

shall receive the sum of his contributions, plus accumulated compound interest, and such payment shall be reduced in the amount of the payments made to deceased. [1973 1st ex.s. c 154 § 64; 1959 c 5 § 8; 1957 c 82 § 8. Prior: 1947 c 91 § 8, part; 1935 c 39 § 6, part; 1929 c 86 § 7, part; 1919 c 196 § 9, part; 1909 c 50 § 9, part; Rem. Supp. 1947 § 9578-47, part.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

41.16.145 Annual increase in benefits payable on retirement for service, death in line of duty, and disability—Appeals. The amount of all benefits payable under the provisions of RCW 41.16.080, 41.16.120, 41.16.130, 41.16.140 and 41.16.230 as now or hereafter amended, shall be increased annually as hereafter in this section provided. The local pension board shall meet subsequent to March 31st but prior to June 30th of each year for the purposes of adjusting benefit allowances payable pursuant to the aforementioned sections. The local board shall determine the increase in the consumer price index between January 1st and December 31st of the previous year and increase in dollar amount the benefits payable subsequent to July 1st of the year in which said board makes such determination by a dollar amount proportionate to the increase in the consumer price index: PROVIDED, That regardless of the change in the consumer price index, such increase shall be at least two percent each year such adjustment is made.

Each year effective with the July payment all benefits specified herein, shall be increased by this section. This benefit increase shall be paid monthly as part of the regular pension payment and shall be cumulative. The increased benefits authorized by this section shall not affect any benefit payable under the provisions of chapter 41.16 RCW in which the benefit payment is attached to a current salary of the rank held at time of retirement. A beneficiary of benefit increases provided for pursuant to this section is hereby authorized to appeal a decision on such increases or the failure of the local pension board to order such increased benefits or the amount of such benefits to the Washington law enforcement officers' and fire fighters' system retirement board provided for in *RCW 41.26.050.

For the purpose of this section the term

"Consumer price index" shall mean, for any calendar year, the consumer price index for the Seattle, Washington area as compiled by the bureau of labor statistics of the United States department of labor. [1975-'76 2nd ex.s. c 44 § 1; 1975 1st ex.s. c 178 § 1; 1974 ex.s. c 190 § 1; 1970 ex.s. c 37 § 3; 1969 ex.s. c 209 § 38.]

***Reviser's note:** RCW 41.26.050 was repealed by 1982 c 163 § 23. Powers, duties, and functions of the Washington law enforcement officers' and fire fighters' retirement board were transferred to the director of retirement systems by RCW 41.26.051, which has been decodified. See Table of Disposition of Former RCW Sections, Volume 0.

Construction of RCW 41.16.145—Severability—1975 1st ex.s. c 178: See RCW 41.16.921, 41.16.911.

Construction—1970 ex.s. c 37: See note following RCW 41.18.104.

Effective date—Construction—Severability—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.16.150 Payment on separation from service. (1) Any fireman who has served twenty years or more and who

shall resign or be dismissed, shall have the option of receiving all his or her contributions plus earned interest compounded semiannually, or a monthly pension in the amount of his average monthly salary times the number of years of service rendered, times one and one-half percent. Payment of such pension shall commence at the time of severance from the fire department, or at the age of fifty-five years, whichever shall be later. The fireman shall have sixty days from the severance date to elect which option he or she will take. In the event he or she fails to exercise his or her right of election then he or she shall receive the amount of his or her contributions plus accrued compounded interest. In the event he or she elects such pension, but dies before attaining the age of fifty-five, his widow or her widower, or if he leaves no widow or she leaves no widower, then his or her child or children shall receive only his contribution, plus accrued compounded interest. In the event he elects to take a pension and dies after attaining the age of fifty-five, his widow or her widower, or if he leaves no widow or she leaves no widower, then child or children shall receive his or her contributions, plus accrued compounded interest, less the amount of pension payments made to such fireman during his or her lifetime.

(2) Any fireman who shall have served for a period of less than twenty years, and shall resign or be dismissed, shall be paid the amount of his or her contributions, plus accrued compounded interest. [1973 1st ex.s. c 154 § 65; 1959 c 5 § 9; 1957 c 82 § 9. Prior: 1947 c 91 § 8, part; Rem. Supp. 1947 § 9578-47, part.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

41.16.160 Payment on death not in line of duty.

Whenever any fireman, after four years of service, shall die from natural causes, or from an injury not sustained in the performance of his or her duty and for which no pension is provided in this chapter, and who has not been retired on account of disability, his widow or her widower, if he or she was his wife or her husband at the time he or she was stricken with his or her last illness, or at the time he or she received the injuries from which he or she died; or if there is no such widow, then his or her child or children shall be entitled to the amount of his or her contributions, plus accrued compounded interest, or the sum of one thousand dollars, whichever sum shall be the greater. In case of death as above stated, before the end of four years of service, an amount based on the proportion of the time of service to four years shall be paid such beneficiaries. [1973 1st ex.s. c 154 § 66; 1959 c 5 § 10; 1957 c 82 § 10. Prior: 1947 c 91 § 8, part; 1929 c 86 § 7, part; 1919 c 196 § 9, part; 1909 c 50 § 9, part; Rem. Supp. 1947 § 9578-47, part.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

41.16.170 Payment on death of fireman with no dependents.

Whenever a fireman dies leaving no widow or widower or children, the amount of his or her accumulated contributions, plus accrued compounded interest only, shall be paid his or her beneficiary. [1973 1st ex.s. c 154 § 67; 1959 c 5 § 11; 1957 c 82 § 11. Prior: 1947 c 91 § 8, part;

1935 c 39 § 5; 1929 c 86 § 6, part; 1919 c 196 § 8, part; 1909 c 50 § 8, part; Rem. Supp. 1947 § 9578-47, part.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

41.16.180 Funeral expense. Upon the death of any active, disabled or retired fireman the board shall pay from the fund the sum of two hundred dollars to assist in defraying the funeral expenses of such fireman. [1959 c 5 § 12; 1957 c 82 § 12. Prior: 1947 c 91 § 8, part; 1935 c 39 § 10; 1929 c 86 § 15; 1919 c 196 § 18; Rem. Supp. 1947 § 9578-47, part.]

41.16.190 Waiting period—Disability retirement.

No fireman disabled in the performance of duty shall receive a pension until six months has elapsed after such disability was sustained. Therefore, whenever the retirement board, pursuant to examination by the board's physician and such other evidence as it may require, shall find a fireman has been disabled while in the performance of his duties, it shall declare him inactive. For a period of six months from the time he became disabled, he shall continue to draw full pay from his municipality and in addition thereto he shall, at the expense of the municipality, be provided with such medical, hospital and nursing care as the retirement board deems proper. If the board finds at the expiration of six months that the fireman is unable to return to and perform his duties, then he shall be retired as herein provided. [1959 c 5 § 13; 1957 c 82 § 13. Prior: 1947 c 91 § 8, part; 1935 c 39 § 4, part; 1929 c 86 § 5, part; 1919 c 196 § 7, part; 1909 c 50 § 7, part; Rem. Supp. 1947 § 9578-47, part.]

41.16.200 Examination of disability pensioners—Restoration to duty.

The board shall require all firemen receiving disability pensions to be examined every six months. All such examinations shall be made by physicians duly appointed by the board. If a fireman shall fail to submit to such examination within ten days of having been so ordered in writing by said retirement board all pensions or benefits paid to said fireman under this chapter, shall immediately cease and the disbursing officer in charge of such payments shall issue no further payments to such fireman. If such fireman fails to present himself for examination within thirty days after being ordered so to do, he shall forfeit all rights under this chapter. If such fireman, upon examination as aforesaid, shall be found fit for service, he shall be restored to duty in the same rank held at the time of his retirement, or if unable to perform the duties of said rank, then, at his request, in such other rank, the duties of which he is then able to perform. The board shall thereupon so notify the fireman and shall require him to resume his duties as a member of the fire department. If, upon being so notified, such member shall fail to report for employment within ten days, he shall forfeit all rights to any benefits under this chapter. [1947 c 91 § 9; Rem. Supp. 1947 § 9578-48. Prior: 1929 c 86 § 8; 1919 c 196 § 10; 1909 c 50 § 10.]

41.16.210 Transfer of assets to new fund—Assumption of obligations. (1) Funds or assets on hand in the firemen's relief and pension fund of any municipality

established under the provisions of chapter 50, Laws of 1909, as amended, after payment of warrants drawn upon and payable therefrom, shall, by the city treasurer, be transferred to and placed in the firemen's pension fund created by this chapter; and the firemen's pension fund created by this chapter shall be liable for and there shall be paid therefrom in the order of their issuance any and all unpaid warrants drawn upon said firemen's relief and pension fund.

(2) Any moneys loaned or advanced by a municipality from the general or any other fund of such municipality to the firemen's relief and pension fund created under the provisions of chapter 50, Laws of 1909, as amended, and not repaid shall be an obligation of the firemen's pension fund created under this chapter, and shall at such times and in such amounts as is directed by the board be repaid. [1947 c 91 § 10; Rem. Supp. 1947 § 9578-49.]

41.16.220 Credit for military service. Any person who was a member of the fire department and within the provisions of chapter 50, Laws of 1909, as amended, at the time he entered, and who is a veteran, as defined in RCW 41.04.005, shall have added and accredited to his period of employment as a fireman as computed under this chapter his period of war service in such armed forces upon payment by him of his contribution for the period of his absence, at the rate provided by chapter 50, Laws of 1909, as amended, for other members: PROVIDED, HOWEVER, Such accredited service shall not in any case exceed five years. [1969 ex.s. c 269 § 7; 1947 c 91 § 11; Rem. Supp. 1947 § 9578-50.]

41.16.230 Repeal does not affect accrued rights. Chapter 50, Laws of 1909; chapter 196, Laws of 1919; chapter 86, Laws of 1929, and chapter 39, Laws of 1935 (secs. 9559 to 9578, incl., Rem. Rev. Stat.; secs. 396-1 to 396-43, incl., PPC) and all other acts or parts of acts in conflict herewith are hereby repealed: PROVIDED, That the repeal of said laws shall not affect any "prior fireman", his widow, her widower, child or children, any fireman eligible for retirement but not retired, his widow, her widower, child or children, or the rights of any retired fireman, his widow, her widower, child or children, to receive payments and benefits from the firemen's pension fund created under this chapter, in the amount, and in the manner provided by said laws which are hereby repealed and as if said laws had not been repealed. [1973 1st ex.s. c 154 § 68; 1947 c 91 § 12; Rem. Supp. 1947 § 9578-51.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

41.16.240 Application of chapter to fire protection districts. Any fire protection district having a full paid fire department may by resolution of its board of fire commissioners provide for the participation of its full time employees in a pension program in the same manner, with the same powers, and with the same force and effect as to such districts as the pension program provided by chapter 41.16 RCW for cities, towns and municipalities, or fire protection districts. [1955 c 46 § 1.]

41.16.250 Retirement and job security rights preserved upon annexation, etc., of district. If all or any

portion of a fire protection district is annexed to or incorporated into a city or town, or is succeeded by a metropolitan municipal corporation or county fire department, no full time paid fireman affected by such annexation, incorporation or succession shall receive a reduction in his retirement and job security rights: PROVIDED, That this section shall not apply to any retirement and job security rights authorized under chapter 41.24 RCW. [1963 c 63 § 1.]

41.16.260 Transfer of credit from city employees' retirement system to firemen's pension system. See RCW 41.18.210.

41.16.900 Severability—1947 c 91. If any clause, part or section of this chapter shall be adjudged in violation of the Constitution, or for any reason invalid, such judgment shall not affect nor invalidate the remainder of the chapter, nor any other clause, part or section thereof, but such judgment shall be confined in its operation to the clause, part or section directly involved in the controversy in which such judgment was rendered, and the balance of the chapter shall remain in full force and effect. [1947 c 91 § 13.]

41.16.910 Severability—1959 c 5. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to any other persons or circumstances is not affected. [1959 c 5 § 15.]

41.16.911 Severability—1975 1st ex.s. c 178. If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 178 § 6.]

41.16.920 Construction—1959 c 5—Benefits retroactively authorized. The provisions of *this act are intended to be remedial and procedural and any benefits heretofore paid to recipients hereunder pursuant to any previous act are retroactively included and authorized as a part of *this act. [1959 c 5 § 14.]

***Reviser's note:** "this act" [1959 c 5], reenacted RCW 41.16.080, 41.16.100, 41.16.110, 41.16.120, 41.16.130, 41.16.140, 41.16.150, 41.16.160, 41.16.170, 41.16.180, and 41.16.190 and amended RCW 41.16.090.

41.16.921 Construction—1975 1st ex.s. c 178, RCW 41.16.145. (1) The provisions of this section are procedural and remedial.

(2) The application and effect of *this act shall be retroactive to and including May 6, 1974. Each benefit being paid on the effective date of *this act shall then be adjusted as if *this act had been in existence since May 6, 1974. Additionally, any amounts which would have been paid had *this act been in effect since May 6, 1974, shall then be due as a one-time lump sum payment.

(3) The provisions of RCW 41.16.145 shall be construed and read to have granted the percentage increase provided by that section to those receiving benefits pursuant to RCW 41.16.230, until and including July 1, 1974, at which time those persons shall be regarded as eligible for the benefits

granted by chapter 190, Laws of 1974 ex. sess., as provided in subsection (2) of this section. Any amounts now payable due to a failure to so construe and read RCW 41.16.145 are now due as a one-time lump sum payment. [1975 1st ex. s. c 178 § 5.]

***Reviser's note:** "this act" [1975 1st ex. s. c 178] enacted this section and RCW 41.16.911 and amended RCW 41.16.145, 41.18.100, 41.18.104, and 41.26.250. The effective date of the act was June 4, 1975.

Chapter 41.18

FIREMEN'S RELIEF AND PENSIONS—1955 ACT

Sections

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Prior acts relating to firemen's relief and pensions: 1935 c 39; 1929 c 86; 1919 c 196; 1909 c 50 were repealed by 1947 c 91 § 12 (codified as RCW 41.16.230).

Firemen's relief and pensions—1947 act: Chapter 41.16 RCW.

Volunteer fire fighters' relief and pensions: Chapter 41.24 RCW.

41.18.010 Definitions. For the purpose of this chapter, unless clearly indicated otherwise by the context, words and phrases shall have the meaning hereinafter ascribed.

(1) "Beneficiary" shall mean any person or persons designated by a fireman in a writing filed with the board, and who shall be entitled to receive any benefits of a deceased fireman under this chapter.

(2) "Fireman" means any person hereafter regularly or temporarily, or as a substitute newly employed and paid as a member of a fire department, who has passed a civil service examination for fireman and who is actively employed as a fireman or, if provided by the municipality by appropriate local legislation, as a fire dispatcher: **PROVID-**

ED, Nothing in *this 1969 amendatory act shall impair or permit the impairment of any vested pension rights of persons who are employed as fire dispatchers at the time *this 1969 amendatory act takes effect; and any person heretofore regularly or temporarily, or as a substitute, employed and paid as a member of a fire department, and who has contributed under and been covered by the provisions of chapter 41.16 RCW as now or hereafter amended and who has come under the provisions of this chapter in accordance with RCW 41.18.170 and who is actively engaged as a fireman or as a member of the fire department as a fireman or fire dispatcher.

(3) "Retired fireman" means and includes a person employed as a fireman and retired under the provisions of this chapter.

(4) "Basic salary" means the basic monthly salary, including longevity pay, attached to the rank held by the retired fireman at the date of his retirement, without regard to extra compensation which such fireman may have received for special duties assignments not acquired through civil service examination: **PROVIDED,** That such basic salary shall not be deemed to exceed the salary of a battalion chief.

(5) "Widow or widower" means the surviving spouse of a fireman and shall include the surviving wife or husband of a fireman, retired on account of length of service, who was lawfully married to him or to her for a period of five years prior to the time of his or her retirement; and the surviving wife or husband of a fireman, retired on account of disability, who was lawfully married to him or her at and prior to the time he or she sustained the injury or contracted the illness resulting in his or her disability. The word shall not mean the divorced wife or husband of an active or retired fireman.

(6) "Child" or "children" means a fireman's child or children under the age of eighteen years, unmarried, and in the legal custody of such fireman at the time of his death or her death.

(7) "Earned interest" means and includes all annual increments to the firemen's pension fund from income earned by investment of the fund. The earned interest payable to any fireman when he leaves the service and accepts his contributions, shall be that portion of the total earned income of the fund which is directly attributable to each individual fireman's contributions. Earnings of the fund for the preceding year attributable to individual contributions shall be allocated to individual firemen's accounts as of January 1st of each year.

(8) "Board" shall mean the municipal firemen's pension board.

(9) "Contributions" shall mean and include all sums deducted from the salary of firemen and paid into the fund as hereinafter provided.

(10) "Disability" shall mean and include injuries or sickness sustained by a fireman.

(11) "Fire department" shall mean the regularly organized, full time, paid, and employed force of firemen of the municipality.

(12) "Fund" shall have the same meaning as in RCW 41.16.010 as now or hereafter amended. Such fund shall be created in the manner and be subject to the provisions

specified in chapter 41.16 RCW as now or hereafter amended.

(13) "Municipality" shall mean every city, town and fire protection district having a regularly organized full time, paid, fire department employing firemen.

(14) "Performance of duty" shall mean the performance of work or labor regularly required of firemen and shall include services of an emergency nature normally rendered while off regular duty. [1973 1st ex.s. c 154 § 69; 1969 ex.s. c 209 § 40; 1965 ex.s. c 45 § 2; 1961 c 255 § 1; 1955 c 382 § 1.]

***Reviser's note:** "this 1969 amendatory act" [1969 ex.s. c 209] consists of chapter 41.26 RCW, RCW 41.16.145, 41.18.010, 41.18.040, 41.18.045, 41.18.060, 41.18.100, 41.18.102, 41.18.104, 41.18.130, 41.18.190, 41.20.005, 41.20.085, and 41.20.170; and RCW 41.20.050 and 41.20.060, subsequently amended by 1969 ex.s. c 219.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

Severability—1961 c 255: "If any clause, part or section of this act shall be adjudged in violation of the constitution, or for any reason invalid, such judgment shall not affect nor invalidate the remainder of the act, nor any clause, part or section thereof, but such judgment shall be confined in its operation to the clause, part or section directly involved in the controversy in which judgment was rendered, and the balance of the act shall remain in full force and effect." [1961 c 255 § 13.] For codification of 1961 c 255, see Codification Tables, Volume 0.

41.18.015 Pension boards in fire districts created—Members—Terms—Vacancies—Officers—Quorum. There is hereby created in each fire protection district which qualifies under this chapter, a firemen's pension board to consist of the following five members, the chairman of the fire commissioners for said district who shall be chairman of the board, the county auditor, county treasurer, and in addition, two regularly employed or retired fire fighters elected by secret ballot of the employed and retired fire fighters. Retired members who are subject to the jurisdiction of the pension board have both the right to elect and the right to be elected under this section. The first members to be elected by the fire fighters shall be elected annually for a two-year term. The two fire fighter elected members shall, in turn, select a third eligible member who shall serve in the event of an absence of one of the regularly elected members. In case a vacancy occurs in the membership of the fire fighter or retired members, the members shall in the same manner elect a successor to serve the unexpired term. The board may select and appoint a secretary who may, but need not be a member of the board. In case of absence or inability of the chairman to act, the board may select a chairman pro tempore who shall during such absence or inability perform the duties and exercise the powers of the chairman. A majority of the members of said board shall constitute a quorum and have power to transact business. [1992 c 6 § 1; 1961 c 255 § 11.]

41.18.020 Powers and duties of board. The board, in addition to such general and special powers as are vested in it by the provisions of chapter 41.16 RCW, which powers the board shall have with respect to this chapter shall have power to:

(1) Generally supervise and control the administration of this chapter;

(2) Pass upon and allow or disallow applications for pensions or other benefits provided by this chapter;

(3) Provide for payment from the firemen's pension fund of necessary expenses of maintenance and administration required by the provisions of this chapter;

(4) Make rules and regulations not inconsistent with this chapter for the purpose of carrying out and effecting the same;

(5) Require the physicians appointed under the provisions of chapter 41.16 RCW, to examine and report to the board upon all applications for relief and pensions under this chapter; and

(6) Perform such acts, receive such compensation and enjoy such immunity as provided in RCW 41.16.040. [1955 c 382 § 2.]

41.18.030 Contributions by firemen. Every fireman to whom this chapter applies shall contribute to the firemen's pension fund a sum equal to six percent of his basic salary which shall be deducted therefrom and placed in the fund. [1961 c 255 § 2; 1955 c 382 § 3.]

41.18.040 Retirement for service—Widow's or widower's pension—Payments to children. Whenever any fireman, *at the time of taking effect of this act or thereafter, shall have been appointed under civil service rules and have served for a period of twenty-five years or more as a member in any capacity of the regularly constituted fire department of any city, town or fire protection district which may be subject to the provisions of this chapter, and shall have attained the age of fifty years, he or she shall be eligible for retirement and shall be retired by the board upon his or her written request. Upon his or her retirement such fireman shall be paid a monthly pension which shall be equal to fifty percent of the basic salary now or hereafter attached to the same rank and status held by the said fireman at the date of his or her retirement: PROVIDED, That a fireman hereafter retiring who has served as a member for more than twenty-five years, shall have his pension payable under this section increased by two percent of the basic salary per year for each full year of such additional service to a maximum of five additional years.

Upon the death of any such retired fireman, his or her pension shall be paid to his widow or her widower, at the same monthly rate that the retired fireman would have received had he or she lived, if such widow or widower was his wife or her husband for a period of five years prior to the time of his or her retirement. If there be no widow or widower, then such monthly payments shall be distributed to and divided among his or her children, share and share alike, until they reach the age of eighteen or are married, whichever occurs first. [1973 1st ex.s. c 154 § 70; 1969 ex.s. c 209 § 29; 1965 ex.s. c 45 § 3; 1961 c 255 § 3; 1955 c 382 § 4.]

***Reviser's note:** The phrase "at the time of taking effect of this act or thereafter" first appears in the 1961 amendment, which became effective at midnight June 7, 1961 (see preface, 1961 session laws). The basic act, 1955 c 382, became effective at midnight June 8, 1955 (see preface, 1955 session laws).

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Applicability—1969 ex.s. c 209: See RCW 41.18.102.

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.18.045 Pension benefits for widows or widowers of unretired, eligible firemen—Retroactive. Upon the death of a fireman who is eligible to retire under RCW 41.18.040 as now or hereafter amended, but who has not retired, a pension shall be paid to his widow or her widower at the same monthly rate that he or she was eligible to receive at the time of his or her death, if such widow or widower was his wife or her husband for a period of five years prior to his or her death. If there be no widow or widower, then such monthly payments shall be distributed to and divided among his or her children, share and share alike, until they reach the age of eighteen or are married, whichever comes first.

This section shall apply retroactively for the benefit of all widows or widowers and survivors of firemen who died after January 1, 1967, if such firemen were otherwise eligible to retire on the date of death. [1973 1st ex.s. c 154 § 71; 1969 ex.s. c 209 § 25.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.18.050 Disablement in line of duty—Retirement. Every fireman who shall become disabled as a result of the performance of duty may be retired at the expiration of six months from the date of his disability, upon his written request filed with his retirement board. The board may, upon such request being filed, consult such medical advice as it sees fit, and may have the applicant examined by such physicians as it deems desirable. If from the reports of such physicians the board finds the applicant capable of performing his duties in the fire department, the board may refuse to recommend his retirement. If, after the expiration of six months from the date of his disability, the board deems it for the good of the fire department or the pension fund it may recommend the retirement of a fireman disabled as a result of the performance of duty without any request for the same by him, and after having been given by the board a thirty days' written notice of such recommendation he shall be retired. [1955 c 382 § 5.]

41.18.060 Disablement in line of duty—Inactive period—Allowance—Medical, hospital, nursing care. Whenever the retirement board, pursuant to examination by the board's physician and such other evidence as it may require, shall find a fire fighter has been disabled while in the performance of his or her duties it shall declare the fire fighter inactive. For a period of six months from the time of the disability the fire fighter shall draw from the pension fund a disability allowance equal to his or her basic monthly salary and, in addition, shall be provided with medical, hospital and nursing care as long as the disability exists. The board may, at its discretion, elect to reimburse the disabled fire fighter for premiums the fire fighter has paid for medical insurance that supplements medicare, including premiums the fire fighter has paid for medicare part B coverage. If the board finds at the expiration of six months

that the fire fighter is unable to return to and perform his or her duties, the fire fighter shall be retired at a monthly sum equal to fifty percent of the amount of his or her basic salary at any time thereafter attached to the rank which he or she held at the date of retirement: PROVIDED, That where, at the time of retirement hereafter for disability under this section, the fire fighter has served honorably for a period of more than twenty-five years as a member, in any capacity of the regularly constituted fire department of a municipality, the fire fighter shall have his or her pension payable under this section increased by two percent of his or her basic salary per year for each full year of additional service to a maximum of five additional years. [1992 c 22 § 1; 1969 ex.s. c 209 § 30; 1961 c 255 § 4; 1955 c 382 § 6.]

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.18.080 Payment upon disablement not in line of duty. Any fireman who has completed his or her probationary period and has been permanently appointed, and sustains a disability not in the performance of his or her duty which renders him or her unable to continue his or her service, may request to be retired by filing a written request with his or her retirement board within sixty days from the date of his or her disability. The board may, upon such request being filed, consult such medical advice as it deems fit and proper. If the board finds the fireman capable of performing his or her duties, it may refuse to recommend retirement and order the fireman back to duty. If no request for retirement has been received after the expiration of sixty days from the date of his or her disability, the board may recommend retirement of the fireman. The board shall give the fireman a thirty day written notice of its recommendation, and he or she shall be retired upon expiration of said notice. Upon retirement he shall receive a pension equal to fifty percent of his or her basic salary. For a period of ninety days following such disability the fireman shall receive an allowance from the fund equal to his or her basic salary. He or she shall during said ninety days be provided with such medical, hospital, and nursing care as the board deems proper. No funds shall be expended for such disability if the board determines that the fireman was gainfully employed or engaged for compensation in other than fire department duty when the disability occurred, or if such disability was the result of dissipation or abuse. Whenever any fireman shall die as a result of a disability sustained not in the line of duty, his widow or her widower shall receive a monthly pension equal to one-third of his or her basic salary until remarried; if such widow or widower has dependent upon her or him for support a child or children of such deceased fireman, he or she shall receive an additional pension as follows: One child, one-eighth of the deceased's basic salary; two children, one-seventh; three or more children, one-sixth. If there be no widow or widower, monthly payments equal to one-third of the deceased fireman's basic salary shall be made to his or her child or children. The widow or widower may elect at any time in writing to receive a cash settlement, and if the board after hearing finds it financially beneficial to the pension fund, he or she may receive the sum of five thousand dollars cash in lieu of all future monthly pension payments, and other benefits, including benefits to any child and/or chil-

dren. [1973 1st ex.s. c 154 § 72; 1965 c 109 § 1; 1961 c 255 § 5; 1955 c 382 § 9.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

41.18.090 Examination of disability pensioners—Restoration to active duty. The board shall require all firemen receiving disability pensions to be examined every six months: PROVIDED, That no such examinations shall be required if upon certification by physicians the board shall formally enter upon its records a finding of fact that the disability is and will continue to be of such a nature that return to active duty can never reasonably be expected. All examinations shall be made by physicians duly appointed by the board. If a fireman shall wilfully fail to present himself for examination, within thirty days after being ordered so to do, he shall forfeit all rights under this chapter. If such fireman, upon examination as aforesaid, shall be found fit for service, he shall be restored to duty in the same rank held at the time of his retirement, or if unable to perform the duties of said rank then, at his request, in such other like or lesser rank as may be or become open and available, the duties of which he is then able to perform. The board shall thereupon so notify the fireman and shall require him to resume his duties as a member of the fire department. If, upon being so notified, such member shall wilfully fail to report for employment within ten days, he shall forfeit all rights to any benefit under this chapter. [1955 c 382 § 15.]

41.18.100 Payment on death in line of duty or while retired on account of service connected disability. In the event a fireman is killed in the performance of duty, or in the event a fireman retired on account of service connected disability shall die from any cause, his widow or her widower shall receive a monthly pension under one of the following applicable provisions: (1) If a fireman is killed in the line of duty his widow or her widower shall receive a monthly pension equal to fifty percent of his or her basic salary at the time of his or her death; (2) if a fireman who has retired on account of a service connected disability dies, his widow or her widower shall receive a monthly pension equal to the amount of the monthly pension such retired fireman was receiving at the time of his or her death. If she or he at any time so elects in writing and the board after hearing finds it to be financially beneficial to the pension fund, he or she may receive in lieu of all future monthly pension and other benefits, including benefits to child or children, the sum of five thousand dollars in cash. If there be no widow or widower at the time of such fireman's death or upon the widow's or widower's death the monthly pension benefits hereinabove provided for shall be paid to and divided among his or her child or children share and share alike, until they reach the age of eighteen or are married, whichever occurs first. The widow's or widower's monthly pension benefit, including increased benefits to his or her children shall cease if and when he or she remarries: PROVIDED, That no pension payable under the provisions of this section shall be less than that specified under RCW 41.18.200. [1975 1st ex.s. c 178 § 4; 1973 1st ex.s. c 154 § 73; 1969 ex.s. c 209 § 28; 1965 ex.s. c 45 § 4; 1955 c 382 § 8.]

Construction—Severability—1975 1st ex.s. c 178: See RCW 41.16.911, 41.16.921.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.18.102 Applicability of RCW 41.18.040 and 41.18.100. The provisions of RCW 41.18.040 and 41.18.100 shall be applicable to all firemen employed prior to March 1, 1970, but shall not apply to any former fireman who has terminated his employment prior to July 1, 1969. [1969 ex.s. c 209 § 32.]

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.18.104 Annual increase in benefits payable on retirement for service or disability—Appeals. The amount of all benefits payable under the provisions of RCW 41.18.040, 41.18.080, 41.18.100 and 41.18.200 as now or hereafter amended, shall be increased annually as hereafter in this section provided. The local pension board shall meet subsequent to March 31st but prior to June 30th of each year for the purpose of adjusting benefit allowances payable pursuant to the aforementioned sections. The local board shall determine the increase in the consumer price index between January 1st and December 31st of the previous year and increase in dollar amount the benefits payable subsequent to July 1st of the year in which said board makes such determination by a dollar amount proportionate to the increase in the consumer price index: PROVIDED, That regardless of the change in the consumer price index, such increase shall be at least two percent each year such adjustment is made.

Each year effective with the July payment all benefits specified herein, shall be increased as authorized by this section. This benefit increase shall be paid monthly as part of the regular pension payment and shall be cumulative. The increased benefits authorized by this section shall not affect any benefit payable under the provisions of chapter 41.18 RCW in which the benefit payment is attached to a current salary of the rank held at time of retirement. A beneficiary of benefit increases provided for pursuant to this section is hereby authorized to appeal a decision on such increases or the failure of the local pension board to order such increased benefits or the amount of such benefits to the Washington law enforcement officers' and fire fighters' system retirement board provided for in *RCW 41.26.050.

For the purpose of this section the term

"Consumer price index" shall mean, for any calendar year, the consumer price index for the Seattle, Washington area as compiled by the bureau of labor statistics of the United States department of labor. [1975-'76 2nd ex.s. c 44 § 2; 1975 1st ex.s. c 178 § 2; 1974 ex.s. c 190 § 2; 1970 ex.s. c 37 § 1; 1969 ex.s. c 209 § 33.]

***Reviser's note:** RCW 41.26.050 was repealed by 1982 c 163 § 23. Powers, duties, and functions of the Washington law enforcement officers' and fire fighters' retirement board were transferred to the director of retirement systems by RCW 41.26.051, which has been decodified. See Table of Disposition of Former RCW Sections, Volume 0.

Construction—Severability—1975 1st ex.s. c 178: See RCW 41.16.911, 41.16.921.

Construction—1970 ex.s. c 37: "This 1970 amendatory act shall be null and void and of no further force and effect if the 1970 extraordinary session of the Legislature does not pass legislation authorizing cities and counties to levy additional taxes or appropriate at least ten million dollars for distribution to cities and towns for the remainder of the 1969-71 fiscal biennium." [1970 ex.s. c 37 § 4.]

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.18.130 Payment on separation—With less than twenty-five years service or less than fifty years of age—Option to be classified as vested fireman. Any fireman who shall have served for a period of less than twenty-five years, or who shall be less than fifty years of age, and shall resign, or be dismissed from the fire department for a reason other than conviction for a felony, shall be paid the amount of his contributions to the fund plus earned interest: **PROVIDED,** That in the case of any fireman who has completed twenty years of service, such fireman, upon termination for any cause except for a conviction of a felony, shall have the option of electing, in lieu of recovery of his contributions as herein provided, to be classified as a vested fireman in accordance with the following provisions:

(1) Written notice of such election shall be filed with the board within thirty days after the effective date of such fireman's termination;

(2) During the period between the date of his termination and the date upon which he becomes a retired fireman as hereinafter provided, such vested fireman and his spouse or dependent children shall be entitled to all benefits available under chapter 41.18 RCW to a retired fireman and his spouse or dependent children with the exception of the service retirement allowance as herein provided for: **PROVIDED,** That any claim for medical coverage under RCW 41.18.060 shall be attributable to service connected illness or injury;

(3) Any fireman electing to become a vested fireman shall be entitled at such time as he otherwise would have completed twenty-five years of service had he not terminated, to receive a service retirement allowance computed on the following basis: Two percent of the amount of salary attached to the position held by the vested fireman for the year preceding the date of his termination, for each year of service rendered prior to the date of his termination. [1969 ex.s. c 209 § 31; 1961 c 255 § 6; 1955 c 382 § 11.]

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.18.140 Funeral expenses. The board shall pay from the firemen's pension fund upon the death of any active or retired fireman the sum of five hundred dollars, to assist in defraying the funeral expenses of such fireman. [1961 c 255 § 7; 1955 c 382 § 13.]

41.18.150 Credit for military service. Every person who was a member of the fire department at the time he entered and served in the armed forces of the United States in time of war, whether as a draftee, or inductee, and who shall have been discharged from such armed forces under conditions other than dishonorable, shall have added and accredited to his period of employment as a fireman his period of war or peacetime service in the armed forces:

PROVIDED, That such added and accredited service shall not as to any individual exceed five years. [1955 c 382 § 14.]

41.18.160 Certain firemen may elect to be covered under other law. Every fireman as defined in this chapter heretofore employed as a member of a fire department, whether or not as a prior fireman as defined in chapter 41.16 RCW, who desires to make the contributions and avail himself of the pension and other benefits of said chapter 41.16 RCW, can do so by handing to and leaving with the firemen's pension board of his municipality a written notice of such intention within sixty days of the effective date of this chapter, or if he was on disability retirement under chapter 41.16 RCW, at the effective date of this chapter and has been recalled to active duty by the retirement board, shall give such notice within sixty days of his return to active duty, and not otherwise. [1955 c 382 § 17.]

Reviser's note: Effective date of chapter 41.18 RCW is midnight June 8, 1955; see preface 1955 session laws.

41.18.165 Credit for membership in private organization acquired by municipality. Every person who was a member of a fire-fighting organization operated by a private enterprise, which fire-fighting organization shall be hereafter acquired before September 1, 1959, by a municipality as its fire department as a matter of public convenience or necessity, where it is in the public interest to retain the trained personnel of such fire-fighting organization, shall have added and accredited to his period of employment as a fireman his period of service with said private enterprise, except that this shall apply only to those persons who are in the service of such fire-fighting organization at the time of its acquisition by the municipality and who remain in the service of that municipality until this chapter shall become applicable to such persons.

No such person shall have added and accredited to his period of employment as a fireman his period of service with said private enterprise unless he or a third party shall pay to the municipality his contribution for the period of such service with the private enterprise at the rate provided in RCW 41.18.030, or, if he shall be entitled to any private pension or retirement benefits as a result of such service with the private enterprise, unless he agrees at the time of his employment by the municipality to accept a reduction in the payment of any benefits payable under this chapter that are based in whole or in part on such added and accredited service by the amount of those private pension or retirement benefits received. For the purposes of RCW 41.18.030, the date of entry of service shall be deemed the date of entry into service with the private enterprise, which service is accredited by this section, and the amount of contributions for the period of accredited service shall be based on the wages or salary of such person during that added and accredited period of service with the private enterprise.

The city may receive payments for these purposes from a third party and shall make from such payments contributions with respect to such prior service as may be necessary to enable the fund to assume its obligations. [1959 c 69 § 1.]

41.18.170 Application of chapter. The provisions of this chapter governing contributions, pensions, and benefits shall have exclusive application (1) to firemen as defined in this chapter hereafter becoming members of a fire department. (2) to firemen as defined in this chapter heretofore employed in a department who have not otherwise elected as provided for in RCW 41.18.160, and (3) to firemen on disability retirement under chapter 41.16 RCW, at the effective date of this chapter, who thereafter shall have been returned to active duty by the retirement board, and who have not otherwise elected as provided for in RCW 41.18.160 within sixty days after return to active duty. [1955 c 382 § 16.]

41.18.180 Fireman contributor under prior law may obtain benefits of chapter—Refunds. Any fireman who has made contributions under any prior act may elect to avail himself of the benefits provided by this chapter or under such prior act by filing written notice with the board within sixty days from the effective date of this 1961 amendatory act: PROVIDED, That any fireman who has received refunds by reason of selecting the benefits of prior acts shall return the amount of such refunds as a condition to coverage under this 1961 amendatory act. [1961 c 255 § 12.]

Reviser's note: "this 1961 amendatory act" [1961 c 255] consists of RCW 41.16.020, 41.16.050, 41.16.060, 41.18.010, 41.18.015, 41.18.030, 41.18.040, 41.18.060, 41.18.080, 41.18.130, 41.18.140, and 41.18.180, and the repeal of RCW 41.18.070, 41.18.110, and 41.18.120. The act became effective at midnight June 7, 1961 (see preface, 1961 session laws).

41.18.190 Transfer of membership authorized. Any fireman as defined in RCW 41.18.010 who has prior to July 1, 1969 been employed as a member of a fire department and who desires to make contributions and avail himself of the pension and other benefits of chapter 41.18 RCW as now law or hereafter amended, may transfer his membership from any other pension fund, except the Washington law enforcement officers' and fire fighters' retirement system, to the pension fund provided in chapter 41.18 RCW: PROVIDED, That such fireman transmits written notice of his intent to transfer to the pension board of his municipality prior to September 1, 1969. [1969 ex.s. c 209 § 41.]

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

Law enforcement officers' and fire fighters' retirement system: Chapter 41.26 RCW.

41.18.200 Minimum pension. All retirees and survivors receiving a pension under the provisions of this chapter shall from and after April 25, 1973 receive a minimum pension of three hundred dollars per month. [1973 1st ex.s. c 181 § 2.]

41.18.210 Transfer of credit from city employees' retirement system to firemen's pension system. Any former employee of a department of a city of the first class, who (1) was a member of the employees' retirement system of such city, and (2) is now employed within the fire department of such city, may transfer his former membership credit from the city employees' retirement system to the fireman's pension system created by chapters 41.16 and 41.18 RCW by filing a written request with the board of

administration and the municipal fireman's pension board, respectively.

Upon the receipt of such request, the transfer of membership to the city's fireman's pension system shall be made, together with a transfer of all accumulated contributions credited to such member. The board of administration shall transmit to the municipal fireman's pension board a record of service credited to such member which shall be computed and credited to such member as a part of his period of employment in the city's fireman's pension system. For the purpose of the transfer contemplated by this section, those affected individuals who have formerly withdrawn funds from the city employees' retirement system shall be allowed to restore contributions withdrawn from that retirement system directly to the fireman's pension system and receive credit in the fireman's pension system for their former membership service in the prior system.

Any employee so transferring shall have all the rights, benefits, and privileges that he would have been entitled to had he been a member of the city's fireman's pension system from the beginning of his employment with the city.

No person so transferring shall thereafter be entitled to any other public pension, except that provided by chapter 41.26 RCW or social security, which is based upon such service with the city.

The right of any employee to file a written request for transfer of membership as set forth in this section shall expire December 31, 1974. [1974 ex.s. c 148 § 1.]

Chapter 41.20

POLICE RELIEF AND PENSIONS IN FIRST CLASS CITIES

Sections

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41.20.005 Definitions. As used in chapter 41.20 RCW:

(1) "Rank" means civil service rank.

(2) "Position" means the particular employment held at any particular time, which may or may not be the same as civil service rank.

(3) Words importing masculine gender shall extend to females also.

(4) "Salary" means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages. [1969 ex.s. c 209 § 39; 1959 c 78 § 1.]

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.20.010 Board of trustees—Composition. (1) The mayor or his designated representative who shall be an elected official of the city, and the clerk, treasurer, president of the city council or mayor pro tem of each city of the first class, or in case any such city has no city council, the commissioner who has supervision of the police department, together with three active or retired members of the police department, to be elected as herein provided, in addition to the duties now required of them, are constituted a board of trustees of the relief and pension fund of the police department of each such city, and shall provide for the disbursement of the fund, and designate the beneficiaries thereof.

(2) The police department and the retired law enforcement officers of each city of the first class shall elect three members to act as members of the board. Members shall be elected for three year terms. Existing members shall continue in office until replaced as provided for in this section.

(3) Such election shall be held in the following manner. Not more than thirty nor less than fifteen days preceding the first day of June in each year, written notice of the nomination of any member or retired member of the department for membership on the board may be filed with the secretary of the board. Each notice of nomination shall be signed by not less than five members or retired members of the department, and nothing herein contained shall prevent any member or retired member of the department from signing more than one notice of nomination. The election shall be held on a date to be fixed by the secretary during the month of June. Notice of the dates upon which notice of nomination may be filed and of the date fixed for the election of such members of the board shall be given by the secretary of the board by posting written notices thereof in a prominent place in the police headquarters. For the purpose of such election, the secretary of the board shall prepare and furnish printed or typewritten ballots in the usual form, containing the names of all persons regularly nominated for membership and shall furnish a ballot box for the election. Each member and each retired member of the police department shall be entitled to vote at the election for one nominee as a member of the board. The chief of the department shall appoint two members to act as officials of the election, who shall be allowed their regular wages for the day, but shall receive no additional compensation therefor. The election

shall be held in the police headquarters of the department and the polls shall open at 7:30 a.m. and close at 8:30 p.m. The one nominee receiving the highest number of votes shall be declared elected to the board and his term shall commence on the first day of July succeeding the election. In the first election the nominee receiving the greatest number of votes shall be elected to the three year term, the second greatest to the two year term and the third greatest to the one year term. Retired members who are subject to the jurisdiction of the board have both the right to elect and the right to be elected under this section. Ballots shall contain all names of those nominated, both active and retired. Notice of nomination and voting by retired members shall be conducted by the board. [1988 c 164 § 3; 1973 1st ex.s. c 16 § 1; 1955 c 69 § 1; 1911 c 18 § 1; 1909 c 39 § 1; RRS § 9579.]

41.20.020 Officers of board—Annual report. The mayor, or his designated representative, shall be ex officio chairman, the clerk shall be ex officio secretary, and the treasurer shall be ex officio treasurer of said board. The secretary of said board, at the time of making his annual reports as said city clerk, shall annually report the condition of said fund, the receipts and disbursements on account of the same, together with a complete list of the beneficiaries of said fund, and the amounts paid to each of them. [1973 1st ex.s. c 16 § 2; 1909 c 39 § 2; RRS § 9580.]

41.20.030 Meetings—Disbursements of fund—Quorum. The board herein provided for shall hold monthly meetings on the first Mondays of each month and upon the call of its president. It shall issue warrants, signed by its president and secretary, to the persons entitled thereto under provisions of this chapter other than RCW 41.20.050, 41.20.060, 41.20.080 and 41.20.085 for the amounts of money ordered paid to such persons from such fund by said board, which warrants shall state for what purpose such payments are made; it shall keep a record of its proceedings, which record shall be a public record; it shall, at each monthly meeting, send to the treasurer of such city a written or printed list of all persons entitled to payment under provisions of this chapter other than RCW 41.20.050, 41.20.060, 41.20.080 and 41.20.085 from the fund herein provided for, stating the amount of such payments and for what granted, which list shall be certified to and signed by the president and secretary of such board, attested under oath. The treasurer of such city shall thereupon enter a copy of said list upon a book to be kept for that purpose and which shall be known as "the police relief and pension fund book", and the said board shall direct payment of the amounts named therein to the persons entitled thereto, out of such fund. The treasurer shall prepare and enter into such book an additional list showing those persons entitled to payment under RCW 41.20.050, 41.20.060, 41.20.080 and 41.20.085 and shall on the last day of each month issue warrants in the appropriate amounts to such persons. A majority of all the members of said board herein provided for shall constitute a quorum, and have power to transact business. [1973 c 143 § 1; 1911 c 18 § 5; 1909 c 39 § 11; RRS § 9589.]

41.20.040 Additional powers of board. The board shall, in addition to other powers herein granted, have power:

(1) To compel witnesses to attend and testify before it upon all matters connected with the administration of this chapter, in the same manner as provided by law for the taking of testimony in courts of record in this state, and its president or any member of the board may administer oaths to such witnesses.

(2) To provide for the payment from the fund of all necessary expenses and printing.

No compensation or emolument shall be paid to any member of the board for any duty required or performed under this chapter.

Each board may make all needful rules and regulations for its guidance in the administration of and in conformity with the provisions of this chapter. [1955 c 69 § 2; 1909 c 39 § 12; RRS § 9590.]

41.20.050 Pension on retirement for years of service. Whenever a person has been duly appointed, and has served honorably for a period of twenty-five years, as a member, in any capacity, of the regularly constituted police department of a city subject to the provisions of this chapter, the board, after hearing, if one is requested in writing, may order and direct that such person be retired, and the board shall retire any member so entitled, upon his written request therefor. The member so retired *hereafter shall be paid from the fund during his lifetime a pension equal to fifty percent of the amount of salary *at any time hereafter attached to the position held by the retired member for the year preceding the date of his retirement: **PROVIDED,** That, except as to a position higher than that of captain held for at least three calendar years prior to date of retirement, no such pension shall exceed an amount equivalent to fifty percent of the salary of captain, and all existing pensions shall be increased to not less than three hundred dollars per month as of April 25, 1973: **PROVIDED FURTHER,** That a person *hereafter retiring who has served as a member for more than twenty-five years, shall have his pension payable under this section increased by two percent of his salary per year for each full year of such additional service to a maximum of five additional years.

Any person who has served in a position higher than the rank of captain for a minimum of three years may elect to retire at such higher position and receive for his lifetime a pension equal to fifty percent of the amount of the salary *at any time hereafter attached to the position held by such retired member for the year preceding his date of retirement: **PROVIDED,** That such person make the said election to retire at a higher position by September 1, 1969 and at the time of making the said election, pay into the relief and pension fund in addition to the contribution required by RCW 41.20.130: (1) an amount equal to six percent of that portion of all monthly salaries previously received upon which a sum equal to six percent has not been previously deducted and paid into the police relief and pension fund; (2) and such person agrees to continue paying into the police relief and pension fund until the date of retirement, in addition to the contributions required by RCW 41.20.130, an amount equal to six percent of that portion of monthly salary

upon which a six percent contribution is not currently deducted pursuant to RCW 41.20.130.

Any person affected by this chapter who at the time of entering the armed services was a member of such police department and is a veteran as defined in RCW 41.04.005, shall have added to his period of employment as computed under this chapter, his period of war service in the armed forces, but such credited service shall not exceed five years and such period of service shall be automatically added to each member's service upon payment by him of his contribution for the period of his absence at the rate provided in RCW 41.20.130. [1973 1st ex.s. c 181 § 3; 1969 ex.s. c 269 § 6; 1969 ex.s. c 219 § 1; 1969 ex.s. c 209 § 36; 1969 c 123 § 1; 1961 c 191 § 1; 1959 c 78 § 3; 1959 c 6 § 1. Prior: 1957 c 84 § 1; 1955 c 69 § 3; 1945 c 45 § 1; 1937 c 24 § 1; 1915 c 40 § 2; 1911 c 18 § 2; 1909 c 39 § 4; Rem. Supp. 1945 § 9582.]

***Reviser's note:** The words "hereafter" and "at any time hereafter" first appear in the 1961 amendment.

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.20.060 Pension on retirement for duty connected disability. Whenever any person, while serving as a policeman in any such city becomes physically disabled by reason of any bodily injury received in the immediate or direct performance or discharge of his duties as a policeman, or becomes incapacitated for service on account of any duty connected disability, such incapacity not having been caused or brought on by dissipation or abuse, of which the board shall be judge, the board may, upon his written request filed with the secretary, or without such written request, if it deems it to be for the benefit of the public, retire such person from the department, and order and direct that he be paid from the fund during his lifetime, a pension equal to fifty percent of the amount of salary *at any time hereafter attached to the position which he held in the department at the date of his retirement, but not to exceed an amount equivalent to fifty percent of the salary of captain except as to a position higher than that of captain held for at least three calendar years prior to the date of retirement in which case as to such position the provisions of RCW 41.20.050 shall apply, and all existing pensions shall be increased to not less than three hundred dollars per month as of April 25, 1973: **PROVIDED,** That where, at the time of retirement hereafter for duty connected disability under this section, such person has served honorably for a period of more than twenty-five years as a member, in any capacity, of the regularly constituted police department of a city subject to the provisions of this chapter, the foregoing percentage factors to be applied in computing the pension payable under this section shall be increased by two percent of his salary per year for each full year of such additional service to a maximum of five additional years.

Whenever such disability ceases, the pension shall cease, and such person shall be restored to active service at the same rank he held at the time of his retirement, and at the current salary attached to said rank at the time of his return to active service.

Disability benefits provided for by this chapter shall not be paid when the policeman is disabled while he is engaged for compensation in outside work not of a police or special

police nature. [1998 c 157 § 3; 1973 1st ex.s. c 181 § 4; 1969 ex.s. c 219 § 2; 1969 ex.s. c 209 § 37; 1969 c 123 § 2; 1961 c 191 § 2; 1959 c 78 § 4; 1959 c 6 § 2; 1957 c 84 § 2; 1955 c 69 § 5; 1937 c 24 § 2; 1911 c 18 § 3; 1909 c 39 § 5; RRS § 9583.]

***Reviser's note:** The words "at any time hereafter" first appear in the 1961 amendment.

Application—1998 c 157 § 3: "The provisions of section 3 of this act apply retrospectively to all line of duty disability retirement allowances heretofore granted under chapter 41.20 RCW." [1998 c 157 § 5.]

Purpose—1998 c 157 §§ 2-5: "The purpose of sections 2 through 5 of this act is to clarify that the intent of the legislature in enacting RCW 41.20.060, insofar as that section provides benefits to members for disabilities incurred in the line of duty, was to provide a statute in the nature of a workers' compensation act that provides compensation to employees for personal injuries incurred in the course of employment. Accordingly this act amends and divides RCW 41.20.060 into two separate sections. Section 3 of this act clarifies and emphasizes the legislature's intent that the disability benefits granted by RCW 41.20.060, as amended, are granted only to those members who become disabled by any injury or incapacity that is incurred in the line of duty. Section 4 of this act continues to provide disability retirement benefits to members who become disabled by an injury or incapacity not incurred in the line of duty." [1998 c 157 § 2.]

Effective date—1998 c 157: See note following RCW 41.40.0931.

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.20.061 Increase in presently payable benefits for service or disability authorized. See RCW 41.26.250.

41.20.065 Pension on retirement for nonduty disability. Whenever any person, while serving as a policeman in any such city becomes physically disabled by reason of any bodily injury not incurred in the line of duty, or becomes incapacitated for service, such incapacity not having been caused or brought on by dissipation or abuse, of which the board shall be judge, the board may, upon his written request filed with the secretary, or without such written request, if it deems it to be for the benefit of the public, retire such person from the department, and order and direct that he be paid from the fund during his lifetime, a pension equal to fifty percent of the amount of salary at any time hereafter attached to the position which he held in the department at the date of his retirement, but not to exceed an amount equivalent to fifty percent of the salary of captain, except as to a position higher than that of captain held for at least three calendar years prior to the date of retirement, in which case as to such position the provisions of RCW 41.20.050 shall apply, and all existing pensions shall be increased to not less than three hundred dollars per month as of April 25, 1973: PROVIDED, That where, at the time of retirement hereafter for disability under this section, such person has served honorably for a period of more than twenty-five years as a member, in any capacity, of the regularly constituted police department of a city subject to the provisions of this chapter, the foregoing percentage factors to be applied in computing the pension payable under this section shall be increased by two percent of his salary per year for each full year of such additional service, to a maximum of five additional years.

Whenever such disability ceases, the pension shall cease, and such person shall be restored to active service at the same rank he held at the time of his retirement, and at

the current salary attached to said rank at the time of his return to active service.

Disability benefits provided for by this chapter shall not be paid when the policeman is disabled while he is engaged for compensation in outside work not of a police or special police nature. [1998 c 157 § 4.]

Purpose—1998 c 157 §§ 2-5: See note following RCW 41.20.060.

Effective date—1998 c 157: See note following RCW 41.40.0931.

41.20.070 Certificate of disability. No person shall be retired, as provided in RCW 41.20.060, or receive any benefit from said fund, unless there shall be filed with said board certificate of his disability, which certificate shall be subscribed and sworn to by said person, and by the city physician (if there be one) and two regularly licensed and practicing physicians of such city, and such board may require other evidence of disability before ordering such retirement and payment as aforesaid. [1909 c 39 § 6; RRS § 9584.]

41.20.080 Pension on death before or after retirement. Whenever any member of the police department of any such city loses his life while actually engaged in the performance of duty, or as the proximate result thereof, leaving a surviving spouse or child or children under the age of eighteen years, upon satisfactory proof of such facts made to it, the board shall order and direct that a pension, equal to one-half of the amount of the salary *at any time hereafter attached to the position which such member held in the police department at the time of his death, shall be paid to the surviving spouse for life, or if there is no surviving spouse, or if the surviving spouse shall die, then to the child or children until they are eighteen years of age: PROVIDED, That if such spouse or child or children marry, the person so marrying shall thereafter receive no further pension from the fund: PROVIDED FURTHER, That all existing pensions shall be increased to not less than three hundred dollars per month as of April 25, 1973.

If any member so losing his life, leaves no spouse, or child or children under the age of eighteen years, the board shall pay the sum of two hundred dollars toward the funeral expenses of such member. [1973 1st ex.s. c 181 § 5; 1961 c 191 § 3; 1959 c 78 § 5; 1959 c 6 § 3; 1957 c 84 § 3; 1955 c 69 § 6; 1937 c 24 § 3; 1915 c 40 § 3; 1909 c 39 § 7; RRS § 9585.]

***Reviser's note:** The words "at any time hereafter" first appear in the 1961 amendment.

41.20.085 Pension on death before or after retirement—Surviving spouse not formerly covered—"Surviving spouse" defined. Whenever any member of the police department of any such city shall die, or shall have heretofore died, or whenever any such member who has been heretofore retired or who is hereafter retired for length of service or a disability, shall have died, or shall die, leaving a surviving spouse or child or children under the age of eighteen years, upon satisfactory proof of such facts made to it, the board shall order and direct that a pension equal to one-third of the amount of salary at any time hereafter attached to the position held by such member in the police department at the time of his death or retirement, not to

exceed one-third of the salary of captain, shall be paid to the surviving spouse during the surviving spouse's life, and in addition, to the child or children, until they are eighteen years of age, as follows: For one child, one-eighth of the salary on which such pension is based; for two children, a total of one-seventh of said salary; and for three or more children, a total of one-sixth of said salary: PROVIDED, If such spouse or child or children marry, the person so marrying shall receive no further pension from the fund. In case there is no surviving spouse, or if the surviving spouse shall die, the child or children shall be entitled to the spouse's share in addition to the share specified herein until they reach eighteen years of age. No spouse shall be entitled to any payments on the death of a retired officer unless such surviving spouse has been married to such officer for a period of at least five years prior to the date of his retirement.

As of April 25, 1973, a surviving spouse not otherwise covered by the provisions of section 2, chapter 78, Laws of 1959, shall be entitled to a pension of three hundred dollars per month.

"Surviving spouse" as used in this section means surviving female or male spouse. [1973 1st ex.s. c 181 § 6; 1969 ex.s. c 209 § 26; 1961 c 140 § 1; 1959 c 78 § 2.]

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.20.086 Increase in certain presently payable death benefits authorized. See RCW 41.26.260.

41.20.090 Lump sum payment on death before or after retirement. Whenever any member of the police department of such city shall, after five years of service in said department, die, his surviving spouse or, if there is no surviving spouse, the child or children under the age of eighteen years, or if there is no surviving spouse or child or children, then his parents or unmarried sister or sisters, minor brother or brothers, dependent upon him for support, shall be entitled to the sum of one thousand dollars from such fund. This section to apply to members who shall have been retired, for any reason, from active service under the provisions of this chapter. [1959 c 78 § 6; 1937 c 24 § 4; 1915 c 40 § 4; 1911 c 18 § 4; 1909 c 39 § 8; RRS § 9586.]

Construction—1937 c 24: "Nothing contained in this act shall affect or be construed as affecting the validity of any act done, obligation entered into, or rights accrued, or any proceedings had or pending under the act of which this act is amendatory." [1937 c 24 § 6; RRS § 9592-1.]

Severability—1937 c 24: "If any section or part of this act shall be held to be unconstitutional and void, such holding shall not effect [affect] the remaining portions of the act." [1937 c 24 § 7; RRS § 9592-2.]

41.20.100 Examination of disability pensioners—Emergency duty. Any person retired for disability under this chapter may be summoned before the board herein provided for, at any time thereafter, and shall submit himself thereto for examination as to his fitness for duty, and shall abide the decision and order of said board with reference thereto; and all members of such police force who may be retired under the provisions of this chapter, shall report to the chief of police of such city where so retired on the first Mondays of April, July, October and January of each year; and in cases of emergency, may be assigned to and shall

perform such duty as said chief of police may direct, and such persons shall have no claim against such city for payment for such duty so performed. [1909 c 39 § 9; RRS § 9587.]

41.20.110 Withdrawal of pension—Grounds.

Whenever any person who shall have received any benefit from said fund shall be convicted of any felony, or shall become an habitual drunkard, or shall fail to report himself for examination for duty as required herein, unless excused by the board, or shall disobey the requirements of said board then such board shall order and direct that such pension or allowance that may have been granted to such person shall immediately cease, and such person shall receive no further pension or allowance or benefit under this chapter, but in lieu thereof the said pension or allowance or benefit may, at the discretion of the board, be paid to those immediately dependent upon him, or to his legally appointed guardian. [1937 c 24 § 5; 1909 c 39 § 10; RRS § 9588.]

Construction—Severability—1937 c 24: See notes following RCW 41.20.090

41.20.120 Sick benefits. Whenever any active member of the police department, or any member *hereafter retired, on account of service, sickness or disability, not caused or brought on by dissipation or abuse, of which the board shall be judge, is confined in any hospital or in his or her home and, whether or not so confined, requires nursing, care, or attention, the board shall pay for the active member the necessary hospital, care, and nursing expenses of the member out of the fund; and the board may pay for the retired member hospital, care, and nursing expenses as are reasonable, in the board's discretion. The board may, at its discretion, elect, in lieu of paying some or all such expenses for the retired member, to reimburse the retired member for premiums the member has paid for medical insurance that supplements medicare, including premiums the member has paid for medicare part B coverage. The salary of the active member shall continue while he or she is necessarily confined to the hospital or home or elsewhere during the period of recuperation, as determined by the board, for a period not exceeding six months; after which period the other provisions of this chapter shall apply: PROVIDED, That the board in all cases may have the active or retired member suffering from such sickness or disability examined at any time by a licensed physician or physicians, to be appointed by the board, for the purpose of ascertaining the nature and extent of the sickness or disability, the physician or physicians to report to the board the result of the examination within three days thereafter. Any active or retired member who refuses to submit to such examination or examinations shall forfeit all his or her rights to benefits under this section: PROVIDED FURTHER, That the board shall designate the hospital and medical services available to the sick or disabled policeman. [1992 c 22 § 2; 1961 c 191 § 4; 1959 c 78 § 7; 1955 c 69 § 7; 1915 c 40 § 5; 1911 c 18 § 6; 1909 c 39 § 13; RRS § 9591.]

***Reviser's note:** The words "hereafter retired" first appear in the 1961 amendment.

41.20.130 Fund created. There is created in each city subject to the provisions of this chapter a police relief and pension fund. The fund shall be constituted as follows:

A sum equal to six percent thereof shall be deducted monthly from the salary of each police officer by the city treasurer and placed in the fund, but the maximum deduction shall not exceed six percent of the monthly salary of captain.

At the time the annual tax levy of the city is made, the city council, or other legislative body, shall order the transfer of an amount of money into the fund, sufficient with the salary deductions, to meet the financial requirements thereof:

(1) From moneys collected or received from all licenses issued;

(2) From fines and forfeitures collected or received in money for violation of city ordinances. [1959 c 78 § 8; 1955 c 69 § 8; 1933 c 30 § 1; 1929 c 101 § 3; 1923 c 54 § 1; 1915 c 40 § 1; 1909 c 39 § 3; RRS § 9581.]

41.20.140 Pension payments monthly—Surplus to general fund. Payments provided for in this chapter shall be made monthly upon proper vouchers. If at any time there is more money in the fund provided for in this chapter than is necessary for the purposes of this chapter, then such surplus shall be transferred from such fund to the general fund of the city: PROVIDED, That at all times enough money shall be kept in said fund to meet all payments provided for in this chapter. [1911 c 18 § 7; 1909 c 39 § 14; RRS § 9592.]

41.20.150 Return of member's contributions—Option to be classified as vested member. Whenever any member affected by this chapter terminates his employment prior to the completion of twenty-five years of service he shall receive seventy-five percent of his contributions made after *the effective date of this act and he shall not receive any contributions made prior thereto: PROVIDED, That in the case of any member who has completed twenty years of service, such member, upon termination for any cause except for a conviction of a felony, shall have the option of electing, in lieu of recovery of his contributions as herein provided, to be classified as a vested member in accordance with the following provisions:

(1) Written notice of such election shall be filed with the board within thirty days after the effective date of such member's termination;

(2) During the period between the date of his termination and the date upon which he becomes a retired member as hereinafter provided, such vested member and his spouse or dependent children shall be entitled to all benefits available under chapter 41.20 RCW to a retired member and his spouse or dependent children with the exception of the service retirement allowance as herein provided for: PROVIDED, That any claim for medical coverage under RCW 41.20.120 shall be attributable to service connected illness or injury;

(3) Any member electing to become a vested member shall be entitled at such time as he otherwise would have completed twenty-five years of service had he not terminated, to receive a service retirement allowance computed on the following basis: Two percent of the amount of salary at any time hereafter attached to the position held by the vested

member for the year preceding the date of his termination, for each year of service rendered prior to the date of his termination. At such time the vested member shall be regarded as a retired member and, in addition to the retirement allowance herein provided for, shall continue to be entitled to all such other benefits as are by chapter 41.20 RCW made available to retired members. [1969 c 123 § 3; 1955 c 69 § 4.]

***Reviser's note:** The words "the effective date of this act" first appear in 1955 c 69 § 4, which became effective midnight June 8, 1955.

41.20.155 Return of member's contributions—Applicability. The provisions of RCW 41.20.050, 41.20.060 and 41.20.150 shall be applicable to all members employed on June 12, 1969, and to those who shall thereafter become members, but shall not apply to any former member who has terminated his employment prior to June 12, 1969. [1969 c 123 § 4.]

41.20.160 Credit for membership in private organization acquired by city of first class. Any person affected by this chapter who was a member of a police organization operated by a private enterprise which police organization shall be hereafter acquired before September 1, 1959, by a city of the first class as its police department as a matter of public convenience or necessity, where it is in the public interest to retain the trained personnel of such police organization, shall have added to his period of employment as computed under this chapter his period of service with said private enterprise, except that this shall apply only to those persons who are in the service of such police organization at the time of its acquisition by the city of the first class and who remain in the service of that city until this chapter shall become applicable to such persons.

No such person shall have added to his period of employment as computed under this chapter his period of service with said private enterprise unless he or a third party shall pay to the city his contribution for the period of such service with the private enterprise, or, if he shall be entitled to any private pension or retirement benefits as a result of such service with the private enterprise, unless he agrees at the time of his employment by the city to accept a reduction in the payment of any benefits payable under this chapter that are based in whole or in part on such added service by the amount of those private pension or retirement benefits received. The rate of such contribution shall be two percent of the wage or salary of such person during that added period of service with the private enterprise before midnight, June 8, 1955, and four and one-half percent of such wage or salary after midnight, June 8, 1955. Such contributions shall be paid into the police relief and pension fund and shall be held subject to the provisions of RCW 41.20.150, except that all such contributions shall be deemed to have been made after June 8, 1955. Such contributions may be invested in investments permitted under chapter 35.39 RCW and may be kept invested until required to meet payments of benefits to such persons.

The city may receive payments for these purposes from a third party and shall make from such payments contributions with respect to such prior service as may be necessary

to enable the police relief and pension fund to assume its obligations. [1983 c 3 § 92; 1959 c 71 § 1.]

Severability—1959 c 71: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1959 c 71 § 2.]

41.20.170 Transfer of membership. Any former employee of a department of a city of the first class who (1) was a member of the employees' retirement system of such city, and (2) is now employed within the police department of such city, may transfer his membership from the city employees' retirement system to the city's police relief and pension fund system by filing a written request with the board of administration and the board of trustees, respectively, of the two systems.

Upon the receipt of such request, the transfer of membership to the city's police relief and pension fund system shall be made, together with a transfer of all accumulated contributions credited to such member. The board of administration of the city's employees' retirement system shall transmit to the board of trustees of the city's police relief and pension fund system a record of service credited to such member which shall be computed and credited to such member as a part of his period of employment in the city's police relief and pension fund system. For the purpose of the transfer contemplated by this section, the affected individuals shall be allowed to restore withdrawn contributions to the city employees' retirement system and reinstate their membership service records.

Any employee so transferring shall have all the rights, benefits and privileges that he would have been entitled to had he been a member of the city's police relief and pension fund system from the beginning of his employment with the city.

No person so transferring shall thereafter be entitled to any other public pension, except that provided by chapter 41.26 RCW or social security, which is based upon service with the city.

The right of any employee to file a written request for transfer of membership as set forth herein shall expire December 31, 1973. [1973 c 143 § 2; 1969 ex.s. c 209 § 27; 1963 c 82 § 1.]

Effective date—Severability—Construction—1969 ex.s. c 209: See RCW 41.26.3901, 41.26.3902, and 41.26.3903.

41.20.175 Transfer of service credit from firemen's pension system to city's police pension system. A former employee of a fire department of a city of the first class who (1) was a member of the fireman's pension system created by chapters 41.16 or 41.18 RCW, and (2) is now employed within the police department of such city, will be regarded as having received membership service credit for such service to the fire department in the city's police and relief pension system at the time he recovers such service credit by paying withdrawn contributions to the Washington law enforcement officers' and fire fighters' retirement system pursuant to RCW 41.26.030(14). [1974 ex.s. c 148 § 2.]

41.20.180 Exemption from taxation and judicial process—Exception—Assignability. The right of a person to a pension, an annuity, or retirement allowance, or disabili-

ty allowance, or death benefits, or any optional benefit, or any other right accrued or accruing to any person under the provisions of this chapter, and any fund created hereby, and all moneys and investments and income thereof, are exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, and shall be unassignable: PROVIDED, That benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation. [1979 ex.s. c 205 § 2; 1965 c 33 § 1.]

41.20.900 Construction—1959 c 6—Benefits retroactively authorized. The provisions of *this act are intended to be remedial and procedural and any benefits heretofore paid to recipients hereunder pursuant to any previous act are retroactively included and authorized as a part of *this act. [1959 c 6 § 4.]

***Reviser's note:** "this act" appears in chapter 6, Laws of 1959, which reenacted RCW 41.20.050, 41.20.060, and 41.20.080. These sections were subsequently amended by chapter 78, Laws of 1959.

41.20.910 Severability—1959 c 6. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1959 c 6 § 5.]

Chapter 41.22

LAW ENFORCEMENT CHAPLAINS

Sections

- 41.22.010 Legislative findings.
- 41.22.020 Washington state patrol—Volunteer chaplain authorized.
- 41.22.030 Local law enforcement agencies—Volunteer chaplains authorized.
- 41.22.040 Volunteer chaplains—Duties.
- 41.22.900 Severability—1985 c 223.

State-employed chaplains—Housing allowance: RCW 41.04.360.

41.22.010 Legislative findings. The career of a police officer is highly stressful, resulting in unacceptable rates of divorce, alcoholism, low morale and suicide. The nature of law enforcement work requires that much information be kept confidential, unfairly burdening the emotional capacity of law enforcement personnel. Police officers may become the hidden victims of society because of their daily work with crisis.

The legislature finds that law enforcement chaplains can provide emotional support for law enforcement personnel, including counseling, stress management, and family life counseling. The legislature also finds that law enforcement chaplains can serve as a crisis intervention resource for personnel of police, fire, and corrections departments, and medical examiners or coroners. [1985 c 223 § 1.]

41.22.020 Washington state patrol—Volunteer chaplain authorized. The Washington state patrol may utilize the services of a volunteer chaplain. [1985 c 223 § 2.]

41.22.030 Local law enforcement agencies—Volunteer chaplains authorized. The legislature authorizes local law enforcement agencies to use the services of volunteer chaplains associated with an agency. [1985 c 223 § 3.]

41.22.040 Volunteer chaplains—Duties. The duties of a volunteer law enforcement chaplain include counseling, training, and crises intervention for law enforcement personnel, their families and the general public. [1985 c 223 § 4.]

41.22.900 Severability—1985 c 223. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 223 § 5.]

Chapter 41.24

VOLUNTEER FIRE FIGHTERS' RELIEF AND PENSIONS

Sections

- 41.24.010 Definitions.
- 41.24.020 Enrollment of fire fighters—Death, disability, retirement benefits.
- 41.24.030 Volunteer fire fighters' relief and pension principal and administrative funds created—Composition—Investment—Use—Treasurer's report.
- 41.24.035 Legal, medical expenses—May be paid from interest earnings of trust funds.
- 41.24.040 Fees, when payable—Interest—Effect of nonpayment.
- 41.24.050 Limitation of membership of volunteer fire departments—Emergency first aid and ambulance service personnel.
- 41.24.060 Board of trustees—How constituted.
- 41.24.070 Officers of board—Record of proceedings—Forms.
- 41.24.080 Duties of board and state board—Disbursements.
- 41.24.090 Meetings.
- 41.24.100 Compelling attendance of witnesses—Oaths—Rules and regulations.
- 41.24.110 Employment of examining physician.
- 41.24.120 Hearing of application for benefits—Appeal to state board.
- 41.24.130 Quorum—Vote on allowance of claims.
- 41.24.140 Guardian may be appointed.
- 41.24.150 Disability payments.
- 41.24.160 Death benefits.
- 41.24.170 Retirement pensions.
- 41.24.172 Retirement pensions—Options—Election.
- 41.24.175 Disability or retirement payments—Computation according to latest legislative expression.
- 41.24.176 Disability or retirement payments—Construction.
- 41.24.180 Lump sum payments.
- 41.24.185 Lump sum payments—Monthly pension under twenty-five dollars.
- 41.24.190 Proof of service.
- 41.24.200 Service need not be continuous nor in a single department or agency.
- 41.24.210 Report of accident—Time limitation for filing report and claim.
- 41.24.220 Hospitalization, surgery, etc.
- 41.24.230 Funeral and burial expenses.
- 41.24.240 Benefits not transferable or subject to legal process—Exceptions—Chapter not exclusive.
- 41.24.245 Payments to spouse or ex spouse pursuant to court order.

- 41.24.250 State board for volunteer fire fighters—Composition—Terms—Vacancies—Oath.
- 41.24.260 State board for volunteer fire fighters—Meetings—Quorum.
- 41.24.270 State board for volunteer fire fighters—Compensation—Travel expenses.
- 41.24.280 State board for volunteer fire fighters—Attorney general is legal advisor.
- 41.24.290 State board for volunteer fire fighters—Powers and duties.
- 41.24.300 State board for volunteer fire fighters—Vouchers, warrants.
- 41.24.310 State board for volunteer fire fighters—Secretary, duties, compensation.
- 41.24.320 State board for volunteer fire fighters—State actuary to provide actuarial services.
- 41.24.330 Emergency medical service districts—Board of trustees—Creation.
- 41.24.340 Emergency medical service districts—Board of trustees—Officers—Annual report.
- 41.24.350 Emergency medical service districts—State board shall set pension fees.
- 41.24.400 Reserve officers—Enrollment—Limitations.
- 41.24.410 Reserve officers—Credit for service.
- 41.24.420 Reserve officers—Enrollment—Procedure.
- 41.24.430 Reserve officers—Eligibility for benefit.
- 41.24.440 Reserve officers—Lump sum payments—Payments to surviving spouse.
- 41.24.450 Reserve officers—Disability and death benefits—Allowed.
- 41.24.460 Reserve officers—Disability and death benefits—Board of trustees.
- 41.24.470 Reserve officers—Disability and death benefits—Fees.

Prior acts relating to volunteer firemen's relief and pensions: (1) 1935 c 121 (repealed by 1945 c 261 § 27).
(2) Benefits extended to volunteer firemen of fire protection districts: 1943 c 137.

Fire protection districts: Title 52 RCW.

Firemen's relief and pensions: Chapters 41.16, 41.18 RCW.

41.24.010 Definitions. As used in this chapter:

"Municipal corporation" or "municipality" includes any county, city, town or combination thereof, fire protection district, local law enforcement agency, or any water, irrigation, or other district, authorized by law to afford emergency medical services or protection to life and property within its boundaries.

"Fire department" means any regularly organized fire department or emergency medical service district consisting wholly of volunteer fire fighters, or any part-paid and part-volunteer fire department duly organized and maintained by any municipality: PROVIDED, That any such municipality wherein a part-paid fire department is maintained may by appropriate legislation permit the full-paid members of its department to come under the provisions of chapter 41.16 RCW.

"Fire fighter" includes any fire fighter or emergency worker who is a member of any fire department of any municipality but shall not include full time, paid fire fighters who are members of the Washington law enforcement officers' and fire fighters' retirement system, with respect to periods of service rendered in such capacity.

"Emergency worker" means any emergency medical service personnel, regulated by chapters 18.71 and 18.73 RCW, who is a member of an emergency medical service district but shall not include full-time, paid emergency medical service personnel who are members of the Washington public employees' retirement system, with respect to periods of service rendered in such capacity.

"Performance of duty" shall be construed to mean and include any work in and about company quarters or any fire

station or any other place under the direction or general orders of the chief or other officer having authority to order such member to perform such work; responding to, working at, or returning from an alarm of fire; drill; or any work performed of an emergency nature in accordance with the rules and regulations of the fire department.

"State board" means the state board for volunteer fire fighters and reserve officers created herein.

"Board of trustees" means a board of trustees created under RCW 41.24.060 or, for matters affecting an emergency worker, an emergency medical service district board of trustees created under RCW 41.24.330.

"Appropriate legislation" means an ordinance when an ordinance is the means of legislating by any municipality, and resolution in all other cases.

"Reserve officer" means the same as defined by the Washington state criminal justice training commission under chapter 43.101 RCW.

"Participant" means any fire fighter, emergency worker, or reserve officer who is or may become eligible to receive a benefit of any type under the retirement provisions of this chapter, or whose beneficiary may be eligible to receive any such benefit. [1995 c 11 § 1; 1993 c 331 § 1; 1989 c 91 § 8; 1970 ex.s. c 6 § 18; 1955 c 263 § 1; 1945 c 261 § 1; Rem. Supp. 1945 § 9578-15.]

Effective date—1989 c 91: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 91 § 27.]

Construction—Saving—1955 c 263: "Any provisions of chapter 41.24 RCW inconsistent with the provisions of this act are hereby repealed: PROVIDED, That such repeal shall not affect any act or proceeding had or pending, under such provision repealed, but the same shall be construed and prosecuted as though such provision had not been repealed." [1955 c 263 § 12.] This applies to RCW 41.24.010, 41.24.080, 41.24.120, and 41.24.250 through 41.24.310.

Severability—1945 c 261: "If any provision of this act, or the application thereof to any person or circumstance, is held invalid, the remainder of the act, and the application of such provision to other persons or circumstances, shall not be affected thereby. If any section, subsection, sentence, clause or phrase of this act is for any reason held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this act. The legislature hereby declares that it would have passed this act and each section, subsection, clause and phrase thereof irrespective of the fact that any one or more of the other sections, subsections, sentences, clauses and phrases be declared unconstitutional." [1945 c 261 § 26.]

Construction—Saving—1945 c 261: "Chapter 121, Laws of 1935 (sections 9578-1 to 9578-11, inclusive, Remington's Revised Statutes, also Pierce's Perpetual Code 773-37 to -57), is hereby repealed: PROVIDED, That such repeal shall not be construed as affecting any act done or right acquired, or obligation incurred, or proceedings had or pending, under said act repealed, but the same shall be continued and prosecuted as though such act had not been repealed." [1945 c 261 § 27.]

The two foregoing annotations apply to RCW 41.24.010 through 41.24.240.

Fire protection district having full paid fire department: RCW 41.16.240.

41.24.020 Enrollment of fire fighters—Death, disability, retirement benefits. (1) Every municipal corporation maintaining and operating a regularly organized fire department shall make provision by appropriate legislation for the enrollment of every fire fighter under the relief and compensation provisions of this chapter for the purpose of providing protection for all its fire fighters and their families from death or disability arising in the performance of their duties as fire fighters: PROVIDED, That nothing

herein shall prohibit any municipality from providing such additional protection for relief and compensation, or death benefit as it may deem proper.

(2) Any municipal corporation maintaining and operating a regularly organized fire department may make provision by appropriate legislation whereby any fire fighter may enroll under the pension provisions of this chapter for the purpose of enabling any fire fighter, so electing, to avail himself or herself of the retirement provisions of this chapter.

(3) Every municipal corporation shall make provisions for the collection and payment of the fees as herein provided, and shall continue to make such provisions for all fire fighters who come under this chapter as long as they shall continue to be members of its fire department. [1989 c 91 § 9; 1945 c 261 § 2; Rem. Supp. 1945 § 9578-16.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.030 Volunteer fire fighters' relief and pension principal and administrative funds created—Composition—Investment—Use—Treasurer's report. (1) There is created in the state treasury a trust fund for the benefit of the participants covered by this chapter, which shall be designated the volunteer fire fighters' relief and pension principal fund and shall consist of:

(a) All bequests, fees, gifts, emoluments, or donations given or paid to the fund.

(b) An annual fee for each member of its fire department to be paid by each municipal corporation for the purpose of affording the members of its fire department with protection from death or disability as provided in this chapter as follows:

(i) Ten dollars for each volunteer or part-paid member of its fire department;

(ii) A sum equal to one and one-half of one percent of the annual salary attached to the rank of each full-paid member of its fire department, prorated for 1970 on the basis of services prior to March 1, 1970.

(c) Where a municipal corporation has elected to make available to the members of its fire department the retirement provisions as provided in this chapter, an annual fee of sixty dollars for each of its fire fighters electing to enroll therein, thirty dollars of which shall be paid by the municipality and thirty dollars of which shall be paid by the fire fighter. However, nothing in this section prohibits any municipality from voluntarily paying the fire fighters' share of the retirement provision.

(d) Where a municipal corporation has elected to make the retirement provisions of this chapter available to reserve officers, for each reserve officer that elects to enroll: An annual fee of thirty dollars shall be paid by the reserve officer and an annual fee determined by the state board based on the latest actuarial valuation shall be paid by the municipal corporation. The fee paid by the municipal corporation may include operating expenses.

(e) Forty percent of all moneys received by the state from taxes on fire insurance premiums shall be paid into the state treasury and credited to the administrative fund created in subsection (2) of this section.

(f) The state investment board, upon request of the state treasurer shall have full power to invest or reinvest such

portion of the amounts credited to the principal fund as is not, in the judgment of the treasurer, required to meet current withdrawals. Such investments shall be made in the manner prescribed by RCW 43.84.150 and not otherwise.

(g) All bonds or other obligations purchased according to (f) of this subsection shall be forthwith placed in the custody of the state treasurer, and he or she shall collect the principal thereof and interest thereon when due.

The state investment board may sell any of the bonds or obligations so acquired and the proceeds thereof shall be paid to the state treasurer.

The interest and proceeds from the sale and redemption of any bonds or other obligations held by the fund and invested by the state investment board shall be credited to and form a part of the principal fund, less the allocation to the state investment board expense account pursuant to RCW 43.33A.160.

All amounts credited to the principal fund shall be available for making the benefit payments required by this chapter.

The state treasurer shall make an annual report showing the condition of the fund.

(2) The volunteer fire fighters' relief and pension administrative fund is hereby created in the state treasury. Moneys in the account, including unanticipated revenues under RCW 43.79.270, may be spent only after appropriation, and may be used only for operating expenses of the volunteer fire fighters' relief and pension principal fund, the operating expenses of the volunteer fire fighters' relief and pension administrative fund, or for transfer from the administrative fund to the principal fund.

(a) The state board shall compute a percentage of the amounts credited to the administrative fund to be paid into the principal fund.

(b) For the purpose of providing amounts to be used to defray the cost of administration of the principal and administrative funds, the state board shall ascertain at the beginning of each biennium and request from the legislature an appropriation from the administrative fund sufficient to cover estimated expenses for the biennium. [1995 c 45 § 1; 1995 c 11 § 3; 1992 c 97 § 1; 1991 sp.s. c 13 § 98. Prior: 1989 c 194 s 1; 1989 c 91 § 1; 1986 c 296 § 4; 1982 1st ex.s. c 35 § 17; 1981 c 3 § 26; 1973 1st ex.s. c 170 § 1; 1970 ex.s. c 6 § 19; 1967 c 160 § 2; 1957 c 116 § 1; 1955 c 223 § 1; 1945 c 261 § 3; Rem. Supp. 1945 § 9578-17; prior: 1935 c 121 § 1; RRS § 9578-1.]

Reviser's note: This section was amended by 1995 c 11 § 3 and by 1995 c 45 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1992 c 97: "This act shall take effect July 1, 1992." [1992 c 97 § 3.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1989 c 194 §§ 1, 2, and 3: "Sections 1, 2, and 3 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 194 § 4.]

Effective date—1989 c 91: See note following RCW 41.24.010.

Severability—Effective date—1986 c 296: See notes following RCW 48.14.020.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

Effective date—1973 1st ex.s. c 170: "This 1973 amendatory act shall take effect on July 1, 1973." [1973 1st ex.s. c 170 § 5.]
Insurance premium taxes: RCW 48.14.020.

41.24.035 Legal, medical expenses—May be paid from interest earnings of trust funds. The state board is authorized to pay from the interest earnings of the trust funds of the system lawful obligations of the system for legal expenses and medical expenses which expenses are primarily incurred for the purpose of protecting the trust fund or are incurred in compliance with statutes governing such funds.

The term "legal expense" includes, but is not limited to, legal services provided through the legal services revolving fund, fees for expert witnesses, travel expenses, fees for court reporters, cost of transcript preparation, and reproduction of documents.

The term "medical costs" includes, but is not limited to, expenses for the medical examination or reexamination of members or retirees, the costs of preparation of medical reports, and fees charged by medical professionals for attendance at discovery proceedings or hearings. [1989 c 194 § 2.]

Effective date—1989 c 194 §§ 1, 2, and 3: See note following RCW 41.24.030.

41.24.040 Fees, when payable—Interest—Effect of nonpayment. On or before the first day of March of each year, every municipal corporation shall pay such amount as shall be due from it to said fund, together with the amounts collected from the participants: PROVIDED, That no fire fighter [participant] shall forfeit his or her right to participate in the relief and compensation provisions of this chapter by reason of nonpayment: PROVIDED FURTHER, That no participant shall forfeit his or her right to participate in the retirement provisions of this chapter until after March 1st of such year: AND PROVIDED FURTHER, That where a municipality has failed to pay or remit the annual fees required within the time provided such delinquent payment shall bear interest at the rate of one percent per month from March 1st until paid: AND PROVIDED FURTHER, That where a participant has forfeited his or her right to participate in the retirement provisions of this chapter that participant may be reinstated so as to participate to the same extent as if all fees had been paid by the payment of all back fees with interest at the rate of one percent per month provided he or she has at all times been otherwise eligible. [1995 c 11 § 5; 1989 c 91 § 10; 1945 c 261 § 4; Rem. Supp. 1945 § 9578-18. Prior: 1935 c 121 § 10; RRS § 9578-10.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.050 Limitation of membership of volunteer fire departments—Emergency first aid and ambulance service personnel. Each municipal corporation shall by appropriate legislation limit the membership of its volunteer fire department to not to exceed twenty-five fire fighters for each one thousand population or fraction thereof: PROVIDED, That any fire department maintaining and operating an emergency first aid and ambulance service requiring emergency medical training under chapter 18.73 RCW shall be

permitted to increase its membership by the number of fire fighters obtaining and maintaining such qualification: PROVIDED FURTHER, That no person serving as an emergency medical technician or first aid vehicle operator under chapter 18.73 RCW shall be permitted to join the law enforcement officers' and fire fighters' retirement system solely on the basis of such service: PROVIDED FURTHER, That in no case shall the membership of any fire department coming under the provisions of this chapter be limited to less than fifteen fire fighters. [1989 c 91 § 11; 1975-'76 2nd ex.s. c 67 § 1; 1945 c 261 § 5; Rem. Supp. 1945 § 9578-19. Prior: 1935 c 121 § 9; RRS § 9578-9.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.060 Board of trustees—How constituted. In every municipal corporation maintaining a regularly organized fire department there is hereby created and established a board of trustees for the administration of this chapter. Such board shall consist of the mayor, city clerk or comptroller, and one councilmember of such municipality, the chief of the fire department, and one member of the fire department to be elected by the members of such fire department for a term of one year and annually thereafter. Where a municipality is governed by a board, the chair, one member of the board and the secretary or clerk thereof shall serve as members of said board in lieu of the mayor, clerk or comptroller and councilmember. [1981 c 213 § 7; 1945 c 261 § 6; 1943 c 137 § 2; Rem. Supp. 1945 § 9578-20. Prior: 1935 c 121 § 2; RRS § 9578-2.]

41.24.070 Officers of board—Record of proceedings—Forms. The mayor or chairman of the board or commission of any such municipality shall be chairman of the board of trustees, and the clerk or comptroller or secretary of any such municipality, board or commission shall be the secretary-treasurer of the board of trustees. The secretary shall keep a public record of all proceedings, of all receipts and disbursements made by the board of trustees and shall make an annual report of its expenses and disbursements with a full list of the beneficiaries of said fund in such municipality, such record to be placed on file in such municipality. Such forms as shall be necessary for the proper administration of this fund and of making the reports required hereunder shall be provided by the state board. [1969 c 118 § 1; 1945 c 261 § 7; Rem. Supp. 1945 § 9578-21. Prior: 1935 c 121 § 3; RRS § 9578-3.]

41.24.080 Duties of board and state board—Disbursements. The board of trustees of each municipal corporation shall provide for enrollment of all members of its fire department under the death and disability provisions hereof; receive all applications for the enrollment under the retirement provisions hereof when the municipality has elected to enroll thereunder; provide for disbursements of relief and compensation; determine the eligibility of fire fighters for pensions; and pass on all claims and direct payment thereof from the volunteer fire fighters' relief and pension fund to those entitled thereto. Vouchers shall be issued to the persons entitled thereto by the board. It shall send to the state board, after each meeting, a voucher for each person entitled to payment from the fund, stating the

amount of such payment and for what granted, which voucher shall be certified and signed by the chairman and secretary of the board. The state board, after review and approval shall cause a warrant to be issued on the fund for the amount specified and approved on each voucher: PROVIDED, That in pension cases after the applicant's eligibility for pension is verified the state board shall authorize the regular issuance of monthly warrants in payment thereof without further action of the board of trustees of any such municipality. [1989 c 91 § 12; 1969 c 118 § 2; 1955 c 263 § 9; 1945 c 261 § 8; Rem. Supp. 1945 § 9578-22. Prior: 1935 c 121 § 2; RRS § 9578-2.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.090 Meetings. Said board of trustees shall meet on the call of its chairman on a regular monthly meeting day when there is business to come before it. The chairman shall be required to call a meeting on any regular meeting day at the request of any member of the fund or his beneficiary claiming any relief, compensation or pension therefrom. [1945 c 261 § 9; Rem. Supp. 1945 § 9578-23.]

41.24.100 Compelling attendance of witnesses—Oaths—Rules and regulations. The board of trustees herein, in addition to other powers herein granted, shall have power to compel the attendance of witnesses to testify before it on all matters connected with the operation of this chapter, and its chairman or any member of said board may administer oaths to such witnesses; to make all necessary rules and regulations for its guidance in conformity with the provisions of this chapter: PROVIDED, HOWEVER, That no compensation or emoluments shall be paid to any member of said board of trustees for any duties performed under this chapter as such trustees. [1945 c 261 § 10; Rem. Supp. 1945 § 9578-24. Prior: 1935 c 121 § 2; RRS § 9578-2.]

41.24.110 Employment of examining physician. The board shall make provisions for the employment of a regularly licensed practicing physician for the examination of members of fire departments making application for membership. Such appointed physician shall visit and examine all sick and injured fire fighters, perform such services and operations and render all medical aid and care necessary for the recovery of fire fighters on account of sickness or disability received while in the performance of duties. Such appointed physician shall be paid his or her fees from said fund but not in excess of the schedule of fees for like services approved by the director of labor and industries under Title 51 RCW. No physician or surgeon, not approved by the board, shall receive or be entitled to any compensation from said fund as the private or attending physician of any fire fighter. No person shall have any right of action against the board of trustees of said fund for the negligence of any physician or surgeon employed by it. Any physician employed by the board to attend upon any fire fighter shall report his or her findings in writing to said board. [1989 c 91 § 13; 1953 c 253 § 6; 1949 c 145 § 1; 1945 c 261 § 11; Rem. Supp. 1949 § 9578-25. Prior: 1935 c 121 § 2; RRS § 9578-2.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.120 Hearing of application for benefits—Appeal to state board. The local board shall initially hear and decide all applications for relief or compensation and pensions under this chapter, subject to review by, or appeal by the proper person to, the state board where decision on such review or appeal shall be final and conclusive. [1969 c 118 § 3; 1955 c 263 § 10; 1945 c 261 § 12; Rem. Supp. 1945 § 9578-27. Prior: 1935 c 121 § 2; RRS § 9578-2.]

41.24.130 Quorum—Vote on allowance of claims. A majority of the board of trustees shall constitute a quorum, and no business shall be transacted when a majority is not present, and no claim shall be allowed where a majority of the board has not voted favorably thereon. [1945 c 261 § 13; Rem. Supp. 1945 § 9578-27. Prior: 1935 c 121 § 2; RRS § 9578-2.]

41.24.140 Guardian may be appointed. Said board of trustees shall have the power and authority to ask for the appointment of a guardian whenever and wherever the claim of a fire fighter or his beneficiary would, in the opinion of the board, be best served thereby. The board shall have full power to make and direct the payments herein provided for to any person entitled thereto without the necessity of any guardianship or administration proceedings, when in its judgment, it shall determine it to be for the best interests of the beneficiary. [1989 c 91 § 14; 1945 c 261 § 14; Rem. Supp. 1945 § 9578-28. Prior: 1935 c 121 § 2; RRS § 9578-2.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.150 Disability payments. Whenever a fire fighter serving in any capacity as a member of the fire fighter's own fire department subject to the provisions of this chapter becomes physically or mentally disabled, or sick, in consequence or as the result of the performance of his or her duties, so as to be wholly prevented from engaging in each and every duty of his or her regular occupation, business, or profession, he or she shall be paid from the fund monthly, an amount equal to his or her monthly wage as certified by the local board or two thousand five hundred fifty dollars, whichever is less, for a period not to exceed six months, or an amount equal to his or her daily wage as certified by the local board or eighty-five dollars, whichever is less, per day for such period as is part of a month, after which period, if the member is incapacitated to such an extent that he or she is thereby prevented from engaging in any occupation or performing any work for compensation or profit or if the member sustained an injury after October 1, 1978, which resulted in the loss or paralysis of both legs or arms, or one leg and one arm, or total loss of eyesight, but such injury has not prevented the member from engaging in an occupation or performing work for compensation or profit, he or she is entitled to draw from the fund monthly, the sum of one thousand two hundred seventy-five dollars so long as the disability continues, except as hereinafter provided: PROVIDED, That if the member has a wife or husband and/or a child or children unemancipated or under eighteen years of age, he or she is entitled to draw from the fund monthly the additional sums of two hundred fifty-five dollars because of the fact of his wife or her husband, and one hundred ten

dollars because of the fact of each child unemancipated or under eighteen years of age, all to a total maximum amount of two thousand five hundred fifty dollars. The board may at any time reopen the grant of such disability pension if the pensioner is gainfully employed, and may reduce it in the proportion that the annual income from such gainful employment bears to the annual income received by the pensioner at the time of his disability: PROVIDED, That where a fire fighter sustains a permanent partial disability the state board may provide that such injured fire fighter shall receive a lump sum compensation therefor to the same extent as is provided for permanent partial disability under the workers' compensation act under Title 51 RCW in lieu of such monthly disability payments. [1996 c 57 § 1; 1989 c 91 § 2; 1987 c 185 § 10; 1986 c 163 § 1; 1981 c 21 § 1; 1975-'76 2nd ex.s. c 76 § 1; 1969 c 118 § 4; 1965 c 86 § 1; 1957 c 159 § 1; 1953 c 253 § 1; 1945 c 261 § 15; Rem. Supp. 1945 § 9578-29. Prior: 1935 c 121 § 4; RRS § 9578-4.]

Effective date—1996 c 57: "This act shall take effect July 1, 1996." [1996 c 57 § 3.]

Effective date—1989 c 91: See note following RCW 41.24.010.

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Effective date—1981 c 21: "This amendatory act shall take effect July 1, 1981." [1981 c 21 § 6.]

Severability—1981 c 21: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 21 § 5.]

41.24.160 Death benefits. (1) Whenever a fire fighter, or a reserve officer provided a benefit under this section, dies as the result of injuries received, or sickness contracted in consequence or as the result of the performance of his or her duties, the board of trustees shall order and direct the payment of the sum of one hundred fifty-two thousand dollars to his widow or her widower, or if there is no widow or widower, then to his or her dependent child or children, or if there is no dependent child or children, then to his or her parents or either of them, and the sum of one thousand two hundred seventy-five dollars per month to his widow or her widower during his or her life together with the additional monthly sum of one hundred ten dollars for each child of the member, unemancipated or under eighteen years of age, dependent upon the member for support at the time of his or her death, to a maximum total of two thousand five hundred fifty dollars per month.

(2) If the widow or widower does not have legal custody of one or more dependent children of the deceased fire fighter or if, after the death of the fire fighter, legal custody of such child or children passes from the widow or widower to another person, any payment on account of such child or children not in the legal custody of the widow or widower shall be made to the person or persons having legal custody of such child or children. Such payments on account of such child or children shall be subtracted from the amount to which such widow or widower would have been entitled had such widow or widower had legal custody of all the children and the widow or widower shall receive the remainder after such payments on account of such child or children have been subtracted. If there is no widow or widower, or the widow or widower dies while there are

children, unemancipated or under eighteen years of age, then the amount of eight hundred twenty-five dollars per month shall be paid for the youngest or only child together with an additional seventy dollars per month for each additional of such children to a maximum of one thousand six hundred fifty dollars per month until they become emancipated or reach the age of eighteen years; and if there are no widow or widower, child, or children entitled thereto, then to his or her parents or either of them the sum of eight hundred twenty-five dollars per month for life, if it is proved to the satisfaction of the board that the parents, or either of them, were dependent on the deceased for their support at the time of his or her death. In any instance in subsections (1) and (2) of this section, if the widow or widower, child or children, or the parents, or either of them, marries while receiving such pension the person so marrying shall thereafter receive no further pension from the fund.

(3) In the case provided for in this section, the monthly payment provided may be converted in whole or in part into a lump sum payment, not in any case to exceed twelve thousand dollars, equal or proportionate, as the case may be, to the actuarial equivalent of the monthly payment in which event the monthly payments shall cease in whole or in part accordingly or proportionately. Such conversion may be made either upon written application to the state board and shall rest in the discretion of the state board; or the state board is authorized to make, and authority is hereby given it to make, on its own motion, lump sum payments, equal or proportionate, as the case may be, to the value of the annuity then remaining in full satisfaction of claims due to dependents. Within the rule aforesaid the amount and value of the lump sum payment may be agreed upon between the applicant and the state board. Any person receiving a monthly payment under this section on June 29, 1961, may elect, within two years, to convert such payments into a lump sum payment as provided in this section. [1998 c 151 § 1; 1996 c 57 § 2; 1989 c 91 § 3; 1986 c 163 § 2; 1981 c 21 § 2; 1975-'76 2nd ex.s. c 76 § 2; 1973 1st ex.s. c 154 § 74; 1965 c 86 § 2; 1961 c 57 § 1; 1957 c 159 § 2; 1953 c 253 § 2; 1951 c 103 § 2; 1945 c 261 § 16; Rem. Supp. 1945 § 9578-30. Prior: 1935 c 121 § 6; RRS § 9578-6.]

Effective date—1998 c 151: "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, 1998]." [1998 c 151 § 2.]

Effective date—1996 c 57: See note following RCW 41.24.150.

Effective date—1989 c 91: See note following RCW 41.24.010.

Effective date—Severability—1981 c 21: See notes following RCW 41.24.150.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

41.24.170 Retirement pensions. Except as provided in RCW 41.24.410, whenever any participant has been a member and served honorably for a period of ten years or more as an active member in any capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and which municipality and participant are enrolled under the retirement provisions, and the participant has reached the age of sixty-five years, the board of trustees shall order and direct that he or

she be retired and be paid a monthly pension as provided in this section.

Whenever a participant has been a member, and served honorably for a period of twenty-five years or more as an active member in any capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and he or she has reached the age of sixty-five years, and the annual retirement fee has been paid for a period of twenty-five years, the board of trustees shall order and direct that he or she be retired and such participant be paid a monthly pension of two hundred twenty-five dollars from the fund for the balance of that participant's life.

Whenever any participant has been a member, and served honorably for a period of twenty-five years or more as an active member in any capacity, of any regularly organized volunteer fire department or law enforcement agency of any municipality in this state, and the participant has reached the age of sixty-five years, and the annual retirement fee has been paid for a period of less than twenty-five years, the board of trustees shall order and direct that he or she be retired and that such participant shall receive a minimum monthly pension of twenty-five dollars increased by the sum of eight dollars each month for each year the annual fee has been paid, but not to exceed the maximum monthly pension provided in this section, for the balance of the participant's life.

No pension provided in this section may become payable before the sixty-fifth birthday of the participant, nor for any service less than twenty-five years: PROVIDED, HOWEVER, That:

(1) Any participant, upon completion of twenty-five years' service and attainment of age sixty, may irrevocably elect, in lieu of the pension to which that participant would be entitled under this section at age sixty-five, to receive for the balance of his or her life a monthly pension equal to sixty percent of such pension.

(2) Any participant, upon completion of twenty-five years' service and attainment of age sixty-two, may irrevocably elect, in lieu of the pension to which that participant would be entitled under this section at age sixty-five, to receive for the balance of his or her life a monthly pension equal to seventy-five percent of such pension.

(3) Any participant, upon completion of less than twenty-five years of service shall receive the applicable reduced pension provided in this subsection, according to the age at which that participant elects to begin to receive the pension. If receipt of the benefits begins at age sixty-five the participant shall receive one hundred percent of the reduced benefit; at age sixty-two the participant shall receive seventy-five percent of the reduced benefit; and at age sixty the participant shall receive sixty percent of the reduced benefit. The reduced benefit shall be computed as follows:

(a) Upon completion of ten years, but less than fifteen years of service, a monthly pension equal to fifteen percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service;

(b) Upon completion of fifteen years, but less than twenty years of service, a monthly pension equal to thirty percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service; and

(c) Upon completion of twenty years, but less than twenty-five years of service, a monthly pension equal to sixty percent of such pension as the participant would have been entitled to receive at age sixty-five after twenty-five years of service. [1995 c 11 § 7; 1992 c 97 § 2; 1989 c 91 § 4; 1981 c 21 § 4; 1979 ex.s. c 157 § 1; 1973 1st ex.s. c 170 § 2; 1969 c 118 § 5; 1961 c 57 § 2; 1953 c 253 § 3; 1951 c 103 § 1; 1945 c 261 § 17; Rem. Supp. 1945 § 9578-31.]

Effective date—1992 c 97: See note following RCW 41.24.030.

Effective date—1989 c 91: See note following RCW 41.24.010.

Effective date—Severability—1981 c 21: See notes following RCW 41.24.150.

Effective date—1973 1st ex.s. c 170: See note following RCW 41.24.030.

41.24.172 Retirement pensions—Options—Election.

Before beginning to receive the pension provided for in RCW 41.24.170, the participant shall elect, in a writing filed with the state board, to have the pension paid under either option 1 or 2, with option 2 calculated so as to be actuarially equivalent to option 1.

(1) Option 1. A participant electing this option shall receive a monthly pension payable throughout the participant's life. However, if the participant dies before the total pension paid to the participant equals the amount paid into the fund, then the balance shall be paid to the participant's surviving spouse, or if there be no surviving spouse, then to the participant's legal representatives.

(2) Option 2. A participant electing this option shall receive a reduced monthly pension, which upon the participant's death shall be continued throughout the life of and paid to the participant's surviving spouse named in the written election filed with the state board. [1995 c 11 § 9; 1989 c 91 § 6.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.175 Disability or retirement payments—Computation according to latest legislative expression.

Payments to persons who are now receiving, or who may hereafter receive any disability or retirement payments under the provisions of chapter 41.24 RCW shall be computed in accordance with the last act enacted by the legislature relative thereto: PROVIDED HOWEVER, That nothing herein contained shall be construed as reducing the amount of any pension to which any fire fighter shall have been eligible to receive under the provisions of section 1, chapter 103, Laws of 1951. [1989 c 91 § 15; 1959 c 9 § 1.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.176 Disability or retirement payments—Construction.

The provisions of *this act are intended to be remedial and procedural and any benefits heretofore paid to recipients hereunder pursuant to any previous act are retroactively included and authorized as part of *this act. [1959 c 9 § 2.]

***Reviser's note:** "this act" appears in 1959 c 9, which is codified as RCW 41.24.175 and 41.24.176.

41.24.180 Lump sum payments. The board of trustees of any municipal corporation shall direct payment from said fund in the following cases:

(1) To any volunteer fire fighter, upon his or her request, upon attaining the age of sixty-five years, who, for any reason, is not qualified to receive the monthly retirement pension herein provided and who was enrolled in said fund and on whose behalf annual fees for retirement pension were paid, a lump sum amount equal to the amount paid into the fund by the fire fighter.

(2) If any fire fighter who has not completed at least ten years of service dies without having requested a lump sum payment under subsection (1) or (4) of this section, there shall be paid to the fire fighter's surviving spouse, or if there be no surviving spouse, then to such fire fighter's legal representatives, a lump sum amount equal to the amount paid into the fund by the fire fighter. If any fire fighter who has completed at least ten years of service dies other than as the result of injuries received or sickness contracted in consequence or as the result of the performance of his or her duties, without having requested a lump sum payment under subsection (1) or (4) of this section and before beginning to receive the monthly pension provided for in this chapter, the fire fighter's surviving spouse shall elect to receive either:

(a) A monthly pension computed as provided for in RCW 41.24.170 actuarially adjusted to reflect option 2 of RCW 41.24.172 and further actuarially reduced to reflect the difference in the number of years between the fire fighter's age at death and age sixty-five; or

(b) A lump sum amount equal to the amount paid into the fund by the fire fighter and the municipality or municipalities in whose department he or she has served.

If there be no such surviving spouse, then there shall be paid to the fire fighter's legal representatives a lump sum amount equal to the amount paid into the fund by the fire fighter.

(4)[(3)] If any volunteer fire fighter retires from the fire service before attaining the age of sixty-five years, the fire fighter may make application for the return in a lump sum of the amount paid into the fund by himself or herself. [1989 c 91 § 5; 1975-'76 2nd ex.s. c 76 § 3; 1974 ex.s. c 26 § 1. Prior: 1973 1st ex.s. c 170 § 3; 1973 1st ex.s. c 154 § 75; 1961 c 57 § 3; 1945 c 261 § 18; Rem. Supp. 1945 § 9578-22.]

Effective date—1989 c 91: See note following RCW 41.24.010.

Effective date—1973 1st ex.s. c 170: See note following RCW 41.24.030.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Conversion of death benefits to lump sum: RCW 41.24.160.

41.24.185 Lump sum payments—Monthly pension under twenty-five dollars.

Any monthly pension, payable under this chapter, which will not amount to twenty-five dollars may be converted into a lump sum payment equal to the actuarial equivalent of the monthly pension. The conversion may be made either upon written application to the state board and shall rest at the discretion of the state board; or the state board may make, on its own motion, lump sum payments, equal or proportionate, as the case may be, to the value of the annuity then remaining in full satisfaction of claims due. Any person receiving a monthly

payment of less than twenty-five dollars at the time of September 1, 1979, may elect, within two years, to convert such payments into a lump sum payment as herein provided. [1989 c 91 § 7.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.190 Proof of service. The filing of reports of enrollment shall be prima facie evidence of the service of the participants therein listed for the year of such report as to service rendered subsequent to July 6, 1945. Proof of service of fire fighters [participants] prior to that date shall be by documentary evidence, or such other evidence reduced to writing and sworn to under oath, as shall be submitted to the state board and certified by it as sufficient. [1995 c 11 § 11; 1989 c 91 § 16; 1969 c 118 § 6; 1953 c 253 § 4; 1945 c 261 § 19; Rem. Supp. 1945 § 9578-33.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.200 Service need not be continuous nor in a single department or agency. The aggregate term of service of any participant need not be continuous nor need it be confined to a single fire department or law enforcement agency nor a single municipality in this state to entitle such participant to a pension: PROVIDED, That the participant has been duly enrolled in a fire department or law enforcement agency of a municipality which has elected to make provisions for the retirement of its participants at the time he or she becomes eligible for such pension as in this chapter provided, and has paid all fees prescribed. To be eligible to the full pension a participant must have an aggregate of twenty-five years service, have made twenty-five annual payments into the fund, and be sixty-five years of age at the time the participant commences drawing the pension provided for by this chapter, all of which twenty-five years service must have been in the fire department or law enforcement agency of a municipality or municipalities which have elected to make provisions for the retirement of its participants: PROVIDED, HOWEVER, That nothing herein contained shall require any participant having twenty-five years active service to continue as a fire fighter or reserve officer and no participant who has completed twenty-five years of active service for which annual pension fees have been paid and who continues as a fire fighter or reserve officer shall be required to pay any additional annual pension fees. [1995 c 11 § 12; 1989 c 91 § 17; 1973 1st ex.s. c 170 § 4; 1961 c 57 § 4; 1953 c 253 § 5; 1945 c 261 § 20; Rem. Supp. 1945 § 9578-34.]

Effective date—1989 c 91: See note following RCW 41.24.010.

Effective date—1973 1st ex.s. c 170: See note following RCW 41.24.030.

41.24.210 Report of accident—Time limitation for filing report and claim. No fire fighter shall receive any disability pension from the fund, or be entitled to receive any relief or compensation for sickness or injuries received in the performance of his or her duties, unless there is filed with the board of trustees a report of accident, which report shall be subscribed to by the claimant, the fire chief, and the authorized attending physician, if there is one. No claim for benefits arising from sickness or injuries incurred in consequence or as a result of the performance of duties shall be

allowed by the state board unless there has been filed with it a report of accident within ninety days after its occurrence and a claim based thereon within one year after the occurrence of the accident on which such claim is based. The board may require such other or further evidence as it deems advisable before ordering any relief, compensation, or pension. [1989 c 91 § 18; 1969 c 118 § 7; 1957 c 159 § 3; 1945 c 261 § 21; Rem. Supp. 1945 § 9578-35.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.220 Hospitalization, surgery, etc. Whenever any fire fighter becomes disabled or sick in consequence or as the result of the performance of his or her duties by reason of which he or she is confined to any hospital an amount not exceeding the daily ward rate of the hospital shall be allowed and paid from said fund toward such hospital expenses: PROVIDED, That this allowance shall not be in lieu of but in addition to any other allowance in this chapter provided: PROVIDED FURTHER, That costs of surgery, medicine, laboratory fees, x-ray, special therapies, and similar additional costs shall be paid in addition thereto: PROVIDED FURTHER, That when extended treatment, not available in the injured fire fighter's home area, is required, such fire fighter may be reimbursed for actual mileage to and from the place of extended treatment pursuant to RCW 43.03.060 as now existing or hereafter amended. [1989 c 91 § 19; 1975-'76 2nd ex.s. c 76 § 4; 1965 c 86 § 3; 1961 c 57 § 5; 1957 c 159 § 4; 1953 c 253 § 7; 1951 c 103 § 3; 1949 c 145 § 2; 1945 c 261 § 22; Rem. Supp. 1949 § 9578-36. Prior: 1935 c 121 § 5; RRS § 9578-5.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.230 Funeral and burial expenses. Upon the death of any fire fighter resulting from injuries or sickness in consequence or as the result of the performance of his or her duties, the board of trustees shall authorize the issuance of a voucher for the sum of two thousand dollars, and upon the death of any fire fighter who is receiving any disability pension provided for in this chapter, the board of trustees shall authorize the issuance of a voucher for the sum of five hundred dollars, to help defray the funeral expenses and burial of such fire fighter, which voucher shall be paid in the manner provided for payment of other charges against the fund. [1989 c 91 § 20; 1986 c 163 § 3; 1981 c 21 § 3; 1975-'76 2nd ex.s. c 76 § 5; 1961 c 57 § 6; 1957 c 159 § 5; 1951 c 103 § 4; 1945 c 261 § 23; Rem. Supp. 1945 § 9578-37. Prior: 1935 c 121 § 7; RRS § 9578-7.]

Effective date—1989 c 91: See note following RCW 41.24.010.

Effective date—Severability—1981 c 21: See notes following RCW 41.24.150.

41.24.240 Benefits not transferable or subject to legal process—Exceptions—Chapter not exclusive. The right of any person to any future payment under the provisions of this chapter shall not be transferable or assignable at law or in equity, and none of the moneys paid or payable or the rights existing under this chapter, shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. This section shall not be applicable to any child support collection action taken under chapter 26.18, 26.23,

or 74.20A RCW Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation.

Nothing in this chapter shall be construed to deprive any participant, eligible to receive a pension hereunder, from receiving a pension under any other act to which that participant may become eligible by reason of services other than or in addition to his or her services under this chapter. [1995 c 11 § 13. Prior: 1989 c 360 § 26; 1989 c 91 § 21; 1979 ex.s. c 205 § 3; 1957 c 159 § 6; 1945 c 261 § 24; Rem. Supp. 1945 § 9578-38.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.245 Payments to spouse or ex spouse pursuant to court order. (1) If the state board or the secretary makes payments to a spouse or ex spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to a court decree of dissolution or legal separation, it shall be a sufficient answer to any claim of a beneficiary against the state board, the secretary, or the fund for the state board or secretary to show that the payments were made pursuant to a court decree.

(2) All payments made to a nonmember spouse or ex spouse pursuant to RCW 41.24.240 shall cease upon the death of such a nonmember spouse or ex spouse. Upon such a death, the state board and the secretary shall pay to the member his or her full monthly entitlement of benefits.

(3) The provisions of RCW 41.24.240 and this section shall apply to all court decrees of dissolution or legal separation and court-approved property settlement agreements, regardless of when entered, but shall apply only to those persons who have actually retired or who have requested withdrawal of any or all of their contributions to the fund: PROVIDED, That the state board or secretary shall not be responsible for making court-ordered divisions of withdrawals unless the order is filed with the state board at least thirty days before the withdrawal payment date. [1987 c 326 § 19.]

Effective date—1987 c 326: See RCW 41.50.901.

Mandatory assignment of retirement benefits to spouse or ex spouse: RCW 41.50.500 through 41.50.660.

41.24.250 State board for volunteer fire fighters—Composition—Terms—Vacancies—Oath. There is established a state board for volunteer fire fighters to consist of three members of a fire department covered by this chapter, no two of whom shall be from the same congressional district, to be appointed by the governor to serve overlapping terms of six years. Of members first appointed, one shall be appointed for a term of six years, one for four years, and one for two years. Upon the expiration of a term, a successor shall be appointed by the governor for a term of six years. Any vacancy shall be filled by the governor for the unexpired term. Each member of the state board, before entering on the performance of his or her duties, shall take an oath that he or she will not knowingly violate or willingly permit the violation of any provision of law applicable to

this chapter, which oath shall be filed with the secretary of state.

The board shall not be deemed to be unlawfully constituted and a member of the board shall not be deemed ineligible to serve the remainder of the member's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts. [1989 c 91 § 22; 1982 1st ex.s. c 30 § 11; 1955 c 263 § 2.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.260 State board for volunteer fire fighters—Meetings—Quorum. The state board shall hold regular semiannual meetings in April and October of each year, and special meetings not more than once monthly at such times and places as may be called by the chairman or by two of its members. No action shall be taken by the state board without the approval of two members. [1955 c 263 § 3.]

41.24.270 State board for volunteer fire fighters—Compensation—Travel expenses. Each member of the state board shall be compensated in accordance with RCW 43.03.240. Each member shall also receive travel expenses, including going to and from meetings of the state board or other authorized business of the state board, in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 70; 1975-'76 2nd ex.s. c 34 § 87; 1969 c 118 § 8; 1955 c 263 § 4.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

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

41.24.280 State board for volunteer fire fighters—Attorney general is legal advisor. The attorney general shall be the legal advisor for the board. [1955 c 263 § 5.]

41.24.290 State board for volunteer fire fighters—Powers and duties. The state board shall:

(1) Generally supervise and control the administration of this chapter;

(2) Promulgate, amend, or repeal rules and regulations not inconsistent with this chapter for the purpose of effecting a uniform and efficient manner of carrying out the provisions of this chapter and the purposes to be accomplished thereby, and for the government of boards of trustees of the municipalities of this state in the discharge of their functions under this chapter;

(3) Review any action, and hear and determine any appeal which may be taken from the decision of the board of trustees of any municipality made pursuant to this chapter;

(4) Take such action as may be necessary to secure compliance of the municipalities governed by this chapter and to provide for the collection of all fees and penalties which are, or may be, due and delinquent from any such municipality;

(5) Review the action of the board of trustees of any municipality authorizing any pension as provided by this chapter; and authorize the regular issuance of monthly warrants in payment thereof without further action of the board of trustees of such municipality;

(6) Require periodic reports from the recipient of any benefits under this chapter for the purpose of determining their continued eligibility therefor;

(7) Maintain such records as may be necessary and proper for the proper maintenance and operation of the volunteer fire fighters' relief and pension fund, including records of the names and addresses of every person enrolled under this chapter, and provide all necessary forms to enable local boards of trustees to effectively carry out their duties as provided by this chapter;

(8) Compel the taking of testimony from witnesses under oath before the state board, or any member or the secretary thereof, or before the local board of trustees or any member thereof, for the purpose of obtaining evidence, at any time, in connection with any claim or pension pending or authorized for payment. For such purpose the state board shall have the same power of subpoena as prescribed in RCW 51.52.100. Failure of any claimant to appear and give any testimony as herein provided shall suspend any rights or eligibility to receive payments for the period of such failure to appear and testify;

(9) Appoint a secretary to hold office at the pleasure of the state board, fix the secretary's compensation at such sum as it shall deem appropriate, and prescribe the secretary's duties not otherwise provided by this chapter. [1989 c 91 § 23; 1955 c 263 § 6.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.300 State board for volunteer fire fighters—Vouchers, warrants. All expenses incurred by the state board shall be accomplished by vouchers signed by the secretary and one member of the state board and issued to the persons entitled thereto and sent to the proper state agency. The proper state agency shall issue a warrant on the fund for the amount specified. [1979 ex.s. c 157 § 2; 1969 c 118 § 9; 1955 c 263 § 7.]

41.24.310 State board for volunteer fire fighters—Secretary, duties, compensation. The secretary shall maintain an office at Olympia at a place to be provided, wherein the secretary shall

(1) keep a record of all proceedings of the state board, which shall be public,

(2) maintain a record of all members of the pension fund, including such pertinent information relative thereto as may be required by law or regulation of the state board,

(3) receive and promptly remit to the state treasurer all moneys received for the volunteer fire fighters' relief and pension fund,

(4) transmit periodically to the proper state agency for payment all claims payable from the volunteer fire fighters' relief and pension fund, stating the amount and purpose of such payment,

(5) certify monthly for payment a list of all persons approved for pensions and the amount to which each is entitled,

(6) perform such other and further duties as shall be prescribed by the state board.

The secretary shall receive such compensation as shall be fixed by the state board, together with travel expenses in carrying out his or her duties authorized by the state board

in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1989 c 91 § 24; 1975-'76 2nd ex.s. c 34 § 88; 1969 c 118 § 10; 1955 c 263 § 8.]

Effective date—1989 c 91: See note following RCW 41.24.010.

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

41.24.320 State board for volunteer fire fighters—State actuary to provide actuarial services. The state actuary shall provide actuarial services for the board. [1989 c 91 § 25.]

Effective date—1989 c 91: See note following RCW 41.24.010.

41.24.330 Emergency medical service districts—Board of trustees—Creation. In every county maintaining a regularly organized emergency medical service district there is hereby created an emergency medical service district board of trustees for the administration of this chapter. The emergency medical service district board shall consist of three of the members of the county legislative authority or their designees, the county auditor or the auditor's designee, the head of the emergency medical service district, and one emergency worker from the emergency medical service district to be elected by the emergency workers of the emergency medical service district for a term of one year and annually thereafter. [1993 c 331 § 2.]

41.24.340 Emergency medical service districts—Board of trustees—Officers—Annual report. The chair of the board of county commissioners shall be chair of the emergency medical service district board of trustees, and the county clerk shall be the secretary-treasurer of the emergency medical service district board of trustees. The secretary shall keep a public record of all proceedings, of all receipts and disbursements made by the emergency medical service district board of trustees and shall make an annual report of its expenses and disbursements with a full list of the beneficiaries of said fund in the county, the record to be placed on file in the county. Such forms as shall be necessary for the proper administration of this fund and of making the reports required hereunder shall be provided by the state board. [1993 c 331 § 3.]

41.24.350 Emergency medical service districts—State board shall set pension fees. The state board shall set the amount consistent with the most recent valuation of the volunteer fire fighters relief and pension fund to be paid for the purposes of this chapter by emergency medical service districts for emergency worker relief and pension fees and by emergency workers for emergency worker pensions. The fees set under this section are subject to the other provisions of this chapter. [1993 c 331 § 4.]

41.24.400 Reserve officers—Enrollment—Limitations. (1) Except as provided in subsection (2) of this section, any municipality may make provision by appropriate legislation and payment of fees required by RCW 41.24.030(1)(d) solely for the purpose of enabling any reserve officer to enroll under the retirement provisions of this chapter or fees required under RCW 41.24.470 to pay

for the costs of extending disability and death benefits to its reserve officers.

(2) A reserve officer is not eligible to receive a benefit under the retirement provisions of this chapter for service under chapter 41.26, 41.32, or 41.40 RCW.

(3) Every municipality shall make provisions for the collection and payment of the fees required under this chapter, and shall continue to make provisions for all reserve officers who come under this chapter as long as they continue to be employed as reserve officers.

(4) Except as provided under RCW 41.24.450, a reserve officer is not eligible to receive a benefit under the relief and compensation provisions of this chapter. [1998 c 307 § 4; 1995 c 11 § 2.]

41.24.410 Reserve officers—Credit for service.

Credit for service as a reserve officer shall not be counted for purposes of RCW 41.24.170 except as stated in this section: Within one year of an election to cover reserve officers under the retirement provisions of this chapter, the municipality must elect, on a one-time basis, one of the following:

(1)(a) To count credit for service only after July 23, 1995;

(b) To pay annual fees only for service after July 23, 1995; or

(2)(a) To count credit for all service as a reserve officer, but only if the actuarial cost, as determined by the state board, is paid by the municipality. The municipality may charge reserve officers for any portion of the cost; and

(b) To pay annual fees only for service after July 23, 1995; or

(3)(a) To count credit for all service as a reserve officer, but only if the actuarial cost, as determined by the state board, is paid by the municipality. The municipality may charge reserve officers for any portion of the cost; and

(b) To pay annual fees for service prior to July 23, 1995, if:

(i) The reserve officer elects, within one year of the municipality's election under this section, to pay the annual fee plus one percent per month interest for each year of past service counted; and

(ii) The municipality pays the actuarial cost, as determined by the state board, of the benefit provided in (b) of this subsection. The municipality may charge reserve officers for any portion of the cost.

Payments under this section may be made in a lump sum or in a manner prescribed by the state board. [1995 c 11 § 4.]

41.24.420 Reserve officers—Enrollment—Procedure. The head of a local law enforcement agency is authorized to enroll its reserve officers and to certify reserve officer service under the retirement provisions of this chapter. The head of that agency shall sign, certify, and send to the state board a voucher for each person entitled to payment from the fund, stating the amount of the payment. The state board, after review and approval shall cause a warrant to be issued on the fund for the amount specified and approved on each voucher. However, after the applicant's eligibility for pension is verified, the state board

shall authorize the regular issuance of monthly warrants in payment thereof without further action of the head of the law enforcement agency. [1995 c 11 § 6.]

41.24.430 Reserve officers—Eligibility for benefit.

A reserve officer shall not receive a retirement benefit under this chapter unless he or she completes at least three years of service after July 23, 1995. [1995 c 11 § 8.]

41.24.440 Reserve officers—Lump sum payments—Payments to surviving spouse. The state board shall direct payment from the fund in the following cases:

(1) To any reserve officer, upon his or her request, upon attaining the age of sixty-five years, who, for any reason, is not qualified to receive the monthly retirement pension under this chapter and who was enrolled in the fund and on whose behalf annual fees for retirement pension were paid, a lump sum amount equal to the amount paid into the fund by the reserve officer.

(2) If any reserve officer who has not completed at least ten years of service dies without having requested a lump sum payment under subsection (1) or (3) of this section, there shall be paid to the reserve officer's surviving spouse, or if there is no surviving spouse, then to such reserve officer's legal representatives, a lump sum amount equal to the amount paid into the fund by the reserve officer. If any reserve officer who has completed at least ten years of service dies without having requested a lump sum payment under subsection (1) or (3) of this section and before beginning to receive the monthly pension provided for in this chapter, the reserve officer's surviving spouse shall elect to receive either:

(a) A monthly pension computed as provided for in RCW 41.24.170 actuarially adjusted to reflect option 2 of RCW 41.24.172 and further actuarially reduced to reflect the difference in the number of years between the reserve officer's age at death and age sixty-five; or

(b) A lump sum amount equal to the amount paid into the fund by the reserve officer and the municipality or municipalities in whose department he or she has served.

If there is no surviving spouse, then there shall be paid to the reserve officer's legal representatives a lump sum amount equal to the amount paid into the fund by the reserve officer.

(3) If any reserve officer retires from service before attaining the age of sixty-five years, the reserve officer may make application for the return in a lump sum of the amount paid into the fund by himself or herself. [1995 c 11 § 10.]

41.24.450 Reserve officers—Disability and death benefits—Allowed. A municipality employing reserve officers may adopt appropriate legislation extending disability and death benefits under this chapter to their reserve officers. Disability and death benefits under this chapter may not be extended to reserve officers if the municipality has extended industrial insurance coverage to its reserve officers under RCW 51.12.140 or 51.12.035(2), or any other provision of law. A municipality that adopts appropriate legislation extending disability and death benefits to its reserve officers under RCW 41.24.150 and 41.24.160 shall enjoy the same extent of immunity from civil actions for

personal injuries to its reserve officers that arises if the reserve officers were covered under Title 51 RCW.

Each municipality that adopts appropriate legislation extending disability and death benefits under this chapter to its reserve officers must pay all fees established under RCW 41.24.470 established for this coverage. [1998 c 307 § 1.]

41.24.460 Reserve officers—Disability and death benefits—Board of trustees. A municipality that adopts appropriate legislation providing its reserve officers with disability and death benefits under RCW 41.24.150 and 41.24.160 shall create a reserve officer board of trustees to administer this chapter composed as follows:

(1) A county reserve officer board of trustees shall consist of the following five members: (a) Two members of the county legislative authority and the county auditor, or their designees; (b) the sheriff; and (c) one reserve officer who is elected by reserve officers of the county for an annual one-year term.

(2) Any other reserve officer board of trustees shall consist of the following five members: (a) The mayor, if one exists for the municipality, and one member of the municipality's legislative authority, or two members of the municipality's legislative authority if a mayor does not exist for the municipality, or their designees; (b) the clerk, comptroller, or chief fiscal officer of the municipality; (c) the head of the law enforcement agency; and (d) one reserve officer who is elected by reserve officers of the municipality for an annual term of one year. [1998 c 307 § 2.]

41.24.470 Reserve officers—Disability and death benefits—Fees. The state board shall set the amount of fees that each municipality must pay to fully finance the costs of providing disability and death benefits for its reserve officers under RCW 41.24.150 and 41.24.160 if the municipality has adopted appropriate legislation providing its reserve officers with such benefits. [1998 c 307 § 3.]

Chapter 41.26

LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' RETIREMENT SYSTEM

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Reviser's note: Throughout chapter 41.26 RCW, the phrase "this act" has been changed to "this chapter." 1969 ex.s. c 209 consists of this chapter and RCW 41.16.145, 41.18.010, 41.18.040, 41.18.045, 41.18.060, 41.18.100, 41.18.102, 41.18.104, 41.18.130, 41.18.190, 41.20.005, 41.20.085, 41.20.170, 41.20.050, and 41.20.060.

Numerical designations—1998 c 341: "(1) The legislature declares that changing the numerical designation of the different retirement plans within the retirement systems from Roman numerals to Arabic numerals is of no substantive importance.

(2) The code reviser, under RCW 1.08.025, is directed to change the numerical designation of the retirement plans as follows:

(a) Where "I" is used, replace with "1";

(b) Where "II" is used, replace with "2"; and

(c) Where "III" is used, replace with "3." [1998 c 341 § 709.] This section takes effect September 1, 2000.

Emergency medical technician or first aid vehicle operator prohibited from joining system solely on basis of such service: RCW 41.24.050.

"PROVISIONS APPLICABLE TO PLAN I AND PLAN II"

41.26.005 Provisions applicable to "plan I" and "plan II." RCW 41.26.010 through 41.26.062 shall apply to members of plan I and plan II. [1992 c 72 § 2; 1991 c 35 § 12; 1989 c 273 § 10; 1985 c 102 § 5; 1979 ex.s. c 249 § 1; 1977 ex.s. c 294 § 18.]

Recodification ratified—Correction of statutory references—1992 c 72: "(1) The recodification of retirement provisions adopted by the code reviser pursuant to the directives of chapter 35, Laws of 1991, is hereby ratified.

(2) The code reviser shall correct all statutory references to sections recodified pursuant to chapter 35, Laws of 1991." [1992 c 72 § 1.]

Intent—1991 c 35: "(1) The legislature intends to reorganize chapter 41.26 RCW. The goals of this reorganization are to: (a) Arrange provisions relating to the Washington law enforcement officers' and fire fighters' retirement system plan I, the Washington law enforcement officers' and fire fighters' retirement system plan II, and those provisions relating to both plan I and plan II into three separate subchapters within chapter 41.26 RCW; (b) decodify or repeal obsolete statutes; (c) update references to the retirement board to refer to either the department of retirement systems or the director of that department, as appropriate; (d) make all references gender neutral; and (e) recodify administrative provisions. The legislature does not intend to make substantive changes in the meaning, interpretation, court construction, or constitutionality of any provision of chapter 41.26 RCW or other statutory provisions or rules adopted under those provisions.

(2) The legislature intends to reorganize chapter 41.32 RCW. The goals of this reorganization are to: (a) Arrange provisions relating to the Washington teachers' retirement system plan I, the Washington teachers' retirement system plan II, and both plan I and plan II into three separate subchapters within chapter 41.32 RCW; (b) decodify or repeal obsolete statutes; (c) update references to the retirement board to refer to either the department of retirement systems or the director of that department, as appropriate; (d) make all references gender neutral; and (e) recodify administrative provisions. The legislature does not intend to make substantive changes in the meaning, interpretation, court construction, or constitutionality of any provision of chapter 41.32 RCW or other statutory provisions or rules adopted under those provisions.

(3) The legislature intends to reorganize chapter 41.40 RCW. The goals of this reorganization are to: (a) Arrange provisions relating to the public employees' retirement system plan I, the public employees' retirement system plan II, and both plan I and plan II into three separate subchapters within chapter 41.40 RCW; (b) decodify obsolete statutes; (c) update references to the retirement board to refer to either the department of retirement systems or the director of that department, as appropriate; (d) make all references gender neutral; and (e) recodify administrative provisions. The legislature does not intend to make substantive changes in the meaning, interpretation, court construction, or constitutionality of any provision of chapter 41.40 RCW or other statutory provisions or rules adopted under those provisions.

(4) This act is technical in nature and shall not have the effect of terminating or in any way modifying any rights, proceedings, or liabilities, civil or criminal, which exist on July 28, 1991." [1991 c 35 § 1.]

Severability—1989 c 273: See RCW 41.45.900.

Purpose—Retrospective application—1985 c 102: See notes following RCW 41.26.120.

41.26.010 Short title. This chapter shall be known and cited as the "Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act" [1969 ex.s. c 209 § 1.]

41.26.020 Purpose of chapter. The purpose of this chapter is to provide for an actuarial reserve system for the payment of death, disability, and retirement benefits to law enforcement officers and fire fighters, and to beneficiaries of such employees, thereby enabling such employees to provide for themselves and their dependents in case of disability or death, and effecting a system of retirement from active duty. [1969 ex.s. c 209 § 2.]

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

(1) "Retirement system" means the "Washington law enforcement officers' and fire fighters' retirement system" provided herein.

(2)(a) "Employer" for plan I members, means the legislative authority of any city, town, county, or district or the elected officials of any municipal corporation that employs any law enforcement officer and/or fire fighter, any authorized association of such municipalities, and, except for the purposes of RCW 41.26.150, any labor guild, association, or organization, which represents the fire fighters or law enforcement officers of at least seven cities of over 20,000 population and the membership of each local lodge or division of which is composed of at least sixty percent law enforcement officers or fire fighters as defined in this chapter.

(b) "Employer" for plan II members, means the following entities to the extent that the entity employs any law enforcement officer and/or fire fighter:

(i) The legislative authority of any city, town, county, or district;

(ii) The elected officials of any municipal corporation;

(iii) The governing body of any other general authority law enforcement agency; or

(iv) A four-year institution of higher education having a fully operational fire department as of January 1, 1996.

(3) "Law enforcement officer" beginning January 1, 1994, means any person who is commissioned and employed by an employer on a full time, fully compensated basis to enforce the criminal laws of the state of Washington generally, with the following qualifications:

(a) No person who is serving in a position that is basically clerical or secretarial in nature, and who is not commissioned shall be considered a law enforcement officer;

(b) Only those deputy sheriffs, including those serving under a different title pursuant to county charter, who have successfully completed a civil service examination for deputy sheriff or the equivalent position, where a different title is used, and those persons serving in unclassified positions authorized by RCW 41.14.070 except a private secretary will be considered law enforcement officers;

(c) Only such full time commissioned law enforcement personnel as have been appointed to offices, positions, or ranks in the police department which have been specifically created or otherwise expressly provided for and designated by city charter provision or by ordinance enacted by the legislative body of the city shall be considered city police officers;

(d) The term "law enforcement officer" also includes the executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2)) if that individual has five years previous membership in the retirement system established in chapter 41.20 RCW. The provisions of this subsection (3)(d) shall not apply to plan II members; and

(e) The term "law enforcement officer" also includes a person employed on or after January 1, 1993, as a public safety officer or director of public safety, so long as the job duties substantially involve only either police or fire duties, or both, and no other duties in a city or town with a population of less than ten thousand. The provisions of this subsection (3)(e) shall not apply to any public safety officer or director of public safety who is receiving a retirement allowance under this chapter as of May 12, 1993.

(4) "Fire fighter" means:

(a) Any person who is serving on a full time, fully compensated basis as a member of a fire department of an employer and who is serving in a position which requires passing a civil service examination for fire fighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time fire fighter where the fire department does not have a civil service examination;

(c) Supervisory fire fighter personnel;

(d) Any full time executive secretary of an association of fire protection districts authorized under RCW 52.12.031. The provisions of this subsection (4)(d) shall not apply to plan II members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(2) as now or hereafter amended), if such individual has five years previous membership in a retirement system established in chapter 41.16 or 41.18 RCW. The provisions of this subsection (4)(e) shall not apply to plan II members;

(f) Any person who is serving on a full time, fully compensated basis for an employer, as a fire dispatcher, in a department in which, on March 1, 1970, a dispatcher was required to have passed a civil service examination for fire fighter; and

(g) Any person who on March 1, 1970, was employed on a full time, fully compensated basis by an employer, and who on May 21, 1971, was making retirement contributions under the provisions of chapter 41.16 or 41.18 RCW.

(5) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(6) "Surviving spouse" means the surviving widow or widower of a member. "Surviving spouse" shall not include the divorced spouse of a member except as provided in RCW 41.26.162.

(7)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically handicapped as determined by the department, except a

handicapped person in the full time care of a state institution, who is:

(i) A natural born child;

(ii) A stepchild where that relationship was in existence prior to the date benefits are payable under this chapter;

(iii) A posthumous child;

(iv) A child legally adopted or made a legal ward of a member prior to the date benefits are payable under this chapter; or

(v) An illegitimate child legitimized prior to the date any benefits are payable under this chapter.

(b) A person shall also be deemed to be a child up to and including the age of twenty years and eleven months while attending any high school, college, or vocational or other educational institution accredited, licensed, or approved by the state, in which it is located, including the summer vacation months and all other normal and regular vacation periods at the particular educational institution after which the child returns to school.

(8) "Member" means any fire fighter, law enforcement officer, or other person as would apply under subsections (3) or (4) of this section whose membership is transferred to the Washington law enforcement officers' and fire fighters' retirement system on or after March 1, 1970, and every law enforcement officer and fire fighter who is employed in that capacity on or after such date.

(9) "Retirement fund" means the "Washington law enforcement officers' and fire fighters' retirement system fund" as provided for herein.

(10) "Employee" means any law enforcement officer or fire fighter as defined in subsections (3) and (4) of this section.

(11)(a) "Beneficiary" for plan I members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan II members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(12)(a) "Final average salary" for plan I members, means (i) for a member holding the same position or rank for a minimum of twelve months preceding the date of retirement, the basic salary attached to such same position or rank at time of retirement; (ii) for any other member, including a civil service member who has not served a minimum of twelve months in the same position or rank preceding the date of retirement, the average of the greatest basic salaries payable to such member during any consecutive twenty-four month period within such member's last ten years of service for which service credit is allowed, computed by dividing the total basic salaries payable to such member during the selected twenty-four month period by twenty-four; (iii) in the case of disability of any member, the basic salary payable to such member at the time of disability retirement; (iv) in the case of a member who hereafter vests pursuant to RCW 41.26.090, the basic salary payable to such member at the time of vesting.

(b) "Final average salary" for plan II members, means the monthly average of the member's basic salary for the highest consecutive sixty service credit months of service prior to such member's retirement, termination, or death.

Periods constituting authorized unpaid leaves of absence may not be used in the calculation of final average salary.

(13)(a) "Basic salary" for plan I members, means the basic monthly rate of salary or wages, including longevity pay but not including overtime earnings or special salary or wages, upon which pension or retirement benefits will be computed and upon which employer contributions and salary deductions will be based.

(b) "Basic salary" for plan II members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay. In any year in which a member serves in the legislature the member shall have the option of having such member's basic salary be the greater of:

(i) The basic salary the member would have received had such member not served in the legislature; or

(ii) Such member's actual basic salary received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because basic salary under (b)(i) of this subsection is greater than basic salary under (b)(ii) of this subsection shall be paid by the member for both member and employer contributions.

(14)(a) "Service" for plan I members, means all periods of employment for an employer as a fire fighter or law enforcement officer, for which compensation is paid, together with periods of suspension not exceeding thirty days in duration. For the purposes of this chapter service shall also include service in the armed forces of the United States as provided in RCW 41.26.190. Credit shall be allowed for all service credit months of service rendered by a member from and after the member's initial commencement of employment as a fire fighter or law enforcement officer, during which the member worked for seventy or more hours, or was on disability leave or disability retirement. Only service credit months of service shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter.

(i) For members retiring after May 21, 1971 who were employed under the coverage of a prior pension act before March 1, 1970, "service" shall also include (A) such military service not exceeding five years as was creditable to the member as of March 1, 1970, under the member's particular prior pension act, and (B) such other periods of service as were then creditable to a particular member under the provisions of RCW 41.18.165, 41.20.160 or 41.20.170. However, in no event shall credit be allowed for any service rendered prior to March 1, 1970, where the member at the time of rendition of such service was employed in a position covered by a prior pension act, unless such service, at the time credit is claimed therefor, is also creditable under the provisions of such prior act.

(ii) A member who is employed by two employers at the same time shall only be credited with service to one such employer for any month during which the member rendered such dual service.

(b) "Service" for plan II members, means periods of employment by a member for one or more employers for which basic salary is earned for ninety or more hours per calendar month which shall constitute a service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for at least seventy hours but less than ninety hours per calendar month shall constitute one-half service credit month. Periods of employment by a member for one or more employers for which basic salary is earned for less than seventy hours shall constitute a one-quarter service credit month.

Members of the retirement system who are elected or appointed to a state elective position may elect to continue to be members of this retirement system.

Service credit years of service shall be determined by dividing the total number of service credit months of service by twelve. Any fraction of a service credit year of service as so determined shall be taken into account in the computation of such retirement allowance or benefits.

If a member receives basic salary from two or more employers during any calendar month, the individual shall receive one service credit month's service credit during any calendar month in which multiple service for ninety or more hours is rendered; or one-half service credit month's service credit during any calendar month in which multiple service for at least seventy hours but less than ninety hours is rendered; or one-quarter service credit month during any calendar month in which multiple service for less than seventy hours is rendered.

(15) "Accumulated contributions" means the employee's contributions made by a member, including any amount paid under RCW 41.50.165(2), plus accrued interest credited thereon.

(16) "Actuarial reserve" means a method of financing a pension or retirement plan wherein reserves are accumulated as the liabilities for benefit payments are incurred in order that sufficient funds will be available on the date of retirement of each member to pay the member's future benefits during the period of retirement.

(17) "Actuarial valuation" means a mathematical determination of the financial condition of a retirement plan. It includes the computation of the present monetary value of benefits payable to present members, and the present monetary value of future employer and employee contributions, giving effect to mortality among active and retired members and also to the rates of disability, retirement, withdrawal from service, salary and interest earned on investments.

(18) "Disability board" for plan I members means either the county disability board or the city disability board established in RCW 41.26.110.

(19) "Disability leave" means the period of six months or any portion thereof during which a member is on leave at an allowance equal to the member's full salary prior to the commencement of disability retirement. The definition contained in this subsection shall apply only to plan I members.

(20) "Disability retirement" for plan I members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

(21) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(22) "Medical services" for plan I members, shall include the following as minimum services to be provided. Reasonable charges for these services shall be paid in accordance with RCW 41.26.150.

(a) Hospital expenses: These are the charges made by a hospital, in its own behalf, for

(i) Board and room not to exceed semiprivate room rate unless private room is required by the attending physician due to the condition of the patient.

(ii) Necessary hospital services, other than board and room, furnished by the hospital.

(b) Other medical expenses: The following charges are considered "other medical expenses", provided that they have not been considered as "hospital expenses"

(i) The fees of the following:

(A) A physician or surgeon licensed under the provisions of chapter 18.71 RCW;

(B) An osteopathic physician and surgeon licensed under the provisions of chapter 18.57 RCW;

(C) A chiropractor licensed under the provisions of chapter 18.25 RCW.

(ii) The charges of a registered graduate nurse other than a nurse who ordinarily resides in the member's home, or is a member of the family of either the member or the member's spouse.

(iii) The charges for the following medical services and supplies:

(A) Drugs and medicines upon a physician's prescription;

(B) Diagnostic x-ray and laboratory examinations;

(C) X-ray, radium, and radioactive isotopes therapy;

(D) Anesthesia and oxygen;

(E) Rental of iron lung and other durable medical and surgical equipment;

(F) Artificial limbs and eyes, and casts, splints, and trusses;

(G) Professional ambulance service when used to transport the member to or from a hospital when injured by an accident or stricken by a disease;

(H) Dental charges incurred by a member who sustains an accidental injury to his or her teeth and who commences treatment by a legally licensed dentist within ninety days after the accident;

(I) Nursing home confinement or hospital extended care facility;

(J) Physical therapy by a registered physical therapist;

(K) Blood transfusions, including the cost of blood and blood plasma not replaced by voluntary donors;

(L) An optometrist licensed under the provisions of chapter 18.53 RCW.

(23) "Regular interest" means such rate as the director may determine.

(24) "Retiree" for persons who establish membership in the retirement system on or after October 1, 1977, means any member in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(25) "Director" means the director of the department.

(26) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(27) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

(28) "Plan I" means the law enforcement officers' and fire fighters' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(29) "Plan II" means the law enforcement officers' and fire fighters' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(30) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(31) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(32) "General authority law enforcement agency" means any agency, department, or division of a municipal corporation, political subdivision, or other unit of local government of this state, and any agency, department, or division of state government, having as its primary function the detection and apprehension of persons committing infractions or violating the traffic or criminal laws in general, but not including the Washington state patrol. Such an agency, department, or division is distinguished from a limited authority law enforcement agency having as one of its functions the apprehension or detection of persons committing infractions or violating the traffic or criminal laws relating to limited subject areas, including but not limited to, the state departments of natural resources, fish and wildlife, and social and health services, the state gambling commission, the state lottery commission, the state parks and recreation commission, the state utilities and transportation commission, the state liquor control board, and the state department of corrections. [1996 c 178 § 11; 1996 c 38 § 2. Prior: 1994 c 264 § 14; 1994 c 197 § 5; prior: 1993 c 502 § 1; 1993 c 322 § 1; 1991 sp.s. c 12 § 1; prior: (1991 sp.s. c 11 § 3 repealed by 1991 sp.s. c 12 § 3); 1991 c 365 § 35; 1991 c 343 § 14; 1991 c 35 § 13; 1987 c 418 § 1; 1985 c 13 § 5; 1984 c 230 § 83; 1981 c 256 § 4; 1979 ex.s. c 249 § 2; 1977 ex.s. c 294 § 17; 1974 ex.s. c 120 § 1; 1972 ex.s. c 131 § 1; 1971 ex.s. c 257 § 6; 1970 ex.s. c 6 § 1; 1969 ex.s. c 209 § 3.]

Reviser's note: This section was amended by 1996 c 38 § 2 and by 1996 c 178 § 11, 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).

Effective date—1996 c 178: See note following RCW 18.35.110.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Effective date—1993 c 502: "This act shall take effect January 1, 1994." [1993 c 502 § 6.]

Application—1993 c 322 § 1: "Section 1 of this act shall apply retroactively to January 1, 1993." [1993 c 322 § 2.]

Effective date—1993 c 322: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 322 § 3.]

Severability—1991 c 365: See note following RCW 41.50.500

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Purpose—1981 c 256: "It is the primary purpose of this act to assure that the provisions of RCW 41.04.250 and 41.04.260 and of any deferred compensation plan established thereunder, are in conformity with the requirements of 26 U.S.C. Sec. 457 and any other requirements of federal law relating to such a deferred compensation plan. This act shall be construed in such a manner as to accomplish this purpose." [1981 c 256 § 1.]

Severability—1981 c 256: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 256 § 7.]

Severability—1974 ex.s. c 120: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 120 § 15.]

Severability—1972 ex.s. c 131: "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 131 § 12.]

Purpose—1971 ex.s. c 257: "It is the purpose of this act to provide minimum medical and health standards for membership coverage into the Washington law enforcement officers' and fire fighters' retirement system act, for the improvement of the public service, and to safeguard the integrity and actuarial soundness of their pension systems, and to improve their retirement and pension systems and related provisions." [1971 ex.s. c 257 § 1.]

Severability—1971 ex.s. c 257: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 257 § 22.]

41.26.035 "Minimum medical and health standards" defined. The term "minimum medical and health standards" means minimum medical and health standards adopted by the department under this chapter. [1991 c 35 § 14; 1971 ex.s. c 257 § 2.]

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.040 System created—Membership—Funds. The Washington law enforcement officers' and fire fighters' retirement system is hereby created for fire fighters and law enforcement officers.

(1) Notwithstanding RCW 41.26.030(8), all fire fighters and law enforcement officers employed as such on or after March 1, 1970, on a full time fully compensated basis in this state shall be members of the retirement system established by this chapter with respect to all periods of service as such, to the exclusion of any pension system existing under any prior act.

(2) Any employee serving as a law enforcement officer or fire fighter on March 1, 1970, who is then making retirement contributions under any prior act shall have his membership transferred to the system established by this chapter as of such date. Upon retirement for service or for disability, or death, of any such employee, his retirement benefits earned under this chapter shall be computed and paid. In addition, his benefits under the prior retirement act to which he was making contributions at the time of this transfer shall be computed as if he had not transferred. For

the purpose of such computations, the employee's creditability of service and eligibility for service or disability retirement and survivor and all other benefits shall continue to be as provided in such prior retirement act, as if transfer of membership had not occurred. The excess, if any, of the benefits so computed, giving full value to survivor benefits, over the benefits payable under this chapter shall be paid whether or not the employee has made application under the prior act. If the employee's prior retirement system was the Washington public employees' retirement system, payment of such excess shall be made by that system; if the employee's prior retirement system was the state-wide city employees' retirement system, payment of such excess shall be made by the employer which was the member's employer when his transfer of membership occurred: PROVIDED, That any death in line of duty lump sum benefit payment shall continue to be the obligation of that system as provided in RCW 41.44.210; in the case of all other prior retirement systems, payment of such excess shall be made by the employer which was the member's employer when his transfer of membership occurred.

(3) All funds held by any firemen's or policemen's relief and pension fund shall remain in that fund for the purpose of paying the obligations of the fund. The municipality shall continue to levy the dollar rate as provided in RCW 41.16.060, and this dollar rate shall be used for the purpose of paying the benefits provided in chapters 41.16 and 41.18 RCW. The obligations of chapter 41.20 RCW shall continue to be paid from whatever financial sources the city has been using for this purpose. [1991 c 35 § 15; 1989 c 273 § 11; 1979 ex.s. c 45 § 1; 1974 ex.s. c 120 § 7; 1973 1st ex.s. c 195 § 44; 1970 ex.s. c 6 § 2; 1969 ex.s. c 209 § 4.]

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1989 c 273: See RCW 41.45.900.

Effective date—1979 ex.s. c 45: "This amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1979." [1979 ex.s. c 45 § 8.]

Severability—1974 ex.s. c 120: See note following RCW 41.26.030.

Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195: See notes following RCW 84.52.043.

41.26.045 Minimum medical and health standards.

(1) Notwithstanding any other provision of law after February 19, 1974 no law enforcement officer or fire fighter, may become eligible for coverage in the pension system established by this chapter, until the individual has met and has been certified as having met minimum medical and health standards: PROVIDED, That an elected sheriff or an appointed chief of police or fire chief, shall not be required to meet the age standard: PROVIDED FURTHER, That in cities and towns having not more than two law enforcement officers and/or not more than two fire fighters and if one or more of such persons do not meet the minimum medical and health standards as required by the provisions of this chapter, then such person or persons may join any other pension system that the city has available for its other employees: AND PROVIDED FURTHER, That for one year after February 19, 1974 any such medical or health standard now existing or hereinafter adopted, insofar as it establishes a maximum age beyond which an applicant is to be deemed

ineligible for coverage, shall be waived as to any applicant for employment or reemployment who is otherwise eligible except for his age, who has been a member of any one or more of the retirement systems created by chapter 41.20 of the Revised Code of Washington and who has restored all contributions which he has previously withdrawn from any such system or systems.

(2) This section shall not apply to persons who initially establish membership in the retirement system on or after July 1, 1979. [1979 ex.s. c 249 § 3; 1977 ex.s. c 294 § 20; 1974 ex.s. c 120 § 8; 1971 ex.s. c 257 § 3.]

Reviser's note: "this 1971 act" [1971 ex.s. c 257] translated to "this chapter." The act consists of RCW 41.16.146, 41.18.105, 41.26.035, 41.26.045, 41.26.046, 41.26.047, 41.26.270, 41.26.280, and 41.26.290, and amendments to RCW 41.26.030, 41.26.050, 41.26.090, 41.26.100, 41.26.150, 41.26.160, 41.26.180, 41.26.200, 41.48.030, and 41.48.050.

Severability—1974 ex.s. c 120: See note following RCW 41.26.030.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.046 Minimum medical and health standards—Board to adopt—Publication and distribution—Employer certification procedures. By July 31, 1971, the *retirement board shall adopt minimum medical and health standards for membership coverage into the Washington law enforcement officers' and fire fighters' retirement system act. In adopting such standards the *retirement board shall consider existing standards recommended by the international association of chiefs of police and the international association of fire fighters, and shall adopt equal or higher standards, together with appropriate standards and procedures to insure uniform compliance with this chapter. The standards when adopted shall be published and distributed to each employer, and each employer shall adopt certification procedures and such other procedures as are required to insure that no law enforcement officer or fire fighter receives membership coverage unless and until he has actually met minimum medical and health standards: PROVIDED, That an elected sheriff or an appointed chief of police, fire chief, or director of public safety shall not be required to meet the age standard. The *retirement board may amend the minimum medical and health standards as experience indicates, even if the standards as so amended are lower or less rigid than those recommended by the international associations mentioned above. The cost of the medical examination contemplated by this section is to be paid by the employer. [1987 c 418 § 2; 1977 ex.s. c 294 § 21; 1974 ex.s. c 120 § 12; 1972 ex.s. c 131 § 2; 1971 ex.s. c 257 § 4.]

Reviser's note: (1) "this 1971 act" [1971 ex.s. c 257] translated to "this chapter." The act consists of RCW 41.16.146, 41.18.105, 41.26.035, 41.26.045, 41.26.046, 41.26.047, 41.26.270, 41.26.280, and 41.26.290, and amendments to RCW 41.26.030, 41.26.050, 41.26.090, 41.26.100, 41.26.150, 41.26.160, 41.26.180, 41.26.200, 41.48.030, and 41.48.050.

* (2) Powers, duties, and functions of the Washington law enforcement officers' and fire fighters' retirement board were transferred to the director of retirement systems by RCW 41.26.051, which has been decodified. See Table of Disposition of Former RCW Sections, Volume 0.

Severability—1974 ex.s. c 120: See note following RCW 41.26.030.

Severability—1972 ex.s. c 131: See note following RCW 41.26.030.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.047 Minimum medical and health standards—Exemptions—Employer may adopt higher standards. Nothing in RCW 41.26.035, 41.26.045 and 41.26.046 shall apply to any fire fighters or law enforcement officers who are employed as such on or before August 1, 1971, as long as they continue in such employment; nor to promotional appointments after becoming a member in the police or fire department of any employer nor to the reemployment of a law enforcement officer or fire fighter by the same or a different employer within six months after the termination of his employment, nor to the reinstatement of a law enforcement officer or fire fighter who has been on military or disability leave, disability retirement status, or leave of absence status. Nothing in this chapter shall be deemed to prevent any employer from adopting higher medical and health standards than those which are adopted by the *retirement board. [1972 ex.s. c 131 § 3; 1971 ex.s. c 257 § 5.]

Reviser's note: (1) "this act" [1971 ex.s. c 257] translated to "this chapter." The act consists of RCW 41.16.146, 41.18.105, 41.26.035, 41.26.045, 41.26.046, 41.26.047, 41.26.270, 41.26.280, and 41.26.290, and amendments to RCW 41.26.030, 41.26.050, 41.26.090, 41.26.100, 41.26.150, 41.26.160, 41.26.180, 41.26.200, 41.48.030, and 41.48.050.

* (2) Powers, duties, and functions of the Washington law enforcement officers' and fire fighters' retirement board were transferred to the director of retirement systems by RCW 41.26.051, which has been decodified. See Table of Disposition of Former RCW Sections, Volume 0.

Severability—1972 ex.s. c 131: See note following RCW 41.26.030.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.048 Special death benefit—Death in the course of employment. (1) A one hundred fifty thousand dollar death benefit shall be paid to the member's estate, or such person or persons, trust or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's death benefit shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) The benefit under this section shall be paid only where death occurs as a result of injuries sustained in the course of employment. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050. [1996 c 226 § 1.]

Effective date—1996 c 226: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1996]." [1996 c 226 § 4.]

41.26.053 Exemption from judicial process, taxes—Exceptions—Deduction for insurance upon request. (1) Subject to subsections (2) and (3) of this section, the right of a person to a retirement allowance, disability allowance, or death benefit, to the return of accumulated contributions, the retirement, disability or death allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the

fund created under this chapter, are hereby exempt from any state, county, municipal, or other local tax and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or any other process of law whatsoever, and shall be unassignable.

(2) On the written request of any person eligible to receive benefits under this section, the department may deduct from such payments the premiums for life, health, or other insurance. The request on behalf of any child or children shall be made by the legal guardian of such child or children. The department may provide for such persons one or more plans of group insurance, through contracts with regularly constituted insurance carriers or health care service contractors.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [1991 c 365 § 20; 1991 c 35 § 25; 1989 c 360 § 24; 1987 c 326 § 22; 1979 ex.s. c 205 § 4; 1971 ex.s. c 257 § 12; 1970 ex.s. c 6 § 15; 1969 ex.s. c 209 § 23. Formerly RCW 41.26.180.]

Reviser's note: This section was amended by 1991 c 35 § 25 and by 1991 c 365 § 20, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1991 c 365: See note following RCW 41.50.500.

Intent—1991 c 35: See note following RCW 41.26.005.

Effective date—1987 c 326: See RCW 41.50.901.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.056 No bond required on appeal to court. No bond of any kind shall be required of a claimant appealing to the superior court, the court of appeals, or the supreme court from a decision of the director affecting such claimant's right to retirement or disability benefits. [1984 c 184 § 18; 1971 c 81 § 103; 1969 ex.s. c 209 § 21. Formerly RCW 41.26.230.]

Severability—1984 c 184: See note following RCW 41.50.150.

41.26.057 Benefit calculation—Limitation. (1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section. [1995 c 145 § 1.]

41.26.059 Establishing, restoring service credit. Notwithstanding any provision to the contrary, persons who fail to:

(1) Establish allowable membership service not previously credited;

(2) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or

(3) Restore service credit represented by a lump sum payment in lieu of benefits, before the deadline established by statute, may do so under the conditions set forth in RCW 41.50.165. [1998 c 17 § 1.]

41.26.061 Disability retirement—Criminal conduct.

A member shall not receive a disability retirement benefit under RCW 41.26.120, 41.26.125, 41.26.130, or 41.26.470 if the disability is the result of criminal conduct by the member committed after April 21, 1997. [1997 c 103 § 1.]

Severability—1997 c 103: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 103 § 4.]

Effective date—1997 c 103: "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 [April 21, 1997]." [1997 c 103 § 5.]

41.26.062 Falsification—Penalty. Any employer, member or beneficiary who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement system in an attempt to defraud the retirement system, shall be guilty of a felony. [1972 ex.s. c 131 § 10. Formerly RCW 41.26.300.]

Severability—1972 ex.s. c 131: See note following RCW 41.26.030.

"PLAN I"

41.26.075 Provisions applicable to plan I. RCW 41.26.080 through 41.26.3903 shall apply only to members of plan I. [1992 c 72 § 3; 1991 c 35 § 101.]

Intent—1991 c 35: See note following RCW 41.26.005

41.26.080 Funding total liability of plan I system. The total liability of the plan I system shall be funded as follows:

(1) Every plan I member shall have deducted from each payroll a sum equal to six percent of his or her basic salary for each pay period.

(2) Every employer shall contribute monthly a sum equal to six percent of the basic salary of each plan I employee who is a member of this retirement system. The employer shall transmit the employee and employer contributions with a copy of the payroll to the retirement system monthly.

(3) The remaining liabilities of the plan I system shall be funded as provided in chapter 41.45 RCW.

(4) Every member shall be deemed to consent and agree to the contribution made and provided for herein, and shall receipt in full for his or her salary or compensation. Payment less said contributions shall be a complete discharge of all claims and demands whatsoever for the services rendered by such person during the period covered by such payments, except his or her claim to the benefits to which he or she may be entitled under the provisions of this chapter. [1991 c 35 § 17; 1989 c 273 § 13; 1969 ex.s. c 209 § 8.]

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1989 c 273: See RCW 41.45.900.

41.26.090 Retirement for service. Retirement of a member for service shall be made by the department as follows:

(1) Any member having five or more service credit years of service and having attained the age of fifty years shall be eligible for a service retirement allowance and shall be retired upon the member's written request effective the first day following the date upon which the member is separated from service.

(2) Any member having five or more service credit years of service, who terminates his or her employment with any employer, may leave his or her contributions in the fund. Any employee who so elects, upon attaining age fifty, shall be eligible to apply for and receive a service retirement allowance based on his or her years of service, commencing on the first day following his or her attainment of age fifty.

(3) Any member selecting optional vesting under subsection (2) of this section with less than twenty service credit years of service shall not be covered by the provisions of RCW 41.26.150, and the member's survivors shall not be entitled to the benefits of RCW 41.26.160 unless his or her death occurs after he or she has attained the age of fifty years. Those members selecting this optional vesting with twenty or more years service shall not be covered by the provisions of RCW 41.26.150 until the attainment of the age of fifty years. A member selecting this optional vesting, with less than twenty service credit years of service credit, who dies prior to attaining the age of fifty years, shall have paid from the Washington law enforcement officers' and fire fighters' retirement fund, to such member's surviving spouse, if any, otherwise to such beneficiary as the member shall have designated in writing, or if no such designation has been made, to the personal representative of his or her estate, a lump sum which is equal to the amount of such member's accumulated contributions plus accrued interest. If the vested member has twenty or more service credit years of service credit the surviving spouse or children shall then become eligible for the benefits of RCW 41.26.160 regardless of the member's age at the time of his or her death, to the exclusion of the lump sum amount provided by this subsection.

(4) Any member who has attained the age of sixty years shall be retired on the first day of the calendar month next succeeding that in which said member shall have attained the age of sixty and may not thereafter be employed as a law enforcement officer or fire fighter: PROVIDED, That for any member who is elected or appointed to the office of sheriff, chief of police, or fire chief, his or her election or appointment shall be considered as a waiver of the age sixty provision for retirement and nonemployment for whatever number of years remain in his or her present term of office and any succeeding periods for which he or she may be so elected or appointed. The provisions of this subsection shall not apply to any member who is employed as a law enforcement officer or fire fighter on March 1, 1970. [1991 sp.s. c 11 § 4. Prior: 1991 c 343 § 15; 1991 c 35 § 18; 1977 ex.s. c 294 § 22; 1972 ex.s. c 131 § 6; 1971 ex.s. c 257 § 8; 1970 ex.s. c 6 § 4; 1969 ex.s. c 209 § 9.]

Purpose—1991 sp.s. c 11: "The purpose of this act is to correct certain double amendments created during the 1991 regular session that the

code reviser's office is unable to merge under RCW 1.12.025. The session laws repealed by section 2 of this act are strictly technical in nature and affect no policy. Sections *3 through 6 of this act are being reenacted to effectuate a legislative directive contained in 1991 c 35 s 2." [1991 sp.s. c 11 § 1.]

***Reviser's note:** 1991 sp.s. c 11 § 3 was repealed by 1991 sp.s. c 12 § 3.

Effective dates—1991 sp.s. c 11: "(1) Sections *3 through 5 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect September 1, 1991.

(2) Sections 1, 2, and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately." [1991 sp.s. c 11 § 7.]

***Reviser's note:** 1991 sp.s. c 11 § 3 was repealed by 1991 sp.s. c 12 § 3.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1972 ex.s. c 131: See note following RCW 41.26.030.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.100 Allowance on retirement for service. A member upon retirement for service shall receive a monthly retirement allowance computed according to his or her completed creditable service credit years of service as follows: Five years but under ten years, one-twelfth of one percent of his or her final average salary for each month of service; ten years but under twenty years, one-twelfth of one and one-half percent of his or her final average salary for each month of service; and twenty years and over one-twelfth of two percent of his or her final average salary for each month of service: PROVIDED, That the recipient of a retirement allowance who shall return to service as a law enforcement officer or fire fighter shall be considered to have terminated his or her retirement status and he or she shall immediately become a member of the retirement system with the status of membership he or she had as of the date of retirement. Retirement benefits shall be suspended during the period of his or her return to service and he or she shall make contributions and receive service credit. Such a member shall have the right to again retire at any time and his or her retirement allowance shall be recomputed, and paid, based upon additional service rendered and any change in final average salary: PROVIDED FURTHER, That no retirement allowance paid pursuant to this section shall exceed sixty percent of final average salary, except as such allowance may be increased by virtue of RCW 41.26.240, as now or hereafter amended. [1991 c 343 § 16; 1974 ex.s. c 120 § 3; 1972 ex.s. c 131 § 7; 1971 ex.s. c 257 § 9; 1970 ex.s. c 6 § 5; 1969 ex.s. c 209 § 10.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Severability—1974 ex.s. c 120: See note following RCW 41.26.030.

Severability—1972 ex.s. c 131: See note following RCW 41.26.030.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.110 City and county disability boards authorized—Composition—Terms—Reimbursement for travel expenses—Duties. (1) All claims for disability shall be

acted upon and either approved or disapproved by either type of disability board hereafter authorized to be created.

(a) Each city having a population of twenty thousand or more shall establish a disability board having jurisdiction over all members employed by said cities and composed of the following five members: Two members of the city legislative body to be appointed by the mayor, one active or retired fire fighter to be elected by the fire fighters employed by or retired from the city, one active or retired law enforcement officer to be elected by the law enforcement officers employed by or retired from the city and one member from the public at large who resides within the city to be appointed by the other four members heretofore designated in this subsection. Retired members who are subject to the jurisdiction of the board have both the right to elect and the right to be elected under this section. Each of the elected members shall serve a two year term. The members appointed pursuant to this subsection shall serve for two year terms: PROVIDED, That cities of the first class only, shall retain existing firemen's pension boards established pursuant to RCW 41.16.020 and existing boards of trustees of the relief and pension fund of the police department as established pursuant to RCW 41.20.010 which such boards shall have authority to act upon and approve or disapprove claims for disability by fire fighters or law enforcement officers as provided under the Washington law enforcement officers' and fire fighters' retirement system act.

(b) Each county shall establish a disability board having jurisdiction over all members residing in the county and not employed by a city in which a disability board is established. The county disability board so created shall be composed of five members to be chosen as follows: One member of the legislative body of the county to be appointed by the county legislative body, one member of a city or town legislative body located within the county which does not contain a city disability board established pursuant to subsection (1)(a) of this section to be chosen by a majority of the mayors of such cities and towns within the county which does not contain a city disability board, one fire fighter or retired fire fighter to be elected by the fire fighters employed or retired in the county who are not employed by or retired from a city in which a disability board is established, one law enforcement officer or retired law enforcement officer to be elected by the law enforcement officers employed in or retired from the county who are not employed by or retired from a city in which a disability board is established, and one member from the public at large who resides within the county but does not reside within a city in which a city disability board is established, to be appointed by the other four members heretofore designated in this subsection. Retired members who are subject to the jurisdiction of the board have both the right to elect and the right to be elected under this section. All members appointed or elected pursuant to this subsection shall serve for two year terms.

(2) The members of both the county and city disability boards shall not receive compensation for their service upon the boards but said members shall be reimbursed by their respective county or city for all expenses incidental to such service as to the amount authorized by law.

(3) The disability boards authorized for establishment by this section shall perform all functions, exercise all powers, and make all such determinations as specified in this chapter.

[1988 c 164 § 1; 1982 c 12 § 1; 1974 ex.s. c 120 § 9; 1970 ex.s. c 6 § 6; 1969 ex.s. c 219 § 3; 1969 ex.s. c 209 § 11.]

Severability—1974 ex.s. c 120: See note following RCW 41.26.030.

41.26.115 Director of retirement systems to adopt rules governing disability boards—Remand of orders not in accordance with rules. (1) The director of retirement systems shall adopt rules, in accordance with chapter 34.05 RCW, under which each disability board shall execute its disability retirement duties under this chapter. The rules shall include, but not be limited to, the following:

(a) Standards governing the type and manner of presentation of medical, employability, and other evidence before disability boards; and

(b) Standards governing the necessity and frequency of medical and employability reexaminations of persons receiving disability benefits.

(2) If the director determines that an order or determination of a disability board was not processed in accordance with the rules established under this section, the director may remand the order or determination for further proceedings consistent with the rules. [1981 c 294 § 1.]

Severability—1981 c 294: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 294 § 16.]

41.26.120 Retirement for disability incurred in the line of duty. Any member, regardless of age or years of service may be retired by the disability board, subject to approval by the director as hereinafter provided, for any disability incurred in the line of duty which has been continuous since his or her discontinuance of service and which renders the member unable to continue service. No disability retirement allowance shall be paid until the expiration of a period of six months after the discontinuance of service during which period the member, if found to be physically or mentally unfit for duty by the disability board following receipt of his or her application for disability retirement, shall be granted a disability leave by the disability board and shall receive an allowance equal to the full monthly salary and shall continue to receive all other benefits provided to active employees from the employer for such period. However, if, at any time during the initial six-month period, the disability board finds the beneficiary is no longer disabled, the disability leave allowance shall be canceled and the member shall be restored to duty in the same rank or position, if any, held by the beneficiary at the time the member became disabled. Applications for disability retirement shall be processed in accordance with the following procedures:

(1) Any member who believes he or she is or is believed to be physically or mentally disabled shall be examined by such medical authority as the disability board shall employ, upon application of said member, or a person acting in his or her behalf, stating that said member is disabled, either physically or mentally: PROVIDED, That no such application shall be considered unless said member or someone in his or her behalf, in case of the incapacity of a member, shall have filed the application within a period of one year from and after the discontinuance of service of said member.

(2) If the examination shows, to the satisfaction of the disability board, that the member is physically or mentally disabled from the further performance of duty, that such disability was incurred in the line of duty, and that such disability has been continuous from the discontinuance of service, the disability board shall enter its written decision and order, accompanied by appropriate findings of fact and by conclusions evidencing compliance with this chapter as now or hereafter amended, granting the member a disability retirement allowance; otherwise, if the member is not found by the disability board to be so disabled, the application shall be denied pursuant to a similar written decision and order, subject to appeal to the director in accordance with RCW 41.26.200: PROVIDED, That in any order granting a duty disability retirement allowance, the disability board shall make a finding that the disability was incurred in line of duty.

(3) Every order of a disability board granting a duty disability retirement allowance shall forthwith be reviewed by the director except the finding that the disability was incurred in the line of duty. The director may affirm the decision of the disability board or remand the case for further proceedings, or the director may reverse the decision of the disability board if the director finds the disability board's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the disability board; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or
- (f) Arbitrary or capricious.

(4) Every member who can establish, to the disability board, that he or she is physically or mentally disabled from the further performance of duty, that such disability was incurred in the line of duty, and that such disability will be in existence for a period of at least six months may waive the six-month period of disability leave and be immediately granted a duty disability retirement allowance, subject to the approval of the director as provided in subsection (3) of this section. [1991 c 35 § 19; 1986 c 176 § 5; 1985 c 102 § 2; 1981 c 294 § 2; 1974 ex.s. c 120 § 10; 1972 ex.s. c 131 § 8; 1970 ex.s. c 6 § 7; 1969 ex.s. c 209 § 12.]

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—1985 c 102: "As expressed in RCW 41.26.270, the intent of the legislature in enacting the law enforcement officers' and fire fighters' retirement system was to provide in RCW 41.26.120 a statute in the nature of a workers' compensation act which provides compensation to employees for personal injuries or sickness incurred in the course of employment. The sole purpose of this 1985 act is to clarify that intent " [1985 c 102 § 1.]

Retrospective application—1985 c 102: "The provisions of this 1985 act apply retrospectively to all disability leave and disability retirement allowances granted under chapter 41.26 RCW on or after March 1, 1970." [1985 c 102 § 7.]

Severability—1981 c 294: See note following RCW 41.26.115.

Severability—1974 ex.s. c 120: See note following RCW 41.26.030.

Severability—1972 ex.s. c 131: See note following RCW 41.26.030.

Disability leave supplement for law enforcement officers and fire fighters:
RCW 41.04.500 through 41.04.550.

41.26.125 Retirement for disability not incurred in the line of duty. Any member, regardless of age or years

of service, may be retired by the disability board, subject to approval by the director as provided in this section, for any disability not incurred in the line of duty which has been continuous since discontinuance of service and which renders the member unable to continue service. No disability retirement allowance may be paid until the expiration of a period of six months after the discontinuance of service during which period the member, if found to be physically or mentally unfit for duty by the disability board following receipt of the member's application for disability retirement, shall be granted a disability leave by the disability board and shall receive an allowance equal to the member's full monthly salary and shall continue to receive all other benefits provided to active employees from the member's employer for the period. However, if, at any time during the initial six-month period, the disability board finds the beneficiary is no longer disabled, the disability leave allowance shall be canceled and the member shall be restored to duty in the same rank or position, if any, held by the member at the time the member became disabled. Applications for disability retirement shall be processed in accordance with the following procedures:

(1) Any member who believes he or she is, or is believed to be, physically or mentally disabled shall be examined by such medical authority as the disability board shall employ, upon application of the member, or a person acting in the member's behalf, stating that the member is disabled, either physically or mentally: PROVIDED, That no such application shall be considered unless the member or someone acting in the member's behalf, in case of the incapacity of a member, has filed the application within a period of one year from and after the discontinuance of service of the member.

(2) If the examination shows, to the satisfaction of the disability board, that the member is physically or mentally disabled from the further performance of duty, that such disability was not incurred in the line of duty, and that such disability had been continuous from the discontinuance of service, the disability board shall enter its written decision and order, accompanied by appropriate findings of fact and by conclusions evidencing compliance with this chapter, granting the member a disability retirement allowance. Otherwise, if the member is not found by the disability board to be so disabled, the application shall be denied pursuant to a similar written decision and order, subject to appeal to the director in accordance with RCW 41.26.200: PROVIDED, That in any order granting a nonduty disability retirement allowance, the disability board shall make a finding that the disability was not incurred in the line of duty.

(3) Every order of a disability board granting a nonduty disability retirement allowance shall forthwith be reviewed by the director except the finding that the disability was not incurred in the line of duty. The director may affirm the decision of the disability board or remand the case for further proceedings, or the director may reverse the decision of the disability board if the director finds the disability board's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the disability board; or
- (c) Made upon unlawful procedure; or

(d) Affected by other error of law; or

(e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or

(f) Arbitrary or capricious.

(4) Every member who can establish to the disability board that the member is physically or mentally disabled from the further performance of duty, that such disability was not incurred in the line of duty, and that such disability will be in existence for a period of at least six months, may waive the six-month period of disability leave and be immediately granted a nonduty disability retirement allowance, subject to the approval of the director as provided in subsection (3) of this section. [1986 c 176 § 6; 1985 c 102 § 3.]

Purpose—Retrospective application—1985 c 102: See notes following RCW 41.26.120.

41.26.130 Allowance on retirement for disability.

(1) Upon retirement for disability a member shall be entitled to receive a monthly retirement allowance computed as follows: (a) A basic amount of fifty percent of final average salary at time of disability retirement, and (b) an additional five percent of final average salary for each child as defined in RCW 41.26.030(7), (c) the combined total of (a) and (b) of this subsection shall not exceed a maximum of sixty percent of final average salary.

(2) A disabled member shall begin receiving the disability retirement allowance as of the expiration of his or her six month period of disability leave or, if his or her application was filed after the sixth month of discontinuance of service but prior to the one year time limit, the member's disability retirement allowance shall be retroactive to the end of the sixth month.

(3) Benefits under this section will be payable until the member recovers from the disability or dies. If at the time that the disability ceases the member is over the age of fifty, he or she shall then receive either disability retirement allowance or retirement for service allowance, whichever is greater.

(4) Benefits under this section for a disability that is incurred while in other employment will be reduced by any amount the member receives or is entitled to receive from workers' compensation, social security, group insurance, other pension plan, or any other similar source provided by another employer on account of the same disability.

(5) A member retired for disability shall be subject to periodic examinations by a physician approved by the disability board prior to attainment of age fifty, pursuant to rules adopted by the director under RCW 41.26.115. Examinations of members who retired for disability prior to July 26, 1981, shall not exceed two medical examinations per year. [1991 c 35 § 20; 1987 c 185 § 11; 1981 c 294 § 3; 1970 ex.s. c 6 § 8; 1969 ex.s. c 209 § 13.]

Intent—1991 c 35: See note following RCW 41.26.005.

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Severability—1981 c 294: See note following RCW 41.26.115.

41.26.135 Cessation of disability—Determination.

(1) A disabled member who believes that his or her disability has ceased in accordance with RCW 41.26.130(3) may

make application to the disability board which originally found the member to be disabled, for a determination that the disability has ceased.

(2) Every order of a disability board determining that a member's disability has ceased pursuant to RCW 41.26.130(3) shall forthwith be reviewed by the director. The director may affirm the decision of the disability board or remand the case for further proceedings if the director finds the disability board's findings, inferences, conclusions, or decisions are:

(a) In violation of constitutional provisions; or

(b) In excess of the statutory authority or jurisdiction of the disability board; or

(c) Made upon unlawful procedure; or

(d) Affected by other error of law; or

(e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or

(f) Arbitrary or capricious.

(3) Determinations of whether a disability has ceased under RCW 41.26.130(3) and this section shall be made in accordance with the same procedures and standards governing other cancellations of disability retirement. [1985 c 103 § 1.]

41.26.140 Reexaminations of disability beneficiaries—Reentry—Appeal.

(1) Upon the basis of reexaminations of members on disability retirement as provided in RCW 41.26.130, the disability board shall determine whether such disability beneficiary is still unable to perform his or her duties either physically or mentally for service in the department where he or she was employed.

(2) If the disability board shall determine that the beneficiary is not so incapacitated the retirement allowance shall be canceled and the member shall be restored to duty in the same civil service rank, if any, held by the beneficiary at the time of his or her retirement or if unable to perform the duties of said rank, then, at his or her request, in such other like or lesser rank as may be or become open and available, the duties of which he or she is then able to perform. In no event, shall a beneficiary previously drawing a disability allowance be returned or be restored to duty at a salary or rate of pay less than the current salary attached to the rank or position held by the said beneficiary at the date of retirement for disability. If the disability board determines that the beneficiary is able to return to service he or she shall be entitled to notice and a hearing, both the notice and the hearing shall comply with the requirements of chapter 34.05 RCW, as now or hereafter amended.

(3) Should a disability beneficiary reenter service and be eligible for membership in the retirement system, the retirement allowance shall be canceled and he or she shall immediately become a member of the retirement system.

(4) Should any disability beneficiary under age fifty refuse to submit to examination, the retirement allowance shall be discontinued until withdrawal of such refusal, and should such refusal continue for one year or more, the retirement allowance shall be canceled.

(5) Should the disability retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into service or retirement for service, he or she shall be paid the excess, if any, of the accumulated contribu-

tions at the time of retirement over all payments made on his or her behalf under this chapter.

(6) Any person feeling aggrieved by an order of a disability board determining that a beneficiary's disability has not ceased, pursuant to RCW 41.26.130(3) has the right to appeal the order or determination to the director. The director shall have no jurisdiction to entertain the appeal unless a notice of appeal is filed with the director within thirty days following the rendition of the order by the disability board. A copy of the notice of appeal shall be served upon the director and the applicable disability board and, within ninety days thereof, the disability board shall certify its decision and order which shall include findings of fact and conclusions of law, together with a transcript of all proceedings in connection therewith, to the director for review. Upon review of the record, the director may affirm the order of the disability board or may remand the case for further proceedings if the director finds that the disability board's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the disability board; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or
- (f) Arbitrary or capricious. [1991 c 35 § 21; 1985 c 103 § 2; 1981 c 294 § 4; 1974 ex.s. c 120 § 4; 1970 ex.s. c 6 § 9; 1969 ex.s. c 209 § 14.]

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1981 c 294: See note following RCW 41.26.115.

Severability—1974 ex.s. c 120: See note following RCW 41.26.030.

41.26.150 Sickness or disability benefits—Medical services. (1) Whenever any active member, or any member hereafter retired, on account of service, sickness, or disability, not caused or brought on by dissipation or abuse, of which the disability board shall be judge, is confined in any hospital or in home, and whether or not so confined, requires medical services, the employer shall pay for the active or retired member the necessary medical services not payable from some other source as provided for in subsection (2) of this section. In the case of active or retired fire fighters the employer may make the payments provided for in this section from the firemen's pension fund established pursuant to RCW 41.16.050 where the fund had been established prior to March 1, 1970. If this pension fund is depleted, the employer shall have the obligation to pay all benefits payable under chapters 41.16 and 41.18 RCW.

(a) The disability board in all cases may have the active or retired member suffering from such sickness or disability examined at any time by a licensed physician or physicians, to be appointed by the disability board, for the purpose of ascertaining the nature and extent of the sickness or disability, the physician or physicians to report to the disability board the result of the examination within three days thereafter. Any active or retired member who refuses to submit to such examination or examinations shall forfeit all rights to benefits under this section for the period of the refusal.

(b) The disability board shall designate the medical services available to any sick or disabled member.

(2) The medical services payable under this section will be reduced by any amount received or eligible to be received by the member under workers' compensation, social security including the changes incorporated under Public Law 89-97, insurance provided by another employer, other pension plan, or any other similar source. Failure to apply for coverage if otherwise eligible under the provisions of Public Law 89-97 shall not be deemed a refusal of payment of benefits thereby enabling collection of charges under the provisions of this chapter.

(3) Upon making the payments provided for in subsection (1) of this section, the employer shall be subrogated to all rights of the member against any third party who may be held liable for the member's injuries or for payment of the cost of medical services in connection with a member's sickness or disability to the extent necessary to recover the amount of payments made by the employer.

(4) Any employer under this chapter, either singly, or jointly with any other such employer or employers through an association thereof as provided for in chapter 48.21 RCW, may provide for all or part of one or more plans of group hospitalization and medical aid insurance to cover any of its employees who are members of the Washington law enforcement officers' and fire fighters' retirement system, and/or retired former employees who were, before retirement, members of the retirement system, through contracts with regularly constituted insurance carriers, with health maintenance organizations as defined in chapter 48.46 RCW, or with health care service contractors as defined in chapter 48.44 RCW. Benefits payable under any the [under the] plan or plans shall be deemed to be amounts received or eligible to be received by the active or retired member under subsection (2) of this section.

(5) Any employer under this chapter may, at its discretion, elect to reimburse a retired former employee under this chapter for premiums the retired former employee has paid for medical insurance that supplements medicare, including premiums the retired former employee has paid for medicare part B coverage. [1992 c 22 § 3; 1991 c 35 § 22; 1987 c 185 § 12; 1983 c 106 § 23; 1974 ex.s. c 120 § 11; 1971 ex.s. c 257 § 10; 1970 ex.s. c 6 § 10; 1969 ex.s. c 219 § 4; 1969 ex.s. c 209 § 15.]

Intent—1991 c 35: See note following RCW 41.26.005.

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Severability—1974 ex.s. c 120: See note following RCW 41.26.030.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.160 Death benefits. (1) In the event of the death of any member who is in active service, or who has vested under the provisions of RCW 41.26.090 with twenty or more service credit years of service, or who is on disability leave or retired, whether for disability or service, the surviving spouse shall become entitled to receive a monthly allowance equal to fifty percent of the final average salary at the date of death if active, or the amount of retirement allowance the vested member would have received at age fifty, or the amount of the retirement allowance such retired member was receiving at the time of death if retired for

service or disability. The amount of this allowance will be increased five percent of final average salary for each child as defined in RCW 41.26.030(7), as now or hereafter amended, subject to a maximum combined allowance of sixty percent of final average salary: PROVIDED, That if the child or children is or are in the care of a legal guardian, payment of the increase attributable to each child will be made to the child's legal guardian or, in the absence of a legal guardian and if the member has created a trust for the benefit of the child or children, payment of the increase attributable to each child will be made to the trust.

(2) If at the time of the death of a vested member with twenty or more service credit years of service as provided in subsection (1) of this section or a member retired for service or disability, the surviving spouse has not been lawfully married to such member for one year prior to retirement or separation from service if a vested member, the surviving spouse shall not be eligible to receive the benefits under this section: PROVIDED, That if a member dies as a result of a disability incurred in the line of duty, then if he or she was married at the time he or she was disabled, the surviving spouse shall be eligible to receive the benefits under this section.

(3) If there be no surviving spouse eligible to receive benefits at the time of such member's death, then the child or children of such member shall receive a monthly allowance equal to thirty percent of final average salary for one child and an additional ten percent for each additional child subject to a maximum combined payment, under this subsection, of sixty percent of final average salary. When there cease to be any eligible children as defined in RCW 41.26.030(7), as now or hereafter amended, there shall be paid to the legal heirs of said member the excess, if any, of accumulated contributions of said member at the time of death over all payments made to survivors on his or her behalf under this chapter: PROVIDED, That payments under this subsection to children shall be prorated equally among the children, if more than one. If the member has created a trust for the benefit of the child or children, the payment shall be made to the trust.

(4) In the event that there is no surviving spouse eligible to receive benefits under this section, and that there be no child or children eligible to receive benefits under this section, then the accumulated contributions shall be paid to the estate of said member.

(5) If a surviving spouse receiving benefits under the provisions of this section thereafter dies and there are children as defined in RCW 41.26.030(7), as now or hereafter amended, payment to the spouse shall cease and the child or children shall receive the benefits as provided in subsection (3) of this section.

(6) The payment provided by this section shall become due the day following the date of death and payments shall be retroactive to that date. [1991 sp.s. c 11 § 5. Prior: 1991 c 343 § 17; 1991 c 35 § 23; 1986 c 176 § 7; 1977 ex.s. c 294 § 23; 1974 ex.s. c 120 § 5; 1972 ex.s. c 131 § 9; 1971 ex.s. c 257 § 11; 1970 ex.s. c 6 § 12; 1969 ex.s. c 209 § 17.]

Purpose—Effective dates—1991 sp.s. c 11: See notes following RCW 41.26.090.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005

(1998 Ed)

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1974 ex.s. c 120: See note following RCW 41.26.030.

Severability—1972 ex.s. c 131: See note following RCW 41.26.030.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.162 Ex spouse qualifying as surviving spouse—When. (1) An ex spouse of a law enforcement officers' and fire fighters' retirement system retiree shall qualify as surviving spouse under RCW 41.26.160 if the ex spouse:

(a) Has been provided benefits under any currently effective court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation entered after the member's retirement and prior to December 31, 1979; and

(b) Was married to the retiree for at least thirty years, including at least twenty years prior to the member's retirement or separation from service if a vested member.

(2) If two or more persons are eligible for a surviving spouse benefit under this subsection, benefits shall be divided between the surviving spouses based on the percentage of total service credit the member accrued during each marriage.

(3) This section shall apply retroactively. [1991 sp.s. c 12 § 2.]

41.26.170 Refund of contributions on discontinuance of service—Reentry. (1) Should service of a member be discontinued except by death, disability, or retirement, the member shall, upon application therefor, be paid the accumulated contributions within sixty days after the day of application and the rights to all benefits as a member shall cease: PROVIDED, That any member with at least five years' service may elect the provisions of RCW 41.26.090(2).

(2) Any member whose contributions have been paid in accordance with subsection (1) of this section and who reenters the service of an employer shall upon the restoration of withdrawn contributions, which restoration must be completed within a total period of five years of service following resumption of employment, then receive credit toward retirement for the period of previous service which these contributions are to cover.

(3) If the member fails to meet the time limitations of subsection (2) of this section, the member may make the payment required under RCW 41.50.165(2) prior to retirement. The member shall then receive credit toward retirement for the period of previous service that the withdrawn contributions cover. [1994 c 197 § 6; 1991 c 35 § 24; 1970 ex.s. c 6 § 14; 1969 ex.s. c 209 § 22.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

41.26.190 Credit for military service. Each person affected by this chapter who at the time of entering the armed services was a member of this system, and has honorably served in the armed services of the United States, shall have added to the period of service as computed under

this chapter, the period of service in the armed forces: PROVIDED, That such credited service shall not exceed five years. [1991 c 35 § 26; 1970 ex.s. c 6 § 13; 1969 ex.s. c 209 § 18.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.26.192 Credit for service under prior pension system—Restoration of withdrawn contributions. If a member of plan I served as a law enforcement officer or fire fighter under a prior pension system and that service is not creditable to plan I because the member withdrew his or her contributions plus accrued interest from the prior pension system, the member's prior service as a law enforcement officer shall be credited to plan I if the member pays to the retirement system the amount under RCW 41.50.165(2) prior to retirement. [1994 c 197 § 7; 1992 c 157 § 1.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.26.194 Credit for service under prior pension system—Service not covered under prior system. If a plan I member's prior service as a law enforcement officer or fire fighter under a prior pension system is not creditable because, although employed in a position covered by a prior pension act, the member had not yet become a member of the pension system governed by the act, the member's prior service as a law enforcement officer or fire fighter shall be creditable under plan I, if the member pays to the plan the amount set forth under RCW 41.50.165(2) prior to retirement. [1994 c 197 § 8; 1992 c 157 § 2.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.26.195 Transfer of service credit from other retirement system—Irrevocable election allowed. Any member of the teachers' retirement system plans I, II, or III, the public employees' retirement system plans I or II, or the Washington state patrol retirement system who has previously established service credit in the law enforcement officers' and fire fighters' retirement system plan I may make an irrevocable election to have such service transferred to their current retirement system and plan subject to the following conditions:

(1) If the individual is employed by an employer in an eligible position, as of July 1, 1997, the election to transfer service must be filed in writing with the department no later than July 1, 1998. If the individual is not employed by an employer in an eligible position, as of July 1, 1997, the election to transfer service must be filed in writing with the department no later than one year from the date they are employed by an employer in an eligible position.

(2) An individual transferring service under this section forfeits the rights to all benefits as a member of the law enforcement officers' and fire fighters' retirement system plan I and will be permanently excluded from membership.

(3) Any individual choosing to transfer service under this section will have transferred to their current retirement system and plan: (a) All the individual's accumulated contributions; (b) an amount sufficient to ensure that the employer contribution rate in the individual's current system and plan will not increase due to the transfer; and (c) all

applicable months of service, as defined in RCW 41.26.030(14)(a).

(4) If an individual has withdrawn contributions from the law enforcement officers' and fire fighters' retirement system plan I, the individual may restore the contributions, together with interest as determined by the director, and recover the service represented by the contributions for the sole purpose of transferring service under this section. The contributions must be restored before the transfer can occur and the restoration must be completed within the time limitations specified in subsection (1) of this section.

(5) Any service transferred under this section does not apply to the eligibility requirements for military service credit as defined in RCW 41.40.170(3) or 43.43.260(3).

(6) If an individual does not meet the time limitations of subsection (1) of this section, the individual may elect to restore any withdrawn contributions and transfer service under this section by paying the amount required under subsection (3)(b) of this section less any employee contributions transferred. [1997 c 122 § 1.]

41.26.197 Service credit for paid leave of absence—Application to elected officials of labor organizations. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided under the provisions of RCW 41.26.080 through 41.26.3903.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The basic salary reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement. [1993 c 95 § 3.]

Retroactive application—Effective date—1993 c 95: See notes following RCW 41.40.175.

41.26.200 Appeal to director of retirement systems. Any person feeling aggrieved by any order or determination of a disability board denying disability leave or disability retirement, or canceling a previously granted disability retirement allowance, shall have the right to appeal the order or determination to the director. The director shall have no jurisdiction to entertain the appeal unless a notice of appeal is filed with the director within thirty days following the rendition of the order by the applicable disability board. A copy of the notice of appeal shall be served upon the director and the applicable disability board and, within ninety days thereof, the disability board shall certify its decision and order which shall include findings of fact and conclusions of law, together with a transcript of all proceedings in connection therewith, to the director for review. Upon review of the record, the director may affirm the order of the disability board or may remand the case for such further

proceedings as he or she may direct, in accordance with such rules of procedure as the director shall promulgate. [1981 c 294 § 5; 1974 ex.s. c 120 § 6; 1971 ex.s. c 257 § 13; 1970 ex.s. c 6 § 11; 1969 ex.s. c 209 § 16.]

Severability—1981 c 294: See note following RCW 41.26.115.

Severability—1974 ex.s. c 120: See note following RCW 41.26.030.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.211 Notice for hearing required prior to petitioning for judicial review. Any person aggrieved by any final decision of the director must, before petitioning for judicial review, file with the director of the retirement system by mail or personally within sixty days from the day such decision was communicated to such person, a notice for a hearing. The notice of hearing shall set forth in full detail the grounds upon which such person considers such decision unjust or unlawful and shall include every issue to be considered, and it must contain a detailed statement of facts upon which such person relies in support thereof. Such persons shall be deemed to have waived all objections or irregularities concerning the matter on which such appeal is taken other than those specifically set forth in the notice of hearing or appearing in the records of the retirement system. [1984 c 184 § 16; 1981 c 294 § 6; 1969 ex.s. c 209 § 19. Formerly RCW 41.26.052, 41.26.210.]

Severability—1984 c 184: See note following RCW 41.50.150.

Severability—1981 c 294: See note following RCW 41.26.115.

41.26.221 Hearing—Conduct. A hearing shall be held by the director, or the director's duly authorized representative, in the county of the residence of the claimant at a time and place designated by the director. Such hearing shall be de novo and shall conform to the provisions of chapter 34.05 RCW, as now or hereafter amended. The disability board and the department shall be entitled to appear in all such proceedings and introduce testimony in support of the decision. Judicial review of any final decision by the director shall be governed by the provisions of chapter 34.05 RCW as now law or hereafter amended. [1984 c 184 § 17; 1981 c 294 § 7; 1969 ex.s. c 209 § 20. Formerly RCW 41.26.054, 41.26.220.]

Severability—1984 c 184: See note following RCW 41.50.150.

Severability—1981 c 294: See note following RCW 41.26.115.

41.26.240 Increases or decreases in retirement allowances to be determined by department in accordance with consumer price index. For purposes of this section:

(1) "Index" shall mean, for any calendar year, that year's average Consumer Price Index—Seattle, Washington area for urban wage earners and clerical workers, all items (1957-1959=100), compiled by the Bureau of Labor Statistics, United States Department of Labor;

(2) "Retirement allowance" shall mean the retirement allowance provided for in RCW 41.26.100 and 41.26.130, and the monthly allowance provided for in RCW 41.26.160.

Effective April 1 of 1971, and of each succeeding year, every retirement allowance which has been in effect for more than one year shall be adjusted to that dollar amount which exceeds its original dollar amount by the percentage

difference which the department finds to exist between the index for the previous calendar year and the index for the calendar year prior to the effective retirement date of the person to whom, or on behalf of whom, such retirement allowance is being paid.

For the purposes of this section, basic allowance shall mean that portion of a total retirement allowance, and any cost of living adjustment thereon, attributable to a member (individually) and shall not include the increased amounts attributable to the existence of a child or children. In those cases where a child ceases to be qualified as an eligible child, so as to lessen the total allowance, the allowance shall, at that time, be reduced to the basic allowance plus the amount attributable for the appropriate number of eligible children. In those cases where a child qualifies as an eligible child subsequent to the retirement of a member so as to increase the total allowance payable, such increased allowance shall at the time of the next and appropriate subsequent cost of living adjustments, be considered the original dollar amount of the allowance. [1991 c 35 § 27; 1974 ex.s. c 120 § 13; 1970 ex.s. c 6 § 16; 1969 ex.s. c 209 § 24.]

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1974 ex.s. c 120: See note following RCW 41.26.030.

41.26.250 Increase in presently payable benefits for service or disability authorized. All benefits presently payable pursuant to the provisions of RCW 41.20.050, 41.20.060 and 41.20.080 as such RCW sections existed prior to the effective date of the amendment of such RCW sections by sections 1, 2, 3, chapter 191, Laws of 1961 to persons who retired prior to the effective date of the said 1961 amendatory act, shall be increased annually as hereafter in this section provided. The local pension board shall meet subsequent to March 31st but prior to June 30th of each year for the purpose of adjusting benefit allowances payable pursuant to the aforementioned sections. The local board shall determine the increase in the consumer price index between January 1st and December 31st of the previous year and increase in dollar amount the benefits payable subsequent to July 1st of the year in which said board makes such determination by a dollar amount proportionate to the increase in the consumer price index: PROVIDED, That regardless of the change in the consumer price index, such increase shall be at least two percent each year such adjustment is made.

Each year effective with the July payment all benefits specified herein, shall be increased as authorized by this section. This benefit increase shall be paid monthly as part of the regular pension payment and shall be cumulative.

For the purpose of this section the term

"Consumer price index" shall mean, for any calendar year, the consumer price index for the Seattle, Washington area as compiled by the bureau of labor statistics of the United States department of labor. [1975 1st ex.s. c 178 § 3; 1974 ex.s. c 190 § 3; 1970 ex.s. c 37 § 2; 1969 ex.s. c 209 § 34.]

Construction—Severability—1975 1st ex.s. c 178: See RCW 41.16.911, 41.16.921.

Construction—1970 ex.s. c 37: See note following RCW 41.18.104.

41.26.260 Increase in certain presently payable death benefits authorized. All benefits presently payable pursuant to the provisions of RCW 41.20.085 which are not related to the amount of current salary attached to the position held by the deceased member, shall be increased annually in the same manner and to the same extent as provided for pursuant to RCW 41.26.250. [1974 ex.s. c 190 § 4; 1969 ex.s. c 209 § 35.]

41.26.270 Declaration of policy respecting benefits for injury or death—Civil actions abolished. The legislature of the state of Washington hereby declares that the relationship between members of the law enforcement officers' and fire fighters' retirement system and their governmental employers is similar to that of workers to their employers and that the sure and certain relief granted by this chapter is desirable, and as beneficial to such law enforcement officers and fire fighters as workers' compensation coverage is to persons covered by Title 51 RCW. The legislature further declares that removal of law enforcement officers and fire fighters from workers' compensation coverage under Title 51 RCW necessitates the (1) continuance of sure and certain relief for personal injuries incurred in the course of employment or occupational disease, which the legislature finds to be accomplished by the provisions of this chapter and (2) protection for the governmental employer from actions at law; and to this end the legislature further declares that the benefits and remedies conferred by this chapter upon law enforcement officers and fire fighters covered hereunder, shall be to the exclusion of any other remedy, proceeding, or compensation for personal injuries or sickness, caused by the governmental employer except as otherwise provided by this chapter; and to that end all civil actions and civil causes of actions by such law enforcement officers and fire fighters against their governmental employers for personal injuries or sickness are hereby abolished, except as otherwise provided in this chapter. [1989 c 12 § 13; 1987 c 185 § 13; 1985 c 102 § 4; 1971 ex.s. c 257 § 14.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Purpose—Retrospective application—1985 c 102: See notes following RCW 41.26.120.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.281 Cause of action for injury or death, when. If injury or death results to a member from the intentional or negligent act or omission of a member's governmental employer, the member, the widow, widower, child, or dependent of the member shall have the privilege to benefit under this chapter and also have cause of action against the governmental employer as otherwise provided by law, for any excess of damages over the amount received or receivable under this chapter. [1991 c 35 § 28; 1971 ex.s. c 257 § 15. Formerly RCW 41.26.058, 41.26.280.]

Intent—1991 c 35: See note following RCW 41.26.005.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.26.3901 Severability—1969 ex.s. c 209. If any provision of *this 1969 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1969 ex.s. c 209 § 42. Formerly RCW 41.26.900.]

***Reviser's note:** "this 1969 amendatory act," see note following chapter digest.

41.26.3902 Act to control inconsistencies. To the extent that the provisions of *this 1969 amendatory act are inconsistent with the provisions of any other law, the provisions of *this 1969 amendatory act shall be controlling. [1969 ex.s. c 209 § 43. Formerly RCW 41.26.910.]

***Reviser's note:** "this 1969 amendatory act," see note following chapter digest.

41.26.3903 Effective date—1969 ex.s. c 209. *This 1969 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions and shall take effect on July 1, 1969. [1969 ex.s. c 209 § 45. Formerly RCW 41.26.920.]

***Reviser's note:** "This 1969 amendatory act," see note following chapter digest.

"PLAN II"

41.26.410 Provisions applicable to plan II. RCW 41.26.420 through 41.26.550 shall apply only to plan II members. [1991 c 35 § 29; 1977 ex.s. c 294 § 2.]

Intent—1991 c 35: See note following RCW 41.26.005.

Legislative direction and placement—1977 ex.s. c 294: "Sections 1 through 16 of this 1977 amendatory act shall be added to chapter 41.26 RCW and shall be codified as consecutive sections of the Revised Code of Washington within such chapter." [1977 ex.s. c 294 § 25.]

Section headings—1977 ex.s. c 294: "Section headings used in this 1977 amendatory act shall not constitute any part of the law." [1977 ex.s. c 294 § 24.]

41.26.420 Computation of the retirement allowance. Except as provided in RCW 41.26.530, a member of the retirement system shall receive a retirement allowance equal to two percent of such member's final average salary for each year of service. [1993 c 517 § 2; 1979 ex.s. c 249 § 4; 1977 ex.s. c 294 § 3.]

Purpose—1993 c 517: "The legislature recognizes the demanding, physical nature of law enforcement and fire fighting, and the resulting need to allow law enforcement officers and fire fighters to make transitions into other careers when these employees feel they can no longer pursue law enforcement or fire fighting. The legislature also recognizes the challenge and cost of maintaining the viability of a retired employee's benefit over longer periods of retirement as longevity increases, and that this problem is compounded for employees who leave a career before they retire from the work force.

Therefore, the purpose of this act is to: (1) Provide full retirement benefits to law enforcement officers and fire fighters at an appropriate age that reflects the unique and physically demanding nature of their work; (2) provide a fair and reasonable value from the retirement system for those who leave the law enforcement or fire fighting profession before retirement; (3) increase flexibility for law enforcement officers and fire fighters to make transitions into other public or private sector employment; (4) increase employee options for addressing retirement needs, personal financial planning, and career transitions; and (5) continue the legislature's established policy of having employees pay a fifty percent share of the contribu-

tions toward their retirement benefits and any enhancements." [1993 c 517 § 1.]

Legislative direction and placement—Section headings—1977 ex.s. c 294: See notes following RCW 41.26.410.

41.26.425 Lump sum retirement allowance—Reentry—Conditions for reinstatement of service. (1) On or after June 10, 1982, the director may pay a beneficiary, subject to the provisions of subsection (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.26.420 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of such monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A beneficiary, subject to the provisions of subsection (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to re-retiring, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations set forth under subsection (3) of this section, the member may reinstate all previous service under RCW 41.50.165(2) prior to retirement. The sum deposited shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.26.420 or an earned disability allowance under RCW 41.26.470 qualify for participation under this section.

(6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system. [1994 c 197 § 9; 1982 c 144 § 1.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.26.430 Retirement for service. (1) **NORMAL RETIREMENT.** Any member with at least five service credit years of service who has attained at least age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.26.420.

(2) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years of service and has attained age fifty shall be eligible to retire and to receive a retirement allowance computed according to the provisions

of RCW 41.26.420, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age fifty-five. [1993 c 517 § 3; 1991 c 343 § 18; 1977 ex.s. c 294 § 4.]

Purpose—1993 c 517: See note following RCW 41.26.420.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Legislative direction and placement—Section headings—1977 ex.s. c 294: See notes following RCW 41.26.410.

41.26.440 Post-retirement cost-of-living. Beginning July 1, 1979, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

- (1) The original dollar amount of the retirement allowance;
- (2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";
- (3) The index for the calendar year prior to the date of determination, to be known as "index B"; and
- (4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

- (a) Produce a retirement allowance which is lower than the original retirement allowance;
- (b) Exceed three percent in the initial annual adjustment; or
- (c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index—Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor. [1977 ex.s. c 294 § 5.]

Legislative direction and placement—Section headings—1977 ex.s. c 294: See notes following RCW 41.26.410.

41.26.450 Plan II employer, member, and state contributions. (1) The required contribution rates to the plan II system for members, employers, and the state of Washington shall be established by the director from time to time as may be necessary upon the advice of the state actuary. The state actuary shall use the aggregate actuarial cost method to calculate contribution rates.

(2) Except as provided in subsection (3) of this section, the member, the employer and the state shall each contribute the following shares of the cost of the retirement system:

Member	50%
Employer	30%
State	20%

(3) Port districts established under Title 53 RCW and institutions of higher education as defined in RCW 28B.10.016 shall contribute both the employer and state shares of the cost of the retirement system for any of their employees who are law enforcement officers. Institutions of

higher education shall contribute both the employer and the state shares of the cost of the retirement system for any of their employees who are fire fighters.

(4) Effective January 1, 1987, however, no member or employer contributions are required for any calendar month in which the member is not granted service credit.

(5) Any adjustments in contribution rates required from time to time for future costs shall likewise be shared proportionally by the members, employers, and the state.

(6) Any increase in the contribution rate required as the result of a failure of the state or of an employer to make any contribution required by this section shall be borne in full by the state or by that employer not making the contribution.

(7) The director shall notify all employers of any pending adjustment in the required contribution rate and such increase shall be announced at least thirty days prior to the effective date of the change.

(8) Members' contributions required by this section shall be deducted from the members basic salary each payroll period. The members contribution and the employers contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends. The state's contribution required by this section shall be transferred to the plan II fund from the total contributions transferred by the state treasurer under RCW 41.45.060 and 41.45.070. [1996 c 38 § 3; 1993 c 502 § 2; 1989 c 273 § 14; 1986 c 268 § 1; 1984 c 184 § 10; 1977 ex.s. c 294 § 6.]

Effective date—1993 c 502: See note following RCW 41.26.030.

Severability—1989 c 273: See RCW 41.45.900.

Severability—1984 c 184: See note following RCW 41.50.150.

Legislative direction and placement—Section headings—1977 ex.s. c 294: See notes following RCW 41.26.410.

41.26.460 Options for payment of retirement allowances—Retirement allowance adjustment. (1) Upon retirement for service as prescribed in RCW 41.26.430 or disability retirement under RCW 41.26.470, a member shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person. Such person

shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last. [1998 c 340 § 5; 1996 c 175 § 3; 1995 c 144 § 17; 1990 c 249 § 3; 1977 ex.s. c 294 § 7.]

Effective date—1998 c 340: See note following RCW 41.31.010.

Findings—1990 c 249: See note following RCW 2.10.146.

Legislative direction and placement—Section headings—1977 ex.s. c 294: See notes following RCW 41.26.410.

41.26.470 Earned disability allowance—Cancellation of allowance—Reentry—Receipt of service credit while disabled—Conditions—Disposition upon death of recipient. (1) A member of the retirement system who becomes

totally incapacitated for continued employment by an employer as determined by the director shall be eligible to receive an allowance under the provisions of RCW 41.26.410 through 41.26.550. Such member shall receive a monthly disability allowance computed as provided for in RCW 41.26.420 and shall have such allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age fifty-five.

(2) Any member who receives an allowance under the provisions of this section shall be subject to such comprehensive medical examinations as required by the department. If such medical examinations reveal that such a member has recovered from the incapacitating disability and the member is no longer entitled to benefits under Title 51 RCW, the retirement allowance shall be canceled and the member shall be restored to duty in the same civil service rank, if any, held by the member at the time of retirement or, if unable to perform the duties of the rank, then, at the member's request, in such other like or lesser rank as may be or become open and available, the duties of which the member is then able to perform. In no event shall a member previously drawing a disability allowance be returned or be restored to duty at a salary or rate of pay less than the current salary attached to the rank or position held by the member at the date of the retirement for disability. If the department determines that the member is able to return to service, the member is entitled to notice and a hearing. Both the notice and the hearing shall comply with the requirements of chapter 34.05 RCW, the Administrative Procedure Act.

(3) Those members subject to this chapter who became disabled in the line of duty on or after July 23, 1989, and who receive benefits under RCW 41.04.500 through 41.04.530 or similar benefits under RCW 41.04.535 shall receive or continue to receive service credit subject to the following:

(a) No member may receive more than one month's service credit in a calendar month.

(b) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(c) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(d) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(e) State contributions shall be as provided in RCW 41.26.450.

(f) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred.

(g) The service and compensation credit under this section shall be granted for a period not to exceed six consecutive months.

(h) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right.

(4)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the

balance shall be paid to the member's estate, or such person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no such designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is neither such designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions. [1995 c 144 § 18; 1993 c 517 § 4; 1990 c 249 § 19. Prior: 1989 c 191 § 1; 1989 c 88 § 1; 1982 c 12 § 2; 1981 c 294 § 9; 1977 ex.s. c 294 § 8.]

Purpose—1993 c 517: See note following RCW 41.26.420.

Findings—1990 c 249: See note following RCW 2.10.146.

Severability—1981 c 294: See note following RCW 41.26.115.

Legislative direction and placement—Section headings—1977 ex.s. c 294: See notes following RCW 41.26.410.

Disability leave supplement for law enforcement officers and fire fighters: RCW 41.04.500 through 41.04.550.

41.26.480 Industrial insurance. Notwithstanding any other provision of law, members shall be eligible for industrial insurance as provided by Title 51 RCW, as now or hereafter amended, and shall be included in the payroll of the employer for such purpose. [1977 ex.s. c 294 § 9.]

Legislative direction and placement—Section headings—1977 ex.s. c 294: See notes following RCW 41.26.410.

41.26.490 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.26.430, 41.26.470, or 41.26.510 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members under the provisions of RCW 41.26.430 shall accrue from the first day of the calendar month immediately following such member's separation from service.

(2) Retirement allowances paid to vested members no longer in service, but qualifying for such an allowance pursuant to RCW 41.26.430, shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members under the provisions of RCW 41.26.470 shall accrue from the first day of the calendar month immediately following such member's separation from service for disability.

(4) Retirement allowances paid as death benefits under the provisions of RCW 41.26.510 shall accrue from the first day of the calendar month immediately following the member's death.

(5) A person is separated from service on the date a person has terminated all employment with an employer. [1997 c 254 § 2; 1977 ex.s. c 294 § 10.]

Intent—Construction—1997 c 254: "(1) This act, which defines separation from service and restrictions concerning postretirement employment, is intended to clarify existing statutory provisions regarding these issues. As a result of this act, the legal standard for determining separation from service and the impact to a retiree's benefit should they return to work following retirement, are either the same as under the prior law, or less restrictive. Accordingly, this act does not constitute a diminution of benefits and applies to all members of the affected retirement systems.

(2) This act, which addresses the determination of employee status, is intended to clarify existing law. The clarifications are consistent with long-standing common law of the state of Washington and long-standing department of retirement systems' interpretations of the appropriate standard to be used in determining employee status. Accordingly, sections 3(49) and 10(22) of this act do not constitute a diminution of benefits and apply to all members of the teachers' retirement system and the public employees' retirement system." [1997 c 254 § 1.]

Application—1997 c 254: "This act applies to all overpayments discovered by the department of retirement systems on or after June 1, 1996, except that sections 10, 12, 14, 15, and 16 of this act apply retroactively to any person who retired under chapter 234, Laws of 1992 or part III of chapter 519, Laws of 1993." [1997 c 254 § 17.]

Legislative direction and placement—Section headings—1977 ex.s. c 294: See notes following RCW 41.26.410.

41.26.500 Suspension of retirement allowance upon reemployment—Reinstatement. (Effective until September 1, 2000.) (1) No retiree under the provisions of plan II shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010 or 41.32.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030. If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(2) The department shall adopt rules implementing this section. [1990 c 274 § 12; 1977 ex.s. c 294 § 11.]

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Application—Reservation—1990 c 274 §§ 11, 12, 14, and 15: See note following RCW 41.40.690.

Legislative direction and placement—Section headings—1977 ex.s. c 294: See notes following RCW 41.26.410.

41.26.500 Suspension of retirement allowance upon reemployment—Reinstatement. (Effective September 1, 2000.) (1) No retiree under the provisions of plan II shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, or 41.35.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030. If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(2) The department shall adopt rules implementing this section. [1998 c 341 § 604; 1990 c 274 § 12; 1977 ex.s. c 294 § 11.]

Effective date—1998 c 341: See RCW 41.35.901.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Application—Reservation—1990 c 274 §§ 11, 12, 14, and 15: See note following RCW 41.40.690.

Legislative direction and placement—Section headings—1977 ex.s. c 294: See notes following RCW 41.26.410.

41.26.510 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.26.430(1), actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.26.460 and if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.26.430(2); if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b)(i) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670; or

(ii) If the member dies on or after July 25, 1993, one hundred fifty percent of the member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court

order filed under RCW 41.50.670. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To an estate, a person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives. [1995 c 245 § 1; 1995 c 144 § 19; 1993 c 236 § 3; 1991 c 365 § 31; 1990 c 249 § 14; 1977 ex.s. c 294 § 12.]

Reviser's note: This section was amended by 1995 c 144 § 19 and by 1995 c 245 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1995 c 245: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 5, 1995]." [1995 c 245 § 3.]

Severability—1991 c 365: See note following RCW 41.50.500.

Findings—1990 c 249: See note following RCW 2.10.146.

Legislative direction and placement—Section headings—1977 ex.s. c 294: See notes following RCW 41.26.410

41.26.520 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.26.410 through 41.26.550.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The basic salary reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (6) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes the employer, member, and state contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner.

(4) If a member fails to meet the time limitations of subsection (3) of this section, the member may receive a maximum of two years of service credit during a member's working career for those periods when a member is on unpaid leave of absence authorized by an employer. This may be done by paying the amount required under RCW 41.50.165(2) prior to retirement.

(5) For the purpose of subsection (3) of this section the contribution shall not include the contribution for the unfunded supplemental present value as required by RCW 41.26.450. The contributions required shall be based on the average of the member's basic salary at both the time the authorized leave of absence was granted and the time the member resumed employment.

(6) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces; and

(ii) The member makes the employee contributions required under RCW 41.26.450 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(b) Upon receipt of member contributions under (a)(ii) of this subsection, the department shall establish the member's service credit and shall bill the employer and the state for their respective contributions required under RCW 41.26.450 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

(7) A member receiving benefits under Title 51 RCW who is not receiving benefits under this chapter shall be deemed to be on unpaid, authorized leave of absence. [1996 c 61 § 1; 1994 c 197 § 10; 1993 c 95 § 4; 1992 c 119 § 1; 1989 c 88 § 2; 1977 ex.s. c 294 § 13.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Retroactive application—Effective date—1993 c 95: See notes following RCW 41.40.175.

Retroactive application—1992 c 119: "This act applies retroactively for retirement system service credit for military service which began on or after January 1, 1990." [1992 c 119 § 4.]

Legislative direction and placement—Section headings—1977 ex.s. c 294: See notes following RCW 41.26.410.

41.26.530 Vested membership. (1) A member who separates or has separated after having completed at least five years of service may remain a member during the period of such member's absence from service for the exclusive purpose only of receiving a retirement allowance under the provisions of RCW 41.26.430 if such member maintains the member's accumulated contributions intact.

(2) The retirement allowance payable under the provisions of RCW 41.26.430 to a member who separates after having completed at least twenty years of service, and remains a member during the period of his or her absence from service by maintaining his or her accumulated contributions intact, shall be increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date the retirement allowance commences as provided in RCW 41.26.490. [1993 c 517 § 5; 1977 ex.s. c 294 § 14.]

Purpose—1993 c 517: See note following RCW 41.26.420.

Legislative direction and placement—Section headings—1977 ex.s. c 294: See notes following RCW 41.26.410.

41.26.540 Refund of contributions on termination.

(1)(a) A member who has completed less than ten years of service, who ceases to be an employee of an employer except by service or disability retirement, may request a refund of the member's accumulated contributions.

(b) A member who has completed ten or more years of service, who ceases to be an employee of an employer except by service or disability retirement, may request a refund of one hundred fifty percent of the member's accumulated contributions. Any accumulated contributions attributable to restorations made under RCW 41.50.165(2) shall be refunded at one hundred percent.

(2) The refund shall be made within ninety days following the receipt of the request and notification of termination through the contribution reporting system by the employer; except that in the case of death, an initial payment shall be made within thirty days of receipt of request for such payment and notification of termination through the contribution reporting system by the employer. A member who files a request for refund and subsequently enters into employment with another employer prior to the refund being made shall not be eligible for a refund. The refund of accumulated contributions shall terminate all rights to benefits under RCW 41.26.410 through 41.26.550. [1995 c 245 § 2; 1993 c 517 § 6; 1982 1st ex.s. c 52 § 5; 1977 ex.s. c 294 § 15.]

Effective date—1995 c 245: See note following RCW 41.26.510.

Purpose—1993 c 517: See note following RCW 41.26.420.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Legislative direction and placement—Section headings—1977 ex.s. c 294: See notes following RCW 41.26.410.

41.26.550 Reentry. (1) A member, who had left service and withdrawn the member's funds pursuant to RCW 41.26.540, shall receive service credit for such prior service if the member restores all withdrawn funds together with interest since the time of withdrawal as determined by the department.

The restoration of such funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service credit destroyed by the withdrawn contributions if the amount required under RCW 41.50.165(2) is paid. [1994 c 197 § 11; 1993 c 517 § 7; 1977 ex.s. c 294 § 16.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Purpose—1993 c 517: See note following RCW 41.26.420.

Legislative direction and placement—Section headings—1977 ex.s. c 294: See notes following RCW 41.26.410.

41.26.901 Severability—1977 ex.s. c 294. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 294 § 26.]

41.26.921 Effective date—1977 ex.s. c 294. This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect October 1, 1977. [1977 ex.s. c 294 § 27.]

Chapter 41.28

RETIREMENT OF PERSONNEL IN CERTAIN FIRST CLASS CITIES

Sections

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41.28.910	Repeal.
41.28.920	Effective date—1939 c 207.

Portability of public retirement benefits: Chapter 41.54 RCW.

State-wide city employees' retirement system: Chapter 41.44 RCW.

41.28.005 Establishment of retirement and pension systems authorized. Any city attaining the status of a first class city after July 1, 1939, is empowered by this chapter to establish retirement and pension systems for superannuated or totally and permanently disabled officers and employees of cities of the first class. [1939 c 207 § 1; RRS § 9592-101. Formerly RCW 41.28.020, part.]

41.28.010 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Retirement system" shall mean "employees' retirement system", provided for in RCW 41.28.020.

(2) "Employee" shall mean any regularly appointed officer or regularly appointed employee of a first class city as described in RCW 41.28.005, whose compensation in such employment is paid wholly by that city.

(3) "Member" shall mean any person included in the membership of the retirement system as provided in RCW 41.28.030.

(4) "City" shall mean any city of the first class as described in RCW 41.28.005.

(5) "Board" shall mean "board of administration" as provided in RCW 41.28.080.

(6) "Retirement fund" shall mean "employees' retirement fund" as created and established in RCW 41.28.070.

(7) "City service" shall mean service rendered to city for compensation, and for the purpose of this chapter, a member shall be considered as being in city service only while he is receiving compensation from the city for such service.

(8) "Prior service" shall mean the service of a member for compensation rendered to the city prior to July 1, 1939, and shall also include military or naval service of a member to the extent specified in RCW 41.28.050.

(9) "Continuous service" shall mean uninterrupted employment by that city, except that discontinuance of city service of a member caused by layoff, leave of absence, suspension, or dismissal, followed by reentrance into city service within one year, shall not count as a break in the continuity of service: PROVIDED, That for the purpose of establishing membership in the retirement system continuous service shall mean six months' service in any one year.

(10) "Beneficiary" shall mean any person in receipt of a pension, annuity, retirement allowance, disability allowance, or any other benefit provided in this chapter.

(11) "Compensation" shall mean the compensation payable in cash, plus the monetary value, as determined by the board of administration, of any allowance in lieu thereof.

(12) "Compensation earnable" by a member shall mean the average compensation as determined by the board of administration upon the basis of the average period of employment of members in the same group or class of employment and at the same rate of pay.

(13) "Final compensation" means the annual average of the greatest compensation earnable by a member during any consecutive five-year period of service for which service credit is allowed.

(14) "Normal contributions" shall mean contributions at the rate provided for in RCW 41.28.040(1).

(15) "Additional contributions" shall mean the contributions provided for in RCW 41.28.040(4).

(16) "Regular interest", unless changed by the board of administration as provided in RCW 41.28.060, shall mean interest at four percent per annum, compounded annually.

(17) "Accumulated normal contribution" shall mean the sum of all normal contributions, deducted from the compensation of a member, standing to the credit of his individual account, together with regular interest thereon.

(18) "Accumulated additional contributions" shall mean the sum of all the additional contributions, deducted from the compensation of a member, standing to the credit of his individual account, together with regular interest thereon.

(19) "Accumulated contributions" shall mean accumulated normal contributions plus accumulated additional contributions.

(20) "Pension" shall mean payments derived from contributions made by the city as provided for in RCW 41.28.130 and 41.28.150.

(21) "Annuity" shall mean payments derived from contributions made by a member as provided in RCW 41.28.130 and 41.28.150.

(22) "Retirement allowance" shall mean the pension plus the annuity.

(23) "Fiscal year" shall mean any year commencing with January 1st, and ending with December 31st, next following.

(24) "Creditable service" shall mean such service as is evidenced by the record of normal contributions received from the employee plus prior service if credit for same is still intact or not lost through withdrawal of accumulated normal contributions as provided in RCW 41.28.110. [1967 c 185 § 1; 1963 c 91 § 1; 1939 c 207 § 2; RRS § 9592-102.]

41.28.020 Retirement system created—Adoption by cities. A retirement system is hereby created and established in each city of the first class in each county with a population of one hundred twenty-five thousand or more to be known as the "employees' retirement system" This chapter shall become effective as to any such city when by ordinance of the city duly enacted its terms are expressly accepted and made applicable thereto. This section shall not be construed as preventing performance before July 1, 1939, of any preliminary work which any city council, city commission or board of administration shall deem necessary. [1991 c 363 § 118; 1939 c 207 § 3; RRS § 9592-103. FORMER PART OF SECTION: 1939 c 207 § 1; RRS § 9592-101 now codified as RCW 41.28.005.]

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

41.28.030 Employees within or excluded from system. (1) With the exception of those employees who are excluded from membership as herein provided, all employees shall become members of the retirement system as follows:

(a) Every employee in city service as defined in this chapter, on July 1, 1939, shall become a member of the retirement system on that date.

(b) Every employee who enters or reenters city service after July 1, 1939, shall become a member of the retirement system upon the completion of six months of continuous service.

(2) The following shall be specifically exempted from the provisions of this chapter:

(a) Members of the police departments who are entitled to the benefits of the police relief and pension fund as established by state law.

(b) Members of the fire departments who are entitled to the benefits of the firemen's relief and pension fund as established by state law.

(3) It shall be the duty of the head of each office or department to give immediate notice in writing to the board of administration of the change in status of any member of his office or department, resulting from transfer, promotion, leave of absence, resignation, reinstatement, dismissal or death. The head of each office or department shall furnish such other information concerning any member as the board may require.

(4) Each member shall be subject to all the provisions of this chapter and to all the rules and regulations adopted by the board of administration. Should the service of any member, in any period of ten consecutive years, amount to less than five years, or should he withdraw more than one quarter of his accumulated contributions, or should he die or be retired, he shall thereupon cease to be a member. [1939 c 207 § 4; RRS § 9592-104.]

41.28.040 Rates of contribution—Deduction and payment into fund. (1) The normal rate of contribution of members shall be those adopted by the board of administration, subject to the approval of the city council or city commission, and for the first five-year period such rates shall be based on sex and on age of entry into the retirement system, which age shall be the age at the birthday nearest the time of entry into the system. The rates so adopted shall remain in full force and effect until revised or changed by the board of administration in the manner provided in RCW 41.28.060. The normal rates of contribution shall be so fixed as to provide an annuity which, together with the pension provided by the city, shall give as nearly as may be a retirement allowance at the age of sixty-two years of one and one-third percent of the final compensation multiplied by the number of years of service of the retiring employee. The normal rate established for age sixty-one shall be the rate for any member who has attained a greater age before entry into the retirement system. The normal rate of contribution for age twenty shall be the rate for any member who enters the retirement system at an earlier age.

(2) Subject to the provision of this chapter, the board of administration shall adopt rules and regulations governing the making of deductions from the compensation of employees and shall certify to the head of each office or department the normal rate of contribution for each member provided for in subdivision (1) of this section. The head of the department shall apply such rate of contribution, and shall certify to the city comptroller on each and every payroll the amount to be contributed and shall furnish immediately to the board a copy of each and every payroll; and each of said amounts shall be deducted by the city comptroller and shall be paid

into the retirement fund, hereinafter provided for, and shall be credited by the board together with regular interest to an individual account of the member for whom the contribution was made.

Every member shall be deemed to consent and agree to the contribution made and provided for herein, and shall receipt in full for his salary or compensation. Payment less said contribution shall be a full and complete discharge of all claims and demands whatsoever for the service rendered by such person during the period covered by such payment, except his claim to the benefits to which he may be entitled under the provisions of this chapter.

(3) At the end of each payroll period, the board shall determine the aggregate amount of the normal contributions for such period, and shall certify such aggregate to the city comptroller, who shall thereupon transfer to the retirement fund, hereinafter provided for, from the money appropriated for that purpose in the budget for the fiscal year, an amount equal to the aggregate normal contributions for the period received from members.

(4) Any member may elect to contribute at rates in excess of those provided for in subdivision (1) of this section, for the purpose of providing additional benefits, but the exercise of this privilege by a member shall not place on the city any additional financial obligation. The board of administration, upon application, shall furnish to such member information concerning the nature and amount of additional benefits to be provided by such additional contribution. [1967 c 185 § 2; 1939 c 207 § 5; RRS § 9592-105.]

41.28.050 Allowance of service credit. (1) Subject to the following and all other provisions of this chapter, including such rules and regulations as the board shall adopt in pursuance thereof, the board, subject to the approval of the city council or city commission, shall determine and may modify allowance for service.

Time during which a member is absent on leave without pay shall not be allowed in computing service: PROVIDED, HOWEVER, That any member shall be given credit for any period served by him in the national guard, or in the United States army, navy, or marine corps, upon the call of the president, if at the time of such service such member was a regular employee under leave of absence. Certificate of honorable discharge from and/or documentary evidence of such service shall be submitted to the board in order to obtain credit for such service.

Each member shall file with the board such information affecting his status as a member of the retirement system as the board may require.

(2) The board shall grant credit for prior service to each member entering the retirement system on July 1, 1939, and to each member entering after that date, if such entry is within one year after rendering service prior to July 1, 1939: PROVIDED, HOWEVER, That the board may grant credit for prior service to those entering the retirement system after July 1, 1939, where the employee, because of sickness or other disability, has been on leave of absence, regularly granted, since discontinuance of city service, regardless of the length of such leave. No prior service credit shall be used as a basis for retirement or other benefit unless the membership continues until retirement on a retirement

allowance or until the granting of other benefits. [1939 c 207 § 6; RRS § 9592-106.]

41.28.060 Board of administration to administer system—Powers and duties—Actuarial investigations and valuations—Reports, records, and accounts. The administration of the retirement system is hereby vested in the board of administration created in RCW 41.28.080. The board shall exercise the powers and duties conferred upon it by said section, and in addition thereto:

(1) The board shall keep in convenient form such data as shall be necessary for the actuarial valuation of the retirement fund created by this chapter. At the end of the five-year period beginning with the year 1939, and at the end of every five-year period thereafter, the board shall cause to be made an actuarial investigation into the mortality, service and compensation experience of the members, and beneficiaries as defined by this chapter; and shall further cause to be made an actuarial valuation of the assets and liabilities of the retirement fund, and upon the basis of such investigation and valuation and subject to the approval of the city council or city commission, shall:

(a) Make any necessary changes in the rate of interest;

(b) Adopt for the retirement system such mortality, service and other tables as shall be necessary;

(c) Revise or change the rates of contribution by members on the basis of such mortality, service and other tables.

(2) The board shall promptly transmit to the city council or city commission a report covering the actuarial investigation and actuarial valuation provided for in subdivision (1) of this section.

(3) In addition to other records and accounts, the board shall keep such detailed reports and accounts as shall be necessary to show the financial condition of the retirement fund at all times.

(4) The board shall annually transmit to the city council or city commission a report showing the financial condition of the fund established by this chapter. [1939 c 207 § 7; RRS § 9592-107.]

41.28.070 Employees' retirement fund created—Composition. A fund is hereby created and established in all cities of the first class as under this chapter provided to be known as the "employees' retirement fund" and shall consist of all the moneys paid into it in accordance with the provisions of this chapter, whether such moneys shall take the form of cash, securities, or other assets. [1939 c 207 § 8; RRS § 9592-108.]

41.28.080 Board of administration—Members—Duties—Fiscal affairs. (1) There is hereby created and established a board of administration in each city coming under this chapter, which shall, under the provisions of this chapter and the direction of the city council or city commission, administer the retirement system and the retirement fund created by this chapter. Under and pursuant to the direction of the city council or city commission, the board shall provide for the proper investment of the moneys in the said retirement fund.

(2) The board of administration shall consist of seven members, as follows: Three members appointed by the regular appointing authority of the city, and three employees who are eligible to membership in the retirement system, to be elected by the employees. The above six members shall appoint the seventh member.

(3) The investment of all or any part of the retirement fund shall be subject to chapter 35.39 RCW.

(4) Subject to such provisions as may be prescribed by law for the deposit of municipal funds in banks, cash belonging to the retirement fund may be deposited in any licensed national bank or in any bank, banks or corporations authorized or licensed to do a banking business and organized under the laws of the state of Washington.

(5) The city treasurer shall be the custodian of the retirement fund. All payments from said fund shall be made by the city treasurer but only upon warrant duly executed by the city comptroller.

(6) Except as herein provided, no member and no employee of the board of administration shall have any interest, direct or indirect, in the making of any investments from the retirement fund, or in the gains or profits accruing therefrom. And no member or employee of said board, directly or indirectly, for himself or as an agent or partner of others, shall borrow any of its funds or deposits or in any manner use the same except to make such current and necessary payments as are authorized by said board; nor shall any member or employee of said board become an endorser or surety or become in any manner an obligor for moneys invested by the board. [1983 c 3 § 93; 1969 ex.s. c 211 § 2; 1939 c 207 § 9; RRS § 9592-109.]

41.28.085 Legislative intent—Investments. In order that the intent of the legislature may be made clear with respect to investments, but without restricting the necessary flexibility that must exist for successful investing of the retirement and pension funds, the legislature makes this declaration of its desire that the investment authority shall give primary consideration to dealing with brokerage firms which maintain offices in the state of Washington so that the investment programs may make a meaningful contribution to the economy of the state. It is further the desire of the legislature that the retirement and pension funds shall be used as much as reasonably possible to benefit and expand the business and economic climate within the state of Washington so long as such use would be consistent with sound investment policy. [1969 ex.s. c 211 § 3.]

41.28.090 Contributions by city. (1) There shall be paid into the retirement fund by contributions of the city, the amounts necessary to pay all pensions and all other benefits allowable under this chapter to members on account of prior service, and minimum allowances provided for in RCW 41.28.130. Until the amount accumulated in the retirement fund becomes at least as large as the present value of all amounts thereafter payable from said fund the amount annually due to the said fund under this section shall be the amount payable from said fund in the ensuing fiscal year on account of prior service and minimum allowances. [1939 c 207 § 10; RRS § 9592-110.]

41.28.100 City obligated to contribute. The payments of the city due the retirement fund as provided for in this chapter are hereby made obligations of the city as defined in this chapter. The board shall annually, on or before the tenth day of July each year, prepare and submit to the city council or city commission an estimate of the amounts necessary to meet such obligations, and the city council or city commission shall provide for the raising of such amounts as are necessary to make such payments. [1939 c 207 § 11; RRS § 9592-111.]

41.28.110 Payments on discontinuance of service—Reemployment—Redeposit. (1) Should the service of a member be discontinued, except by death or retirement, he shall be paid not later than six months after the day of discontinuance such part of his accumulated contributions as he shall demand: PROVIDED, HOWEVER, That a member may appeal to the board and by unanimous vote, the board may grant a request for immediate withdrawal of contributions. If in the opinion of the board said member is permanently separated from service by reason of such discontinuance he shall be paid forthwith all of his accumulated contributions with interest: AND PROVIDED ALSO, That the board may, in its discretion, withhold for not more than one year after a member last rendered service all or part of his accumulated normal contributions if after a previous discontinuance of service he withdrew all or part of his accumulated normal contributions and failed to redeposit such withdrawn amount in the retirement fund as provided in this section: PROVIDED FURTHER, That the city shall receive credit for the full amount deposited by the city in the retirement fund for such member's benefit plus interest. Any member may redeposit in the retirement fund an amount equal to that which he previously withdrew therefrom at the last termination of his membership, such redeposit to be paid into the retirement fund in accordance with rules established by the board. If a member upon reentering the retirement system after a termination of his membership shall not make such a redeposit as hereinabove provided, the rate of his contributions for future years shall be the normal rate provided for in RCW 41.28.040(1) at his age of reentrance; otherwise his rate of contribution for future years shall be the same as his rate prior to the termination of his membership. In the event such redeposit is made by a member, an amount equal to the accumulated normal contributions so redeposited shall again be held for the benefit of said member, and shall no longer be included in the amounts available to meet the obligations of the city on account of benefits that have been granted or liabilities that have been assumed on account of prior service of members, and the city shall reinstate the prior service credit for such member. [1939 c 207 § 12; RRS § 9592-112.]

41.28.120 Retirement for service. Retirement of member for service shall be made by the board of administration as follows:

(1) Each member in the city service on June 8, 1967, who, on or before such effective date, has attained the age of sixty-five years or over, shall be forthwith retired on the first day of the calendar month next succeeding the month in which the employee shall have attained the age of sixty-five:

PROVIDED, That none of such members shall be subject to compulsory retirement for a period of five years following said effective date, but during such period any member having attained the age of sixty-five may voluntarily retire after attaining such age. Members attaining the age of sixty-five after June 8, 1967 shall be retired on the first day of the calendar month next succeeding the month in which the member shall have attained the age of sixty-five, but none of such members shall be subject to compulsory retirement until five years after said effective date: PROVIDED, FURTHER, That any member attaining the age of seventy years during said five year period shall be forthwith retired on the first day of the calendar month next succeeding the month in which the employee shall have attained the age of seventy years, except as otherwise provided in this chapter. The board shall extend the time of retirement for any member hired prior to June 8, 1967 so as to enable said member to qualify for retirement benefits under this chapter, but in no event should such extension extend beyond the age of seventy years.

(2) Any member in the city service may retire by filing with the board a written application, stating when he desires to be retired, such application to be made at least thirty days prior to date of retirement: PROVIDED, HOWEVER, That said member, at the time specified for his retirement, shall have completed ten years of city service as defined in this chapter, and shall have attained the age of fifty-seven years, or shall have completed thirty years of city service as defined in this chapter. Permanent discontinuance of city service after age of fifty-seven shall entitle the member to his retirement allowance: PROVIDED, That such employee has had at least ten years of city service to his credit: AND PROVIDED FURTHER, That permanent discontinuance of city service after the completion of thirty years of city service shall entitle the member to his retirement allowance. [1967 c 185 § 3; 1939 c 207 § 13; RRS § 9592-113.]

41.28.130 Service retirement allowances. (1) A member, upon retirement from service, shall receive a retirement allowance subject to the provisions of paragraph (2) of this section, which shall consist of:

- (a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement.
- (b) A pension purchased by the contributions of the city, equal to the annuity purchased by the accumulated normal contributions of the member.

(c) For any member having credit for prior service an additional pension, purchased by the contributions of the city equal to one and one-third percent of the final compensation, multiplied by the number of years of prior service credited to said member, except that if a member shall retire before attaining the age of sixty-two years, the additional pension shall be reduced to an amount which shall be equal to a lesser percentage of final compensation, multiplied by the number of years of prior service credited to said member, which lesser percentage shall be applied to the respective ages of retirement in accordance with the following tabulation:

Retirement age	Percentage
62	1.333

61	1.242
60	1.158
59	1.081
58	1.010
57	0.945
56	0.885
55	0.829
54	0.778
53	0.731
52	0.687
51	0.646
50	0.608

(2) If the retirement allowance of the member as provided in this section, exclusive of any annuity purchased by his accumulated additional contributions, is in excess of two-thirds of his final salary, the pension of the member, purchased by the contributions of the city, shall be reduced to such an amount as shall make the member's retirement allowance, exclusive of any annuity purchased by his accumulated additional contributions, equal to two-thirds of his final salary, and the actuarial equivalent of such reduction shall remain in the retirement fund to the credit of the city: PROVIDED, That the retired member will be granted a cost of living increase, in addition to the allowance provided in this section, of one percent commencing January 1, 1968 and an additional one percent on the first day of each even-numbered year thereafter if the U.S. Bureau of Labor Statistics' Cost of Living Index has increased one percent or more since the last cost of living increase in the member's retirement allowance; such increases shall apply only to retirement allowances approved on or after January 1, 1967.

(3) Any member, who enters the retirement system on July 1, 1939, or who enters after that date and who is given the credit for prior service, and who is retired by reason of attaining the age of seventy years, shall receive such additional pension on account of prior service, purchased by the contributions of the city, as will make his total retirement allowance not less than four hundred twenty dollars per year.

(4) Any member who, at the time of his retirement, has at least ten years of creditable service, as defined in this chapter, and who has attained the age of sixty-five years or over, shall receive such additional pension, purchased by the contributions of the city, as will make his total retirement allowance not less than nine hundred sixty dollars per year. [1969 c 31 § 1; 1967 c 185 § 4; 1961 c 260 § 1; 1939 c 207 § 14; RRS § 9592-114.]

Validation—1969 c 31: "Any action effected in accordance with the provisions of the last two paragraphs of section 1 of this 1969 amendatory act during the period of from June 8, 1967 until the effective date of this 1969 amendatory act is hereby declared valid." [1969 c 31 § 2.] "Section 1 of this 1969 amendatory act" refers to RCW 41.28.130 above; "the effective date of this 1969 amendatory act" is March 18, 1969.

41.28.140 Retirement for disability. Any member while in city service may be retired by the board of administration for permanent and total disability, either ordinary or accidental, upon examination, as follows:

(1) Any member who has not attained the age of sixty-five years and who has at least ten years of city service as defined in this chapter, to his credit: PROVIDED, That the required ten years of city service shall have been credited to the member over a period of not to exceed fifteen years

immediately preceding retirement, within three months after the discontinuance of city service, or while physically or mentally incapacitated for the performance of duty, if such incapacity has been continuous from discontinuance of city service, shall be examined by a physician or surgeon, appointed by the board of administration upon the application of the head of the office or department in which said member is employed, or upon application of said member, or a person acting in his behalf, stating that said member is permanently and totally incapacitated, either physically or mentally, for the performance of duty and ought to be retired. If such medical examination shows, to the satisfaction of the board, that the said member is permanently and totally incapacitated either physically or mentally for the performance of duty and ought to be retired, the board shall retire the said member for disability forthwith.

(2) The board shall secure such medical services and advice as it may deem necessary to carry out the purpose of this section and of RCW 41.28.160, and shall pay for such medical services and advice such compensation as the board shall deem reasonable. [1939 c 207 § 15; RRS § 9592-115.]

41.28.150 Disability retirement allowances—
Grounds for denial. (1) Upon retirement for disability, as hereinabove provided: PROVIDED, The disability is not due to intemperance, wilful misconduct or violation of law, of which the board shall be the judge, a member shall receive a retirement allowance which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated contributions at the time of his retirement.

(b) A pension purchased by the contributions of the city, which, together with his annuity provided by his accumulated normal contributions, shall make the retirement allowance, exclusive of the annuity provided by his additional contributions equal to (i) one and one-fourth percent of his final compensation multiplied by the number of years of service which would be creditable to him were his services to continue until attainment by him of age sixty-two. The minimum disability retirement allowance shall be nine hundred sixty dollars per year.

(2) If disability is due to intemperance, wilful misconduct or violation of law on the part of the member, the board of administration in its discretion may pay to said member in one lump sum, his accumulated contributions, in lieu of a retirement allowance, and such payment shall constitute full satisfaction of all obligations of the city to such member, and upon receipt of such payment he shall cease to be a member of the retirement system.

(3) Upon the death of a member while in receipt of a disability retirement allowance, his accumulated contributions, as they were at the date of his retirement, less any annuity payments made to him, shall be paid to his estate, or to such persons having an insurable interest in his life as he shall have nominated by written designation duly executed and filed with the board. [1963 c 91 § 2; 1961 c 260 § 2; 1939 c 207 § 16; RRS § 9592-116.]

41.28.160 Physical examination of disabled members—Reentry. (1) The board of administration may at its pleasure require any disability beneficiary under age sixty-two years to undergo medical examination to be made by a

physician or surgeon appointed by the board, at a place to be designated by the board. Upon the basis of such examination the board shall determine whether such disability beneficiary is still totally and permanently incapacitated either mentally or physically for service in the office or department of the city where he was employed or in any other city service for which he is qualified. If the board of administration shall determine that said beneficiary is not so incapacitated, his retirement allowance shall be canceled and he shall be reinstated forthwith in the city service.

(2) Should a disability beneficiary reenter the city service and be eligible for membership in the retirement system in accordance with RCW 41.28.030(1), his retirement allowance shall be canceled and he shall immediately become a member of the retirement system, his rate of contribution for future years being that established for his age at the time of reentry. His individual account shall be credited with his accumulated contributions less the annuity payments made to him. An amount equal to the accumulated normal contributions so credited to him shall again be held for the benefit of said member and shall no longer be included in the amounts available to meet the obligations of the city on account of benefits that have been granted and on account of prior service of members. Such member shall receive credit for prior service in the same manner as if he had never been retired for disability.

(3) Should any disability beneficiary under age sixty-two years refuse to submit to medical examination, his pension may be discontinued until his withdrawal of such refusal, and should refusal continue for one year, his retirement allowance may be canceled. Should said disability beneficiary, prior to attaining age sixty-two years, engage in a gainful occupation not in city service, or should he reenter the city service and be ineligible for membership in the retirement system in accordance with RCW 41.28.030(2), the board of administration shall reduce the amount of his retirement allowance to an amount, which when added to the compensation earned by him in such occupation shall not exceed the amount of the final compensation on the basis of which his retirement allowance was determined. Should the earning capacity of such beneficiary be further altered, the board may further alter his retirement allowance to an amount which shall not exceed the amount upon which he was originally retired, but which, subject to such limitation shall equal, when added to the compensation earned by him, the amount of his final compensation on the basis of which his retirement allowance was determined. When said disability beneficiary reaches the age of sixty-two years, his retirement allowance shall be made equal to the amount upon which he was originally retired, and shall not again be modified for any cause except as provided in RCW 41.28.220.

(4) Should the retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into the city service he shall be paid his accumulated contributions, less annuity payments made to him. [1939 c 207 § 17; RRS § 9592-117.]

41.28.170 Optional allowances. A member may elect to receive, in lieu of the retirement allowance provided for in RCW 41.28.130, its actuarial equivalent in the form of a

lesser retirement allowance, payable in accordance with the terms and conditions of one of the options set forth below in this section. Election of any option must be made by written application filed with the board of administration at least thirty days in advance of retirement as provided in RCW 41.28.120, and shall not be effective unless approved by the board prior to retirement of the member.

Option A. The lesser retirement allowance shall be payable to the member throughout his life: PROVIDED, That if he die before he receive in annuity payments referred to in RCW 41.28.130(1)(a), a total amount equal to the amount of his accumulated contributions as it was at the date of his retirement, the balance of such accumulated contributions shall be paid in one sum to his estate or to such person having an insurable interest in his life as he shall nominate by written designation duly executed and filed with the board.

Option B. The lesser retirement allowance shall be payable to a member throughout his life: PROVIDED, That if he die before he receive in annuity payments referred to in RCW 41.28.130(1)(a), a total amount equal to the amount of his accumulated contributions as it was at the date of his retirement, the said annuity payments resulting from his accumulated contributions shall be continued and paid to his estate or such person, having an insurable interest in his life, as he shall nominate by written designation duly executed and filed with the board until the total amount of annuity payments shall equal the amount of his accumulated contributions as it was at the date of his retirement.

Option C. The member shall elect a "guaranteed period" of any number of years. If he dies before the lesser retirement allowance has been paid to him for the number of years elected by him as the "guaranteed period", the lesser retirement allowance shall be continued to the end of the "guaranteed period", and during such continuation shall be paid to his estate or to such person having an insurable interest in his life as he shall nominate by written designation duly executed and filed with the board.

Option D. The lesser retirement allowance shall be payable to the member throughout life, and after the death of the member, one-half of the lesser retirement allowance shall be continued throughout the life of and paid to the wife or husband of the member.

Option E. The lesser retirement allowance shall be payable to the member throughout life, and after death of the member it shall be continued throughout the life of and paid to the wife or husband of the member. [1967 c 185 § 5; 1963 c 91 § 3; 1939 c 207 § 18; RRS § 9592-118.]

41.28.180 Payments on death of unretired members. Upon the death of any person who has not been retired, pursuant to the provisions of this chapter, there shall be paid to his estate, or to such persons having an insurable interest in his life as he shall have nominated by written designation duly executed and filed with the board, his accumulated contributions less any payments therefrom already made to him, if any. [1939 c 207 § 19; RRS § 9592-119.]

41.28.190 Payments to be made monthly. A pension annuity or a retirement allowance granted under the provisions of this chapter, unless otherwise specified herein, shall

be payable in monthly installments, and each installment shall cover for the current calendar month. [1939 c 207 § 20; RRS § 9592-120.]

41.28.200 Exemption from process—Rights not assignable. The right of a person to a pension, an annuity or a retirement allowance, to the return of contributions, the pension, annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter shall not be subject to execution, garnishment, attachment, or any other process whatsoever and shall be unassignable except as in this chapter specifically provided. [1939 c 207 § 21; RRS § 9592-121.]

41.28.205 Benefits payable in accordance with court decree or order of dissolution or legal separation. Benefits under this chapter shall be payable to a spouse or ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation. [1979 ex.s. c 205 § 9.]

41.28.207 Payments to spouse or ex spouse pursuant to court order. (1) If the board of administration makes payments to a spouse or ex spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to a court decree of dissolution or legal separation, it shall be a sufficient answer to any claim of a beneficiary against the board of administration or the retirement system for the board of administration to show that the payments were made pursuant to a court decree.

(2) All payments made to a nonmember spouse or ex spouse pursuant to RCW 41.28.205 shall cease upon the death of such a nonmember spouse or ex spouse. Upon such a death, the board of administration shall pay to the member his or her full monthly entitlement of benefits.

(3) The provisions of RCW 41.28.205 and this section shall apply to all court decrees of dissolution or legal separation and court-approved property settlement agreements, regardless of when entered, but shall apply only to those persons who have actually retired or who have requested withdrawal of any or all of their accumulated contributions: PROVIDED, That the board of administration shall not be responsible for making court-ordered divisions of withdrawals unless the order is filed with the board at least thirty days before the withdrawal payment date. [1987 c 326 § 20.]

Effective date—1987 c 326: See RCW 41.50.901.

Mandatory assignment of retirement benefits to spouse or ex spouse: RCW 41.50.500 through 41.50.660.

41.28.210 Estimates of service, compensation, or age. If it shall be impracticable for the board of administration to determine from the records the length of service, the compensation, or the age of any member, the said board may estimate for the purpose of this chapter, such length of ser-

vice, compensation or age. [1939 c 207 § 22; RRS § 9592-122.]

41.28.220 Suspension of allowances during other public aid. The payment of any retirement allowance to a member who has been retired from service shall be suspended during the time that the beneficiary is in receipt of other pension or of other compensation for state or public service paid from direct or indirect state or municipal taxes or revenues of publicly owned utilities, except as to the amount by which such retirement allowance may exceed such compensation for the same period. [1939 c 207 § 23; RRS § 9592-123.]

41.28.230 Administrative expense. The city council or city commission shall appropriate annually from the retirement fund the amount it deems necessary for the purpose of paying the expenses of administering the retirement system. The board of administration shall annually submit to the city council or city commission its estimate of the amount necessary to pay such expenses. The preliminary cost of establishment of said retirement system, such as clerical help and actuarial survey costs, etc., shall be paid by the department or departments affected. [1939 c 207 § 24; RRS § 9592-124.]

41.28.240 Existing systems preserved. Nothing in this chapter shall repeal, supersede, alter, amend or be regarded as a substitute for any existing retirement or pension system, duly established by city ordinance. [1939 c 207 § 28; RRS § 9592-128.]

41.28.900 Severability—1939 c 207. If any one or more sections, subsections, subdivisions, sentences, clauses or phrases of this chapter are for any reason held to be unconstitutional or invalid, such decision shall not affect the validity of the remaining portions of this chapter, but the same shall remain in full force and effect. [1939 c 207 § 25; RRS § 9592-125.]

41.28.910 Repeal. All laws and parts of laws in conflict herewith be and the same are hereby repealed. [1939 c 207 § 26.]

41.28.920 Effective date—1939 c 207. The retirement system shall become effective on July 1, 1939, as provided in RCW 41.28.020. [1939 c 207 § 27.]

Chapter 41.31

EXTRAORDINARY INVESTMENT GAINS—PLAN I

Sections

- | | |
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| 41.31.010 | Annual pension increases—Increased by gain-sharing increase amount. |
| 41.31.020 | Gain-sharing increase amount calculated. |
| 41.31.030 | Contractual right to increase not granted. |

41.31.010 Annual pension increases—Increased by gain-sharing increase amount. Beginning July 1, 1998, and on January 1st of even-numbered years thereafter, the

annual increase amount as defined in RCW 41.32.010 and 41.40.010 shall be increased by the gain-sharing increase amount, if any. The monthly retirement allowance of a person in receipt of the benefit provided in RCW 41.32.489 or 41.40.197 shall immediately be adjusted to reflect any increase. [1998 c 340 § 1.]

Effective date—1998 c 340: "Except for section 13 of this act, 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 [April 3, 1998]." [1998 c 340 § 14.]

41.31.020 Gain-sharing increase amount calculated.

(1) The gain-sharing increase amount shall be the amount of increase, rounded to the nearest cent, that can be fully funded in actuarial present value by the amount of extraordinary investment gains, if any. The amount of extraordinary investment gains shall be calculated as follows:

(a) One-half of the sum of the value of the net assets held in trust for pension benefits in the teachers' retirement system plan I fund and the public employees' retirement system plan I fund at the close of the previous state fiscal year;

(b) Multiplied by the amount which the compound average of investment returns on those assets over the previous four state fiscal years exceeds ten percent.

(2) The gain-sharing increase amount for July 1998, as provided for in RCW 41.31.010, is ten cents. [1998 c 340 § 2.]

Effective date—1998 c 340: See note following RCW 41.31.010.

41.31.030 Contractual right to increase not granted.

The legislature reserves the right to amend or repeal this chapter in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that amendment or repeal. [1998 c 340 § 3.]

Effective date—1998 c 340: See note following RCW 41.31.010.

Chapter 41.31A

EXTRAORDINARY INVESTMENT GAINS— PLAN III

Sections

41.31A.010 Definitions.

41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted.

41.31A.030 Retroactive extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted.

41.31A.010 Definitions. (*Effective September 1, 2000.*) The definitions in this section apply throughout this chapter unless the context requires otherwise.

(1) "Actuary" means the state actuary or the office of the state actuary.

(2) "Department" means the department of retirement systems.

(3) "Teacher" means any employee included in the membership of the teachers' retirement system as provided for in chapter 41.32 RCW.

(4) "Member account" or "member's account" means the sum of any contributions as provided for in chapter 41.34 RCW and the earnings on behalf of the member.

(5) "Classified employee" means the same as in RCW 41.35.010. [1998 c 341 § 311.]

Effective date—1998 c 341: See RCW 41.35.901.

41.31A.020 Extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted. (*Effective September 1, 2000.*) (1) On January 1, 2002, and on January 1st of even-numbered years thereafter, the member account of a person meeting the requirements of this section shall be credited by the extraordinary investment gain amount.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) Any member of the teachers' retirement system plan III or the Washington school employees' retirement system plan III who earned service credit during the twelve-month period from September 1st to August 31st immediately preceding the distribution and had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution; or

(b) Any person in receipt of a benefit pursuant to RCW 41.32.875 or 41.35.680; or

(c) Any person who is a retiree pursuant to RCW 41.34.020(8) and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age fifty-four; or

(d) Any teacher who is a retiree pursuant to RCW 41.34.020(8) and who has completed five service credit years by July 1, 1996, under plan II and who transferred to plan III under RCW 41.32.817; or

(e) Any classified employee who is a retiree pursuant to RCW 41.34.020(8) and who has completed five service credit years by September 1, 2000, and who transferred to plan III under RCW 41.35.510; or

(f) Any person who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age fifty-four; or

(g) Any teacher who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by July 1, 1996, under plan II and who transferred to plan III under RCW 41.32.817; or

(h) Any classified employee who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by September 1, 2000, and who transferred to plan III under RCW 41.35.510.

(3) The extraordinary investment gain amount shall be calculated as follows:

(a) One-half of the sum of the value of the net assets held in trust for pension benefits in the teachers' retirement

system combined plan II and III fund and the Washington school employees' retirement system combined plan II and III fund at the close of the previous state fiscal year not including the amount attributable to member accounts;

(b) Multiplied by the amount which the compound average of investment returns on those assets over the previous four state fiscal years exceeds ten percent;

(c) Multiplied by the proportion of:

(i) The sum of the service credit on August 31st of the previous year of all persons eligible for the benefit provided in subsection (1) of this section; to

(ii) The sum of the service credit on August 31st of the previous year of:

(A) All persons eligible for the benefit provided in subsection (1) of this section;

(B) Any person who earned service credit in the teachers' retirement system plan II or the Washington school employees' retirement system plan II during the twelve-month period from September 1st to August 31st immediately preceding the distribution;

(C) Any person in receipt of a benefit pursuant to RCW 41.32.765 or 41.35.420; and

(D) Any person with five or more years of service in the teachers' retirement system plan II or the Washington school employees' retirement system plan II;

(d) Divided proportionally among persons eligible for the benefit provided in subsection (1) of this section on the basis of their service credit total on August 31st of the previous year.

(4) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this distribution not granted prior to that time. [1998 c 341 § 312.]

Effective date—1998 c 341: See RCW 41.35.901.

41.31A.030 Retroactive extraordinary investment gain—Credited to member accounts—Persons eligible—Calculation of amount—Contractual right not granted. (Effective September 1, 2000.) (1) On March 1, 2001, the member account of a person meeting the requirements of this section shall be credited by the 1998 retroactive extraordinary investment gain amount and the 2000 retroactive extraordinary investment gain amount.

(2) The following persons shall be eligible for the benefits provided in subsection (1) of this section:

(a) Any classified employee who earned service credit during the twelve-month period from September 1st to August 31st immediately preceding the distribution and who transferred to plan III under RCW 41.35.510; or

(b) Any classified employee in receipt of a benefit pursuant to RCW 41.35.680 and who has completed five service credit years by September 1, 2000, and who transferred to plan III under RCW 41.35.510; or

(c) Any classified employee who is a retiree pursuant to RCW 41.34.020(8) and who has completed five service credit years by September 1, 2000, and who transferred to plan III under RCW 41.35.510; or

(d) Any classified employee who has a balance of at least one thousand dollars in his or her member account and who has completed five service credit years by September 1, 2000, and who transferred to plan III under RCW 41.35.510.

(3) The 1998 retroactive extraordinary investment gain amount shall be calculated as follows:

(a) An amount equal to the average benefit per year of service paid to members of the teachers' retirement system plan III pursuant to section 309, chapter 341, Laws of 1998 in 1998;

(b) Distributed to persons eligible for the benefit provided in subsection (1) of this section on the basis of their service credit total on August 31, 1997.

(4) The 2000 retroactive extraordinary investment gain amount shall be calculated as follows:

(a) An amount equal to the average benefit per year of service paid to members of the teachers' retirement system plan III pursuant to section 309, chapter 341, Laws of 1998 in 2000;

(b) Distributed to persons eligible for the benefit provided in subsection (1) of this section on the basis of their service credit total on August 31, 1999.

(5) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this distribution not granted prior to that time. [1998 c 341 § 313.]

Effective date—1998 c 341: See RCW 41.35.901.

Chapter 41.32

TEACHERS' RETIREMENT

Sections

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- Numerical designations—1998 c 341:** See note following chapter 41.26 RCW digest.
- Prior acts relating to teachers' retirement:** (1) 1943 c 116, 1941 c 97; 1939 c 86, 40; 1937 c 221 (repealed by 1947 c 80 § 70).
 (2) 1931 c 115; 1923 c 187; 1919 c 150; 1917 c 163 (repealed by 1937 c 221 § 14).
- Employee salary or compensation—Limitations respecting:* RCW 28A.400.220.
- Portability of public retirement benefits:* Chapter 41.54 RCW.
- Teachers in state correctional facilities as members of teachers' retirement fund:* RCW 72.01.200.
- "PROVISIONS APPLICABLE TO PLAN I, PLAN II, AND PLAN III"**
- 41.32.005 Provisions applicable to "plan I," "plan II," and "plan III."** RCW 41.32.010 through 41.32.067 shall apply to members of plan I, plan II, and plan III. [1995 c 239 § 101; 1992 c 72 § 4; 1991 c 35 § 30; 1990 c 274 § 16. Prior: 1989 c 273 § 15; 1989 c 272 § 4; 1977 ex.s. c 293 § 19.]
- Effective date—1995 c 239:** "This act shall take effect July 1, 1996, except that sections 301 and 302 of this act shall take effect immediately [March 13, 1996]." [1996 c 39 § 23; 1995 c 239 § 327.]
- Part and subchapter headings not law—1995 c 239:** "Part headings and subchapter headings as used in this act constitute no part of the law." [1995 c 239 § 328.]
- Intent—Purpose—1995 c 239:** See note following RCW 41.32.831.
- Intent—1991 c 35:** See note following RCW 41.26.005.
- Findings—Construction—1990 c 274:** See notes following RCW 41.32.010.
- Severability—1989 c 273:** See RCW 41.45.900.
- Purpose—1989 c 272:** "The legislature recognizes that inflation erodes the purchasing power of retirement benefits. Although the benefit provided to state retirees from social security is fully protected, the benefits provided by the public employees' retirement system, plan I, and the teachers' retirement system, plan I provide an automatic cost-of-living adjustment only for persons who receive the minimum benefit.
- The purpose of this act is to add provisions to the teachers' retirement system and the public employees' retirement system which will help mitigate the impact of inflation on retirees of those systems. These additional provisions are intended to reflect and implement the following policies:
- (1) The minimum benefit is increased in order to provide a more adequate basic standard of living to persons who retired long ago under lower salaries and less generous retirement benefit formulas; and
- (2) Retirees whose benefits have lost forty percent of their purchasing power are made eligible for automatic adjustments which are provided in a manner that is consistent with the retirement age and benefit provisions of plan II of the teachers' retirement system and the public employees' retirement system." [1989 c 272 § 1.]
- Effective date—Severability—1977 ex.s. c 293:** See notes following RCW 41.32.755.

Benefits not contractual right until date specified: RCW 41.34.100.

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

(1)(a) "Accumulated contributions" for plan I members, means the sum of all regular annuity contributions and, except for the purpose of withdrawal at the time of retirement, any amount paid under RCW 41.50.165(2) with regular interest thereon.

(b) "Accumulated contributions" for plan II members, means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(2) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality tables and regulations as shall be adopted by the director and regular interest.

(3) "Annuity" means the moneys payable per year during life by reason of accumulated contributions of a member.

(4) "Member reserve" means the fund in which all of the accumulated contributions of members are held.

(5)(a) "Beneficiary" for plan I members, means any person in receipt of a retirement allowance or other benefit provided by this chapter.

(b) "Beneficiary" for plan II and plan III members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(6) "Contract" means any agreement for service and compensation between a member and an employer.

(7) "Creditable service" means membership service plus prior service for which credit is allowable. This subsection shall apply only to plan I members.

(8) "Dependent" means receiving one-half or more of support from a member.

(9) "Disability allowance" means monthly payments during disability. This subsection shall apply only to plan I members.

(10)(a) "Earnable compensation" for plan I members, means:

(i) All salaries and wages paid by an employer to an employee member of the retirement system for personal services rendered during a fiscal year. In all cases where compensation includes maintenance the employer shall fix the value of that part of the compensation not paid in money.

(ii) "Earnable compensation" for plan I members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation and the individual shall receive the equivalent service credit.

(B) If a leave of absence, without pay, is taken by a member for the purpose of serving as a member of the state legislature, and such member has served in the legislature five or more years, the salary which would have been re-

ceived for the position from which the leave of absence was taken shall be considered as compensation earnable if the employee's contribution thereon is paid by the employee. In addition, where a member has been a member of the state legislature for five or more years, earnable compensation for the member's two highest compensated consecutive years of service shall include a sum not to exceed thirty-six hundred dollars for each of such two consecutive years, regardless of whether or not legislative service was rendered during those two years.

(iii) For members employed less than full time under written contract with a school district, or community college district, in an instructional position, for which the member receives service credit of less than one year in all of the years used to determine the earnable compensation used for computing benefits due under RCW 41.32.497, 41.32.498, and 41.32.520, the member may elect to have earnable compensation defined as provided in RCW 41.32.345. For the purposes of this subsection, the term "instructional position" means a position in which more than seventy-five percent of the member's time is spent as a classroom instructor (including office hours), a librarian, or a counselor. Earnable compensation shall be so defined only for the purpose of the calculation of retirement benefits and only as necessary to insure that members who receive fractional service credit under RCW 41.32.270 receive benefits proportional to those received by members who have received full-time service credit.

(iv) "Earnable compensation" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Earnable compensation" for plan II and plan III members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Earnable compensation" for plan II and plan III members also includes the following actual or imputed payments which, except in the case of (b)(ii)(B) of this subsection, are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wages which the individual would have earned during a payroll period shall be considered earnable compensation, to the extent provided above, and the individual shall receive the equivalent service credit.

(ii) In any year in which a member serves in the legislature the member shall have the option of having such member's earnable compensation be the greater of:

(A) The earnable compensation the member would have received had such member not served in the legislature; or

(B) Such member's actual earnable compensation received for teaching and legislative service combined. Any

additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions.

(11) "Employer" means the state of Washington, the school district, or any agency of the state of Washington by which the member is paid.

(12) "Fiscal year" means a year which begins July 1st and ends June 30th of the following year.

(13) "Former state fund" means the state retirement fund in operation for teachers under chapter 187, Laws of 1923, as amended.

(14) "Local fund" means any of the local retirement funds for teachers operated in any school district in accordance with the provisions of chapter 163, Laws of 1917 as amended.

(15) "Member" means any teacher included in the membership of the retirement system. Also, any other employee of the public schools who, on July 1, 1947, had not elected to be exempt from membership and who, prior to that date, had by an authorized payroll deduction, contributed to the member reserve.

(16) "Membership service" means service rendered subsequent to the first day of eligibility of a person to membership in the retirement system: PROVIDED, That where a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered. The provisions of this subsection shall apply only to plan I members.

(17) "Pension" means the moneys payable per year during life from the pension reserve.

(18) "Pension reserve" is a fund in which shall be accumulated an actuarial reserve adequate to meet present and future pension liabilities of the system and from which all pension obligations are to be paid.

(19) "Prior service" means service rendered prior to the first date of eligibility to membership in the retirement system for which credit is allowable. The provisions of this subsection shall apply only to plan I members.

(20) "Prior service contributions" means contributions made by a member to secure credit for prior service. The provisions of this subsection shall apply only to plan I members.

(21) "Public school" means any institution or activity operated by the state of Washington or any instrumentality or political subdivision thereof employing teachers, except the University of Washington and Washington State University.

(22) "Regular contributions" means the amounts required to be deducted from the compensation of a member and credited to the member's individual account in the member reserve. This subsection shall apply only to plan I members.

(23) "Regular interest" means such rate as the director may determine.

(24)(a) "Retirement allowance" for plan I members, means monthly payments based on the sum of annuity and pension, or any optional benefits payable in lieu thereof.

(b) "Retirement allowance" for plan II and plan III members, means monthly payments to a retiree or beneficiary as provided in this chapter.

(25) "Retirement system" means the Washington state teachers' retirement system.

(26)(a) "Service" for plan I members means the time during which a member has been employed by an employer for compensation.

(i) If a member is employed by two or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service is rendered.

(ii) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(iii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(b) "Service" for plan II and plan III members, means periods of employment by a member for one or more employers for which earnable compensation is earned subject to the following conditions:

(i) A member employed in an eligible position or as a substitute shall receive one service credit month for each month of September through August of the following year if he or she earns earnable compensation for eight hundred ten or more hours during that period and is employed during nine of those months, except that a member may not receive credit for any period prior to the member's employment in an eligible position except as provided in RCW 41.32.812 and 41.50.132;

(ii) If a member is employed either in an eligible position or as a substitute teacher for nine months of the twelve month period between September through August of the following year but earns earnable compensation for less than eight hundred ten hours but for at least six hundred thirty hours, he or she will receive one-half of a service credit month for each month of the twelve month period;

(iii) All other members in an eligible position or as a substitute teacher shall receive service credit as follows:

(A) A service credit month is earned in those calendar months where earnable compensation is earned for ninety or more hours;

(B) A half-service credit month is earned in those calendar months where earnable compensation is earned for at least seventy hours but less than ninety hours; and

(C) A quarter-service credit month is earned in those calendar months where earnable compensation is earned for less than seventy hours.

(iv) Any person who is a member of the teachers' retirement system and who is elected or appointed to a state elective position may continue to be a member of the retirement system and continue to receive a service credit month for each of the months in a state elective position by making the required member contributions.

(v) When an individual is employed by two or more employers the individual shall only receive one month's service credit during any calendar month in which multiple service for ninety or more hours is rendered.

(vi) As authorized by RCW 28A.400.300, up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.32.470. For purposes of plan II and plan III "forty-

five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(vii) As authorized in RCW 41.32.065, service earned in an out-of-state retirement system that covers teachers in public schools may be applied solely for the purpose of determining eligibility to retire under RCW 41.32.470.

(viii) The department shall adopt rules implementing this subsection.

(27) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(28) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(29) "Teacher" means any person qualified to teach who is engaged by a public school in an instructional, administrative, or supervisory capacity. The term includes state, educational service district, and school district superintendents and their assistants and all employees certificated by the superintendent of public instruction; and in addition thereto any full time school doctor who is employed by a public school and renders service of an instructional or educational nature.

(30) "Average final compensation" for plan II and plan III members, means the member's average earnable compensation of the highest consecutive sixty service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.32.810(2).

(31) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(32) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(33) "Director" means the director of the department.

(34) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

(35) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(36) "Substitute teacher" means:

(a) A teacher who is hired by an employer to work as a temporary teacher, except for teachers who are annual contract employees of an employer and are guaranteed a minimum number of hours; or

(b) Teachers who either (i) work in ineligible positions for more than one employer or (ii) work in an ineligible position or positions together with an eligible position.

(37)(a) "Eligible position" for plan II members from June 7, 1990, through September 1, 1991, means a position which normally requires two or more uninterrupted months of creditable service during September through August of the following year.

(b) "Eligible position" for plan II and plan III on and after September 1, 1991, means a position that, as defined by the employer, normally requires five or more months of at least seventy hours of earnable compensation during September through August of the following year.

(c) For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(d) The elected position of the superintendent of public instruction is an eligible position.

(38) "Plan I" means the teachers' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(39) "Plan II" means the teachers' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977, and prior to July 1, 1996.

(40) "Plan III" means the teachers' retirement system, plan III providing the benefits and funding provisions covering persons who first become members of the system on and after July 1, 1996, or who transfer under RCW 41.32.817.

(41) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items compiled by the bureau of labor statistics, United States department of labor.

(42) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(43) "Index B" means the index for the year prior to index A.

(44) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(45) "Adjustment ratio" means the value of index A divided by index B.

(46) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(47) "Member account" or "member's account" for purposes of plan III means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan III.

(48) "Separation from service or employment" occurs when a person has terminated all employment with an employer.

(49) "Employed" or "employee" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law. [1997 c 254 § 3; 1996 c 39 § 1. Prior: 1995 c 345 § 9; 1995 c 239 § 102; prior: 1994 c 298 § 3; 1994 c 247 § 2; 1994 c 197 § 12; 1993 c 95 § 7; prior: 1992 c 212 § 1; 1992 c 3 § 3; prior: 1991 c 343 § 3; 1991 c 35 § 31; 1990

c 274 § 2; 1987 c 265 § 1; 1985 c 13 § 6; prior: 1984 c 256 § 1; 1984 c 5 § 1; 1983 c 5 § 1; 1982 1st ex.s. c 52 § 6; 1981 c 256 § 5; 1979 ex.s. c 249 § 5; 1977 ex.s. c 293 § 18; 1975 1st ex.s. c 275 § 149; 1974 ex.s. c 199 § 1; 1969 ex.s. c 176 § 95; 1967 c 50 § 11; 1965 ex.s. c 81 § 1; 1963 ex.s. c 14 § 1; 1955 c 274 § 1; 1947 c 80 § 1; Rem. Supp. 1947 § 4995-20; prior: 1941 c 97 § 1; 1939 c 86 § 1; 1937 c 221 § 1; 1931 c 115 § 1; 1923 c 187 § 1; 1917 c 163 § 1; Rem. Supp. 1941 § 4995-1.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Effective dates—1996 c 39: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1996, with the exception of section 23 of this act, which shall take effect immediately [March 13, 1996]." [1996 c 39 § 25.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Intent—1994 c 298: See note following RCW 41.40.010.

Effective date—1994 c 247: See note following RCW 41.32.4991.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165

Retroactive application—Effective date—1993 c 95: See notes following RCW 41.40.175.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 274: "(1) The current system for calculating service credit for school district employees is difficult and costly to administer. By changing from the current hours per month calculation to an hours per year calculation, the accumulation of service credit by school district employees will be easier to understand and to administer.

(2) The current system for granting service credit for substitute teachers is difficult and costly to administer. By notifying substitute teachers of their eligibility for service credit and allowing the substitute teacher to apply for service credit, the accumulation of service credit by substitute teachers will be easier to understand and to administer.

(3) Currently, temporary employees in eligible positions in the public employees' retirement system are exempted from membership in the system for up to six months. If the position lasts for longer than six months the employee is made a member retroactively. This conditional exemption causes tracking problems for the department of retirement systems and places a heavy financial burden for back contributions on a temporary employee who crosses the six-month barrier. Under the provisions of this act all persons, other than retirees, who are hired in an eligible position will become members immediately, thereby alleviating the problems described in this section.

(4) The legislature finds that retirees from the plan II systems of the law enforcement officers' and fire fighters' retirement system, the teachers' retirement system, and the public employees' retirement system, may not work for a nonfederal public employer without suffering a suspension of their retirement benefits. This fails to recognize the current and projected demographics indicating the decreasing work force and that the expertise possessed by retired workers can provide a substantial benefit to the state. At the same time, the legislature recognizes that a person who is working full time should have his or her pension delayed until he or she enters full or partial retirement. By allowing plan II retirees to work in ineligible positions, the competing concerns listed above are both properly addressed." [1990 c 274 § 1.]

Intent—Reservation—1990 c 274 §§ 2, 4: "(1) The 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 are intended by the legislature to effect administrative, rather than substantive, changes to the affected retirement plan. The legislature therefore reserves the right to revoke or amend the 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450. No member is entitled to have his or her service credit calculated under the 1990 amendments to RCW 41.32.010(27)(b) and 41.40.450 as a matter of contractual right.

(2) The department's retroactive application of the changes made in RCW 41.32.010(27)(b) to all service rendered between October 1, 1977, and August 31, 1990, is consistent with the legislative intent of the 1990 changes to RCW 41.32.010(27)(b)." [1994 c 177 § 10; 1990 c 274 § 18.]

Effective date—1990 c 274: "Sections 1 through 8 of this act shall take effect September 1, 1990." [1990 c 274 § 21.]

Construction—1990 c 274: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1990 c 274 § 17.]

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Purpose—Severability—1981 c 256: See notes following RCW 41.26.030.

Effective date—Severability—1977 ex.s. c 293: See notes following RCW 41.32.755.

Emergency—1974 ex.s. c 199: "This 1974 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1974 ex.s. c 199 § 7.]

Severability—1974 ex.s. c 199: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 199 § 8.]

Construction—1974 ex.s. c 199: "(1) Subsection (3) of section 4 of this 1974 amendatory act relating to elected and appointed officials shall be retroactive to January 1, 1973.

(2) Amendatory language contained in subsection (11) of section 1 relating to members as members of the legislature and in provisos (2) and (3) of section 2 of this 1974 amendatory act shall only apply to those members who are serving as a state senator, state representative or state superintendent of public instruction on or after the effective date of this 1974 amendatory act.

(3) Notwithstanding any other provision of this 1974 amendatory act, RCW 41.32.497 as last amended by section 2, chapter 189, Laws of 1973 1st ex. sess. shall be applicable to any member serving as a state senator, state representative or superintendent of public instruction on the effective date of this 1974 amendatory act." [1974 ex.s. c 199 § 5.]

Reviser's note: (1) "Subsection (3) of section 4 of this 1974 amendatory act" is codified as RCW 41.32.498(3).

(2) Sections 1 and 2 of 1974 ex.s. c 199 consist of amendments to RCW 41.32.010 and 41.32.260. For amendatory language, a portion of which was vetoed, see the 1973-1974 session laws.

(3) "this 1974 amendatory act" [1974 ex.s. c 199] is codified in RCW 41.32.010, 41.32.260, 41.32.497, 41.32.498, and 41.32.4945. The effective date of 1974 ex.s. c 199 is May 6, 1974.

Effective date—1969 ex.s. c 176: The effective date of the amendments to this section and RCW 41.32.420 is April 25, 1969.

Effective date—1967 c 50: "This 1967 amendatory act shall take effect on July 1, 1967." [1967 c 50 § 12.]

Severability—1967 c 50: "If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1967 amendatory act, or the application of the provision to other persons or circumstances is not affected." [1967 c 50 § 13.]

Severability—1965 ex.s. c 81: "If any provision of this act is held to be invalid the remainder of this act shall not be affected." [1965 ex.s. c 81 § 9.]

Effective date—1965 ex.s. c 81: "The effective date of this act is July 1, 1965." [1965 ex.s. c 81 § 10.]

Savings—1963 ex.s. c 14: "The amendment of any section by this 1963 act shall not be construed as impairing any existing right acquired or any liability incurred by any member under the provisions of the section amended: nor shall it affect any vested right of any former member who reenters public school employment or becomes reinstated as a member subsequent to the effective date of such act." [1963 ex.s. c 14 § 23.]

Severability—1963 ex.s. c 14: "If any provision of this act is held to be invalid the remainder of the act shall not be affected." [1963 ex.s. c 14 § 24.]

Effective date—1963 ex.s. c 14: "The effective date of this act is July 1, 1964." [1963 ex.s. c 14 § 26.]

41.32.013 Substitute teachers—Application for service credit—Procedures. Substitute teachers may apply to the department to receive service credit or credit for earnable compensation or both after the end of the last day of instruction of the school year during which the service was performed.

(1) The application must:

(a) Include a list of the employers the substitute teacher has worked for;

(b) Include proof of hours worked and compensation earned; and

(c) Be made prior to retirement.

(2) If the department accepts the substitute teacher's application for service credit, the substitute teacher may obtain service credit by paying the required contribution to the retirement system. The employer must pay the required employer contribution upon notice from the department that the substitute teacher has made contributions under this section.

(3) The department shall charge interest prospectively on employee contributions that are submitted under this section more than six months after the end of the school year, as defined in RCW 28A.150.040, for which the substitute teacher is seeking service credit. The interest rate charged to the employee shall take into account interest lost on employer contributions delayed for more than six months after the end of the school year.

(4) Each employer shall quarterly notify each substitute teacher it has employed during the school year of the number of hours worked by, and the compensation paid to, the substitute teacher.

(5) The department shall adopt rules implementing this section.

(6) If a substitute teacher as defined in RCW 41.32.010(36)(b)(ii) applies to the department under this section for credit for earnable compensation earned from an employer the substitute teacher must make contributions for all periods of service for that employer. [1992 c 212 § 16; 1991 c 343 § 4; 1990 c 274 § 5.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

41.32.020 Name of system. The name of the retirement system provided for in this chapter shall be the "Washington State Teachers' Retirement System" and by this name all of its business shall be transacted and all of its funds invested and all of its cash, securities and other property held. [1947 c 80 § 2; Rem. Supp. 1947 § 4995-21. Prior: 1937 c 221 § 2; Rem. Supp. 1941 § 4995-2.]

41.32.025 Department's power to determine eligibility. The department is empowered within the limits of this chapter and, with regard to restoration of service credit under RCW 41.50.165(2), to decide on all questions of eligibility covering membership, service credit, and benefits. [1994 c 197 § 13; 1991 c 35 § 35; 1955 c 274 § 3; 1947 c 80 § 16; Rem. Supp. 1947 § 4995-35. Prior: 1941 c 97 § 2, part;

1937 c 221 § 3, part; Rem. Supp. 1941 § 4995-3, part. Formerly RCW 41.32.160.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

41.32.032 Membership in system—Service credit of educational staff associates. (1) Any teacher, as defined under RCW 41.32.010, who is first employed by a public school on or after June 7, 1984, shall become a member of the retirement system if otherwise eligible.

(2) Any person who before June 7, 1984, has established service credit under chapter 41.40 RCW while employed in an educational staff associate position and who is employed in such a position on or after June 7, 1984, has the following options:

(a) To remain a member of the public employees' retirement system notwithstanding the provisions of RCW 41.32.240 or 41.32.780; or

(b) To irrevocably elect to join the retirement system under this chapter and to receive service credit for previous periods of employment in any position included under RCW 41.32.010. This service credit and corresponding employee contribution shall be computed as though the person had then been a member of the retirement system under this chapter. All employee contributions credited to a member under chapter 41.40 RCW for service now to be credited to the retirement system under this chapter shall be transferred to the system and the member shall not receive any credit nor enjoy any rights under chapter 41.40 RCW for those periods of service. The member shall pay any difference between the employee contributions made under chapter 41.40 RCW and transferred under this subsection and what would have been required under this chapter, including interest as set by the director. The member shall be given until July 1, 1989, to make the irrevocable election permitted under this section. The election shall be made by submitting written notification as required by the department requesting credit under this section and by remitting any necessary proof of service or payments within the time set by the department.

Any person, not employed as an educational staff associate on June 7, 1984, may, before June 30 of the fifth school year after that person's return to employment as a teacher, request and establish membership and credit under this subsection. [1995 c 239 § 103; 1992 c 212 § 17; 1991 c 35 § 39; 1984 c 256 § 2. Formerly RCW 41.32.242.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.32.035 Employer contribution rates—Computation and payment. The amount paid by each employer shall be computed by applying the rates established under chapter 41.45 RCW to the total earnable compensation of the employer's members as shown on the current payrolls of the employer. The employer's contribution shall be paid at the end of each month in the amount due for that month, except as provided in RCW 41.32.013. [1990 c 274 § 8;

1989 c 273 § 18; 1984 c 236 § 3. Formerly RCW 41.32.403.]

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Severability—1989 c 273: See RCW 41.45.900.

Effective date—1984 c 236: "This act shall take effect September 1, 1985. However, rules necessary for the implementation of this act may be promulgated by appropriate state agencies prior to the effective date." [1984 c 236 § 6.]

Severability—1984 c 236: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 236 § 5.]

41.32.042 Validity of deductions—Interest. The deductions from salaries of members of the retirement system for their contributions to the system are not considered diminution of pay and every member is conclusively presumed to consent thereto as a condition of employment. All contributions to the member reserve shall be credited to the individual for whose account the deductions from salary were made. Regular interest shall be credited to each member's account at least annually. [1992 c 212 § 9; 1982 1st ex.s. c 52 § 13; 1947 c 80 § 46; Rem. Supp. 1947 § 4995-65. Prior: 1941 c 97 § 5, part; 1939 c 86 § 5, part; 1937 c 221 § 6, part; Rem. Supp. 1941 § 4995-6, part. Formerly RCW 41.32.460.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

41.32.044 Retired teacher may reenter system—Benefit limitations. A retired teacher upon returning to service in the public schools of Washington may elect to again become a member of the retirement system: PROVIDED, That if such a retired teacher elects to be restored to membership he must establish two full years of service credit before he will be eligible to retire under the provision of a formula other than the one in effect at the time of his previous retirement: PROVIDED FURTHER, That where any such right to again retire is exercised to become effective before a member has established two full years of service credit he may elect to retire only under the provisions of the formula in effect at the time of his previous retirement: AND PROVIDED FURTHER, That this section shall not apply to any individual who has returned to service and is presently in service on *the effective date of this 1973 amendatory act. [1973 2nd ex.s. c 32 § 5; 1947 c 80 § 58; Rem. Supp. 1947 § 4995-77. Formerly RCW 41.32.580.]

***Reviser's note:** "the effective date of this 1973 amendatory act," because of the emergency clause footnoted to RCW 41.32.310, is September 27, 1973, the date of approval by the governor.

Emergency—Severability—1973 2nd ex.s. c 32: See notes following RCW 41.32.310.

41.32.052 Exemption from taxation and judicial process—Exceptions—Nonassignability—Deductions authorized. (1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, a retirement allowance, or disability allowance, to the return of contributions, any optional benefit or death benefit, any other right accrued or accruing to any person under the provisions of this chapter and the moneys in the various funds created by this chapter shall be unassignable, and are hereby exempt

from any state, county, municipal or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance who is eligible:

(a) Under RCW 41.05.080 from authorizing monthly deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions;

(b) Under a group health care benefit plan approved pursuant to RCW 28A.400.350 or 41.05.065 from authorizing monthly deductions therefrom, of the amount or amounts of subscription payments, premiums, or contributions to any person, firm, or corporation furnishing or providing medical, surgical, and hospital care or other health care insurance; or

(c) Under this system from authorizing monthly deductions therefrom for payment of dues and other membership fees to any retirement association composed of retired teachers and/or public employees pursuant to a written agreement between the director and the retirement association.

Deductions under (a) and (b) of this subsection shall be made in accordance with rules that may be adopted by the director.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [1991 c 365 § 21; 1991 c 35 § 63; 1989 c 360 § 25; 1987 c 326 § 23; 1982 c 135 § 1; 1981 c 294 § 13; 1979 ex.s. c 205 § 5; 1971 c 63 § 1; 1961 c 132 § 5; 1947 c 80 § 59; Rem. Supp. 1947 § 4995-78. Prior: 1937 c 22 § 9; 1917 c 163 § 19. Formerly RCW 41.32.590.]

Reviser's note: This section was amended by 1991 c 35 § 63 and by 1991 c 365 § 21, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1991 c 365: See note following RCW 41.50.500.

Intent—1991 c 35: See note following RCW 41.26.005.

Effective date—1987 c 326: See RCW 41.50.901.

Severability—1981 c 294: See note following RCW 41.26.115.

Effective date—1961 c 132: See note following RCW 41.32.240.

41.32.054 Disability retirement—Criminal conduct. A member shall not receive a disability retirement benefit under RCW 41.32.540, 41.32.550, 41.32.790, or 41.32.880 if the disability is the result of criminal conduct by the member committed after April 21, 1997. [1997 c 103 § 2.]

Severability—Effective date—1997 c 103: See notes following RCW 41.26.061.

41.32.055 Falsification—Penalty. Any person who shall knowingly make false statements or shall falsify or permit to be falsified any record or records of the retirement system in any attempt to defraud such system as a result of such act, shall be guilty of a felony. [1947 c 80 § 67; Rem. Supp. 1947 § 4995-86. Prior: 1937 c 221 § 10. Formerly RCW 41.32.670.]

41.32.062 Effect of certain accumulated vacation leave on retirement benefits. RCW 43.01.044 shall not result in any increase in retirement benefits. The rights extended to state officers and employees under RCW 43.01.044 are not intended to and shall not have any effect on retirement benefits under this chapter. [1983 c 283 § 3. Formerly RCW 41.32.850.]

41.32.063 Benefit calculation—Limitation. (1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section. [1995 c 145 § 2.]

41.32.064 Establishing, restoring service credit. Notwithstanding any provision to the contrary, persons who fail to:

(1) Establish allowable membership service not previously credited;

(2) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or

(3) Restore service credit represented by a lump sum payment in lieu of benefits, before the deadline established by statute, may do so under the conditions set forth in RCW 41.50.165. [1998 c 17 § 2.]

41.32.065 Election to use out-of-state service credit to calculate time at which the member may retire. A member may elect under this section to apply service credit earned in an out-of-state retirement system that covers teachers in public schools solely for the purpose of determining the time at which the member may retire. The benefit shall be actuarially reduced to recognize the difference between the age a member would have first been able to retire based on service in the state of Washington and the member's retirement age. [1991 c 278 § 1.]

41.32.067 Purchase of additional benefits—Conditions. A member may purchase additional benefits subject to the following:

(1) The member shall pay all reasonable administrative and clerical costs; and

(2) The member shall make a member reserve contribution to be actuarially converted to a monthly benefit at the time of retirement. [1992 c 212 § 13; 1991 c 278 § 2.]

"PLAN I"

41.32.215 Provisions applicable to plan I. RCW 41.32.240 through *41.32.575 shall apply only to members of plan I. [1992 c 72 § 5; 1991 c 35 § 103.]

***Reviser's note:** RCW 41.32.575 was repealed by 1995 c 345 § 11

Intent—1991 c 35: See note following RCW 41.26.005.

41.32.240 Membership in system. (1) All teachers employed full time in the public schools shall be members of the system except alien teachers who have been granted a temporary permit to teach as exchange teachers.

(2) A minimum of ninety days or the equivalent of ninety days of employment during a fiscal year shall be required to establish membership. A teacher shall be considered as employed full time if serving regularly for four-fifths or more of a school day or if assigned to duties which are the equivalent of four-fifths or more of a full time assignment. A teacher who is employed for less than full time service may become a member by filing an application with the retirement system, submitting satisfactory proof of teaching service and making the necessary payment before June 30 of the school year immediately following the one during which the service was rendered.

(3) After June 30th of the school year immediately following the one during which the less than full-time service was rendered, the necessary payment may be made under RCW 41.50.165(2). [1994 c 197 § 14; 1991 c 35 § 38; 1979 ex.s. c 45 § 3; 1965 ex.s. c 81 § 3; 1963 ex.s. c 14 § 4; 1961 c 132 § 1; 1955 c 274 § 7; 1947 c 80 § 24; Rem. Supp. 1947 § 4995-43. Prior: 1941 c 97 § 3, part; 1939 c 86 § 2, part; 1937 c 221 § 4, part; 1931 c 115 § 3, part; 1923 c 187 § 10, part; Rem. Supp. 1941 § 4995-4, part.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

Effective date—1979 ex.s. c 45: See note following RCW 41.26.040.

Severability—Effective date—1965 ex.s. c 81: See notes following RCW 41.32.010.

Savings—Severability—Effective date—1963 ex.s. c 14: See notes following RCW 41.32.010.

Effective date—1961 c 132: "The provisions of this act shall be effective July 1, 1961." [1961 c 132 § 8.] For codification of 1961 c 132, see Codification Tables, Volume 0.

Eligibility for retirement allowance: RCW 41.32.470.

41.32.260 Credit for military service or as state legislator. Any member whose public school service is interrupted by active service to the United States as a member of its military, naval or air service, or to the state of Washington, as a member of the legislature, may upon becoming reemployed in the public schools, receive credit for that service upon presenting satisfactory proof, and contributing to the member reserve, either in a lump sum or installments, amounts determined by the director. Except that no military service credit in excess of five years shall be established or reestablished after July 1, 1961, unless the service was actually rendered during time of war. [1992 c 212 § 8; 1991 c 35 § 40; 1974 ex.s. c 199 § 2; 1973 1st ex.s. c 189 § 1; 1971 ex.s. c 271 § 1; 1967 c 50 § 2; 1961 c 132 § 2; 1955 c 274 § 8; 1947 c 80 § 26; Rem. Supp.

1947 § 4995-45. Prior: 1941 c 97 § 4, part; 1939 c 86 § 4, part; 1937 c 221 § 1, part; Rem. Supp. 1941 § 4995-5, part.]

Intent—1991 c 35: See note following RCW 41.26.005.

Emergency—Severability—1974 ex.s. c 199: See notes following RCW 41.32.010.

Construction—1974 ex.s. c 199: See note following RCW 41.32.010.

Severability—1973 1st ex.s. c 189: See note following RCW 41.32.215.

Parts of sections retroactive—1973 1st ex.s. c 189: See note following RCW 41.32.498.

Severability—1971 ex.s. c 271: "If any provision of this 1971 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 271 § 17.] For codification of 1971 ex.s. c 271, see Codification Tables, Volume 0.

Effective date—Severability—1967 c 50: See notes following RCW 41.32.010.

Effective date—1961 c 132: See note following RCW 41.32.240.

Members' retirement contributions—Payment by employer: RCW 41.04.445.

41.32.263 State legislators and state officials eligible for retirement benefits. A member of the retirement system who is a member of the state legislature or a state official eligible for the combined pension and annuity provided by RCW 41.32.497, or 41.32.498, as now or hereafter amended shall have deductions taken from his or her salary in the amount of seven and one-half percent of earnable compensation and that service credit shall be established with the retirement system while such deductions are reported to the retirement system, unless he or she has by reason of his or her employment become a contributing member of another public retirement system in the state of Washington. Such elected official who has retired or otherwise terminated his or her public school service may then elect to terminate his or her membership in the retirement system and receive retirement benefits while continuing to serve as an elected official. A member of the retirement system who had previous service as an elected or appointed official, for which he or she did not contribute to the retirement system, may receive credit for such legislative service unless he or she has received credit for that service in another state retirement system, upon making contributions in such amounts as shall be determined by the board of trustees. [1991 c 35 § 41.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.32.267 Service credit for paid leave of absence—Application to elected officials of labor organizations. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided under the provisions of RCW 41.32.240 through *41.32.575.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority

rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement. [1993 c 95 § 5.]

***Reviser's note:** RCW 41.32.575 was repealed by 1995 c 345 § 11.

Retroactive application—Effective date—1993 c 95: See notes following RCW 41.40.175.

41.32.270 Teaching service, how credited. Service rendered for four-fifths or more of the official school year of the school district or institution in which a teacher is employed shall be credited as a year's service regardless of the length of the school term, but in no case shall more than one year of service be creditable for service rendered in one fiscal year. Service rendered for less than four-fifths of the official school year shall be credited for that portion of the school year for which it was rendered: PROVIDED, That no service of less than twenty days in any school year shall be creditable. [1947 c 80 § 27; Rem. Supp. 1947 § 4995-46. Prior: 1941 c 97 § 4, part; 1939 c 86 § 4, part; 1937 c 221 § 5, part; Rem. Supp. 1941 § 4995-5, part.]

41.32.300 Limitation on credit for out-of-state service. (1) Henceforth a total of not more than four years of service outside of the state shall be credited to a member who establishes or reestablishes credit for out-of-state public school employment in this state subsequent to July 1, 1961. Foreign public school teaching service shall be creditable as out-of-state service.

(2) No out-of-state service credit shall be established or reestablished subsequent to July 1, 1964, except that a member who has been granted official leave of absence by his or her employer may, upon return to public school service in this state, establish out-of-state membership service credit, within the limitations of this section and conditioned upon satisfactory proof and upon contributions to the member reserve, for public school service rendered in another state or in another country.

(3) No member who establishes out-of-state service credit after July 1, 1947, shall at retirement for pension payment purposes be allowed credit for out-of-state service in excess of the number of years credit which he or she shall have earned in the public schools of the state of Washington. [1992 c 212 § 14; 1991 c 35 § 42; 1963 ex.s. c 14 § 5; 1961 c 132 § 7; 1955 c 274 § 11; 1947 c 80 § 30; Rem. Supp. 1947 § 4995-49.]

Intent—1991 c 35: See note following RCW 41.26.005.

Savings—Severability—Effective date—1963 ex.s. c 14: See notes following RCW 41.32.010.

Effective date—1961 c 132: See note following RCW 41.32.240.

41.32.310 Time limit for claiming service credit—Payments. (1) Any member desiring to establish credit for services previously rendered, must present proof and make the necessary payments on or before June 30 of the fifth school year of membership. Payments covering all types of membership service credit must be made in a lump sum when due, or in annual installments. The first annual installment of at least twenty percent of the amount due must be paid before the above deadline date, and the final payment

must be made by June 30th of the fourth school year following that in which the first installment was made. The amount of payment and the interest thereon, whether lump sum or installments, shall be made by a method and in an amount established by the department.

(2) A member who had the opportunity under chapter 41.32 RCW prior to July 1, 1969, to establish credit for active United States military service or credit for professional preparation and failed to do so shall be permitted to establish additional credit within the provisions of RCW 41.32.260 and 41.32.330. A member who was not permitted to establish credit pursuant to section 2, chapter 32, Laws of 1973 2nd ex. sess., for Washington teaching service previously rendered, must present proof and make the necessary payment to establish such credit as membership service credit. Payment for such credit must be made in a lump sum on or before June 30, 1974. Any member desiring to establish credit under the provisions of this subsection must present proof and make the necessary payment before June 30, 1974; or, if not employed on the effective date of this amendment, before June 30th of the fifth school year upon returning to public school employment in this state.

(3) After June 30th of the fifth school year of membership, any member desiring to establish credit for services previously rendered, must present proof and make the necessary payments under RCW 41.50.165(2) but prior to retirement. [1994 c 197 § 15; 1992 c 72 § 6. Prior: 1991 c 35 § 43; 1974 ex.s. c 193 § 1; 1973 2nd ex.s. c 32 § 2; 1969 ex.s. c 150 § 9; 1965 ex.s. c 81 § 8; 1955 c 274 § 12; 1947 c 80 § 31; Rem. Supp. 1947 § 4995-50.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

Emergency—1974 ex.s. c 193: "This amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1974 ex.s. c 193 § 10.]

Severability—1974 ex.s. c 193: "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 193 § 9.]

Emergency—1973 2nd ex.s. c 32: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately." [1973 2nd ex.s. c 32 § 7.]

Severability—1973 2nd ex.s. c 32: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 2nd ex.s. c 32 § 6.]

Effective date—1969 ex.s. c 150: See note following RCW 41.50.200.

41.32.330 Credit for professional preparation subsequent to becoming teacher. The department may allow credit for professional preparation to a member for attendance at institutions of higher learning, or for a scholarship or grant under an established foundation, subsequent to becoming a public school teacher; but not more than two years of such credit may be granted to any member. [1991 c 35 § 44; 1969 ex.s. c 150 § 10; 1955 c 274 § 14; 1947 c 80 § 33; Rem. Supp. 1947 § 4995-52.]

Intent—1991 c 35: See note following RCW 41.26.005.

Effective date—1969 ex.s. c 150: See note following RCW 41.50.200.

41.32.340 Creditable service, what to consist of. Creditable service of a member at retirement shall consist of the membership service rendered for which credit has been allowed, and also, if a prior service certificate is in full force and effect, the amount of the service certified on the prior service certificate. No pension payments shall be made for service credits established or reestablished after July 1, 1955, if such credits entitle the member to retirement benefits from any other public state or local retirement system or fund. No pension payments shall be made for service credits established or reestablished after July 1, 1961, if such credits entitle the member to retirement benefits from a public federal retirement system or fund for services rendered under a civilian program: PROVIDED, That no pension payments shall be made for service credits established or reestablished after July 1, 1969, if credit for the same service is retained for benefits under any other retirement system or fund. [1991 c 35 § 45; 1969 ex.s. c 150 § 11; 1961 c 132 § 3; 1955 c 274 § 15; 1947 c 80 § 34; Rem. Supp. 1947 § 4995-53. Prior: 1941 c 97 § 4, part; 1939 c 86 § 4, part; 1937 c 221 § 5, part; Rem. Supp. 1941 § 4995-5, part.]

Intent—1991 c 35: See note following RCW 41.26.005.

Effective date—1969 ex.s. c 150: See note following RCW 41.50.200.

41.32.345 "Earnable compensation" defined for certain part-time employees—Adoption of rules. (1) Subject to the limitations contained in this section, for the purposes of *RCW 41.32.010(10)(a)(ii), earnable compensation means the compensation the member would have received in the same position if employed on a regular full-time basis for the same contract period.

(2) In order to ensure that the benefit provided by this section is not used to unfairly inflate a member's retirement allowance, the department shall adopt rules having the force of law to govern the application of this section.

(3)(a) In adopting rules which apply to a member employed by a school district, the department may consult the district's salary schedule and related workload provisions, if any, adopted pursuant to RCW 28A.405.200. The rules may require that, in order to be eligible for this benefit, a member's position must either be included on the district's schedule, or the position must have duties, responsibilities, and method of pay which are similar to those found on the district's schedule.

(b) In adopting rules which apply to a member employed by a community college district, the department may consult the district's salary schedule and workload provisions contained in an agreement negotiated pursuant to chapter 28B.52 RCW, or similar documents. The rules may require that, in order to be eligible for this benefit, a member's position must either be included on the district's agreement, or the position must have duties, responsibilities, and method of pay which are similar to those found on the district's agreement. The maximum full-time work week used in calculating the benefit for community college employees paid on an hourly rate shall in no case exceed fifteen credit hours, twenty classroom contact hours, or thirty-five assigned hours.

(4) If the legislature amends or revokes the benefit provided by this section, no affected employee who thereafter retires is entitled to receive the benefit as a matter of contractual right. [1992 c 212 § 18; 1990 c 33 § 570; 1987 c 265 § 2. Formerly RCW 41.32.011.]

***Reviser's note:** RCW 41.32.010 was amended by 1994 c 298 § 3, changing subsection (10)(a)(ii) to subsection (10)(a)(iii).

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

41.32.350 Purchase of additional annuity. A member may make an additional lump sum payment at date of retirement, not to exceed the member's accumulated contributions, to purchase additional annuity. A contribution of six percent of earnable compensation is required from each member, except as provided under RCW 41.32.013. [1991 c 35 § 46; 1990 c 274 § 7; 1973 1st ex.s. c 189 § 6; 1963 ex.s. c 14 § 7; 1955 c 274 § 16; 1947 c 80 § 35; Rem. Supp. 1947 § 4995-54. Prior: 1941 c 97 § 5, part; 1939 c 86 § 5, part; 1937 c 221 § 6, part; 1931 c 115 § 4, part; 1923 c 115 § 11, part; 1917 c 163 § 10, part; Rem. Supp. 1941 § 4995-6, part.]

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Severability—1973 1st ex.s. c 189: See note following RCW 41.50.215.

Savings—Severability—Effective date—1963 ex.s. c 14: See notes following RCW 41.32.010.

Members' retirement contributions—Payment by employer: RCW 41.04.445.

41.32.360 Basis of contributions to disability reserve fund. For each year of employment, each member who is employed on a full time basis shall have transferred from his or her contributions a sum determined by the director, in accordance with the recommendations of the state actuary, to maintain a fund sufficient, with regular interest, to provide temporary disability benefits for the members whose claims will be approved by the department in accordance with the provisions of RCW 41.32.540. These transfers shall be placed in the disability reserve fund. [1991 c 35 § 47; 1963 ex.s. c 14 § 8; 1955 c 274 § 17; 1947 c 80 § 36; Rem. Supp. 1947 § 4995-55. Prior: 1941 c 97 § 5, part; 1939 c 86 § 5, part; 1937 c 221 § 6, part; 1917 c 163 § 10, part; Rem. Supp. 1941 § 4995-6, part.]

Intent—1991 c 35: See note following RCW 41.26.005.

Savings—Severability—Effective date—1963 ex.s. c 14: See notes following RCW 41.32.010.

41.32.366 Basis of contributions to death benefit fund. During each fiscal year that a member is employed on a full time basis, the department shall transfer from the member's contributions a sum that will, with regular interest, maintain a fund sufficient according to actuarial rates adopted by the department to pay the death benefits as provided for in this chapter. [1991 c 35 § 48; 1963 ex.s. c 14 § 10.]

Intent—1991 c 35: See note following RCW 41.26.005.

Savings—Severability—Effective date—1963 ex.s. c 14: See notes following RCW 41.32.010.

41.32.380 Source of pension reserve—Contributions. There shall be placed in the pension reserve all appropriations made by the legislature for the purpose of paying pensions and survivors' benefits and of establishing and maintaining an actuarial reserve and all gifts and bequests to the pension reserve, and contributions of persons entering the retirement system who have established prior service credit. Members establishing prior service credit shall contribute to the pension reserve as follows:

For the first ten years of prior service fifteen dollars per year;

For the second ten years of prior service thirty dollars per year;

For the third ten years of prior service forty-five dollars per year. [1992 c 212 § 10; 1982 1st ex.s. c 52 § 8; 1947 c 80 § 38; Rem. Supp. 1947 § 4995-57.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

41.32.390 Contributions for prior service credits. At least twenty percent of the total amount due for prior service credit must be paid before an application for credit may be presented to the department for approval. The balance is not due until date of retirement and may be paid at that time without additional charge. Any unpaid installments at the time the member is retired for service or disability shall constitute a first, paramount, and prior lien against his or her retirement allowance. [1991 c 35 § 49; 1955 c 274 § 18; 1947 c 80 § 39; Rem. Supp. 1947 § 4995-58. Prior: 1941 c 97 § 5, part; 1939 c 86 § 5, part; 1937 c 221 § 6, part; Rem. Supp. 1941 § 4995-6, part.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.32.470 Eligibility for retirement allowance. A member who is not a dual member under RCW 41.54.010 must have established or reestablished with the retirement system at least five years of credit for public school service in this state to be entitled to a retirement allowance. [1994 c 298 § 4; 1965 ex.s. c 81 § 4; 1963 ex.s. c 14 § 15; 1947 c 80 § 47; Rem. Supp. 1947 § 4995-66. Prior: 1941 c 97 § 7, part; 1939 c 86 § 7, part; 1937 c 221 § 8, part; 1931 c 115 § 7, part; 1923 c 187 § 17, part; Rem. Supp. 1941 § 4995-8, part.]

Intent—1994 c 298: See note following RCW 41.40.010.

Severability—Effective date—1965 ex.s. c 81: See notes following RCW 41.32.010.

Savings—Severability—Effective date—1963 ex.s. c 14: See notes following RCW 41.32.010.

41.32.480 Qualifications for retirement. (1) Any member who separates from service after having completed thirty years of creditable service may retire upon the approval by the department of an application for retirement filed on the prescribed form. Upon retirement the member shall receive a retirement allowance consisting of an annuity which shall be the actuarial equivalent of his or her accumulated contributions at his or her age of retirement and a pension as provided in RCW 41.32.497. Effective July 1, 1967, anyone then receiving a retirement allowance or a survivor retirement allowance under this chapter, based on thirty-five years of creditable service, and who has

established more than thirty-five years of service credit with the retirement system, shall thereafter receive a retirement allowance based on the total years of service credit established.

(2) Any member who has attained age sixty years, but who has completed less than thirty years of creditable service, upon separation from service, may retire upon the approval by the department of an application for retirement filed on the prescribed form. Upon retirement the member shall receive a retirement allowance consisting of an annuity which shall be the actuarial equivalent of his or her accumulated contributions at his or her age of retirement and a pension as provided in RCW 41.32.497.

(3) Any member who has attained age fifty-five years and who has completed not less than twenty-five years of creditable service, upon separation from service, may retire upon the approval by the department of an application for retirement filed on the prescribed form. Upon retirement the member shall receive a retirement allowance which shall be the actuarial equivalent of his or her accumulated contributions at his or her age of retirement and a pension as provided in RCW 41.32.497. An individual who has retired pursuant to this subsection, on or after July 1, 1969, shall not suffer an actuarial reduction in his or her retirement allowance, except as the allowance may be actuarially reduced pursuant to the options contained in RCW 41.32.530. The chapter 193, Laws of 1974 ex. sess. amendment to this section shall be retroactive to July 1, 1969. [1997 c 254 § 4; 1991 c 35 § 53; 1974 ex.s. c 193 § 2; 1972 ex.s. c 147 § 1; 1970 ex.s. c 35 § 2; 1969 ex.s. c 150 § 14; 1967 c 151 § 1; 1955 c 274 § 21; 1947 c 80 § 48; Rem. Supp. 1947 § 4995-67. Prior: 1941 c 97 § 7, part; 1939 c 86 § 7, part; 1937 c 221 § 8, part; 1931 c 115 § 7, part; 1923 c 187 § 17, part; Rem. Supp. 1941 § 4995-8, part.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—1991 c 35: See note following RCW 41.26.005.

Emergency—Severability—1974 ex.s. c 193: See notes following RCW 41.32.310.

Effective date—1972 ex.s. c 147: "The effective date of this 1972 amendatory act shall be July 1, 1972." [1972 ex.s. c 147 § 9.]

Severability—1972 ex.s. c 147: "If any provision of this 1972 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1972 ex.s. c 147 § 10.]

Effective date—1970 ex.s. c 35: "The provisions of sections 1 through 5 and 7 of this 1970 amendatory act shall take effect on July 1, 1970; the provisions of section 6 of this 1970 amendatory act shall be effective on the date chapter 223, Laws of 1969 ex. sess. becomes effective [July 1, 1970], at which time section 5 of this 1970 amendatory act shall be void and of no effect." [1970 ex.s. c 35 § 8.]

Severability—1970 ex.s. c 35: "If any provision of this 1970 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 35 § 9.]

Effective date—1969 ex.s. c 150: See note following RCW 41.50.200.

Effective date—1967 c 151: "This act shall become effective on July 1, 1967." [1967 c 151 § 9.]

Severability—1967 c 151: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances shall not be affected." [1967 c 151 § 8.]

41.32.485 Minimum retirement allowance—Cost-of-living adjustment—Post-retirement adjustment—Computation. (1) Notwithstanding any provision of law to the contrary, effective July 1, 1989, as a cost-of-living adjustment, no beneficiary receiving a retirement allowance pursuant to this chapter shall receive, as the pension portion of that retirement allowance, less than fourteen dollars and eighty-two cents per month for each year of service creditable to the person whose service is the basis of the pension. Portions of a year shall be treated as fractions of a year and the decimal equivalent shall be multiplied by fourteen dollars and eighty-two cents. Where the pension payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum pension provided in this section shall be adjusted in a manner consistent with that adjustment.

(2) Notwithstanding any provision of law to the contrary, effective July 1, 1979, the retirement allowance of each beneficiary who either is receiving benefits pursuant to RCW 41.32.520 or 41.32.550 as of December 31, 1978, or commenced receiving a monthly retirement allowance under this chapter as of a date no later than July 1, 1974, shall be permanently increased by a post-retirement adjustment. This adjustment shall be in lieu of any adjustments provided under *RCW 41.32.499(6) as of July 1, 1979, or July 1, 1980, for the affected beneficiaries. Such adjustment shall be calculated as follows:

(a) Retirement allowances to which this subsection and subsection (1) of this section are both applicable shall be determined by first applying subsection (1) and then applying this subsection. The department shall determine the total years of creditable service and the total dollar benefit base accrued as of December 31, 1978, except that this determination shall take into account only those beneficiaries to whom this subsection applies;

(b) The department shall multiply the total benefits determined in (a) of this subsection by six percent and divide the dollar value thus determined by the total service determined in (a) of this subsection. The resultant figure shall then be a post-retirement increase factor which shall be applied as specified in (c) of this subsection;

(c) Each beneficiary to whom this subsection applies shall receive an increase which is the product of the factor determined in (b) of this subsection multiplied by the years of creditable service.

(3) The provisions of subsections (1) and (2) of this section shall not be applicable to those receiving benefits pursuant to RCW 41.32.540 or 41.32.760 through 41.32.825. [1989 c 272 § 5; 1987 c 455 § 1; 1986 c 306 § 2; 1979 ex.s. c 96 § 2.]

***Reviser's note:** RCW 41.32.499 was repealed by 1995 c 345 § 11.

Purpose—1989 c 272: See note following RCW 41.32.005.

Effective date—1987 c 455: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 455 § 9.]

Effective date—1986 c 306: "This act shall take effect on July 1, 1986." [1986 c 306 § 5.]

41.32.4851 Minimum retirement allowance—Annual adjustment—Persons who become beneficiaries after June 30, 1995. (1) No one who becomes a beneficiary after June 30, 1995, shall receive a monthly retirement allowance

of less than twenty-four dollars and twenty-two cents times the number of years of service creditable to the person whose service is the basis of such retirement allowance.

(2) If the retirement allowance payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum allowance provided in this section shall be adjusted in a manner consistent with that adjustment.

(3) Beginning July 1, 1996, the minimum benefit set forth in subsection (1) of this section shall be adjusted annually by the annual increase.

(4) Those receiving a temporary disability benefit under RCW 41.32.540 shall not be eligible for the benefit provided by this section. [1995 c 345 § 3.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.32.4872 Permanent increase for specified beneficiaries age seventy or over. (1) The amount of the July 1, 1993, increase to the retirement allowance of beneficiaries under this chapter as a result of the temporary adjustment authorized by section 2, chapter 519, Laws of 1993, shall be made a permanent adjustment on July 1, 1995.

(2) Beneficiaries receiving a benefit under RCW 41.32.485 who are at least age seventy-nine shall receive on July 1, 1995, a permanent adjustment of one dollar and eighteen cents per month per year of service.

(3) Beneficiaries under this chapter who are not subject to subsection (1) of this section and not receiving a benefit under RCW 41.32.485 shall receive the following permanent adjustment to their retirement allowance on July 1, 1995:

(a) Those who are age seventy, thirty-nine cents per month per year of service;

(b) Those who are age seventy-one, seventy-nine cents per month per year of service; and

(c) Those who are at least age seventy-two, one dollar and eighteen cents per month per year of service. [1995 c 345 § 4.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.32.489 Retirement allowance—Annual increases—Eligibility. (1) Beginning July 1, 1995, and annually thereafter, the retirement allowance of a person meeting the requirements of this section shall be increased by the annual increase amount.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary who has received a retirement allowance for at least one year and has attained at least age sixty-six by July 1st in the calendar year in which the annual increase is given; or

(b) A beneficiary whose retirement allowance is lower than the minimum benefit provided under RCW 41.32.4851.

(3) The following persons shall also be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary receiving the minimum benefit on June 30, 1995, under RCW 41.32.485; or

(b) A recipient of a survivor benefit on June 30, 1995, which has been increased by *RCW 41.32.575.

(4) If otherwise eligible, those receiving an annual adjustment under RCW 41.32.530(1)(d) shall be eligible for

the annual increase adjustment in addition to the benefit that would have been received absent this section.

(5) Those receiving a temporary disability benefit under RCW 41.32.540 shall not be eligible for the benefit provided by this section.

(6) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that time. [1995 c 345 § 2.]

***Reviser's note:** RCW 41.32.575 was repealed by 1995 c 345 § 11.

Intent—1995 c 345: "The intent of this act is to:

(1) Simplify the calculation of postretirement adjustments so that they can be more easily communicated to plan I active and retired members;

(2) Provide postretirement adjustments based on years of service rather than size of benefit;

(3) Provide postretirement adjustments at an earlier age;

(4) Provide postretirement adjustments to a larger segment of plan I retirees; and

(5) Simplify administration by reducing the number of plan I postretirement adjustments to one." [1995 c 345 § 1.]

Effective date—1995 c 345: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1995]." [1995 c 345 § 14.]

41.32.4931 Additional special pension for former members not receiving social security. (1) The benefits provided under subsection (2) of this section shall be available only to former members who have reached age sixty-five or are disabled for further public school service and are not receiving federal old age, survivors or disability benefit payments (social security) and are not able to qualify for such benefits.

(2) Effective July 1, 1987, former members who receive the minimum retirement allowance provided by RCW 41.32.485(1) and who meet the requirements of subsection (1) of this section shall receive an additional special pension of ten dollars per month per year of service credit. [1987 c 455 § 6; 1973 2nd ex.s. c 32 § 3; 1967 c 151 § 6.]

Effective date—1987 c 455: See note following RCW 41.32.485.

Emergency—Severability—1973 2nd ex.s. c 32: See notes following RCW 41.32.310.

Effective date—Severability—1967 c 151: See notes following RCW 41.32.480.

41.32.4945 Limitation as to earnable compensation of member as member of the legislature. Notwithstanding any other provision of RCW 41.32.010, 41.32.260, 41.32.497, 41.32.498 and this section, when the salary of any member as a member of the legislature is increased beyond the amount provided for in Initiative Measure No. 282 then earnable compensation for the purposes of this chapter shall be based solely on the sum of (1) the compensation actually received from the salary for the job from which such leave of absence may have been taken and (2) such member's salary as a legislator during the two highest compensated consecutive years. [1991 c 35 § 54; 1974 ex.s. c 199 § 6.]

Intent—1991 c 35: See note following RCW 41.26.005.

Emergency—Severability—Construction—1974 ex.s. c 199: See notes following RCW 41.32.010.

41.32.497 Retirement allowance for members entering system before April 25, 1973—Election. Any

person who became a member on or before April 25, 1973 and who qualifies for a retirement allowance shall, at time of retirement, make an irrevocable election to receive either the retirement allowance by RCW 41.32.498 as now or hereafter amended or to receive a retirement allowance pursuant to this section consisting of: (1) An annuity which shall be the actuarial equivalent of his accumulated contributions at his age of retirement, (2) A basic service pension of one hundred dollars per annum, and (3) A service pension which shall be equal to one one-hundredth of his average earnable compensation for his two highest compensated consecutive years of service times the total years of creditable service established with the retirement system: **PROVIDED**, That no beneficiary now receiving benefits or who receives benefits in the future, except those beneficiaries receiving reduced benefits pursuant to *RCW 41.32.520(1) or 41.32.530, shall receive a pension of less than six dollars and fifty cents per month for each year of creditable service established with the retirement system. Pension benefits payable under the provisions of this section shall be prorated on a monthly basis and paid at the end of each month. [1990 c 249 § 12; 1974 ex.s. c 199 § 3; 1973 1st ex.s. c 189 § 2; 1970 ex.s. c 35 § 3; 1969 ex.s. c 150 § 15; 1963 ex.s. c 14 § 16.]

***Reviser's note:** RCW 41.32.520(1) was renumbered as RCW 41.32.520(1)(a) by 1990 c 249 § 15.

Findings—1990 c 249: See note following RCW 2.10.146.

Emergency—Severability—Construction—1974 ex.s. c 199: See notes following RCW 41.32.010.

Severability—1973 1st ex.s. c 189: See note following RCW 41.50.215.

Parts of sections retroactive—1973 1st ex.s. c 189: See note following RCW 41.32.498.

Effective date—Severability—1970 ex.s. c 35: See notes following RCW 41.32.480.

Effective date—1969 ex.s. c 150: See note following RCW 41.50.200.

Savings—Severability—Effective date—1963 ex.s. c 14: See notes following RCW 41.32.010.

41.32.498 Retirement allowance for members entering system after April 25, 1973, or in lieu of allowance under RCW 41.32.497. Any person who becomes a member subsequent to April 25, 1973 or who has made the election, provided by RCW 41.32.497, to receive the benefit provided by this section, shall receive a retirement allowance consisting of:

(1) An annuity which shall be the actuarial equivalent of his or her additional contributions on full salary as provided by chapter 274, Laws of 1955 and his or her lump sum payment in excess of the required contribution rate made at date of retirement, pursuant to RCW 41.32.350, if any; and

(2) A combined pension and annuity service retirement allowance which shall be equal to two percent of his or her average earnable compensation for his or her two highest compensated consecutive years of service times the total years of creditable service established with the retirement system, to a maximum of sixty percent of such average earnable compensation: **PROVIDED**, That any member may irrevocably elect, at time of retirement, to withdraw all or a part of his or her accumulated contributions, other than any

amount paid under RCW 41.50.165(2), and to receive, in lieu of the full retirement allowance provided by this subsection, a reduction in the standard two percent allowance, of the actuarially determined amount of monthly annuity which would have been purchased by said contributions: **PROVIDED FURTHER**, That no member may withdraw an amount of accumulated contributions which would lower his or her retirement allowance below the minimum allowance provided by RCW 41.32.497 as now or hereafter amended: **AND PROVIDED FURTHER**, That said reduced amount may be reduced even further pursuant to the options provided in RCW 41.32.530;

(3) Notwithstanding the provisions of subsections (1) and (2) of this section, the retirement allowance payable for service of a member who was state superintendent of public instruction on January 1, 1973 shall be equal to three percent of the average earnable compensation of his two highest consecutive years of service for each year of such service. [1994 c 197 § 16; 1991 c 35 § 55; 1990 c 249 § 4; 1988 c 116 § 1; 1987 c 143 § 1; 1974 ex.s. c 199 § 4; 1973 1st ex.s. c 189 § 3.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 249: See note following RCW 2.10.146.

Effective date—1988 c 116: "This act shall take effect June 30, 1988." [1988 c 116 § 2.]

Emergency—Severability—Construction—1974 ex.s. c 199: See notes following RCW 41.32.010.

Parts of sections as retroactive—1973 1st ex.s. c 189: "Subsection (3) of section 3 of this 1973 amendatory act and the equivalent language contained in the last proviso in section 1 of this 1973 amendatory act, relating to elected and appointed officials, shall be retroactive to January 1, 1973." [1973 1st ex.s. c 189 § 4.]

Reviser's note: The reference to "subsection (3) of section 3" appears to be erroneous. Section 13 of the original bill (House Bill No. 419) referred to equivalent language in subsection (3) of section 12 and the last proviso in section 4, amending RCW 41.32.497. The language referred to in section 4 remains in section 2 of the final bill which amends RCW 41.32.497, but was deleted by senate committee amendment from section 3 (formerly section 12 of the original bill) of the engrossed substitute bill, codified herein as RCW 41.32.498.

Severability—1973 1st ex.s. c 189: See note following RCW 41.50.215.

41.32.4991 Permanent retirement allowance adjustment. The dollar amount of the temporary postretirement allowance adjustment granted by section 1, chapter 519, Laws of 1993 shall be provided as a permanent retirement allowance adjustment as of July 1, 1995. [1994 c 247 § 1.]

Effective date—1994 c 247: "This act shall take effect August 1, 1994." [1994 c 247 § 8.]

Temporary postretirement allowance—1993 c 519: "The benefit adjustment granted by sections 711(1) and 712(1), chapter 232, Laws of 1992 (uncodified) being received by plan I beneficiaries as of June 30, 1993, unless otherwise improper, shall be continued through June 30, 1995." [1993 c 519 § 1.]

41.32.500 Termination of membership. Membership in the retirement system is terminated when a member retires for service or disability, dies, or withdraws his or her accumulated contributions.

The prior service certificate becomes void when a member dies or withdraws the accumulated contributions,

and any prior administrative interpretation of the board of trustees, consistent with this section, is hereby ratified, affirmed and approved. [1995 c 134 § 13. Prior: 1994 c 197 § 17; 1994 c 177 § 5; 1991 c 35 § 57; 1986 c 317 § 2; 1983 c 233 § 1; 1974 ex.s. c 193 § 3; 1969 ex.s. c 150 § 16; 1967 c 50 § 6; 1965 ex.s. c 81 § 5; 1955 c 274 § 23; 1947 c 80 § 50; Rem. Supp. 1947 § 4995-69.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—1994 c 177: See note following RCW 41.50.125.

Intent—1991 c 35: See note following RCW 41.26.005.

Legislative findings—Intent—Severability—1986 c 317: See notes following RCW 41.40.150.

Severability—1983 c 233: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 233 § 4.]

Emergency—Severability—1974 ex.s. c 193: See notes following RCW 41.32.310.

Effective date—1969 ex.s. c 150: See note following RCW 41.50.200.

Effective date—Severability—1967 c 50: See notes following RCW 41.32.010.

Effective date—Severability—1965 ex.s. c 81: See notes following RCW 41.32.010.

41.32.510 Payment on withdrawal—Reentry. (1)

Should a member cease to be employed by an employer and request upon a form provided by the department a refund of the member's accumulated contributions with interest, this amount shall be paid to the individual less any withdrawal fee which may be assessed by the director which shall be deposited in the department of retirement systems expense fund.

(2) A member who files a request for a refund and subsequently enters into employment with an employer prior to the refund being made shall not be eligible for a refund. For purposes of this section, a written or oral employment agreement shall be considered entering into employment. [1994 c 197 § 18; 1994 c 177 § 6; 1982 1st ex.s. c 52 § 15; 1969 ex.s. c 150 § 17; 1963 ex.s. c 14 § 17; 1955 c 274 § 24; 1947 c 80 § 51; Rem. Supp. 1947 § 4995-70. Prior: 1941 c 97 § 6, part; 1939 c 86 § 6, part; 1937 c 221 § 7, part; Rem. Supp. 1941 § 4995-7, part.]

Reviser's note: This section was amended by 1994 c 177 § 6 and by 1994 c 197 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—1994 c 177: See note following RCW 41.50.125.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Effective date—1969 ex.s. c 150: See note following RCW 41.50.200.

Savings—Severability—Effective date—1963 ex.s. c 14: See notes following RCW 41.32.010.

41.32.520 Payment on death before retirement or within sixty days following application for disability retirement. (1) Except as specified in subsection (3) of this section, upon receipt of proper proofs of death of any member before retirement or before the first installment of

his or her retirement allowance shall become due his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, and/or other benefits payable upon his or her death shall be paid to his or her estate or to such persons, trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department. If a member fails to file a new beneficiary designation subsequent to marriage, divorce, or reestablishment of membership following termination by withdrawal, lapsation, or retirement, payment of his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, and/or other benefits upon death before retirement shall be made to the surviving spouse, if any; otherwise, to his or her estate. If a member had established ten or more years of Washington membership service credit or was eligible for retirement, the beneficiary or the surviving spouse if otherwise eligible may elect, in lieu of a cash refund of the member's accumulated contributions, the following survivor benefit plan actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670:

(a) A widow or widower, without a child or children under eighteen years of age, may elect a monthly payment of fifty dollars to become effective at age fifty, provided the member had fifteen or more years of Washington membership service credit. A benefit paid under this subsection (1)(a) shall terminate at the marriage of the beneficiary.

(b) The beneficiary, if a surviving spouse or a dependent (as that term is used in computing the dependent exemption for federal internal revenue purposes) may elect to receive a joint and one hundred percent retirement allowance under RCW 41.32.530.

(i) In the case of a dependent child the allowance shall continue until attainment of majority or so long as the department judges that the circumstances which created his or her dependent status continue to exist. In any case, if at the time dependent status ceases, an amount equal to the amount of accumulated contributions of the deceased member has not been paid to the beneficiary, the remainder shall then be paid in a lump sum to the beneficiary.

(ii) If at the time of death, the member was not then qualified for a service retirement allowance, the benefit shall be based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased member would have first qualified for a service retirement allowance.

(2) If no qualified beneficiary survives a member, at his or her death his or her accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to his or her estate, or his or her dependents may qualify for survivor benefits under benefit plan (1)(b) in lieu of a cash refund of the members accumulated contributions in the following order: Widow or widower, guardian of a dependent child or children under age eighteen, or dependent parent or parents.

(3) If a member dies within sixty days following application for disability retirement under RCW 41.32.550, the beneficiary named in the application may elect to receive the benefit provided by:

(a) This section; or

(b) RCW 41.32.550, according to the option chosen under RCW 41.32.530 in the disability application. [1997 c 73 § 1; 1995 c 144 § 9; 1993 c 16 § 1; 1992 c 212 § 7. Prior: 1991 c 365 § 29; 1991 c 35 § 58; 1990 c 249 § 15; 1974 ex.s. c 193 § 5; 1973 2nd ex.s. c 32 § 4; 1973 1st ex.s. c 154 § 76; 1967 c 50 § 7; 1965 ex.s. c 81 § 6; 1957 c 183 § 3; 1955 c 274 § 25; 1947 c 80 § 52; Rem. Supp. 1947 § 4995-71; prior: 1941 c 97 § 6; 1939 c 86 § 6; 1937 c 221 § 7; 1923 c 187 § 22; 1917 c 163 § 21; Rem. Supp. 1941 § 4995-7.]

Effective date—1997 c 73: "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 [April 19, 1997]." [1997 c 73 § 4.]

Application—1993 c 16 § 1: "The provisions of section 1(3) of this act shall apply to all determinations of disability made after June 30, 1992." [1993 c 16 § 2.]

Effective date—1993 c 16: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 12, 1993]." [1993 c 16 § 3.]

Severability—1991 c 365: See note following RCW 41.50.500.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 249: See note following RCW 2.10.146.

Emergency—Severability—1974 ex.s. c 193: See notes following RCW 41.32.310.

Emergency—Severability—1973 2nd ex.s. c 32: See notes following RCW 41.32.310.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

Effective date—Severability—1967 c 50: See notes following RCW 41.32.010.

Effective date—Severability—1965 ex.s. c 81: See notes following RCW 41.32.010.

Severability—1957 c 183: See RCW 41.33.900.

41.32.522 Death benefits. (1) The department shall pay a death benefit of six hundred dollars to a member's estate or to the persons, trust, or organization the member nominates by written designation duly executed and filed with the department or to the persons as may otherwise qualify as the beneficiary pursuant to RCW 41.32.520 upon receipt of proper proof of death of the member if he or she:

(a) Was employed on a full time basis during the fiscal year in which his or her death occurs;

(b) Was under contract for full time employment in a Washington public school;

(c) Submits an application for a retirement allowance to be approved by the department immediately following termination of his or her full-time Washington public school service and who dies before the first installment of his or her retirement allowance becomes due;

(d) Is receiving or is entitled to receive temporary disability payments; or

(e) Upon becoming eligible for a disability retirement allowance submits an application for an allowance to be approved by the department immediately following the date of his or her eligibility for a disability retirement allowance

and dies before the first installment of such allowance becomes due.

(2) In order to receive a death benefit under this section a deceased member:

(a) Must have established at least one year of credit with the retirement system for full time Washington membership service;

(b) Who was not employed full time in Washington public school service during the fiscal year immediately preceding the year of his or her death must have been employed full time in Washington public school service for at least fifty consecutive days during the fiscal year of his or her death. [1995 c 144 § 10; 1992 c 212 § 4; 1991 c 35 § 59; 1974 ex.s. c 193 § 4; 1969 ex.s. c 150 § 18; 1967 c 50 § 8; 1963 ex.s. c 14 § 20.]

Intent—1991 c 35: See note following RCW 41.26.005.

Emergency—Severability—1974 ex.s. c 193: See notes following RCW 41.32.310.

Effective date—1969 ex.s. c 150: See note following RCW 41.50.200.

Effective date—Severability—1967 c 50: See notes following RCW 41.32.010.

Savings—Effective date—Severability—1963 ex.s. c 14: See notes following RCW 41.32.010.

41.32.523 Death benefits—Members not qualified for benefits under RCW 41.32.522 and retired former members. Upon receipt of proper proof of death of a member who does not qualify for the death benefit of six hundred dollars under RCW 41.32.522, or a former member who was retired for age, service, or disability, a death benefit of four hundred dollars shall be paid to the member's estate or to the persons, trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department or to the persons as may otherwise qualify as the beneficiary pursuant to RCW 41.32.520: PROVIDED, That the member or the retired former member had established not less than ten years of credit with the retirement system for full time Washington membership service. [1995 c 144 § 11; 1992 c 212 § 5; 1991 c 35 § 60; 1974 ex.s. c 193 § 6; 1969 ex.s. c 150 § 19; 1967 c 50 § 9; 1965 ex.s. c 81 § 7; 1963 ex.s. c 14 § 21.]

Intent—1991 c 35: See note following RCW 41.26.005.

Emergency—Severability—1974 ex.s. c 193: See notes following RCW 41.32.310.

Effective date—1969 ex.s. c 150: See note following RCW 41.50.200.

Effective date—Severability—1967 c 50: See notes following RCW 41.32.010.

Savings—Effective date—Severability—1963 ex.s. c 14: See notes following RCW 41.32.010.

41.32.530 Options available—Retirement allowance adjustment. (1) Upon an application for retirement for service under RCW 41.32.480 or retirement for disability under RCW 41.32.550, approved by the department, every member shall receive the maximum retirement allowance available to him or her throughout life unless prior to the time the first installment thereof becomes due he or she has elected, by executing the proper application therefor, to receive the actuarial equivalent of his or her retirement

allowance in reduced payments throughout his or her life with the following options:

(a) Standard allowance. If he or she dies before he or she has received the present value of his or her accumulated contributions at the time of his or her retirement in annuity payments, the unpaid balance shall be paid to his or her estate or to such person, trust, or organization as he or she shall have nominated by written designation executed and filed with the department.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person who has an insurable interest in the member's life. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(c) Such other benefits shall be paid to a member receiving a retirement allowance under RCW 41.32.497 as the member may designate for himself, herself, or others equal to the actuarial value of his or her retirement annuity at the time of his retirement: PROVIDED, That the board of trustees shall limit withdrawals of accumulated contributions to such sums as will not reduce the member's retirement allowance below one hundred and twenty dollars per month.

(d) A member whose retirement allowance is calculated under RCW 41.32.498 may also elect to receive a retirement allowance based on options available under this subsection that includes the benefit provided under RCW 41.32.770. This retirement allowance option shall also be calculated so as to be actuarially equivalent to the maximum retirement allowance and to the options available under this subsection.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last. [1998 c 340 § 6; 1996 c 175 § 4; 1995 c 144 § 12; 1990 c 249 § 5; 1955 c 274 § 26; 1947 c 80 § 53; Rem. Supp. 1947 § 4995-72. Prior: 1941 c 97 § 7, part; 1939 c 86 § 7, part; 1937 c 221 § 8, part; Rem. Supp. 1941 § 4995-8, part.]

Effective date—1998 c 340: See note following RCW 41.31.010.

Findings—1990 c 249: See note following RCW 2.10.146.

41.32.540 Disability allowance—Temporary. Upon application of a member in service or of his or her employer or of his or her legal guardian or of the legal representative of a deceased member who was eligible to apply for a temporary disability allowance based on the final illness a member shall be granted a temporary disability allowance by the department if the medical director, after a medical examination of the member, certifies that the member is mentally or physically incapacitated for the further performance of duty. Any member receiving a temporary disability allowance on July 1, 1964 or who qualifies for a temporary disability allowance effective on or after July 1, 1964 shall receive a temporary disability allowance of one hundred eighty dollars per month for a period not to exceed two years, but no payments shall be made for a disability period of less than sixty days: PROVIDED, That a member who is not employed full time in Washington public school service for consecutive fiscal years shall have been employed for at least fifty consecutive days during the fiscal year in which he or she returns to full time Washington public school service before he or she may qualify for temporary disability benefits: PROVIDED FURTHER, That no temporary disability benefits shall be paid on the basis of an application received more than four calendar years after a member became eligible to apply for such benefits. [1992 c 212 § 3; 1991 c 35 § 61; 1974 ex.s. c 193 § 7; 1963 ex.s. c 14 § 18; 1959 c 37 § 1; 1955 c 274 § 27; 1947 c 80 § 54; Rem. Supp. 1947 § 4995-73. Prior: 1941 c 97 § 7, part; 1939 c 86 § 7, part; 1937 c 221 § 8, part; Rem. Supp. 1941 § 4995-8, part.]

Intent—1991 c 35: See note following RCW 41.26.005.

Emergency—Severability—1974 ex.s. c 193: See notes following RCW 41.32.310.

Savings—Effective date—Severability—1963 ex.s. c 14: See notes following RCW 41.32.010.

41.32.550 Options and allowances on report that disability will be permanent—Reexamination. (1) Should the director determine from the report of the medical director that a member employed under an annual contract with an employer has become permanently disabled for the performance of his or her duties or at any time while a member is receiving temporary disability benefits that a member's disability will be permanent, a member shall have the option of then receiving (a) all of the accumulated contributions in a lump sum payment and canceling his or her membership, or (b) of accepting a retirement allowance based on service or age, if eligible under RCW 41.32.480, or (c) if the member had five or more years of Washington membership service credit established with the retirement system, a retirement allowance because of disability.

(2) Any member applying for a retirement allowance who is eligible for benefits on the basis of service or age shall receive a retirement allowance based on the provision of law governing retirement for service or age. If the member qualifies to receive a retirement allowance because of disability he or she shall be paid the maximum annuity which shall be the actuarial equivalent of the accumulated contributions at his or her age of retirement and a pension equal to the service pension to which he or she would be entitled under RCW 41.32.497. If the member dies before he or she has received in annuity payments the present value of the accumulated contributions at the time of retirement, the unpaid balance shall be paid to the estate or to the persons, trust, or organization nominated by written designation executed and filed with the department.

(3) A member retired for disability may be required at any time to submit to reexamination. If medical findings reveal that the individual is no longer disabled for the performance of public school service, the retirement allowance granted because of disability may be terminated by action of the director or upon written request of the member. In case of termination, the individual shall be restored to full membership in the retirement system. [1995 c 144 § 13; 1991 sp.s. c 11 § 6. Prior: 1991 c 365 § 33; 1991 c 35 § 62; 1970 ex.s. c 35 § 4; 1969 ex.s. c 150 § 20; 1967 c 50 § 10; 1963 ex.s. c 14 § 19; 1961 c 132 § 4; 1959 c 37 § 2; 1955 c 274 § 28; 1947 c 80 § 55; Rem. Supp. 1947 § 4995-74; prior: 1941 c 97 § 7, part; 1939 c 86 § 7, part; 1937 c 221 § 8, part; 1931 c 115 § 8; 1923 c 187 § 18; 1917 c 163 § 17, part; Rem. Supp. 1941 § 4995-8, part.]

Purpose—Effective dates—1991 sp.s. c 11: See notes following RCW 41.26.090.

Severability—1991 c 365: See note following RCW 41.50.500.

Intent—1991 c 35: See note following RCW 41.26.005.

Effective date—Severability—1970 ex.s. c 35: See notes following RCW 41.32.480.

Effective date—1969 ex.s. c 150: See note following RCW 41.50.200.

Effective date—Severability—1967 c 50: See notes following RCW 41.32.010.

Savings—Severability—Effective date—1963 ex.s. c 14: See notes following RCW 41.32.010.

41.32.555 Persons with annual half-time contracts—Eligibility for benefits under RCW 41.32.550. Persons who were under an annual half-time contract with an employer anytime during the period of September 1, 1986,

through August 31, 1987, shall be eligible for benefits provided by RCW 41.32.550, as amended by chapter 365, Laws of 1991, effective beginning the month following when they left service due to their disability if during that period they were medically determined to be permanently disabled for the performance of their duty.

A member who qualifies for benefits under this section who has not begun receiving benefits prior to June 11, 1992, shall be permitted to select a survivor option pursuant to RCW 41.32.530. [1992 c 212 § 19; 1991 c 365 § 34.]

Severability—1991 c 365: See note following RCW 41.50.500.

41.32.570 Reduction, suspension of pension payments—Service as substitute teacher. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any monthly benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) Any retired teacher or retired administrator who enters service in any public educational institution in Washington state and who has satisfied the break in employment requirement of subsection (1) of this section shall cease to receive pension payments while engaged in such service: PROVIDED, That service may be rendered up to five hundred twenty-five hours per school year without reduction of pension.

(3) In addition to the five hundred twenty-five hours of service permitted under subsection (2) of this section, a retired teacher or retired administrator may also serve only as a substitute teacher for up to an additional one hundred five hours per school year without reduction of pension if:

(a) A school district, which is not a member of a multidistrict substitute cooperative, determines that it has exhausted or can reasonably anticipate that it will exhaust its list of qualified and available substitutes and the school board of the district adopts a resolution to make its substitute teachers who are retired teachers or retired administrators eligible for the additional one hundred five hours of extended service once the list of qualified and available substitutes has been exhausted. The resolution by the school district shall state that the services of retired teachers and retired administrators are necessary to address the shortage of qualified and available substitutes. The resolution shall be valid only for the school year in which it is adopted. The district shall forward a copy of the resolution with a list of retired teachers and retired administrators who have been employed as substitute teachers to the department and may notify the retired teachers and retired administrators included on the list of their right to take advantage of the provisions of this subsection; or

(b) A multidistrict substitute cooperative determines that the school districts have exhausted or can reasonably anticipate that they will exhaust their list of qualified and

available substitutes and each of the school boards adopts a resolution to make their substitute teachers who are retired teachers or retired administrators eligible for the extended service once the list of qualified and available substitutes has been exhausted. The resolutions by each of the school districts shall state that the services of retired teachers and retired administrators are necessary to address the shortage of qualified and available substitutes. The resolutions shall be valid only for the school year in which they are adopted. The cooperative shall forward a copy of the resolutions with a list of retired teachers and retired administrators who have been employed as substitute teachers to the department and may notify the retired teachers and retired administrators included on the list of their right to take advantage of the provisions of this subsection.

(4) In addition to the five hundred twenty-five hours of service permitted under subsection (2) of this section, a retired administrator or retired teacher may also serve as a substitute administrator up to an additional one hundred five hours per school year without reduction of pension if a school district board of directors adopts a resolution declaring that the services of a retired administrator or retired teacher are necessary because it cannot find a replacement administrator to fill a vacancy. The resolution shall be valid only for the school year in which it is adopted. The district shall forward a copy of the resolution with the name of the retired administrator or retired teacher who has been employed as a substitute administrator to the department. However, a retired administrator or retired teacher may not serve more than a total of one hundred five additional hours per school year pursuant to subsections (3) and (4) of this section.

(5) Subsection (2) of this section shall apply to all persons governed by the provisions of plan I, regardless of the date of their retirement, but shall apply only to benefits payable after June 11, 1986.

(6) Subsection (3) of this section shall apply to all persons governed by the provisions of plan I, regardless of the date of their retirement, but shall only apply to benefits payable after September 1, 1994. [1997 c 254 § 5; 1995 c 264 § 1; 1994 c 69 § 2; 1989 c 273 § 29; 1986 c 237 § 1; 1967 c 151 § 5; 1959 c 37 § 3; 1955 c 274 § 30; 1947 c 80 § 57; Rem. Supp. 1947 § 4995-76.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Effective date—1995 c 264: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 5, 1995]." [1995 c 264 § 2.]

Findings—1994 c 69: "The legislature finds that there is a shortage of certificated substitute teachers in many regions of the state, and that this shortage will likely increase in the coming years. The legislature further finds that one method of reducing this shortage of substitute teachers is to encourage retired teachers to serve as substitutes by increasing the number of days they can work without affecting their retirement payments." [1994 c 69 § 1.]

Severability—1989 c 273: See RCW 41.45.900.

Effective date—Severability—1967 c 151: See notes following RCW 41.32.480.

"PLAN II"

41.32.755 Provisions applicable to plan II. RCW 41.32.760 through 41.32.825 shall apply only to plan II members. [1992 c 72 § 7; 1977 ex.s. c 293 § 2.]

Effective date—1977 ex.s. c 293: "This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect October 1, 1977." [1977 ex.s. c 293 § 23.]

Severability—1977 ex.s. c 293: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 293 § 22.]

Legislative direction and placement—1977 ex.s. c 293: "Sections 1 through 17 of this 1977 amendatory act shall be added to chapter 41.32 RCW and shall be codified as consecutive sections of the Revised Code of Washington within such chapter." [1977 ex.s. c 293 § 21.]

Section headings—1977 ex.s. c 293: "Section headings used in this 1977 amendatory act shall not constitute any part of the law." [1977 ex.s. c 293 § 20.]

41.32.760 Computation of the retirement allowance.

A member of the retirement system shall receive a retirement allowance equal to two percent of such member's average final compensation for each year of service. [1977 ex.s. c 293 § 3.]

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

41.32.762 Lump sum retirement allowance—Reentry—Conditions for reinstatement of service. (1) On or after June 10, 1982, the director may pay a beneficiary, subject to the provisions of subsection (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.32.760 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of such monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A beneficiary, subject to the provisions of subsection (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to retiring, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations under subsection (3) of this section, reinstatement of all previous service will occur if the member pays the amount required under RCW 41.50.165(2). The amount, however, shall

exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.32.760 or an earned disability allowance under RCW 41.32.790 qualify for participation under this section.

(6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system. [1994 c 197 § 19; 1982 c 144 § 2.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.32.765 Retirement for service. (1) **NORMAL RETIREMENT.** Any member with at least five service credit years of service who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760.

(2) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years of service who has attained at least age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.760, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five. [1991 c 343 § 5; 1977 ex.s. c 293 § 4.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

41.32.770 Post-retirement cost-of-living. Beginning July 1, 1979, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

(1) The original dollar amount of the retirement allowance;

(2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";

(3) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

(a) Produce a retirement allowance which is lower than the original retirement allowance;

(b) Exceed three percent in the initial annual adjustment;

or
(c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index—Seattle, Washington area for urban wage earners and clerical

workers, all items, compiled by the bureau of labor statistics, United States department of labor. [1977 ex.s. c 293 § 5.]

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

41.32.780 Teachers required to be members. All teachers who become employed by an employer in an eligible position on or after October 1, 1977, shall be members of the retirement system and shall be governed by the provisions of RCW 41.32.755 through 41.32.825. [1991 c 35 § 67; 1990 c 274 § 15; 1979 ex.s. c 45 § 5; 1977 ex.s. c 293 § 7.]

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Application—Reservation—1990 c 274 §§ 11, 12, 14, and 15: See note following RCW 41.40.690.

Effective date—1979 ex.s. c 45: See note following RCW 41.26.040.

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

41.32.785 Options for payment of retirement allowances—Retirement allowance adjustment. (1) Upon retirement for service as prescribed in RCW 41.32.765 or retirement for disability under RCW 41.32.790, a member shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) **Standard allowance.** A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty

percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last. [1998 c 340 § 7; 1996 c 175 § 5; 1995 c 144 § 14; 1990 c 249 § 6; 1977 ex.s. c 293 § 8.]

Effective date—1998 c 340: See note following RCW 41.31.010.

Findings—1990 c 249: See note following RCW 2.10.146.

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

41.32.790 Earned disability allowance—Eligibility—Disposition upon death of recipient. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department upon recommendation of the department shall be eligible to receive an allowance under the provisions of RCW 41.32.755 through 41.32.825. The member shall receive a monthly disability allowance computed as provided for in RCW 41.32.760 and shall have the allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If medical examinations reveal that a member has recovered

from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is neither a designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions. [1995 c 144 § 15; 1991 c 35 § 68; 1990 c 249 § 20; 1989 c 191 § 2; 1977 ex.s. c 293 § 9.]

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 249: See note following RCW 2.10.146.

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

41.32.795 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.32.765, 41.32.790, or 41.32.805 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members under the provisions of RCW 41.32.765 shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances paid to vested members no longer in service, but qualifying for such an allowance pursuant to RCW 41.32.765, shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members under the provisions of RCW 41.32.790 shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits under the provisions of RCW 41.32.805 shall accrue from the first day of the calendar month immediately following the member's death. [1977 ex.s. c 293 § 10.]

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

41.32.800 Suspension of retirement allowance upon reemployment—Reinstatement. (*Effective until September 1, 2000.*) (1) Except as provided in RCW 41.32.802, no

retiree under the provisions of plan II shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010 or 41.32.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030.

If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(2) The department shall adopt rules implementing this section. [1997 c 254 § 6; 1990 c 274 § 13; 1977 ex.s. c 293 § 11.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

41.32.800 Suspension of retirement allowance upon reemployment—Reinstatement. (*Effective September 1, 2000.*) (1) Except as provided in RCW 41.32.802, no retiree under the provisions of plan II shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, or 41.35.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030.

If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(2) The department shall adopt rules implementing this section. [1998 c 341 § 605; 1997 c 254 § 6; 1990 c 274 § 13; 1977 ex.s. c 293 § 11.]

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

41.32.802 Reduction of retirement allowance upon reemployment—Reestablishment of membership. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section, may work up to five months per calendar year in an eligible position without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.32.044, he or she terminates his or her retirement status and immediately becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible. [1997 c 254 § 8.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

41.32.805 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, at the time of such member's death shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.32.765(1), actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.32.785 and if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.32.765(2); if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of

accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To an estate, a person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives. [1995 c 144 § 16; 1993 c 236 § 4; 1991 c 365 § 30; 1990 c 249 § 16; 1977 ex.s. c 293 § 12.]

Severability—1991 c 365: See note following RCW 41.50.500.

Findings—1990 c 249: See note following RCW 2.10.146.

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

41.32.810 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.32.755 through 41.32.825.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (6) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if the member makes both the employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner.

(4) If a member fails to meet the time limitations of subsection (3) of this section, the member may receive a maximum of two years of service credit during a member's working career for those periods when a member is on unpaid leave of absence authorized by an employer. This may be done by paying the amount required under RCW 41.50.165(2) prior to retirement.

(5) For the purpose of subsection (3) of this section, the contribution shall not include the contribution for the unfunded supplemental present value as required by *RCW 41.32.775. The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(6) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces; and

(ii) The member makes the employee contributions required under *RCW 41.32.775 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(b) Upon receipt of member contributions under (a)(ii) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under *RCW 41.32.775 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave. [1996 c 61 § 2; 1994 c 197 § 20; 1993 c 95 § 6; 1992 c 119 § 2; 1977 ex.s. c 293 § 13.]

***Reviser's note:** RCW 41.32.775 was repealed by 1995 c 239 § 326, effective July 1, 1996.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Retroactive application—Effective date—1993 c 95: See notes following RCW 41.40.175.

Retroactive application—1992 c 119: See note following RCW 41.26.520.

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

41.32.812 Service credit for half-time employment from October 1, 1977, through December 31, 1986. The department of retirement systems shall credit at least one-half service credit month for each month of each school year, as defined by RCW 28A.150.040, from October 1, 1977, through December 31, 1986, to a member of the teachers' retirement system plan II who was employed by an employer, as defined by RCW 41.32.010, under a contract

for half-time employment as determined by the department for such school year and from whose compensation contributions were paid by the employee or picked up by the employer. Any withdrawn contributions shall be restored under *RCW 41.32.500(1) or 41.50.165 prior to crediting any service. [1994 c 197 § 21; 1992 c 212 § 20; 1991 c 343 § 12.]

***Reviser's note:** RCW 41.32.500(1) was renumbered by 1994 c 197 § 17 and deleted in large part by 1994 c 177 § 5.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

41.32.815 Vested membership. A member who separates or has separated after having completed at least five years of service may remain a member during the period of such member's absence from service for the exclusive purpose only of receiving a retirement allowance under the provisions of RCW 41.32.765 if such member maintains the member's accumulated contributions intact. [1977 ex.s. c 293 § 14.]

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

41.32.817 Transfer to plan III—Irrevocable option.

(1) Every plan II member employed by an employer in an eligible position may make an irrevocable option to transfer to plan III.

(2) Any plan II member who is a substitute teacher may make an irrevocable option to transfer to plan III at the time the member purchases substitute service credit pursuant to RCW 41.32.013, pursuant to time lines and procedures established by the department.

(3) Any plan II member, other than a substitute teacher, who wishes to transfer to plan III after December 31, 1997, may transfer during the month of January in any following year, provided that the member earns service credit for that month.

(4) All service credit in plan II shall be transferred to the defined benefit portion of plan III.

(5) The accumulated contributions in plan II less fifty percent of any contributions made pursuant to RCW 41.50.165(2) shall be transferred to the member's account in the defined contribution portion established in chapter 41.34 RCW, pursuant to procedures developed by the department and subject to RCW 41.34.090. Contributions made pursuant to RCW 41.50.165(2) that are not transferred to the member's account shall be transferred to the fund created in RCW 41.50.075(2), except that interest earned on all such contributions shall be transferred to the member's account.

(6) The legislature reserves the right to discontinue the right to transfer under this section.

(7) Anyone previously retired from plan II is prohibited from transferring to plan III. [1996 c 39 § 2; 1995 c 239 § 303.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.32.818 Public employees' retirement system members who previously declined membership in the teachers' retirement system—Transfer to plan III—Irrevocable option. Any member of the public employees' retirement system plan II who is employed in an eligible position as an educational staff associate and who elected pursuant to RCW 41.32.032(2)(a) to remain a member of the public employees' retirement system under chapter 41.40 RCW may make an irrevocable option before January 1, 1998, to transfer to plan III pursuant to RCW 41.32.817, PROVIDED THAT:

(1) Only service credit for previous periods of employment in a position covered by RCW 41.32.010 is transferred to plan III;

(2) Equivalent accumulated employee and employer contributions attributable to service covered by subsection (1) of this section are transferred to plan III;

(3) Employer contributions transferred under this section shall be paid into the teachers' retirement system combined plan II and III fund. [1996 c 39 § 3; 1995 c 239 § 304.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.32.820 Refund of contributions on termination.

A member who ceases to be an employee of an employer except by service or disability retirement may request a refund of the member's accumulated contributions. The refund shall be made within ninety days following the receipt of the request and notification of termination through the contribution reporting system by the employer; except that in the case of death, an initial payment shall be made within thirty days of receipt of request for such payment and notification of termination through the contribution reporting system by the employer. A member who files a request for refund and subsequently enters into employment with another employer prior to the refund being made shall not be eligible for a refund. The refund of accumulated contributions shall terminate membership and all benefits under the provisions of RCW 41.32.755 through 41.32.825. [1988 c 117 § 1; 1982 1st ex.s. c 52 § 17; 1977 ex.s. c 293 § 15.]

Effective date—1988 c 117: "This act shall take effect July 1, 1988." [1988 c 117 § 3.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

41.32.825 Reentry. (1) A member, who had left service and withdrawn the member's accumulated contributions, shall, upon reestablishment of membership under RCW 41.32.240, receive service credit for such prior service if the member restores all withdrawn accumulated contributions together with interest since the time of withdrawal as determined by the department. The restoration of such funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive

service credit destroyed by the withdrawn contributions if the amount required under RCW 41.50.165(2) is paid. [1994 c 197 § 22; 1988 c 117 § 2; 1977 ex.s. c 293 § 16.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Effective date—1988 c 117: See note following RCW 41.32.820.

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

"PLAN III"

41.32.831 Provisions applicable to plan III—Plan III elements. (1) RCW 41.32.831 through 41.32.895 shall apply only to plan III members.

(2) Plan III shall consist of two separate elements: (a) A defined benefit portion covered under this subchapter; and (b) a defined contribution portion covered under chapter 41.34 RCW.

(3) Unless otherwise specified, all references to "plan III" in this subchapter refer to the defined benefit portion of plan III. [1996 c 39 § 10; 1995 c 239 § 104.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: "The legislature recognizes that teachers, principals, and district administrators need the ability to make transitions to other public or private sector careers, and that the retirement system should not be a barrier to exercise of employee choice. The legislature also recognizes that teachers, principals, and district administrators need a secure and viable retirement benefit, not only for their own financial protection, but also that public funds are spent prudently for their intended purpose.

It is the legislative intent to create a new public retirement system that balances flexibility with stability, provides both increased employee control of investments and responsible protection of the public's investment in employee benefits, and encourages the pursuit of public sector careers without preventing employees from transitioning into other public or private sector employment.

Therefore, the purpose of chapter 239, Laws of 1995 is to continue to provide teachers, principals, and district administrators with a guaranteed pension at retirement age based on years of public service with an element of inflation protection. It is further the purpose of chapter 239, Laws of 1995 to create a parallel retirement plan where employees have options regarding the investment of their retirement contributions and have the opportunity, along with the accompanying risk, to receive a full rate of return on their investments and where employees who leave public employment prior to retirement receive a fair and reasonable value from the retirement system." [1995 c 239 § 1.]

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.32.835 Membership in plan III. All teachers who first become employed by an employer in an eligible position on or after July 1, 1996, shall be members of plan III. [1995 c 239 § 105.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.32.840 Computation of the retirement allowance.

(1) A member of the retirement system shall receive a retirement allowance equal to one percent of such member's average final compensation for each service credit year.

(2) The retirement allowance payable under RCW 41.32.875 to a member who separates after having completed at least twenty service credit years shall be increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences. [1996 c 39 § 4; 1995 c 239 § 106.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.32.8401 Additional payment. (1) Anyone who requests to transfer under RCW 41.32.817 before January 1, 1998, and establishes service credit for January 1998, shall have their member account increased by forty percent of:

(a) Plan II accumulated contributions as of January 1, 1996, less fifty percent of any payments made pursuant to RCW 41.50.165(2); or

(b) All amounts withdrawn after January 1, 1996, which are completely restored before January 1, 1998.

(2) A further additional payment of twenty-five percent, for a total of sixty-five percent, shall be paid subject to the conditions contained in subsection (1) of this section on July 1, 1998.

(3) Substitute teachers shall receive the additional payment provided in subsection (1) of this section if they:

(a) Establish service credit for January 1998; and

(b) Establish any service credit from July 1996 through December 1997; and

(c) Elect to transfer on or before March 1, 1999.

(4) If a member who requests to transfer dies before January 1, 1998, the additional payment provided by this section shall be paid to the member's estate, or the person or persons, trust, or organization the member nominated by written designation duly executed and filed with the department.

(5) The legislature reserves the right to modify or discontinue the right to an incentive payment under this section for any plan II members who have not previously transferred to plan III. [1998 c 341 § 701; 1997 c 10 § 1; 1996 c 39 § 8.]

Effective date—1998 c 341: See note following RCW 41.34.060.

Effective dates—1996 c 39: See note following RCW 41.32.010.

41.32.845 Postretirement cost-of-living allowance. Retirement allowances paid under the defined benefit portion of plan III shall have a postretirement cost-of-living allowance calculated and paid as provided in RCW 41.32.770. [1995 c 239 § 107.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.32.851 Options for payment of retirement allowances. (1) Upon retirement for service as prescribed in RCW 41.32.875 or retirement for disability under RCW 41.32.880, a member shall elect to have the retirement

allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. Upon the death of the retired member, all benefits shall cease.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to such person or persons as the retiree shall have nominated by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and joint and fifty percent survivor option.

(2) A member, if married, must provide the written consent of his or her spouse to the option selected under this section. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section. [1995 c 239 § 108.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.32.855 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.32.875, 41.32.880, or 41.32.895 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances payable to eligible members no longer in service, but qualifying for such an allowance pursuant to RCW 41.32.875 shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits shall accrue from the first day of the calendar month immediately following the member's death. [1996 c 39 § 5; 1995 c 239 § 109.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.32.860 Suspension of retirement allowance upon reemployment—Reinstatement. (1) Except under RCW 41.32.862, no retiree shall be eligible to receive such

retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010 or 41.32.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused the suspension of benefits. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department. [1997 c 254 § 7; 1995 c 239 § 110.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.32.862 Reduction of retirement allowance upon reemployment—Reestablishment of membership. (1)(a)

If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every seven hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred forty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section, may work up to five months per calendar year in an eligible position without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.32.044, he or she terminates his or her retirement status and immediately becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible. [1997 c 254 § 9.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

41.32.865 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establish-

es service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes the contribution on behalf of the employer, plus interest, as determined by the department; and

(b) The member makes the employee contribution, plus interest, as determined by the department, to the defined contribution portion.

The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to retirement system service credit for up to five years of military service if within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

The department shall establish the member's service credit and shall bill the employer for its contribution required under chapter 239, Laws of 1995 for the period of military service, plus interest as determined by the department. Service credit under this subsection may be obtained only if the member makes the employee contribution to the defined contribution portion as determined by the department.

The contributions required shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave. [1996 c 61 § 3; 1995 c 239 § 111.]

Effective date—1996 c 61 § 3: "Section 3 of this act shall take effect July 1, 1996." [1996 c 61 § 5.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.32.867 Purchased service credit—Allocation. (1) Contributions on behalf of the employer paid by the employee to purchase plan III service credit shall be allocated to the defined benefit portion of plan III and shall not be refundable when paid to the fund described in RCW 41.50.075(2). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the statutory time limitations to purchase plan III service credit, it may be purchased under the provisions of RCW 41.50.165(2). One-half of the purchase payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account.

(2) No purchased plan III membership service will be credited until all payments required of the member are made, with interest. Upon receipt of all payments owed by the member, the department shall bill the employer for any contributions, plus interest, required to purchase membership service. [1996 c 39 § 11.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

41.32.870 Lump sum payments—Reentry. (1) The director may pay a member eligible to receive a retirement allowance or the member's beneficiary a lump sum payment in lieu of a monthly benefit if the initial monthly benefit would be less than one hundred dollars. The one hundred dollar limit shall be increased by three percent compounded annually on January 1. The lump sum payment shall be the actuarial equivalent of the monthly benefit.

(2) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to retiring again, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(3) Any member who receives a settlement under this section shall be deemed to be retired from this system. [1995 c 239 § 112.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.32.875 Retirement eligibility. (1) NORMAL RETIREMENT. Any member who is at least age sixty-five and who has:

(a) Completed ten service credit years; or

(b) Completed five service credit years, including twelve service credit months after attaining age fifty-four; or

(c) Completed five service credit years by July 1, 1996, under plan II and who transferred to plan III under RCW 41.32.817;

shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840.

(2) EARLY RETIREMENT. Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.32.840, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five. [1996 c 39 § 6; 1995 c 239 § 113.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.32.880 Earned disability allowance—Eligibility—Disposition upon death of recipient. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department shall be eligible to receive an allowance under the provisions of plan III. The member shall receive a monthly disability allowance computed as provided for in RCW 41.32.840 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) If the recipient of a monthly retirement allowance under this section dies, any further benefit payments shall be conditioned by the payment option selected by the retiree as provided in RCW 41.32.851. [1995 c 239 § 114.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.32.892 Restored, purchased service credit under plan II—Transfer to plan III. (1) Any member who elects to transfer to plan III and has eligible unrestored withdrawn contributions in plan II, may restore such contributions under the provisions of RCW 41.32.825(1) with interest as determined by the department. The restored plan II service credit will be automatically transferred to plan III. Restoration payments will be transferred to the member account in plan III. If the member fails to meet the time limitations of RCW 41.32.825(1), they may restore such contributions under the provisions of RCW 41.50.165(2). The restored plan II service credit will be automatically transferred to plan III. One-half of the restoration payments under RCW 41.50.165(2) plus interest shall be allocated to the member's account.

(2) Any member who elects to transfer to plan III may purchase plan II service credit under RCW 41.32.810(3). Purchased plan II service credit will be automatically transferred to plan III. Contributions on behalf of the employer paid by the employee shall be allocated to the defined benefit portion of plan III and shall not be refundable when paid to the fund described in RCW 41.50.075(2). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the time limitations of RCW 41.32.810(3), they may subsequently restore such contributions under the provisions of RCW 41.50.165(2). Purchased plan II service credit will be automatically transferred to plan III. One-half of the payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account. [1996 c 39 § 9.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

41.32.895 Death benefits. If a member dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in RCW 41.32.851 actuarially reduced to reflect a joint and one hundred percent survivor option and if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.32.875(2).

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority.

If there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike. The allowance shall be calculated with the assumption that the age of the spouse and member were equal at the time of the member's death. [1996 c 39 § 7; 1995 c 239 § 117.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

Chapter 41.33

TEACHERS' RETIREMENT— FEDERAL SOCIAL SECURITY

Sections

41.33.010	Plan for covering members under OASI approved.
41.33.020	Terms and provisions of plan.
41.33.030	Effective date for coverage of members.
41.33.900	Severability—1957 c 183.

41.33.010 Plan for covering members under OASI approved. The plan for covering the members of the teachers' retirement system under the old age and survivor insurance provisions of Title II of the federal social security act as amended, required by RCW 41.48.050 as amended by section 5, chapter 4, Laws of the Extraordinary Session of 1955, approved by the board of trustees of the teachers' retirement system on October 8, 1956, and by the governor of the state of Washington on November 19, 1956, is hereby approved. [1957 c 183 § 1.]

41.33.020 Terms and provisions of plan. The terms and provisions of the plan are as follows:

(1) Each political subdivision of the state employing members of the teachers' retirement system and the members of the teachers' retirement system, after the approval of this plan by the legislature, and by the eligible employees through a referendum as provided in RCW 41.48.030 (3) and (4), shall be deemed to have accepted and agreed to be bound by the following terms and conditions in consideration of extension of the existing agreement between the secretary of health, education and welfare and the governor to make the protection of the federal old age and survivors insurance program available and applicable to such employees.

(2) As used in this plan the terms quoted below shall have the meanings assigned thereto in this section.

"Political subdivision" means any political subdivision, or instrumentality of one or more subdivisions, or proprietary enterprise acquired, purchased or originated by one or more such subdivisions after December, 1950, which employs members of the teachers' retirement system. The state, its agencies, instrumentalities and institutions of higher learning shall be grouped and considered as a single political subdivision.

"Employee" means any person who is a member of the teachers' retirement system and is employed by a political subdivision.

"Wages" shall have the meaning given in RCW 41.48.020(1) and section 209 of the social security act (42 U.S.C.A. Sec. 409).

"State" where not otherwise clearly indicated by the context, means the commissioner of employment security or other officer designated by the governor to administer the plan at the state level for all participating political subdivisions.

(3) The terms and conditions of this plan are intended and shall be construed to be in conformity with the requirements of the federal social security act as amended and with the requirements of chapter 41.48 RCW, and particularly RCW 41.48.050, as amended by chapter 4, Laws of 1955 extraordinary session.

(4) The rights and benefits accruing to employees from membership in the teachers' retirement system shall in no way be altered or impaired by this plan or by the additional and supplementary OASI coverage which such employees may receive hereunder, other than the elimination of (1), (2) and (3) of section 52, chapter 80, Laws of 1947 and RCW 41.32.520 as each are amended, with the exception of that part of (1) which permits a widow or widower without a child or children under age eighteen to receive a monthly payment of fifty dollars at age fifty, provided that the member had fifteen or more years of Washington membership service credit at date of death.

(5) There shall be no additional cost to or involvement of the state or a political subdivision with respect to OASI coverage of members of the teachers' retirement system until this plan has been approved by the legislature.

(6) Each employee to whom OASI coverage is made applicable under this plan pursuant to an extension or modification under RCW 41.48.030 of the existing agreement between the secretary of health, education and welfare and the governor shall be required to pay into the *OASI contribution fund established by RCW 41.48.060 during the period of such coverage contributions with respect to his wages in an amount equal to the employee tax imposed by the federal insurance contributions act (section 3101, Internal Revenue Code of 1954), in consideration of the employee's retention in service by the political subdivision. The subdivision shall withhold such contributions from the wages paid to the employee; and shall remit the contributions so withheld in each calendar quarter to the state for deposit in the *contribution fund not later than the twentieth calendar day of the month following that quarter.

(7) Each political subdivision shall pay into the *contribution fund with respect to the wages of its employees during the period of their OASI coverage pursuant to this

plan contributions in an amount equal to the employer tax imposed by the federal insurance contributions act (section 3111, Internal Revenue Code of 1954), from the fund of the subdivision from which such employees' wages are paid. The subdivision shall remit such contributions to the state for deposit in the *contribution fund on a quarterly basis, not later than the twentieth calendar day of the month following each calendar quarter.

(8) If any political subdivision other than that comprising the state, its agencies, instrumentalities and institutions of higher learning fails to remit as provided herein employer contributions or employee contributions, or any part of either, such delinquent contributions may be recovered with interest at the rate of six percent per annum by action in a court of competent jurisdiction against the political subdivision; or such delinquent contributions may at the request of the governor be deducted from any moneys payable to such subdivision by the state.

(9) Each political subdivision shall be charged with a share of the cost of administration of this plan by the state, to be computed as that proportion of the overall cost of administration which its total annual contributions bear to the total annual contributions paid by all subdivisions on behalf of employees covered by the plan. The state shall compute the share of cost allocable to each subdivision and bill the subdivision therefor at the end of each fiscal year. The subdivision shall within ninety days thereafter remit its share of the cost to the state for deposit in the general fund of the state.

(10) Each political subdivision shall submit to the state, through the employment security department, P.O. Box 367, Olympia, Washington, or such other officer or agency as the governor may subsequently designate, on forms furnished by the state, not later than the twentieth calendar day of the month following the end of each calendar quarter, the following information:

- A. The social security account number of each employee;
- B. the name of each employee;
- C. the amount of wages subject to contributions as required hereunder paid to each employee during the quarter;
- D. the total amount of wages subject to contributions paid to all employees during the quarter;
- E. the total amount of employee contributions withheld and remitted for the quarter; and
- F. the total amount of employer contributions paid by the subdivision for the quarter.

(11) Each political subdivision shall furnish in the same manner as provided in subsection (10) of this section, upon reasonable notice, such other and further reports or information as the governor may from time to time require. Each subdivision shall comply with such requirements as the secretary of health, education and welfare or the governor may from time to time establish with respect to any or all of the reports or information which are or may be provided for under subsection (10) of this section or this subsection in order to assure the correctness and verification thereof.

(12) The governing body of each political subdivision shall designate an officer of the subdivision to administer such accounting, reporting and other functions as will be required for the effective operation of this plan within the subdivision, as provided herein. The commissioner of

employment security or such other officer as the governor may designate, shall perform or supervise those functions with respect to employees of the subdivision comprising the state, its agencies, instrumentalities and institutions of higher learning; and shall serve as the representative of the participating political subdivisions in the administration of this plan with the secretary of health, education and welfare.

(13) The legislature shall designate the first day of any month beginning with January, 1956, as the effective date of OASI coverage for such employees, except that after January 1, 1958, the effective date may not be prior to the first day of the current year.

The employer's contribution for any retroactive coverage shall be transferred by the board of trustees from the teachers' retirement pension reserve to the official designated by the governor to administer the plan at the state level.

Each employee's contributions for any retroactive coverage shall be transferred by the board of trustees from his accumulated contributions in the teachers' retirement fund, to the official designated above. Each employee, if he so desires, may, within one year from the date of transfer, reimburse his accumulated contributions for the amount so transferred.

(14) The governor may terminate the operation of this plan in its entirety with respect to any political subdivision, in his discretion, if he finds that the subdivision has failed to comply substantially with any requirement or provision of this plan. The plan shall not be so terminated until reasonable notice and opportunity for hearing thereon have been given to the subdivision under such conditions, consistent with the provisions of the social security act, as shall have been established in regulations by the governor. [1992 c 212 § 12; 1973 1st ex.s. c 154 § 77; 1957 c 183 § 2.]

***Reviser's note:** The "OASI contribution fund" was redesignated the "OASI contribution account" by 1991 sp.s. c 13 § 112.

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

41.33.030 Effective date for coverage of members.

The effective date of OASI coverage for members of the teachers' retirement system shall be January 1, 1956: PROVIDED, That should the agreement between the governor and the secretary of health, education and welfare be executed subsequent to December 31, 1957, the effective date of coverage shall be that specified in the agreement. [1957 c 183 § 5.]

41.33.900 Severability—1957 c 183. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1957 c 183 § 6.]

Chapter 41.34

CONTRIBUTIONS UNDER TEACHERS' RETIREMENT SYSTEM PLAN III

Sections

- 41.34.010 Purpose.
- 41.34.020 Definitions.
- 41.34.030 Application of chapter—Plan III elements.

- 41.34.040 Contributions—Rate structures.
- 41.34.050 Legislature may contribute to members' accounts.
- 41.34.060 Members' accounts—Investment—Election.
- 41.34.070 Distribution options.
- 41.34.080 Benefits exempt from taxation, garnishment, other processes of law—Exceptions.
- 41.34.090 Administration of chapter—Construction—Severability.
- 41.34.100 Benefits not contractual right until July 1, 1996.
- 41.34.110 Reentry
- 41.34.120 Money, property, income held in trust.
- 41.34.130 Self-directed investment—Duties of state investment board—Expenses—Recordkeeping.
- 41.34.140 Liability for loss or deficiencies—Limitations.

41.34.010 Purpose. The purpose of chapter 239, Laws of 1995 is to:

(1) Provide a fair and reasonable value from the retirement system for those who leave public employment before retirement;

(2) Increase flexibility for such employees to make transitions into other public or private sector employment;

(3) Increase employee options for addressing retirement needs, personal financial planning, and career transitions; and

(4) Continue the legislature's established policy of having employees contribute toward their retirement benefits. [1995 c 239 § 201.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

41.34.020 Definitions. (*Effective until September 1, 2000.*) As used in this chapter, the following terms have the meanings indicated:

(1) "Actuary" means the state actuary or the office of the state actuary.

(2) "Board" means the employee retirement benefits board authorized in chapter 41.50 RCW.

(3) "Department" means the department of retirement systems.

(4) "Compensation" for purposes of this chapter is the same as "earnable compensation" for plan III in chapter 41.32 RCW, except that the compensation may be reported when paid, rather than when earned.

(5) "Employer" means the same as "employer" for plan III in chapter 41.32 RCW.

(6) "Member" means any employee included in the membership of a retirement system as provided for in chapter 41.32 RCW of plan III.

(7) "Member account" or "member's account" means the sum of the contributions and earnings on behalf of the member.

(8) "Retiree" means any member in receipt of an allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member. [1996 c 39 § 13; 1995 c 239 § 202.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

41.34.020 Definitions. (*Effective September 1, 2000.*) As used in this chapter, the following terms have the meanings indicated:

(1) "Actuary" means the state actuary or the office of the state actuary.

(2) "Board" means the employee retirement benefits board authorized in chapter 41.50 RCW.

(3) "Department" means the department of retirement systems.

(4)(a) "Compensation" for teachers for purposes of this chapter is the same as "earnable compensation" for plan III in chapter 41.32 RCW except that the compensation may be reported when paid, rather than when earned.

(b) "Compensation" for classified employees for purposes of this chapter is the same as "compensation earnable" for plan III in RCW 41.35.010, except that the compensation may be reported when paid, rather than when earned.

(5)(a) "Employer" for teachers for purposes of this chapter means the same as "employer" for plan III in chapter 41.32 RCW.

(b) "Employer" for classified employees for purposes of this chapter means the same as "employer" for plan III in RCW 41.35.010.

(6) "Member" means any employee included in the membership of a retirement system as provided for in chapter 41.32 RCW of plan III or chapter 41.35 RCW of plan III.

(7) "Member account" or "member's account" means the sum of the contributions and earnings on behalf of the member.

(8) "Retiree" means any member in receipt of an allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(9) "Teacher" means a member of the teachers' retirement system plan III as defined in RCW 41.32.010(29).

(10) "Classified employee" means a member of the school employees' retirement system plan III as defined in RCW 41.35.010. [1998 c 341 § 301; 1996 c 39 § 13; 1995 c 239 § 202.]

Effective date—1998 c 341: See RCW 41.35.901.

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

41.34.030 Application of chapter—Plan III elements. (*Effective until September 1, 2000.*) (1) This chapter applies only to members of plan III retirement systems created under chapter 41.32 RCW.

(2) Plan III consists of two separate elements: (a) A defined benefit portion covered under sections 101 through 117, chapter 239, Laws of 1995; and (b) a defined contribution portion covered under this chapter. Unless specified otherwise, all references to "plan III" in this chapter refer to the defined contribution portion of plan III. [1995 c 239 § 203.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

41.34.030 Application of chapter—Plan III elements. (*Effective September 1, 2000.*) (1) This chapter

applies only to members of plan III retirement systems created under chapters 41.32 and 41.35 RCW.

(2) Plan III consists of two separate elements:

(a) A defined benefit portion covered under:

(i) Sections 101 through 117, chapter 239, Laws of 1995; or

(ii) Sections 1 through 25 and 201 through 213, chapter 341, Laws of 1998; and

(b) A defined contribution portion covered under this chapter. Unless specified otherwise, all references to "plan III" in this chapter refer to the defined contribution portion of plan III. [1998 c 341 § 302; 1995 c 239 § 203.]

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

41.34.040 Contributions—Rate structures. (1) A member shall contribute from his or her compensation according to one of the following rate structures:

<u>Option A</u>	<u>Contribution Rate</u>
All Ages	5.0% fixed
<u>Option B</u>	
Up to Age 35	5.0%
Age 35 to 44	6.0%
Age 45 and above	7.5%
<u>Option C</u>	
Up to Age 35	6.0%
Age 35 to 44	7.5%
Age 45 and above	8.5%

(2) The board shall have the right to offer contribution rate options in addition to those listed in subsection (1) of this section, provided that no significant additional administrative costs are created. All options offered by the board shall conform to the requirements stated in subsections (3) and (4) of this section.

(3) Within ninety days of the date that an employee becomes a member of plan III or changes employers, he or she has an irrevocable option to choose one of the above contribution rate structures. If the member does not select an option within this ninety-day period, he or she shall be assigned option A. Such assignment shall be irrevocable.

(4) Contributions shall begin the first day of the pay cycle in which the rate option is made, or the first day of the pay cycle in which the end of the ninety-day period occurs. [1996 c 39 § 14; 1995 c 239 § 204.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

41.34.050 Legislature may contribute to members' accounts. The legislature may authorize contributions to the members' accounts for a biennium through budget appropriation. [1995 c 239 § 205.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

41.34.060 Members' accounts—Investment—Election. (1) Except as provided in subsection (2) of this section, the member's account shall be invested by the state investment board. In order to reduce transaction costs and address liquidity issues, based upon recommendations of the state investment board, the department may require members to provide up to ninety days' notice prior to moving funds from the state investment board portfolio to self-directed investment options provided under subsection (2) of this section.

(a) For members of the retirement system as provided for in chapter 41.32 RCW of plan III, investment shall be in the same portfolio as that of the teachers' retirement system combined plan II and III fund under RCW 41.50.075(2).

(b) For members of the retirement system as provided for in chapter 41.35 RCW of plan III, investment shall be in the same portfolio as that of the school employees' retirement system combined plan II and III fund under RCW 41.50.075(4).

(2) Members may elect to self-direct their investments as set forth in RCW 41.34.130 and 43.33A.190. [1998 c 341 § 303; 1996 c 39 § 15; 1995 c 239 § 206.]

Effective date—1998 c 341: "Sections 303, 306 through 309, 404, 505, 507, 515, 701, 707, and 710 through 713 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 3, 1998]." [1998 c 341 § 716.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

41.34.070 Distribution options. (1) If the member retires, becomes disabled, or otherwise terminates employment, the balance in the member's account may be distributed in accordance with an option selected by the member either as a lump sum or pursuant to other options authorized by the board.

(2) If the member dies while in service, the balance of the member's account may be distributed in accordance with an option selected by the member either as a lump sum or pursuant to other options authorized by the board. The distribution shall be made to such person or persons as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, the balance of the member's account in the retirement system, less any amount identified as owing to an obligee upon withdrawal of such account balance pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there is no surviving spouse, then to such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department.

(3) If a member has a terminal illness and terminates from employment, the member may choose to have the balance in the member's account distributed as a lump sum payment based on the most recent valuation in order to expedite the distribution. The department shall make this payment within ten working days after receipt of notice of

termination of employment, documentation verifying the terminal illness, and an application for payment.

(4) The distribution under subsections (1), (2), or (3) of this section shall be less any amount identified as owing to an obligee upon withdrawal pursuant to a court order filed under RCW 41.50.670. [1998 c 117 § 1; 1995 c 239 § 207.]

Effective date—1998 c 117: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 23, 1998]." [1998 c 117 § 2.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

41.34.080 Benefits exempt from taxation, garnishment, other processes of law—Exceptions. (Effective until September 1, 2000.) (1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, a retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the various funds created by chapter 239, Laws of 1995 and all moneys and investments and income thereof, is hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, and shall be unassignable.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and that has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [1995 c 239 § 208.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

41.34.080 Benefits exempt from taxation, garnishment, other processes of law—Exceptions. (Effective September 1, 2000.) (1) Subject to subsections (2) and (3)

of this section, the right of a person to a pension, an annuity, a retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the various funds created by chapter 239, Laws of 1995, and chapter 341, Laws of 1998 and all moneys and investments and income thereof, is hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, and shall be unassignable.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and that has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [1998 c 341 § 304; 1995 c 239 § 208.]

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

41.34.090 Administration of chapter—Construction—Severability. (1) The retirement plan created by this chapter shall be administered so as to comply with the federal Internal Revenue Code, Title 26 U.S.C., and specifically with plan qualification requirements imposed on governmental plans by section 401(a) of the Internal Revenue Code.

(2) Any section or provision of this chapter which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy requirements imposed by section 401(a) of the Internal Revenue Code.

(3) If any section or provision of this chapter is found to be in conflict with the plan qualification requirements for governmental plans in section 401(a) of the Internal Revenue Code, the conflicting part of this chapter is hereby inoperative solely to the extent of the conflict, and such finding

shall not affect the operation of the remainder of this chapter. [1995 c 239 § 209.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

41.34.100 Benefits not contractual right until July 1, 1996. (Effective until September 1, 2000.) The benefits provided pursuant to chapter 239, Laws of 1995 are not provided to employees as a matter of contractual right prior to July 1, 1996. The legislature retains the right to alter or abolish these benefits at any time prior to July 1, 1996. [1995 c 239 § 325.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

41.34.100 Benefits not contractual right until date specified. (Effective September 1, 2000.) (1) The benefits provided pursuant to chapter 239, Laws of 1995 are not provided to employees as a matter of contractual right prior to July 1, 1996. The legislature retains the right to alter or abolish these benefits at any time prior to July 1, 1996.

(2) The benefits provided pursuant to chapter 341, Laws of 1998 are not provided to employees as a matter of contractual right prior to September 1, 2000. The legislature retains the right to alter or abolish these benefits at any time prior to September 1, 2000. [1998 c 341 § 305; 1995 c 239 § 325.]

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

41.34.110 Reentry. A member who separates from service and then reestablishes membership may restore contributions to the member account. [1996 c 39 § 12.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

41.34.120 Money, property, income held in trust. All moneys in members' accounts, all property and rights purchased therewith, and all income attributable thereto, shall be held in trust by the state investment board, as set forth under RCW 43.33A.030, for the exclusive benefit of the members and their beneficiaries. [1998 c 341 § 306.]

Effective date—1998 c 341: See note following RCW 41.34.060.

41.34.130 Self-directed investment—Duties of state investment board—Expenses—Recordkeeping. (1) The state investment board has the full authority to invest all self-directed investment moneys in accordance with RCW 43.84.150 and 43.33A.140, and cumulative investment directions received pursuant to RCW 41.34.060 and this section. In carrying out this authority the state investment board, after consultation with the employee retirement benefits board regarding any recommendations made pursuant to *RCW 41.50.088(2), shall provide a set of options for members to choose from for self-directed investment.

(2) All investment and operating costs of the state investment board associated with making self-directed

investments shall be paid by members and recovered under procedures agreed to by the board and the state investment board pursuant to the principles set forth in RCW 43.33A.160 and 43.84.160. All other expenses caused by self-directed investment shall be paid by the member in accordance with rules established by the board under RCW 41.50.088. With the exception of these expenses, all earnings from self-directed investments shall accrue to the member's account.

(3) The department shall keep or cause to be kept full and adequate accounts and records of each individual member's account. The department shall account for and report on the investment of defined contribution assets or may enter into an agreement with the state investment board for such accounting and reporting under this chapter. [1998 c 341 § 307.]

***Reviser's note:** RCW 41.50.088 was amended by 1998 c 341 § 507 and by 1998 c 116 § 10, changing subsection (2) to subsection (1)(b).

Effective date—1998 c 341: See note following RCW 41.34.060.

41.34.140 Liability for loss or deficiencies—Limitations. (1) A state board or commission, agency, or any officer, employee, or member thereof is not liable for any loss or deficiency resulting from member defined contribution investments selected or required pursuant to RCW 41.34.060 (1) or (2).

(2) Neither the board nor the state investment board, nor any officer, employee, or member thereof is liable for any loss or deficiency resulting from reasonable efforts to implement investment directions pursuant to RCW 41.34.060 (1) or (2). [1998 c 341 § 308.]

Effective date—1998 c 341: See note following RCW 41.34.060.

Chapter 41.35

WASHINGTON SCHOOL EMPLOYEES' RETIREMENT SYSTEM

Sections

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Numerical designations—1998 c 341: See note following chapter 41.26 RCW digest.

PROVISIONS APPLICABLE TO PLAN II AND PLAN III

41.35.005 Intent. (Effective September 1, 2000.) The legislature recognizes that teachers and school district employees share the same educational work environment and academic calendar.

It is the intent of the legislature to achieve similar retirement benefits for all educational employees by transferring the membership of classified school employees in the public employees' retirement system plan II to the Washington school employees' retirement system plan II. The transfer of membership to the Washington school employees' retirement system plan II is not intended to cause a diminution or expansion of benefits for affected members. It is enacted solely to provide public employees working under the same conditions with the same options for retirement planning.

As members of the Washington school employees' retirement system plan II, classified employees will have the same opportunity to transfer to the Washington school employees' retirement system plan III as their certificated

coworkers. The ability to transfer to the Washington school employees' retirement system plan III offers members a new public retirement system that balances flexibility with stability; provides increased employee control of investments and responsible protection of the public's investment in employee benefits; and encourages the pursuit of public sector careers without creating barriers to other public or private sector employment. [1998 c 341 § 1.]

41.35.010 Definitions. (Effective September 1, 2000.)

The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise:

(1) "Retirement system" means the Washington school employees' retirement system provided for in this chapter.

(2) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4) "Employer," for plan II and plan III members, means a school district or an educational service district.

(5) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.35.030.

(6)(a) "Compensation earnable" for plan II and plan III members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States internal revenue code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

(b) "Compensation earnable" for plan II and plan III members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement, which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided in this subsection, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under this (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(7) "Service" for plan II and plan III members means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.35.180. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(a) Service in any state elective position shall be deemed to be full-time service.

(b) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(c) For purposes of plan II and III "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(i) Less than eleven days equals one-quarter service credit month;

(ii) Eleven or more days but less than twenty-two days equals one-half service credit month;

(iii) Twenty-two days equals one service credit month;

(iv) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month; and

(v) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(8) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(9) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(10) "Membership service" means all service rendered as a member.

(11) "Beneficiary" for plan II and plan III members means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(12) "Regular interest" means such rate as the director may determine.

(13) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(14) "Average final compensation" for plan II and plan III members means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2).

(15) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(16) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(17) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(18) "Retirement allowance" for plan II and plan III members means monthly payments to a retiree or beneficiary as provided in this chapter.

(19) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(20) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(21) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(22) "Eligible position" means any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position.

(23) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (22) of this section.

(24) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(25) "Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience.

(26) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(27) "Director" means the director of the department.

(28) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

(29) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(30) "Plan II" means the Washington school employees' retirement system plan II providing the benefits and funding provisions covering persons who first became members of the public employees' retirement system on and after October 1, 1977, and transferred to the Washington school employees' retirement system under RCW 41.40.750.

(31) "Plan III" means the Washington school employees' retirement system plan III providing the benefits and funding provisions covering persons who first became members of the system on and after September 1, 2000, or who transfer from plan II under RCW 41.35.510.

(32) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(33) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(34) "Index B" means the index for the year prior to index A.

(35) "Adjustment ratio" means the value of index A divided by index B.

(36) "Separation from service" occurs when a person has terminated all employment with an employer.

(37) "Member account" or "member's account" for purposes of plan III means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan III.

(38) "Classified employee" means an employee of a school district or an educational service district who is not eligible for membership in the teachers' retirement system established under chapter 41.32 RCW. [1998 c 341 § 2.]

41.35.020 System created—Administration. (*Effective September 1, 2000.*) A retirement system is hereby created for the employees of school districts or educational service districts. The administration and management of the retirement system, the responsibility for making effective the provisions of this chapter, and the authority to make all rules necessary therefor are hereby vested in the department. All such rules shall be governed by the provisions of chapter 34.05 RCW. This retirement system shall be known as the Washington school employees' retirement system. [1998 c 341 § 3.]

41.35.030 Membership. (*Effective September 1, 2000.*) Membership in the retirement system shall consist of all regularly compensated classified employees and appointive and elective officials of employers, as defined in this chapter, with the following exceptions:

(1) Persons in ineligible positions;

(2)(a) Persons holding elective offices or persons appointed directly by the governor: PROVIDED, That such persons shall have the option of applying for membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective

office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: AND PROVIDED FURTHER, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file on a form supplied by the department a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (2)(b);

(3) Retirement system retirees: PROVIDED, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;

(4) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by employers to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;

(5) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession;

(6) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

(7) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position;

(8) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the

employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the noncredited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application. [1998 c 341 § 4.]

41.35.040 Nonelective position held for at least nine months—Deemed to be eligible position, when. (*Effective September 1, 2000.*) Any person who has been employed in a nonelective position for at least nine months and who has made member contributions required under this chapter throughout such period, shall be deemed to have been in an eligible position during such period of employment. [1998 c 341 § 5.]

41.35.050 Information furnished by employees, appointive and elective officials. (*Effective September 1, 2000.*) Within thirty days after his or her employment or his or her acceptance into membership each employee or appointive or elective official shall submit to the department a statement of his or her name and such other information as the department shall require. Compliance with the provisions set forth in this section shall be considered to be a condition of employment and failure by an employee to comply may result in separation from service. [1998 c 341 § 6.]

41.35.060 Reduction of retirement allowance upon reemployment—Reestablishment of membership. (*Effective September 1, 2000.*) (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section may work up to five months per calendar year in an eligible position without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.35.030, he or she terminates his or her retirement status and becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.35.420 or 41.35.680. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated. [1998 c 341 § 7.]

41.35.070 Duty disability retirement recipients—Continued service credit. (*Effective September 1, 2000.*) Those members subject to this chapter who became disabled in the line of duty and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. No service credit shall be granted until the employee contribution has been paid.

(6) The service and compensation credit shall not be granted for a period to exceed twelve consecutive months.

(7) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right. [1998 c 341 § 8.]

41.35.080 Members agree to deductions. (*Effective September 1, 2000.*) The deductions from the compensation of members, provided for in RCW 41.35.430, shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for in this chapter and receipt in full for his or her salary or compensation, and payment, less the deductions, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the person during the period covered by the payment, except as to benefits provided for under this chapter. [1998 c 341 § 9.]

41.35.090 Employer's contribution—Computation—Billing. (*Effective September 1, 2000.*) (1) The director shall report to each employer the contribution rates required for the ensuing biennium or fiscal year, whichever is applicable.

(2) Beginning September 1, 1990, the amount to be collected as the employer's contribution shall be computed by applying the applicable rates established in chapter 41.45 RCW to the total compensation earnable of employer's members as shown on the current payrolls of the employer. Each employer shall compute at the end of each month the amount due for that month and the same shall be paid as are its other obligations.

(3) In the event of failure, for any reason, of an employer other than a political subdivision of the state to have remitted amounts due for membership service of any of the

employer's members rendered during a prior biennium, the director shall bill such employer for such employer's contribution together with such charges as the director deems appropriate in accordance with RCW 41.50.120. Such billing shall be paid by the employer as, and the same shall be, a proper charge against any moneys available or appropriated to such employer for payment of current biennial payrolls. [1998 c 341 § 10.]

41.35.100 Exemption from taxation and judicial process—Exceptions—Assignability—Deductions authorized. (*Effective September 1, 2000.*) (1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, and shall be unassignable.

(2) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section also does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section does not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [1998 c 341 § 11.]

41.35.110 Disability retirement—Criminal conduct. (*Effective September 1, 2000.*) A member shall not receive a disability retirement benefit under RCW 41.35.440 or 41.35.690 if the disability is the result of criminal conduct by the member committed after April 21, 1997. [1998 c 341 § 12.]

41.35.120 False statements—Penalty. (*Effective September 1, 2000.*) Any person who knowingly makes any false statements, or falsifies or permits to be falsified any

record or records of this retirement system in any attempt to defraud the retirement system as a result of such act, is guilty of a gross misdemeanor. [1998 c 341 § 13.]

41.35.130 Transfer of service credit from state-wide city employees' retirement system. (*Effective September 1, 2000.*) (1) Any person who was a member of the state-wide city employees' retirement system governed by chapter 41.44 RCW and who was never reemployed by an employer as defined in RCW 41.40.010 and who is employed by an employer as defined in RCW 41.35.010, may, in a writing filed with the director, elect to:

(a) Transfer to this retirement system all service currently credited under chapter 41.44 RCW;

(b) Reestablish and transfer to this retirement system all service which was previously credited under chapter 41.44 RCW but which was canceled by discontinuance of service and withdrawal of accumulated contributions as provided in RCW 41.44.190. The service may be reestablished and transferred only upon payment by the member to the employees' savings fund of this retirement system of the amount withdrawn plus interest thereon from the date of withdrawal until the date of payment at a rate determined by the director. No additional payments are required for service credit described in this subsection if already established under this chapter; and

(c) Establish service credit for the initial period of employment not to exceed six months, prior to establishing membership under chapter 41.44 RCW, upon payment in full by the member of the total employer's contribution to the benefit account fund of this retirement system that would have been made under this chapter when the initial service was rendered. The payment shall be based on the first month's compensation earnable as a member of the state-wide city employees' retirement system and as defined in RCW 41.44.030(13). However, a person who has established service credit under RCW 41.40.010(13) (c) or (d) shall not establish additional credit under this subsection nor may anyone who establishes credit under this subsection establish any additional credit under RCW 41.40.010(13) (c) or (d). No additional payments are required for service credit described in this subsection if already established under this chapter.

(2) The written election must be filed and the payments must be completed in full within one year after employment by an employer.

(3) Upon receipt of the written election and payments required by subsection (1) of this section from any retiree described in subsection (1) of this section, the department shall recompute the retiree's allowance in accordance with this section and shall pay any additional benefit resulting from such recomputation retroactively to the date of retirement from the system governed by this chapter.

(4) Any person who was a member of the state-wide city employees' retirement system under chapter 41.44 RCW and also became a member of the public employees' retirement system established under chapter 41.40 RCW or the Washington school employees' retirement system established under this chapter, and did not make the election under RCW 41.40.058 or subsection (1) of this section because he or she was not a member of the public

employees' retirement system prior to July 27, 1987, or did not meet the time limitations of RCW 41.40.058 or subsection (2) of this section, may elect to do any of the following:

(a) Transfer to this retirement system all service currently credited under chapter 41.44 RCW;

(b) Reestablish and transfer to this retirement system all service that was previously credited under chapter 41.44 RCW but was canceled by discontinuance of service and withdrawal of accumulated contributions as provided in RCW 41.44.190; and

(c) Establish service credit for the initial period of employment not to exceed six months, prior to establishing membership under chapter 41.44 RCW.

To make the election or elections, the person must pay the amount required under RCW 41.50.165(2) prior to retirement from this retirement system. [1998 c 341 § 14.]

41.35.140 Hearing prior to appeal required—Notice. (*Effective September 1, 2000.*) Any person aggrieved by any decision of the department affecting his or her legal rights, duties, or privileges must, before he or she appeals to the courts, file with the director by mail or personally within sixty days from the day the decision was communicated to the person, a notice for a hearing before the director's designee. The notice of hearing shall set forth in full detail the grounds upon which the person considers the decision unjust or unlawful and shall include every issue to be considered by the department, and it must contain a detailed statement of facts upon which the person relies in support of the appeal. These persons shall be deemed to have waived all objections or irregularities concerning the matter on which the appeal is taken, other than those specifically set forth in the notice of hearing or appearing in the records of the retirement system. [1998 c 341 § 15.]

41.35.150 Hearing prior to appeal required—Conduct of hearing. (*Effective September 1, 2000.*) Following its receipt of a notice for hearing in accordance with RCW 41.35.140, a hearing shall be held by the director or a duly authorized representative, in the county of the residence of the claimant at a time and place designated by the director. Such hearing shall be conducted and governed in all respects by the provisions of chapter 34.05 RCW. [1998 c 341 § 16.]

41.35.160 Judicial review in accordance with administrative procedure act. (*Effective September 1, 2000.*) Judicial review of any final decision and order by the director is governed by the provisions of chapter 34.05 RCW. [1998 c 341 § 17.]

41.35.170 Appeal—No bond required. (*Effective September 1, 2000.*) No bond of any kind shall be required of a claimant appealing to the superior court, the court of appeals, or the supreme court from a finding of the department affecting the claimant's right to retirement or disability benefits. [1998 c 341 § 18.]

41.35.180 Service credit—Computation. (*Effective September 1, 2000.*) (1) Except for any period prior to the

member's employment in an eligible position, a plan II or plan III member who is employed by a school district or districts or an educational service district:

(a) Shall receive a service credit month for each month of the period from September through August of the following year if he or she is employed in an eligible position, earns compensation earnable for eight hundred ten hours or more during that period, and is employed during nine months of that period;

(b) If a member in an eligible position for each month of the period from September through August of the following year does not meet the hours requirements of (a) of this subsection, the member is entitled to one-half service credit month for each month of the period if he or she earns earnable compensation for at least six hundred thirty hours but less than eight hundred ten hours during that period, and is employed nine months of that period;

(c) In all other instances, a member in an eligible position is entitled to service credit months as follows:

(i) One service credit month for each month in which compensation is earned for ninety or more hours;

(ii) One-half service credit month for each month in which compensation is earned for at least seventy hours but less than ninety hours; and

(iii) One-quarter service credit month for each month in which compensation is earned for less than seventy hours.

(2) The department shall adopt rules implementing this section. [1998 c 341 § 19.]

41.35.190 Effect of certain accumulated vacation leave on retirement benefits. (*Effective September 1, 2000.*) RCW 43.01.044 shall not result in any increase in retirement benefits. The rights extended to state officers and employees under RCW 43.01.044 are not intended to and shall not have any effect on retirement benefits under this chapter. [1998 c 341 § 20.]

41.35.200 Benefit calculation—Limitation. (*Effective September 1, 2000.*) (1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section. [1998 c 341 § 21.]

41.35.210 Post-retirement cost-of-living. (*Effective September 1, 2000.*) Beginning July 1, 1979, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

(1) The original dollar amount of the retirement allowance;

(2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";

(3) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be

applied beginning with the July payment. In no event, however, shall the annual adjustment:

(a) Produce a retirement allowance which is lower than the original retirement allowance;

(b) Exceed three percent in the initial annual adjustment; or

(c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index—Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor. [1998 c 341 § 22.]

41.35.220 Options for payment of retirement allowances. (*Effective September 1, 2000.*) (1) Upon retirement for service as prescribed in RCW 41.35.420 or 41.35.680 or retirement for disability under RCW 41.35.440 or 41.35.690, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply. [1998 c 341 § 23.]

41.35.230 Suspension of retirement allowance upon reemployment—Exceptions—Reinstatement. (*Effective September 1, 2000.*) (1) Except as provided in RCW 41.35.060, no retiree under the provisions of plan II shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.35.010, RCW 41.40.010 or 41.32.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030, except that a retiree who ends his or her membership in the retirement system pursuant to RCW 41.40.023(3)(b) is not subject to this section if the retiree's only employment is as an elective official.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(3) The department shall adopt rules implementing this section. [1998 c 341 § 24.]

41.35.399 Provisions applicable to plan II and plan III. (*Effective September 1, 2000.*) RCW 41.35.005 through 41.35.230 apply to members of plan II and plan III. [1998 c 341 § 25.]

PLAN II

41.35.400 Computation of retirement allowance. (*Effective September 1, 2000.*) A member of the retirement system shall receive a retirement allowance equal to two percent of such member's average final compensation for each service credit year of service. [1998 c 341 § 101.]

41.35.410 Lump sum retirement allowance—Reentry—Reinstatement of service. (*Effective September 1, 2000.*) (1) The director may pay a member eligible to receive a retirement allowance or the member's beneficiary, subject to the provisions of subsection (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.35.400 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of the monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A retiree or a beneficiary, subject to the provisions of subsection (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum

payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of RCW 41.40.625 or subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to rereitting, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations under subsection (3) of this section, reinstatement of all previous service will occur if the member pays the amount required under RCW 41.50.165(2). The amount, however, shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.35.400 or an earned disability allowance under RCW 41.35.440 qualify for participation under this section.

(6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system. [1998 c 341 § 102.]

41.35.420 Retirement eligibility. (*Effective September 1, 2000.*) (1) **NORMAL RETIREMENT.** Any member with at least five service credit years who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400.

(2) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.400, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five. [1998 c 341 § 103.]

41.35.430 Employer and member contribution rates. (*Effective September 1, 2000.*) The required contribution rates to the retirement system for both members and employers shall be established by the director from time to time as may be necessary upon the advice of the state actuary. The state actuary shall use the aggregate actuarial cost method to calculate contribution rates. The employer contribution rate calculated under this section shall be used only for the purpose of determining the amount of employer contributions to be deposited in the plan II fund from the total employer contributions collected under RCW 41.35.090.

Contribution rates required to fund the costs of the retirement system shall always be equal for members and employers, except as herein provided. Any adjustments in contribution rates required from time to time for future costs shall likewise be shared equally by the members and employers.

Any increase in the contribution rate required as the result of a failure of an employer to make any contribution required by this section shall be borne in full by the employer not making the contribution.

The director shall notify all employers of any pending adjustment in the required contribution rate and such increase shall be announced at least thirty days prior to the effective date of the change.

Members contributions required by this section shall be deducted from the members compensation earnable each payroll period. The members contribution and the employers contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends. [1998 c 341 § 104.]

41.35.440 Earned disability allowance—Disposition upon death of recipient. (Effective September 1, 2000.)

(1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department upon recommendation of the department shall be eligible to receive an allowance under the provisions of RCW 41.35.400 through 41.35.599. The member shall receive a monthly disability allowance computed as provided for in RCW 41.35.400 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is no designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative. [1998 c 341 § 105.]

41.35.450 Application for and effective date of retirement allowances. (Effective September 1, 2000.)

Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.35.420, 41.35.440, or 41.35.460 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members under the provisions of RCW 41.35.420 shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances paid to vested members no longer in service, but qualifying for such an allowance pursuant to RCW 41.35.420, shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members under the provisions of RCW 41.35.440 shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits under the provisions of RCW 41.35.460 shall accrue from the first day of the calendar month immediately following the member's death. [1998 c 341 § 106.]

41.35.460 Death benefits. (Effective September 1, 2000.)

(1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.35.420, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.35.220 and if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.35.420; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike, calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, estate, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives. [1998 c 341 § 107.]

41.35.470 Leaves of absence, military service. (Effective September 1, 2000.) (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.35.400 through 41.35.599.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes both the plan II employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner; or

(b) If not within five years of resumption of service but prior to retirement, pay the amount required under RCW 41.50.165(2).

The contributions required under (a) of this subsection shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the

federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces; and

(ii) The member makes the employee contributions required under RCW 41.35.430 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(b) Upon receipt of member contributions under (a)(ii) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.35.430 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave. [1998 c 341 § 108.]

41.35.480 Vested membership. (Effective September 1, 2000.) A member who separates or has separated after having completed at least five years of service may remain a member during the period of such member's absence from service for the exclusive purpose only of receiving a retirement allowance under the provisions of RCW 41.35.420 if such member maintains the member's accumulated contributions intact. [1998 c 341 § 109.]

41.35.490 Refund of contributions. (Effective September 1, 2000.) A member who ceases to be an employee of an employer except by service or disability retirement may request a refund of the member's accumulated contributions. The refund shall be made within ninety days following the receipt of the request and notification of termination through the contribution reporting system by the employer; except that in the case of death, an initial payment shall be made within thirty days of receipt of request for such payment and notification of termination through the contribution reporting system by the employer. A member who files a request for refund and subsequently enters into employment with another employer prior to the refund being made shall not be eligible for a refund. The refund of accumulated contributions shall terminate all rights to benefits under RCW 41.35.400 through 41.35.599. [1998 c 341 § 110.]

41.35.500 Reentry. (Effective September 1, 2000.) (1) A member, who had left service and withdrawn the member's accumulated contributions, shall receive service credit for such prior service if the member restores all with-

drawn accumulated contributions together with interest since the time of withdrawal as determined by the department.

The restoration of such funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service credit destroyed by the withdrawn contributions if the amount required under RCW 41.50.165(2) is paid. [1998 c 341 § 111.]

41.35.510 Transfer to plan III—Irrevocable option. (*Effective September 1, 2000.*) (1) Every plan II member employed by an employer in an eligible position has the option to make an irrevocable transfer to plan III.

(2) All service credit in plan II shall be transferred to the defined benefit portion of plan III.

(3) Any plan II member who wishes to transfer to plan III after February 28, 2001, may transfer during the month of January in any following year, provided that the member earns service credit for that month.

(4) The accumulated contributions in plan II, less fifty percent of any contributions made pursuant to RCW 41.50.165(2) shall be transferred to the member's account in the defined contribution portion established in chapter 41.34 RCW, pursuant to procedures developed by the department and subject to RCW 41.34.090. Contributions made pursuant to RCW 41.50.165(2) that are not transferred to the member's account shall be transferred to the fund created in RCW 41.50.075(2), except that interest earned on all such contributions shall be transferred to the member's account.

(5) The legislature reserves the right to discontinue the right to transfer under this section.

(6) Anyone previously retired from plan II is prohibited from transferring to plan III. [1998 c 341 § 114.]

41.35.599 Provisions applicable to plan II. (*Effective September 1, 2000.*) RCW 41.35.400 through 41.35.510 apply only to plan II members. [1998 c 341 § 112.]

PLAN III

41.35.600 Provisions applicable to plan III—Plan III elements. (*Effective September 1, 2000.*) (1) RCW 41.35.600 through 41.35.720 apply only to plan III members.

(2) Plan III consists of two separate elements: (a) A defined benefit portion covered under this subchapter; and (b) a defined contribution portion covered under chapter 41.34 RCW.

(3) Unless otherwise specified, all references to "plan III" in this subchapter refer to the defined benefit portion of plan III. [1998 c 341 § 201.]

41.35.610 Membership in plan III. (*Effective September 1, 2000.*) All classified employees who first become employed by an employer in an eligible position on or after September 1, 2000, shall be members of plan III. [1998 c 341 § 202.]

41.35.620 Computation of retirement allowance. (*Effective September 1, 2000.*) (1) A member of the retirement system shall receive a retirement allowance equal to one percent of such member's average final compensation for each service credit year.

(2) The retirement allowance payable under RCW 41.35.680 to a member who separates after having completed at least twenty service credit years shall be increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences. [1998 c 341 § 203.]

41.35.630 Additional payment. (*Effective September 1, 2000.*) (1) Anyone who requests to transfer under RCW 41.35.510 before March 1, 2001, and establishes service credit for January 2001, shall have their member account increased by sixty-five percent of:

(a) The member's public employees' retirement system plan II accumulated contributions as of January 1, 2000, less fifty percent of any payments made pursuant to RCW 41.50.165(2); or

(b) All amounts withdrawn after January 1, 2000, which are completely restored before March 1, 2001.

(2) If a member who requests to transfer dies before January 1, 2001, the additional payment provided by this section shall be paid to the member's estate, or the person or persons, trust, or organization the member nominated by written designation duly executed and filed with the department.

(3) The legislature reserves the right to modify or discontinue the right to an additional payment under this section for any plan II members who have not previously transferred to plan III. [1998 c 341 § 204.]

41.35.640 Application for and effective date of retirement allowances. (*Effective September 1, 2000.*) Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.35.680, 41.35.690, or 41.35.710 is eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances payable to eligible members no longer in service, but qualifying for such an allowance pursuant to RCW 41.35.140 shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits shall accrue from the first day of the calendar month immediately following the member's death. [1998 c 341 § 205.]

41.35.650 Leaves of absence, military service. (*Effective September 1, 2000.*) (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes the contribution on behalf of the employer, plus interest, as determined by the department; and

(b) The member makes the employee contribution, plus interest, as determined by the department, to the defined contribution portion.

The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to retirement system service credit for up to five years of military service if within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

The department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.35.720 for the period of military service, plus interest as determined by the department. Service credit under this subsection may be obtained only if the member makes the employee contribution to the defined contribution portion as determined by the department.

The contributions required shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave. [1998 c 341 § 206.]

41.35.660 Purchased service credit—Allocation. (*Effective September 1, 2000.*) (1) Contributions on behalf of the employer paid by the employee to purchase plan III service credit shall be allocated to the defined benefit portion of plan III and shall not be refundable when paid to the fund described in RCW 41.50.075(4). Contributions on behalf of

the employee shall be allocated to the member account. If the member fails to meet the statutory time limitations to purchase plan III service credit, it may be purchased under the provisions of RCW 41.50.165(2). One-half of the purchase payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account.

(2) No purchased plan III membership service will be credited until all payments required of the member are made, with interest. Upon receipt of all payments owed by the member, the department shall bill the employer for any contributions, plus interest, required to purchase membership service. [1998 c 341 § 207.]

41.35.670 Lump sum payments—Reentry. (*Effective September 1, 2000.*) (1) The director may pay a member eligible to receive a retirement allowance or the member's beneficiary a lump sum payment in lieu of a monthly benefit if the initial monthly benefit would be less than one hundred dollars. The one hundred dollar limit shall be increased annually as determined by the director. The lump sum payment shall be the actuarial equivalent of the monthly benefit.

(2) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to retiring again, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(3) Any member who receives a settlement under this section is deemed to be retired from this system. [1998 c 341 § 208.]

41.35.680 Retirement eligibility. (*Effective September 1, 2000.*) (1) NORMAL RETIREMENT. Any member who is at least age sixty-five and who has:

(a) Completed ten service credit years; or

(b) Completed five service credit years, including twelve service credit months after attaining age fifty-four; or

(c) Completed five service credit years by September 1, 2000, under the public employees' retirement system plan II and who transferred to plan III under RCW 41.35.510; shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620.

(2) EARLY RETIREMENT. Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.35.620, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five. [1998 c 341 § 209.]

41.35.690 Earned disability allowance—Disposition upon death of recipient. (*Effective September 1, 2000.*) (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as

determined by the department shall be eligible to receive an allowance under the provisions of plan III. The member shall receive a monthly disability allowance computed as provided for in RCW 41.35.620 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) If the recipient of a monthly retirement allowance under this section dies, any further benefit payments shall be conditioned by the payment option selected by the retiree as provided in RCW 41.35.220. [1998 c 341 § 210.]

41.35.700 Restored, purchased service credit under plan II—Transfer to plan III. (*Effective September 1, 2000.*) (1) Any member who elects to transfer to plan III and has eligible unrestored withdrawn contributions in plan II, may restore such contributions under the provisions of RCW 41.40.750 with interest as determined by the department. The restored plan II service credit will be automatically transferred to plan III. Restoration payments will be transferred to the member account in plan III. If the member fails to meet the time limitations of RCW 41.40.750, they may restore such contributions under the provisions of RCW 41.50.165(2). The restored plan II service credit will be automatically transferred to plan III. One-half of the restoration payments under RCW 41.50.165(2) plus interest shall be allocated to the member's account.

(2) Any member who elects to transfer to plan III may purchase plan II service credit under RCW 41.40.750. Purchased plan II service credit will be automatically transferred to plan III. Contributions on behalf of the employer paid by the employee shall be allocated to the defined benefit portion of plan III and shall not be refundable when paid to the fund described in RCW 41.50.075(4). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the time limitations of RCW 41.40.750, they may subsequently restore such contributions under the provisions of RCW 41.50.165(2). Purchased plan II service credit will be automatically transferred to plan III. One-half of the payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account. [1998 c 341 § 211.]

41.35.710 Death benefits. (*Effective September 1, 2000.*) If a member dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in RCW 41.35.620 actuarially reduced to reflect a joint and one hundred percent survivor option and if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.35.680.

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority.

If there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike. The allowance shall be calculated with the assumption that the age of the spouse and member were equal at the time of the member's death. [1998 c 341 § 212.]

41.35.720 Employer contribution rates. (*Effective September 1, 2000.*) The required contribution rates to the retirement system for employers shall be established by the director from time to time as may be necessary upon the advice of the state actuary. The state actuary shall use the aggregate actuarial cost method to calculate contribution rates. The employer contribution rate calculated under this section shall be used only for the purpose of determining the amount of employer contributions to be deposited in the plan II fund from the total employer contributions collected under RCW 41.35.090.

Any increase in the contribution rate required as the result of a failure of an employer to make any contribution required by this section shall be borne in full by the employer not making the contribution.

The director shall notify all employers of any pending adjustment in the required contribution rate and such increase shall be announced at least thirty days prior to the effective date of the change.

The employer's contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends. [1998 c 341 § 213.]

41.35.900 Benefits not contractual right until September 1, 2000. The benefits provided pursuant to chapter 341, Laws of 1998 are not provided to employees as a matter of contractual right prior to September 1, 2000. The legislature retains the right to alter or abolish these benefits at any time prior to September 1, 2000. [1998 c 341 § 713.]

Effective date—1998 c 341: See note following RCW 41.34.060.

41.35.901 Effective date—1998 c 341. Except for sections 303, 306 through 309, 404, 505, 507, 515, 701, 707, and 710 through 713 of this act, this act takes effect September 1, 2000. [1998 c 341 § 714.]

Chapter 41.40

WASHINGTON PUBLIC EMPLOYEES' RETIREMENT SYSTEM

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 41.40.920 Effective date—1977 ex.s. c 295.
- Numerical designations—1998 c 341:** See note following chapter 41.26 RCW digest.
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- "PROVISIONS APPLICABLE TO PLAN I AND PLAN II"**
- 41.40.005 Provisions applicable to "plan I" and "plan II."** RCW 41.40.010 through *41.40.112 shall apply to members of plan I and plan II. [1992 c 72 § 8; 1991 c 35 § 69; 1989 c 273 § 20; 1989 c 272 § 7; 1979 ex.s. c 249 § 6; 1977 ex.s. c 295 § 21.]
- *Reviser's note:** RCW 41.40.112 was decodified August 1993.
Intent—1991 c 35: See note following RCW 41.26.005.
Severability—1989 c 273: See RCW 41.45.900.
Purpose—1989 c 272: See note following RCW 41.32.005.

41.40.010 Definitions. (*Effective until September 1, 2000.*) As used in this chapter, unless a different meaning is plainly required by the context:

- (1) "Retirement system" means the public employees' retirement system provided for in this chapter.
- (2) "Department" means the department of retirement systems created in chapter 41.50 RCW.
- (3) "State treasurer" means the treasurer of the state of Washington.
- (4)(a) "Employer" for plan I members, means every branch, department, agency, commission, board, and office of the state, any political subdivision or association of political subdivisions of the state admitted into the retirement system, and legal entities authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the term shall also include any labor guild, association, or organization the membership of a local lodge or division of which is comprised of at least forty percent employees of an employer (other than such labor guild, association, or organization) within this chapter. The term may also include any city of the first class that has its own retirement system.
- (b) "Employer" for plan II members, means every branch, department, agency, commission, board, and office of the state, and any political subdivision and municipal corporation of the state admitted into the retirement system, including public agencies created pursuant to RCW 35.63.070, 36.70.060, and 39.34.030.
- (5) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.40.023. RCW 41.26.045 does not prohibit a person otherwise eligible for membership in the retirement system from establishing such membership effective when he or she first entered an eligible position.
- (6) "Original member" of this retirement system means:
 - (a) Any person who became a member of the system prior to April 1, 1949;
 - (b) Any person who becomes a member through the admission of an employer into the retirement system on and after April 1, 1949, and prior to April 1, 1951;
 - (c) Any person who first becomes a member by securing employment with an employer prior to April 1, 1951, provided the member has rendered at least one or more years of service to any employer prior to October 1, 1947;
 - (d) Any person who first becomes a member through the admission of an employer into the retirement system on or after April 1, 1951, provided, such person has been in the regular employ of the employer for at least six months of the twelve-month period preceding the said admission date;
 - (e) Any member who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement becomes entitled to be credited with ten years or more of membership service except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member;
 - (f) Any member who has been a contributor under the system for two or more years and who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement has rendered five or more years of service for the state or any political subdivision prior to the

time of the admission of the employer into the system; except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member.

(7) "New member" means a person who becomes a member on or after April 1, 1949, except as otherwise provided in this section.

(8)(a) "Compensation earnable" for plan I members, means salaries or wages earned during a payroll period for personal services and where the compensation is not all paid in money, maintenance compensation shall be included upon the basis of the schedules established by the member's employer.

(i) "Compensation earnable" for plan I members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable and the individual shall receive the equivalent service credit;

(B) If a leave of absence is taken by an individual for the purpose of serving in the state legislature, the salary which would have been received for the position from which the leave of absence was taken, shall be considered as compensation earnable if the employee's contribution is paid by the employee and the employer's contribution is paid by the employer or employee;

(C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(D) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(E) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(F) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise. Standby compensation is *regular salary for the purposes of RCW 41.50.150(2).

(ii) "Compensation earnable" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Compensation earnable" for plan II members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Compensation earnable" for plan II members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided above, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise. Standby compensation is *regular salary for the purposes of RCW 41.50.150(2).

(9)(a) "Service" for plan I members, except as provided in RCW 41.40.088, means periods of employment in an eligible position or positions for one or more employers rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Compensation earnable earned in full time work for seventy hours or more in any given calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service except as provided in RCW 41.40.088. Only service credit months and one-quarter service credit months shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits. Time spent in standby status, whether compensated or not, is not service.

(i) Service by a state employee officially assigned by the state on a temporary basis to assist another public agency, shall be considered as service as a state employee: PROVIDED, That service to any other public agency shall not be considered service as a state employee if such service

has been used to establish benefits in any other public retirement system.

(ii) An individual shall receive no more than a total of twelve service credit months of service during any calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for seventy or more hours is rendered.

(iii) A school district employee may count up to forty-five days of sick leave as creditable service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan I "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than twenty-two days equals one-quarter service credit month;

(B) Twenty-two days equals one service credit month;

(C) More than twenty-two days but less than forty-five days equals one and one-quarter service credit month.

(b) "Service" for plan II members, means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(i) Service in any state elective position shall be deemed to be full time service, except that persons serving in state elective positions who are members of the teachers' retirement system or law enforcement officers' and fire fighters' retirement system at the time of election or appointment to such position may elect to continue membership in the teachers' retirement system or law enforcement officers' and fire fighters' retirement system.

(ii) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(iii) Up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan II "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(10) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(11) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(12) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(13) "Membership service" means:

(a) All service rendered, as a member, after October 1, 1947;

(b) All service after October 1, 1947, to any employer prior to the time of its admission into the retirement system for which member and employer contributions, plus interest as required by RCW 41.50.125, have been paid under RCW 41.40.056 or 41.40.057;

(c) Service not to exceed six consecutive months of probationary service rendered after April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of the total amount of the employer's contribution to the retirement fund which would have been required under the law in effect when such probationary service was rendered if the member had been a member during such period, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member;

(d) Service not to exceed six consecutive months of probationary service, rendered after October 1, 1947, and before April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of five percent of such member's salary during said period of probationary service, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member.

(14)(a) "Beneficiary" for plan I members, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for plan II members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(15) "Regular interest" means such rate as the director may determine.

(16) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(17)(a) "Average final compensation" for plan I members, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service credit months for which service credit is allowed; or if the member has less than two years of service

credit months then the annual average compensation earnable during the total years of service for which service credit is allowed.

(b) "Average final compensation" for plan II members, means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2).

(18) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(19) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(20) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(21) "Retirement allowance" means the sum of the annuity and the pension.

(22) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(23) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(24) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(25) "Eligible position" means:

(a) Any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position;

(b) Any position occupied by an elected official or person appointed directly by the governor, or appointed by the chief justice of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which compensation is paid.

(26) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (25) of this section.

(27) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(28) "Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience.

(29) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(30) "Director" means the director of the department.

(31) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

(32) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(33) "Plan I" means the public employees' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(34) "Plan II" means the public employees' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(35) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(36) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(37) "Index B" means the index for the year prior to index A.

(38) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(39) "Adjustment ratio" means the value of index A divided by index B.

(40) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(41) "Separation from service" occurs when a person has terminated all employment with an employer. [1997 c 254 § 10; 1997 c 88 § 6. Prior: 1995 c 345 § 10; 1995 c 286 § 1; 1995 c 244 § 3; prior: 1994 c 298 § 2; 1994 c 247 § 5; 1994 c 197 § 23; 1994 c 177 § 8; 1993 c 95 § 8; prior: 1991 c 343 § 6; 1991 c 35 § 70; 1990 c 274 § 3; prior: 1989 c 309 § 1; 1989 c 289 § 1; 1985 c 13 § 7; 1983 c 69 § 1; 1981 c 256 § 6; 1979 ex.s. c 249 § 7; 1977 ex.s. c 295 § 16; 1973 1st ex.s. c 190 § 2; 1972 ex.s. c 151 § 1; 1971 ex.s. c 271 § 2; 1969 c 128 § 1; 1965 c 155 § 1; 1963 c 225 § 1; 1963 c 174 § 1; 1961 c 291 § 1; 1957 c 231 § 1; 1955 c 277 § 1; 1953 c 200 § 1; 1951 c 50 § 1; 1949 c 240 § 1; 1947 c 274 § 1; Rem. Supp. 1949 § 11072-1.]

Reviser's note: *(1) The phrase "regular salary" was eliminated from RCW 41.50.150(2) by 1997 c 221 § 1.

(2) This section was amended by 1997 c 88 § 6 and by 1997 c 254 § 10, 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—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

Intent—1994 c 298: "(1) This act provides cross-references to existing statutes that affect calculation of pensions under the retirement systems authorized by chapters 41.40 and 41.32 RCW to the relevant definition sections of those chapters. Except as provided in subsection (2) of this section, this act is technical in nature and neither enhances nor diminishes existing pension rights. Except for the amendment to RCW 41.40.010(5), it is not the intent of the legislature to change the substance or effect of any statute previously enacted. Rather, this act provides cross-references to applicable statutes in order to aid with the administration of benefits authorized in chapters 41.40 and 41.32 RCW.

(2) The amendments to RCW 41.40.010 (5) and (29) contained in section 2, chapter 298, Laws of 1994, and to RCW 41.32.010(31) contained in section 3, chapter 298, Laws of 1994, clarify the status of certain persons as either members or retirees. RCW 41.04.275 and section 7, chapter 298, Laws of 1994, create the pension funding account in the state treasury and direct the transfer of moneys deposited in the budget stabilization account

by the 1993-95 operating appropriations act, section 919, chapter 24, Laws of 1993 sp. sess., for the continuing costs of state retirement system benefits in effect on July 1, 1993, consistent with section 919, chapter 24, Laws of 1993 sp. sess. to the pension funding account." [1994 c 298 § 1.]

Effective date—1994 c 247: See note following RCW 41.32.4991.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—1994 c 177: See note following RCW 41.50.125.

Retroactive application—Effective date—1993 c 95: See notes following RCW 41.40.175.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Applicability—1983 c 69: "Section 1 of this 1983 act applies only to service credit accruing after July 24, 1983." [1983 c 69 § 3.]

Purpose—Severability—1981 c 256: See notes following RCW 41.26.030.

Severability—1973 1st ex.s. c 190: "If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 190 § 16.]

Severability—1971 ex.s. c 271: See note following RCW 41.32.260.

Severability—1969 c 128: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 c 128 § 19.]

Severability—1965 c 155: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1965 c 155 § 10.]

Severability—1963 c 174: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1963 c 174 § 19.]

Severability—1961 c 291: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 291 § 18.]

41.40.010 Definitions. (Effective September 1, 2000.)

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

(1) "Retirement system" means the public employees' retirement system provided for in this chapter.

(2) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(3) "State treasurer" means the treasurer of the state of Washington.

(4)(a) "Employer" for plan I members, means every branch, department, agency, commission, board, and office of the state, any political subdivision or association of political subdivisions of the state admitted into the retirement system, and legal entities authorized by RCW 35.63.070 and 36.70.060 or chapter 39.34 RCW; and the term shall also include any labor guild, association, or organization the membership of a local lodge or division of which is comprised of at least forty percent employees of an employer (other than such labor guild, association, or organization) within this chapter. The term may also include any city of the first class that has its own retirement system.

(b) "Employer" for plan II members, means every branch, department, agency, commission, board, and office of the state, and any political subdivision and municipal corporation of the state admitted into the retirement system, including public agencies created pursuant to RCW 35.63.070, 36.70.060, and 39.34.030; except that after August 31, 2000, school districts and educational service districts will no longer be employers for the public employees' retirement system plan II.

(5) "Member" means any employee included in the membership of the retirement system, as provided for in RCW 41.40.023. RCW 41.26.045 does not prohibit a person otherwise eligible for membership in the retirement system from establishing such membership effective when he or she first entered an eligible position.

(6) "Original member" of this retirement system means:

(a) Any person who became a member of the system prior to April 1, 1949;

(b) Any person who becomes a member through the admission of an employer into the retirement system on and after April 1, 1949, and prior to April 1, 1951;

(c) Any person who first becomes a member by securing employment with an employer prior to April 1, 1951, provided the member has rendered at least one or more years of service to any employer prior to October 1, 1947;

(d) Any person who first becomes a member through the admission of an employer into the retirement system on or after April 1, 1951, provided, such person has been in the regular employ of the employer for at least six months of the twelve-month period preceding the said admission date;

(e) Any member who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement becomes entitled to be credited with ten years or more of membership service except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member;

(f) Any member who has been a contributor under the system for two or more years and who has restored all contributions that may have been withdrawn as provided by RCW 41.40.150 and who on the effective date of the individual's retirement has rendered five or more years of service for the state or any political subdivision prior to the time of the admission of the employer into the system; except that the provisions relating to the minimum amount of retirement allowance for the member upon retirement at age seventy as found in RCW 41.40.190(4) shall not apply to the member.

(7) "New member" means a person who becomes a member on or after April 1, 1949, except as otherwise provided in this section.

(8)(a) "Compensation earnable" for plan I members, means salaries or wages earned during a payroll period for personal services and where the compensation is not all paid in money, maintenance compensation shall be included upon the basis of the schedules established by the member's employer.

(i) "Compensation earnable" for plan I members also includes the following actual or imputed payments, which are not paid for personal services:

(A) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable and the individual shall receive the equivalent service credit;

(B) If a leave of absence is taken by an individual for the purpose of serving in the state legislature, the salary which would have been received for the position from which the leave of absence was taken, shall be considered as compensation earnable if the employee's contribution is paid by the employee and the employer's contribution is paid by the employer or employee;

(C) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(D) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(E) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(F) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(ii) "Compensation earnable" does not include:

(A) Remuneration for unused sick leave authorized under RCW 41.04.340, 28A.400.210, or 28A.310.490;

(B) Remuneration for unused annual leave in excess of thirty days as authorized by RCW 43.01.044 and 43.01.041.

(b) "Compensation earnable" for plan II members, means salaries or wages earned by a member during a payroll period for personal services, including overtime payments, and shall include wages and salaries deferred under provisions established pursuant to sections 403(b), 414(h), and 457 of the United States Internal Revenue Code, but shall exclude nonmoney maintenance compensation and lump sum or other payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, or any form of severance pay.

"Compensation earnable" for plan II members also includes the following actual or imputed payments, which are not paid for personal services:

(i) Retroactive payments to an individual by an employer on reinstatement of the employee in a position, or payments by an employer to an individual in lieu of reinstatement in a position which are awarded or granted as the equivalent of the salary or wage which the individual would have earned during a payroll period shall be considered compensation earnable to the extent provided above, and the individual shall receive the equivalent service credit;

(ii) In any year in which a member serves in the legislature, the member shall have the option of having such member's compensation earnable be the greater of:

(A) The compensation earnable the member would have received had such member not served in the legislature; or

(B) Such member's actual compensation earnable received for nonlegislative public employment and legislative

service combined. Any additional contributions to the retirement system required because compensation earnable under (b)(ii)(A) of this subsection is greater than compensation earnable under (b)(ii)(B) of this subsection shall be paid by the member for both member and employer contributions;

(iii) Assault pay only as authorized by RCW 27.04.100, 72.01.045, and 72.09.240;

(iv) Compensation that a member would have received but for a disability occurring in the line of duty only as authorized by RCW 41.40.038;

(v) Compensation that a member receives due to participation in the leave sharing program only as authorized by RCW 41.04.650 through 41.04.670; and

(vi) Compensation that a member receives for being in standby status. For the purposes of this section, a member is in standby status when not being paid for time actually worked and the employer requires the member to be prepared to report immediately for work, if the need arises, although the need may not arise.

(9)(a) "Service" for plan I members, except as provided in RCW 41.40.088, means periods of employment in an eligible position or positions for one or more employers rendered to any employer for which compensation is paid, and includes time spent in office as an elected or appointed official of an employer. Compensation earnable earned in full time work for seventy hours or more in any given calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service except as provided in RCW 41.40.088. Only service credit months and one-quarter service credit months shall be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits. Time spent in standby status, whether compensated or not, is not service.

(i) Service by a state employee officially assigned by the state on a temporary basis to assist another public agency, shall be considered as service as a state employee: PROVIDED, That service to any other public agency shall not be considered service as a state employee if such service has been used to establish benefits in any other public retirement system.

(ii) An individual shall receive no more than a total of twelve service credit months of service during any calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for seventy or more hours is rendered.

(iii) A school district employee may count up to forty-five days of sick leave as creditable service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan I "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than twenty-two days equals one-quarter service credit month;

(B) Twenty-two days equals one service credit month;

(C) More than twenty-two days but less than forty-five days equals one and one-quarter service credit month.

(b) "Service" for plan II members, means periods of employment by a member in an eligible position or positions for one or more employers for which compensation earnable is paid. Compensation earnable earned for ninety or more hours in any calendar month shall constitute one service credit month except as provided in RCW 41.40.088. Compensation earnable earned for at least seventy hours but less than ninety hours in any calendar month shall constitute one-half service credit month of service. Compensation earnable earned for less than seventy hours in any calendar month shall constitute one-quarter service credit month of service. Time spent in standby status, whether compensated or not, is not service.

Any fraction of a year of service shall be taken into account in the computation of such retirement allowance or benefits.

(i) Service in any state elective position shall be deemed to be full time service, except that persons serving in state elective positions who are members of the Washington school employees' retirement system, teachers' retirement system, or law enforcement officers' and fire fighters' retirement system at the time of election or appointment to such position may elect to continue membership in the Washington school employees' retirement system, teachers' retirement system, or law enforcement officers' and fire fighters' retirement system.

(ii) A member shall receive a total of not more than twelve service credit months of service for such calendar year. If an individual is employed in an eligible position by one or more employers the individual shall receive no more than one service credit month during any calendar month in which multiple service for ninety or more hours is rendered.

(iii) Up to forty-five days of sick leave may be creditable as service solely for the purpose of determining eligibility to retire under RCW 41.40.180 as authorized by RCW 28A.400.300. For purposes of plan II "forty-five days" as used in RCW 28A.400.300 is equal to two service credit months. Use of less than forty-five days of sick leave is creditable as allowed under this subsection as follows:

(A) Less than eleven days equals one-quarter service credit month;

(B) Eleven or more days but less than twenty-two days equals one-half service credit month;

(C) Twenty-two days equals one service credit month;

(D) More than twenty-two days but less than thirty-three days equals one and one-quarter service credit month;

(E) Thirty-three or more days but less than forty-five days equals one and one-half service credit month.

(10) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(11) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(12) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(13) "Membership service" means:

(a) All service rendered, as a member, after October 1, 1947;

(b) All service after October 1, 1947, to any employer prior to the time of its admission into the retirement system for which member and employer contributions, plus interest as required by RCW 41.50.125, have been paid under RCW 41.40.056 or 41.40.057;

(c) Service not to exceed six consecutive months of probationary service rendered after April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of the total amount of the employer's contribution to the retirement fund which would have been required under the law in effect when such probationary service was rendered if the member had been a member during such period, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member;

(d) Service not to exceed six consecutive months of probationary service, rendered after October 1, 1947, and before April 1, 1949, and prior to becoming a member, in the case of any member, upon payment in full by such member of five percent of such member's salary during said period of probationary service, except that the amount of the employer's contribution shall be calculated by the director based on the first month's compensation earnable as a member.

(14)(a) "Beneficiary" for plan I members, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for plan II members, means any person in receipt of a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer by another person.

(15) "Regular interest" means such rate as the director may determine.

(16) "Accumulated contributions" means the sum of all contributions standing to the credit of a member in the member's individual account, including any amount paid under RCW 41.50.165(2), together with the regular interest thereon.

(17)(a) "Average final compensation" for plan I members, means the annual average of the greatest compensation earnable by a member during any consecutive two year period of service credit months for which service credit is allowed; or if the member has less than two years of service credit months then the annual average compensation earnable during the total years of service for which service credit is allowed.

(b) "Average final compensation" for plan II members, means the member's average compensation earnable of the highest consecutive sixty months of service credit months prior to such member's retirement, termination, or death. Periods constituting authorized leaves of absence may not be used in the calculation of average final compensation except under RCW 41.40.710(2).

(18) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(19) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(20) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(21) "Retirement allowance" means the sum of the annuity and the pension.

(22) "Employee" or "employed" means a person who is providing services for compensation to an employer, unless the person is free from the employer's direction and control over the performance of work. The department shall adopt rules and interpret this subsection consistent with common law.

(23) "Actuarial equivalent" means a benefit of equal value when computed upon the basis of such mortality and other tables as may be adopted by the director.

(24) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(25) "Eligible position" means:

(a) Any position that, as defined by the employer, normally requires five or more months of service a year for which regular compensation for at least seventy hours is earned by the occupant thereof. For purposes of this chapter an employer shall not define "position" in such a manner that an employee's monthly work for that employer is divided into more than one position;

(b) Any position occupied by an elected official or person appointed directly by the governor, or appointed by the chief justice of the supreme court under RCW 2.04.240(2) or 2.06.150(2), for which compensation is paid.

(26) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (25) of this section.

(27) "Leave of absence" means the period of time a member is authorized by the employer to be absent from service without being separated from membership.

(28) "Totally incapacitated for duty" means total inability to perform the duties of a member's employment or office or any other work for which the member is qualified by training or experience.

(29) "Retiree" means any person who has begun accruing a retirement allowance or other benefit provided by this chapter resulting from service rendered to an employer while a member.

(30) "Director" means the director of the department.

(31) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

(32) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(33) "Plan I" means the public employees' retirement system, plan I providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(34) "Plan II" means the public employees' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(35) "Index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

(36) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(37) "Index B" means the index for the year prior to index A.

(38) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(39) "Adjustment ratio" means the value of index A divided by index B.

(40) "Annual increase" means, initially, fifty-nine cents per month per year of service which amount shall be increased each July 1st by three percent, rounded to the nearest cent.

(41) "Separation from service" occurs when a person has terminated all employment with an employer. [1998 c 341 § 601. Prior: 1997 c 254 § 10; 1997 c 88 § 6; prior: 1995 c 345 § 10; 1995 c 286 § 1; 1995 c 244 § 3; prior: 1994 c 298 § 2; 1994 c 247 § 5; 1994 c 197 § 23; 1994 c 177 § 8; 1993 c 95 § 8; prior: 1991 c 343 § 6; 1991 c 35 § 70; 1990 c 274 § 3; prior: 1989 c 309 § 1; 1989 c 289 § 1; 1985 c 13 § 7; 1983 c 69 § 1; 1981 c 256 § 6; 1979 ex.s. c 249 § 7; 1977 ex.s. c 295 § 16; 1973 1st ex.s. c 190 § 2; 1972 ex.s. c 151 § 1; 1971 ex.s. c 271 § 2; 1969 c 128 § 1; 1965 c 155 § 1; 1963 c 225 § 1; 1963 c 174 § 1; 1961 c 291 § 1; 1957 c 231 § 1; 1955 c 277 § 1; 1953 c 200 § 1; 1951 c 50 § 1; 1949 c 240 § 1; 1947 c 274 § 1; Rem. Supp. 1949 § 11072-1.]

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

Intent—1994 c 298: "(1) This act provides cross-references to existing statutes that affect calculation of pensions under the retirement systems authorized by chapters 41.40 and 41.32 RCW to the relevant definition sections of those chapters. Except as provided in subsection (2) of this section, this act is technical in nature and neither enhances nor diminishes existing pension rights. Except for the amendment to RCW 41.40.010(5), it is not the intent of the legislature to change the substance or effect of any statute previously enacted. Rather, this act provides cross-references to applicable statutes in order to aid with the administration of benefits authorized in chapters 41.40 and 41.32 RCW.

(2) The amendments to RCW 41.40.010 (5) and (29) contained in section 2, chapter 298, Laws of 1994, and to RCW 41.32.010(31) contained in section 3, chapter 298, Laws of 1994, clarify the status of certain persons as either members or retirees. RCW 41.04.275 and section 7, chapter 298, Laws of 1994, create the pension funding account in the state treasury and direct the transfer of moneys deposited in the budget stabilization account by the 1993-95 operating appropriations act, section 919, chapter 24, Laws of 1993 sp. sess., for the continuing costs of state retirement system benefits in effect on July 1, 1993, consistent with section 919, chapter 24, Laws of 1993 sp. sess. to the pension funding account." [1994 c 298 § 1.]

Effective date—1994 c 247: See note following RCW 41.32.4991.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—1994 c 177: See note following RCW 41.50.125.

Retroactive application—Effective date—1993 c 95: See notes following RCW 41.40.175.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

Purpose—Application—Retrospective application—1985 c 13: See notes following RCW 41.04.445.

Applicability—1983 c 69: "Section 1 of this 1983 act applies only to service credit accruing after July 24, 1983." [1983 c 69 § 3.]

Purpose—Severability—1981 c 256: See notes following RCW 41.26.030.

Severability—1973 1st ex.s. c 190: "If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 190 § 16.]

Severability—1971 ex.s. c 271: See note following RCW 41.32.260.

Severability—1969 c 128: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 c 128 § 19.]

Severability—1965 c 155: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1965 c 155 § 10.]

Severability—1963 c 174: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1963 c 174 § 19.]

Severability—1961 c 291: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1961 c 291 § 18.]

41.40.020 System created—Administration. A state employees' retirement system is hereby created for the employees of the state of Washington and its political subdivisions. The administration and management of the retirement system, the responsibility for making effective the provisions of this chapter, and the authority to make all rules and regulations necessary therefor are hereby vested in the department. All such rules and regulations shall be governed by the provisions of chapter 34.05 RCW, as now or hereafter amended. The retirement system herein provided for shall be known as the Washington Public Employees' Retirement System. [1991 c 35 § 71; 1969 c 128 § 2; 1967 c 127 § 1; 1949 c 240 § 2; 1947 c 274 § 2; Rem. Supp. 1949 § 11072-2.]

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1969 c 128: See note following RCW 41.40.010.

41.40.023 Membership. Membership in the retirement system shall consist of all regularly compensated employees and appointive and elective officials of employers, as defined in this chapter, with the following exceptions:

(1) Persons in ineligible positions;

(2) Employees of the legislature except the officers thereof elected by the members of the senate and the house and legislative committees, unless membership of such employees be authorized by the said committee;

(3)(a) Persons holding elective offices or persons appointed directly by the governor: PROVIDED, That such persons shall have the option of applying for membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon

payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: **AND PROVIDED FURTHER**, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file, on a form supplied by the department, a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (3)(b);

(4) Employees holding membership in, or receiving pension benefits under, any retirement plan operated wholly or in part by an agency of the state or political subdivision thereof, or who are by reason of their current employment contributing to or otherwise establishing the right to receive benefits from any such retirement plan: **PROVIDED, HOWEVER**, In any case where the retirement system has in existence an agreement with another retirement system in connection with exchange of service credit or an agreement whereby members can retain service credit in more than one system, such an employee shall be allowed membership rights should the agreement so provide: **AND PROVIDED FURTHER**, That an employee shall be allowed membership if otherwise eligible while receiving survivor's benefits: **AND PROVIDED FURTHER**, That an employee shall not either before or after June 7, 1984, be excluded from membership or denied service credit pursuant to this subsection solely on account of: (a) Membership in the plan created under chapter 2.14 RCW; or (b) enrollment under the relief and compensation provisions or the pension provisions of the volunteer fire fighters' relief and pension fund under chapter 41.24 RCW;

(5) Patient and inmate help in state charitable, penal, and correctional institutions;

(6) "Members" of a state veterans' home or state soldiers' home;

(7) Persons employed by an institution of higher learning or community college, primarily as an incident to and in furtherance of their education or training, or the education or training of a spouse;

(8) Employees of an institution of higher learning or community college during the period of service necessary to establish eligibility for membership in the retirement plans operated by such institutions;

(9) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession;

(10) Persons appointed after April 1, 1963, by the liquor control board as agency vendors;

(11) Employees of a labor guild, association, or organization: **PROVIDED**, That elective officials and employees of a labor guild, association, or organization which qualifies as an employer within this chapter shall have the option of applying for membership;

(12) Retirement system retirees: **PROVIDED**, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;

(13) Persons employed by or appointed or elected as an official of a first class city that has its own retirement system: **PROVIDED**, That any member elected or appointed to an elective office on or after April 1, 1971, shall have the option of continuing as a member of this system in lieu of becoming a member of the city system. A member who elects to continue as a member of this system shall pay the appropriate member contributions and the city shall pay the employer contributions at the rates prescribed by this chapter. The city shall also transfer to this system all of such member's accumulated contributions together with such further amounts as necessary to equal all employee and employer contributions which would have been paid into this system on account of such service with the city and thereupon the member shall be granted credit for all such service. Any city that becomes an employer as defined in RCW 41.40.010(4) as the result of an individual's election under this subsection shall not be required to have all employees covered for retirement under the provisions of this chapter. Nothing in this subsection shall prohibit a city of the first class with its own retirement system from: (a) Transferring all of its current employees to the retirement system established under this chapter, or (b) allowing newly hired employees the option of continuing coverage under the retirement system established by this chapter.

Notwithstanding any other provision of this chapter, persons transferring from employment with a first class city of over four hundred thousand population that has its own retirement system to employment with the state department of agriculture may elect to remain within the retirement system of such city and the state shall pay the employer contributions for such persons at like rates as prescribed for employers of other members of such system;

(14) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

(15) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position;

(16) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: **PROVIDED**, That unless otherwise

excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the noncredited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application;

(17) The city manager or chief administrative officer of a city or town, other than a retiree, who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from date of their appointment to such positions. Persons serving in such positions as of April 4, 1986, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1986, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(18) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by local governments to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan. [1997 c 254 § 11. Prior: 1994 c 298 § 8; 1994 c 197 § 24; 1993 c 319 § 1; prior: 1990 c 274 § 10; 1990 c 192 § 4; 1988 c 109 § 25; 1987 c 379 § 1; 1986 c 317 § 5; 1984 c 184 § 13; 1984 c 121 § 1; 1982 1st ex.s. c 52 § 19; 1975 c 33 § 6; 1974 ex.s. c 195 § 2; 1973 1st ex.s. c 190 § 5; 1971 ex.s. c 271 § 4; 1969 c 128 § 5; 1967 c 127 § 3; 1965 c 155 § 2; 1963 c 225 § 2; 1963 c 210 § 1; 1957 c 231 § 2; 1955 c 277 § 2; 1953 c 200 § 5; 1951 c 50 § 2; 1949 c 240 § 7; 1947 c 274 § 13; Rem. Supp. 1949 § 11072-13. Formerly RCW 41.40.120.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—1994 c 298: See note following RCW 41.40.010

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Effective date—1988 c 109: See note following RCW 2.10.030.

Legislative findings—Intent—Severability—1986 c 317: See notes following RCW 41.40.150.

Severability—1984 c 184: See note following RCW 41.50.150.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Severability—1975 c 33: See note following RCW 35.21.780.

Severability—1974 ex.s. c 195: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 195 § 14.]

Severability—1973 1st ex.s. c 190: See note following RCW 41.40.010.

Severability—1971 ex.s. c 271: See note following RCW 41.32.260.

Severability—1969 c 128: See note following RCW 41.40.010.

Election authorized to establish membership under RCW 41.40.023(3): RCW 41.54.050.

Pension benefits or annuity benefits for certain classifications of school district employees: RCW 28A.400.260.

41.40.028 Nonelective position employees employed for at least nine months—Deemed in eligible position, when. Any person who has been employed in a nonelective position for at least nine months and who has made member contributions required under this chapter throughout such period, shall be deemed to have been in an eligible position during such period of employment. [1980 c 112 § 2. Formerly RCW 41.40.123.]

41.40.032 Information furnished by employees, appointive and elective officials. Within thirty days after his or her employment or his or her acceptance into membership each employee or appointive or elective official shall submit to the department a statement of his or her name, sex, title, compensation, duties, date of birth, and length of service as an employee or appointive or elective official, and such other information as the department shall require. Each employee who becomes a member shall file a detailed statement of all his or her prior service as an employee and shall furnish such other facts as the department may require for the proper operation of the retirement system. Compliance with the provisions set forth in this section shall be considered to be a condition of employment and failure by an employee to comply may result in separation from service. [1991 c 35 § 76; 1949 c 240 § 8; 1947 c 274 § 1; Rem. Supp. 1949 § 11072-14. Formerly RCW 41.40.130.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.035 Service credit prohibited for certain members of committees, boards, and commissions and for certain appointive and elective officials. (1) No person appointed to membership on any committee, board, or commission on or after July 1, 1976, who is compensated for service on such committee, board, or commission for fewer than ten days or seventy hours in any month, whichever amount is less, shall receive service credit for such service for that month: PROVIDED, That on and after October 1, 1977, appointive and elective officials who receive monthly compensation earnable from an employer in an amount equal to or less than ninety times the state minimum hourly wage shall not receive any service credit for such employment.

(2) This section does not apply to any person serving on a committee, board, or commission on June 30, 1976, who continued such service until subsequently appointed by the governor to a different committee, board, or commission. [1987 c 146 § 1; 1977 ex.s. c 295 § 17; 1975-'76 2nd ex.s. c 34 § 4. Formerly RCW 41.40.165.]

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

41.40.037 Reduction of retirement allowance upon reemployment—Reestablishment of membership. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's

monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section, may work up to five months per calendar year in an eligible position without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under RCW 41.40.023(12), he or she terminates his or her retirement status and becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.40.180. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated. [1997 c 254 § 14.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

41.40.038 Duty disability retirement recipients—Continued service credit. Those members subject to this chapter who became disabled in the line of duty on or after March 27, 1984, and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. No service credit shall be granted until the employee contribution has been paid.

(6) The service and compensation credit shall not be granted for a period to exceed twelve consecutive months.

(7) Nothing in this section shall abridge service credit rights granted in RCW 41.40.220(2) and 41.40.320.

(8) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right. [1987 c 118 § 1; 1986 c 176 § 2. Formerly RCW 41.40.223.]

(1998 Ed.)

41.40.042 Members agree to deductions. The deductions from the compensation of members, provided for in RCW 41.40.330 or 41.40.650, shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for in this chapter and receipt in full for his or her salary or compensation, and payment less the deductions shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the person during the period covered by the payment, except as to benefits provided for under this chapter. [1991 c 35 § 89; 1977 ex.s. c 295 § 18; 1947 c 274 § 35; Rem. Supp. 1947 § 11072-35. Formerly RCW 41.40.340.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.048 Employer's contribution—Computation—Billing. (1) The director shall report to each employer the contribution rates required for the ensuing biennium or fiscal year, whichever is applicable.

(2) Beginning September 1, 1990, the amount to be collected as the employer's contribution shall be computed by applying the applicable rates established in chapter 41.45 RCW to the total compensation earnable of employer's members as shown on the current payrolls of the said employer. In addition, the director shall determine and collect the additional employer contribution rate necessary to fund the benefits granted officials holding office pursuant to Articles II and III of the Constitution of the state of Washington and RCW 48.02.010. Each said employer shall compute at the end of each month the amount due for that month and the same shall be paid as are its other obligations. Effective January 1, 1987, however, no contributions are required for any calendar month in which the member is not granted service credit.

(3) In the event of failure, for any reason, of an employer other than a political subdivision of the state to have remitted amounts due for membership service of any of the employer's members rendered during a prior biennium, the director shall bill such employer for such employer's contribution together with such charges as the director deems appropriate in accordance with RCW 41.50.120. Such billing shall be paid by the employer as, and the same shall be, a proper charge against any moneys available or appropriated to such employer for payment of current biennial payrolls. [1989 c 273 § 23; 1986 c 268 § 5; 1985 c 138 § 1; 1982 1st ex.s. c 52 § 22; 1979 c 151 § 63; 1977 ex.s. c 295 § 20; 1963 c 126 § 1; 1961 c 291 § 12; 1949 c 240 § 26; 1947 c 274 § 38; Rem. Supp. 1947 § 11072-38. Formerly RCW 41.40.370.]

Severability—1989 c 273: See RCW 41.45.900.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

41.40.052 Exemption from taxation and judicial process—Exceptions—Assignability—Deductions authorized. (1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter,

the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, and shall be unassignable.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department, and this section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law. [1991 c 365 § 22; 1991 c 35 § 92; 1989 c 360 § 27; 1988 c 107 § 20; 1987 c 326 § 24; 1982 c 135 § 2; 1981 c 294 § 14; 1979 ex.s. c 205 § 6; 1974 ex.s. c 195 § 4; 1967 c 127 § 6; 1947 c 274 § 39; Rem. Supp. 1947 § 11072-39. Formerly RCW 41.40.380.]

Reviser's note: This section was amended by 1991 c 35 § 92 and by 1991 c 365 § 22, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1991 c 365: See note following RCW 41.50.500.

Intent—1991 c 35: See note following RCW 41.26.005.

Implementation—Effective dates—1988 c 107: See RCW 41.05.901.

Effective date—1987 c 326: See RCW 41.50.901.

Severability—1981 c 294: See note following RCW 41.26.115.

Severability—1974 ex.s. c 195: See note following RCW 41.40.023.

41.40.054 Disability retirement—Criminal conduct.

A member shall not receive a disability retirement benefit under RCW 41.40.200, 41.40.220, 41.40.230, 41.40.235, 41.40.250, or 41.40.670 if the disability is the result of criminal conduct by the member committed after April 21, 1997. [1997 c 103 § 3.]

Severability—Effective date—1997 c 103: See notes following RCW 41.26.061

41.40.055 Penalty for false statements. Any person who shall knowingly make any false statements, or shall

falsify or permit to be falsified any record or records of this retirement system in any attempt to defraud the retirement system as a result of such act, shall be guilty of a gross misdemeanor. [1947 c 274 § 41; Rem. Supp. 1947 § 11072-41. Formerly RCW 41.40.400.]

41.40.056 Establishment of service credit—Former employees—Employers admitted before July 23, 1995.

Except as qualified by RCW 41.40.023, for employers that were admitted into the retirement system before July 23, 1995, membership service may be established for the employer's former employees who are active members of the system if the member or member's former employer pays an amount equal to the employer and member contributions which would have been paid to the retirement system on account of such service to the retirement system. Payment shall be made prior to the retirement of such member.

Payments submitted by the member under this section shall be placed in the member's individual account in the members' savings fund and be treated as any other contribution made by the member, with the exception that the contributions submitted by the member in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall be excluded from the calculation of the member's annuity in the event the member selects a benefit with an annuity option. [1995 c 286 § 2.]

41.40.057 Establishment of service credit—Current and former employees—Employers admitted after July 23, 1995. (1) This section applies to the establishment of membership service with employers admitted to the retirement system after July 23, 1995.

(2) For current employees, membership service may be established for periods of employment with an employer prior to the employer's admission into the retirement system by making the payments required by this section.

The employer must select one of the options in this subsection and apply it uniformly, except as provided in subsection (3) of this section. The required payment shall include the total member and employer contributions that would have been required from the date of each current member's hire.

(a) Option A: The employer makes all the required payments within fifteen years from the date of the employer's admission.

(b) Option B: The employer makes a portion of the required payments and the member pays the balance. The employer shall not be required to make its payments until the member has made his or her payments. Each member shall have the option to purchase the membership service.

(c) Option C: The member makes all of the required payments. Each member shall have the option to purchase the membership service.

All payments under options B and C of this subsection must be completed within five years from the date of the employer's admission, or prior to the retirement of the member, whichever occurs sooner. A member may not receive membership service credit under option B or C of this subsection until all required payments have been made.

(3) An employer shall not be required to purchase membership service under option A or B for periods of employment for which the employer made contributions to a qualified retirement plan as defined by 26 U.S.C. Sec. 401(a), if the contributions plus interest accrued cannot be transferred to the retirement system. If the employer does not purchase the membership credit under this subsection, the member may purchase the membership service under subsection (2)(c) of this section.

(4) A former employee who is an active member of the system and is not covered by subsection (2) of this section may establish membership service by making the required payments under subsection (2)(c) of this section prior to the retirement of the member.

(5) All payments made by the member under this section shall be placed in the member's individual account in the members' savings fund. [1995 c 286 § 3.]

41.40.058 Transfer of service credit from state-wide city employees' retirement system. (1) Any person who was a member of the state-wide city employees' retirement system governed by chapter 41.44 RCW and who also became a member of this retirement system on or before July 26, 1987, may, in a writing filed with the director, elect to:

(a) Transfer to this retirement system all service currently credited under chapter 41.44 RCW;

(b) Reestablish and transfer to this retirement system all service which was previously credited under chapter 41.44 RCW but which was canceled by discontinuance of service and withdrawal of accumulated contributions as provided in RCW 41.44.190. The service may be reestablished and transferred only upon payment by the member to the employees' savings fund of this retirement system of the amount withdrawn plus interest thereon from the date of withdrawal until the date of payment at a rate determined by the director. No additional payments are required for service credit described in this subsection if already established under this chapter; and

(c) Establish service credit for the initial period of employment not to exceed six months, prior to establishing membership under chapter 41.44 RCW, upon payment in full by the member of the total employer's contribution to the benefit account fund of this retirement system that would have been made under this chapter when the initial service was rendered. The payment shall be based on the first month's compensation earnable as a member of the state-wide city employees' retirement system and as defined in RCW 41.44.030(13). However, a person who has established service credit under RCW 41.40.010(13) (c) or (d) shall not establish additional credit under this subsection nor may anyone who establishes credit under this subsection establish any additional credit under RCW 41.40.010(13) (c) or (d). No additional payments are required for service credit described in this subsection if already established under this chapter.

(2)(a) In the case of a member of this retirement system who is employed by an employer on July 26, 1987, the written election required by subsection (1) of this section must be filed and the payments required by subsection (1)(b)

and (c) of this section must be completed in full within one year after July 26, 1987.

(b) In the case of a former member of this retirement system who is not employed by an employer on July 26, 1987, the written election must be filed and the payments must be completed in full within one year after reemployment by an employer.

(c) In the case of a retiree receiving a retirement allowance from this retirement system on July 26, 1987, or any person having vested rights as described in RCW 41.40.150 (4), the written election may be filed and the payments may be completed at any time.

(3) Upon receipt of the written election and payments required by subsection (1) of this section from any retiree described in subsection (2) of this section, the department shall recompute the retiree's allowance in accordance with this section and shall pay any additional benefit resulting from such recomputation retroactively to the date of retirement from the system governed by this chapter.

(4) Any person who was a member of the state-wide city employees' retirement system under chapter 41.44 RCW and also became a member of this retirement system, and did not make the election under subsection (1) of this section because he or she was not a member of this retirement system prior to July 27, 1987, or did not meet the time limitations of subsection (2) (a) or (b) of this section, may elect to do any of the following:

(a) Transfer to this retirement system all service currently credited under chapter 41.44 RCW;

(b) Reestablish and transfer to this retirement system all service that was previously credited under chapter 41.44 RCW but was canceled by discontinuance of service and withdrawal of accumulated contributions as provided in RCW 41.44.190; and

(c) Establish service credit for the initial period of employment not to exceed six months, prior to establishing membership under chapter 41.44 RCW.

To make the election or elections, the person must pay the amount required under RCW 41.50.165(2) prior to retirement from this retirement system. [1994 c 197 § 25; 1987 c 417 § 1; 1984 c 184 § 9. Formerly RCW 41.40.403.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Severability—1984 c 184: See note following RCW 41.50.150.

41.40.059 Credit for service in Seattle's police relief and pension fund system. Any active member of this retirement system who has previously established ten or more years' service credit in the city of Seattle's police relief and pension fund system, who withdrew his or her contributions from Seattle's police relief and pension fund system prior to July 1, 1961, and who has never been a member of the law enforcement officers' and fire fighters' pension system created in chapter 41.26 RCW, may receive credit in this retirement system for such service, subject to the terms and conditions specified in RCW 41.40.061. [1992 c 157 § 3.]

41.40.061 Credit for service in Seattle's police relief and pension fund system—Terms and conditions. (1) A

member who fulfills the requirements of RCW 41.40.059 may file a written declaration no later than September 30, 1992, with the department and the Seattle police relief and pension fund system indicating the member's desire to make an irrevocable transfer of credit from the Seattle system to this retirement system. The member shall restore his or her contributions, with interest since the date of withdrawal as determined by the director, no later than December 31, 1992.

(2) Upon receipt of the written declaration, the Seattle police relief and pension fund system shall send the department a report of the member's service credit. It shall also transfer to the department the portion of such member's contributions that was retained in the Seattle police relief and pension fund pursuant to RCW 41.20.150, plus a sum equal to such member's total contributions to the Seattle police relief and pension fund, which shall be treated as matching contributions by the employer, plus the compound interest that would have been generated by such sums, as determined by the Seattle city treasurer. The Seattle police relief and pension fund system shall send the service credit report and transfer the funds within ninety days of receiving the member's written declaration. [1992 c 157 § 4.]

41.40.062 Optional entry of system by political subdivisions or associations of political subdivisions—Procedure—School districts declared employers and eligible employees members of system. (Effective until September 1, 2000.) (1) The members and appointive and elective officials of any political subdivision or association of political subdivisions of the state may become members of the retirement system by the approval of the local legislative authority.

(2) On and after September 1, 1965, every school district of the state of Washington shall be an employer under this chapter. Every member of each school district who is eligible for membership under RCW 41.40.023 shall be a member of the retirement system and participate on the same basis as a person who first becomes a member through the admission of any employer into the retirement system on and after April 1, 1949. [1995 c 286 § 4; 1991 c 35 § 93; 1971 ex.s. c 271 § 12; 1969 c 128 § 13; 1965 c 84 § 1; 1963 c 174 § 16; 1961 c 291 § 13; 1953 c 200 § 19; 1951 c 50 § 13; 1949 c 240 § 27; 1947 c 274 § 43; Rem. Supp. 1949 § 11072-42. Formerly RCW 41.40.410.]

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1971 ex.s. c 271: See note following RCW 41.32.260.

Severability—1969 c 128: See note following RCW 41.40.010.

41.40.062 Optional entry of system by political subdivisions or associations of political subdivisions—Procedure—School districts declared employers and eligible employees members of system—Exception. (Effective September 1, 2000.) (1) The members and appointive and elective officials of any political subdivision or association of political subdivisions of the state may become members of the retirement system by the approval of the local legislative authority.

(2) On and after September 1, 1965, every school district of the state of Washington shall be an employer under this chapter. Every member of each school district who is eligible for membership under RCW 41.40.023 shall

be a member of the retirement system and participate on the same basis as a person who first becomes a member through the admission of any employer into the retirement system on and after April 1, 1949, except that after August 31, 2000, school districts will no longer be employers for the public employees' retirement system plan II. [1998 c 341 § 602; 1995 c 286 § 4; 1991 c 35 § 93; 1971 ex.s. c 271 § 12; 1969 c 128 § 13; 1965 c 84 § 1; 1963 c 174 § 16; 1961 c 291 § 13; 1953 c 200 § 19; 1951 c 50 § 13; 1949 c 240 § 27; 1947 c 274 § 43; Rem. Supp. 1949 § 11072-42. Formerly RCW 41.40.410.]

Effective date—1998 c 341: See RCW 41.35.901.

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1971 ex.s. c 271: See note following RCW 41.32.260.

Severability—1969 c 128: See note following RCW 41.40.010.

41.40.068 Hearing prior to appeal—Required—Notice. Any person aggrieved by any decision of the department affecting his or her legal rights, duties, or privileges must before he or she appeals to the courts, file with the director by mail or personally within sixty days from the day the decision was communicated to the person, a notice for a hearing before the director's designee. The notice of hearing shall set forth in full detail the grounds upon which the person considers the decision unjust or unlawful and shall include every issue to be considered by the department, and it must contain a detailed statement of facts upon which the person relies in support of the appeal. These persons shall be deemed to have waived all objections or irregularities concerning the matter on which the appeal is taken, other than those specifically set forth in the notice of hearing or appearing in the records of the retirement system. [1991 c 35 § 94; 1969 c 128 § 14; 1963 c 174 § 17; 1953 c 200 § 22. Formerly RCW 41.40.412.]

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1969 c 128: See note following RCW 41.40.010.

41.40.073 Hearing prior to appeal—Conduct of hearing. Following its receipt of a notice for hearing in accordance with RCW 41.40.068, a hearing shall be held by the director or a duly authorized representative, in the county of the residence of the claimant at a time and place designated by the director. Such hearing shall be conducted and governed in all respects by the provisions of chapter 34.05 RCW. [1989 c 175 § 87; 1969 c 128 § 15; 1953 c 200 § 23. Formerly RCW 41.40.414.]

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

Severability—1969 c 128: See note following RCW 41.40.010.

41.40.078 Judicial review in accordance with administrative procedure act. Judicial review of any final decision and order by the director is governed by the provisions of chapter 34.05 RCW. [1989 c 175 § 88; 1969 c 128 § 16; 1963 c 174 § 18; 1953 c 200 § 20; 1951 c 50 § 14. Formerly RCW 41.40.420.]

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

Severability—1969 c 128: See note following RCW 41.40.010.

41.40.082 Appeal—No bond required. No bond of any kind shall be required of a claimant appealing to the

superior court, the court of appeals, or the supreme court from a finding of the department affecting the claimant's right to retirement or disability benefits. [1991 c 35 § 95; 1971 c 81 § 105; 1951 c 50 § 16. Formerly RCW 41.40.440.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.088 Education employment—Service credit—Computation. (Effective until September 1, 2000.) (1) A plan I member who is employed by a school district or districts, an educational service district, the state school for the deaf, the state school for the blind, institutions of higher education, or community colleges:

(a) Shall receive a service credit month for each month of the period from September through August of the following year if he or she is employed in an eligible position, earns compensation earnable for six hundred thirty hours or more during that period, and is employed during nine months of that period, except that a member may not receive credit for any period prior to the member's employment in an eligible position;

(b) If a member in an eligible position does not meet the requirements of (a) of this subsection, the member is entitled to a service credit month for each month of the period he or she earns earnable compensation for seventy or more hours; and the member is entitled to a one-quarter service credit month for those calendar months during which he or she earned compensation for less than seventy hours.

(2) Except for any period prior to the member's employment in an eligible position, a plan II member who is employed by a school district or districts, an educational service district, the state school for the blind, the state school for the deaf, institutions of higher education, or community colleges:

(a) Shall receive a service credit month for each month of the period from September through August of the following year if he or she is employed in an eligible position, earns compensation earnable for eight hundred ten hours or more during that period, and is employed during nine months of that period;

(b) If a member in an eligible position for each month of the period from September through August of the following year does not meet the hours requirements of (a) of this subsection, the member is entitled to one-half service credit month for each month of the period if he or she earns earnable compensation for at least six hundred thirty hours but less than eight hundred ten hours during that period, and is employed nine months of that period.

(c) In all other instances, a member in an eligible position is entitled to service credit months as follows:

(i) One service credit month for each month in which compensation is earned for ninety or more hours;

(ii) One-half service credit month for each month in which compensation is earned for at least seventy hours but less than ninety hours; and

(iii) One-quarter service credit month for each month in which compensation is earned for less than seventy hours.

(3) The department shall adopt rules implementing this section. [1991 c 343 § 9; 1991 c 35 § 96; 1990 c 274 § 4; 1989 c 289 § 2; 1987 c 136 § 1; 1983 c 69 § 2; 1973 c 23 § 1. Formerly RCW 41.40.450.]

Reviser's note: This section was amended by 1991 c 35 § 96 and by 1991 c 343 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Intent—Reservation—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

41.40.088 Education employment—Service credit—Computation. (Effective September 1, 2000.) (1) A plan I member who is employed by a school district or districts, an educational service district, the state school for the deaf, the state school for the blind, institutions of higher education, or community colleges:

(a) Shall receive a service credit month for each month of the period from September through August of the following year if he or she is employed in an eligible position, earns compensation earnable for six hundred thirty hours or more during that period, and is employed during nine months of that period, except that a member may not receive credit for any period prior to the member's employment in an eligible position;

(b) If a member in an eligible position does not meet the requirements of (a) of this subsection, the member is entitled to a service credit month for each month of the period he or she earns earnable compensation for seventy or more hours; and the member is entitled to a one-quarter service credit month for those calendar months during which he or she earned compensation for less than seventy hours.

(2) Except for any period prior to the member's employment in an eligible position, a plan II member who is employed by a school district or districts, an educational service district, the state school for the blind, the state school for the deaf, institutions of higher education, or community colleges:

(a) Shall receive a service credit month for each month of the period from September through August of the following year if he or she is employed in an eligible position, earns compensation earnable for eight hundred ten hours or more during that period, and is employed during nine months of that period;

(b) If a member in an eligible position for each month of the period from September through August of the following year does not meet the hours requirements of (a) of this subsection, the member is entitled to one-half service credit month for each month of the period if he or she earns earnable compensation for at least six hundred thirty hours but less than eight hundred ten hours during that period, and is employed nine months of that period.

(c) In all other instances, a member in an eligible position is entitled to service credit months as follows:

(i) One service credit month for each month in which compensation is earned for ninety or more hours;

(ii) One-half service credit month for each month in which compensation is earned for at least seventy hours but less than ninety hours; and

(iii) One-quarter service credit month for each month in which compensation is earned for less than seventy hours.

(d) After August 31, 2000, school districts and educational service districts will no longer be employers for the public employees' retirement system plan II.

(3) The department shall adopt rules implementing this section. [1998 c 341 § 603. Prior: 1991 c 343 § 9; 1991 c 35 § 96; 1990 c 274 § 4; 1989 c 289 § 2; 1987 c 136 § 1; 1983 c 69 § 2; 1973 c 23 § 1. Formerly RCW 41.40.450.]

Effective date—1998 c 341: See RCW 41.35.901.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—Intent—Reservation—Effective date—Construction—1990 c 274: See notes following RCW 41.32.010.

41.40.092 Transfer of cadet service credit to Washington state patrol retirement system. (1) Active members of the Washington state patrol retirement system who have previously established service credit in the public employees' retirement system while employed by the state patrol as a cadet as defined in RCW 43.43.120(6)(b) may have such service credit transferred to the state patrol retirement system subject to the terms and conditions specified in chapter 43.43 RCW, including reestablishment of such service for the sole purpose of transfer. Service reestablishment shall be subject to the interest requirements of RCW 41.40.150(2).

(2) Service credit established for employment other than that specified in subsection (1) of this section is not eligible for transfer. [1983 c 81 § 3. Formerly RCW 41.40.530.]

Effective date—1983 c 81: See note following RCW 43.43.120.

41.40.0931 Death benefit—Death in the course of employment as a police officer. (1) A one hundred fifty thousand dollar death benefit for members who had the opportunity to transfer to the law enforcement officers' and fire fighters' retirement system pursuant to chapter 502, Laws of 1993, but elected to remain in the public employees' retirement system, shall be paid to the member's estate, or such person or persons, trust, or organization as the member has nominated by written designation duly executed and filed with the department. If there is no designated person or persons still living at the time of the member's death, the member's death benefit shall be paid to the member's surviving spouse as if in fact the spouse had been nominated by written designation, or if there is no surviving spouse, then to the member's legal representatives.

(2) Subject to subsection (3) of this section, the benefit under this section shall be paid only where death occurs as a result of injuries sustained in the course of employment as a general authority police officer. The determination of eligibility for the benefit shall be made consistent with Title 51 RCW by the department of labor and industries. The department of labor and industries shall notify the department of retirement systems by order under RCW 51.52.050.

(3) The benefit under this section shall not be paid in the event the member was in the act of committing a felony when the fatal injuries were suffered. [1998 c 157 § 1.]

Effective date—1998 c 157: "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, 1998]." [1998 c 157 § 6.]

41.40.094 Fire fighters—Optional transfer to LEOFF plan II. (1) An employee who was a member of the public employees' retirement system on or before January 1, 1996, and, on June 6, 1996, is employed by an institution of higher education as a fire fighter as defined in RCW 41.26.030, has the following options:

(a) Remain a member of the public employees' retirement system; or

(b) Make an irrevocable choice, filed in writing with the department of retirement systems no later than January 1, 1997, to transfer to the law enforcement officers' and fire fighters' retirement system plan II as defined in RCW 41.26.030. An employee transferring membership under this subsection (1)(b) shall be a dual member as provided in RCW 41.54.010 unless the employee exercises the option to transfer service credit under subsection (2) of this section.

(2)(a) An employee who transferred membership under subsection (1)(b) of this section may choose to transfer service credit as a fire fighter previously earned under the public employees' retirement system, to the law enforcement officers' and fire fighters' retirement system plan II, by making an irrevocable choice filed in writing with the department of retirement systems within one year of the department's announcement of the ability to make such a transfer.

(b) Any fire fighter choosing to transfer under this subsection shall have transferred from the retirement system to the law enforcement officers' and fire fighters' retirement system plan II: (i) All the employee's applicable accumulated contributions and employer contributions attributed to such employee; and (ii) all applicable months of service, as defined in RCW 41.26.030(14)(b), credited to the employee under chapter 41.40 RCW, as though such service was rendered as a member of the law enforcement officers' and fire fighters' retirement system.

(c) For the applicable period of service, the employee shall pay the difference between the contributions such employee paid to the retirement system, and the contributions which would have been paid by the employee had the employee been a member of the law enforcement officers' and fire fighters' retirement system, plus interest as determined by the director. This payment shall be made no later than December 31, 1998, or the date of retirement, whichever comes first. If the payment required by this subsection is not paid in full by the deadline, the transferred service credit shall not be used to determine eligibility for benefits nor to calculate benefits under the law enforcement officers' and fire fighters' retirement system. In such case, the additional employee contributions transferred under this subsection, and any payments made under this subsection, shall be refunded to the employee and the employer shall be entitled to a credit for the payments made under (d) of this subsection.

(d) For the applicable period of service, the employer shall pay:

(i) The difference between the employer contributions paid to the public employees' retirement system, and the combined employer and state contributions which would have been payable to the law enforcement officers' and fire fighters' retirement system; and

(ii) An amount sufficient to ensure that the contribution level of current members of the law enforcement officers'

and fire fighters' retirement system will not increase due to this transfer.

For the purpose of this subsection (2)(d), the state contribution shall not include the contribution related to the amortization of the costs of the law enforcement officers' and fire fighters' retirement system plan I as required by chapter 41.45 RCW.

(e) An individual who transfers service credit and contributions under this subsection shall be permanently excluded from the public employees' retirement system for all service as a fire fighter. [1996 c 38 § 1.]

41.40.095 Transfer of membership from judicial retirement system. (1) Any member of the Washington judicial retirement system who wishes to transfer such membership to the retirement system provided for in this chapter shall file a written request with the director as required by RCW 2.10.040 on or before December 31, 1989, or within one year after reentering service as a judge.

Upon receipt of such request, the director shall transfer from the judicial retirement system to this retirement system: (a) An amount equal to the employee and employer contributions the judge would have made if the judge's service under chapter 2.10 RCW had originally been earned under this chapter, which employee contributions shall be credited to the member's account established under this chapter; and (b) a record of service credited to the member. The judge's accumulated contributions that exceed the amount credited to the judge's account under this subsection shall be deposited in the judge's retirement account created pursuant to chapter 2.14 RCW.

(2) The member shall be given year-for-year credit for years of service, as determined under RCW 2.10.030(8), earned under the judicial retirement system. Service credit granted under the judicial retirement system pursuant to RCW 2.10.220 shall not be transferred under this section. The director instead shall reverse the transfer of contributions and service credit previously made under RCW 2.10.220 and shall credit the member for such periods of service and contributions under this chapter as though no transfer had ever occurred.

(3) All employee contributions transferred pursuant to this section shall be treated the same as other employee contributions made under this chapter. [1988 c 109 § 5. Formerly RCW 41.40.540.]

Effective date—1988 c 109: See note following RCW 2.10.030.

41.40.098 Transfer of former service from judicial retirement system. A former member of the Washington judicial retirement system who: (1) Is not serving as a judge on July 1, 1988; (2) has not retired under the applicable provisions of chapter 2.10 RCW; and (3) subsequently reacquires membership in the public employees' retirement system may, by written request filed with the director of retirement systems, transfer to the public employees' retirement system all periods of time served as a judge, as defined in RCW 2.10.030(2). Upon such membership transfer being made, the department of retirement systems shall transfer the employer contributions and the employee's contributions and service from the judicial retirement system to the public employees' retirement system. The service

shall be transferred and credited to the member as though the service was originally earned as a member of the public employees' retirement system. [1988 c 109 § 6. Formerly RCW 41.40.542.]

Effective date—1988 c 109: See note following RCW 2.10.030.

41.40.102 Effect of certain accumulated vacation leave on retirement benefits. RCW 43.01.044 shall not result in any increase in retirement benefits. The rights extended to state officers and employees under RCW 43.01.044 are not intended to and shall not have any effect on retirement benefits under this chapter. [1983 c 283 § 4. Formerly RCW 41.40.800.]

41.40.103 Benefit calculation—Limitation. (1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section. [1995 c 145 § 3.]

41.40.104 Establishing, restoring service credit. Notwithstanding any provision to the contrary, persons who fail to:

(1) Establish allowable membership service not previously credited;

(2) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or

(3) Restore service credit represented by a lump sum payment in lieu of benefits, before the deadline established by statute, may do so under the conditions set forth in RCW 41.50.165. [1998 c 17 § 3.]

41.40.105 Chapter not applicable to officers and employees of state convention and trade center. The provisions of this chapter shall not be applicable to the officers and employees of the nonprofit corporation formed under chapter 67.40 RCW. [1984 c 210 § 6. Formerly RCW 41.40.810.]

Savings—Severability—1984 c 210: See notes following RCW 67.40.020.

41.40.108 Higher education classified employees—Membership in the public employees' retirement system. (1) All classified employees employed by Washington State University on and after April 24, 1973, and otherwise eligible shall become members of the Washington public employees' retirement system to the exclusion of any other retirement benefit system at the institution unless otherwise provided by law.

(2) All classified employees employed by the University of Washington or each of the regional universities or The Evergreen State College on and after May 6, 1974, and otherwise eligible shall become members of the Washington public employees' retirement system at the institution unless otherwise provided by law: PROVIDED, That persons who, immediately prior to the date of their hiring as classified employees, have for at least two consecutive years held membership in a retirement plan underwritten by the private

insurer of the retirement plan of their respective educational institution may irrevocably elect to continue their membership in the retirement plan notwithstanding the provisions of this chapter, if the election is made within thirty days from the date of their hiring as classified employees. If these persons elect to become members of the public employees' retirement system, contributions by them and their employers shall be required from their first day of employment. [1991 c 35 § 107.]

Intent—1991 c 35: See note following RCW 41.26.005.

"PLAN I"

41.40.145 Provisions applicable to plan I. RCW 41.40.150 through 41.40.363 shall apply only to members of plan I. [1992 c 72 § 9; 1991 c 35 § 105.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.150 Termination of membership—Restoration of service credit. Should any member die, or should the individual separate or be separated from service without leave of absence before attaining age sixty years, or should the individual become a beneficiary, except a beneficiary of an optional retirement allowance as provided by RCW 41.40.188, the individual shall thereupon cease to be a member except;

(1) As provided in RCW 41.40.170.

(2) An employee not previously retired who reenters service shall upon completion of six months of continuous service and upon the restoration, in one lump sum or in annual installments, of all withdrawn contributions: (a) With interest as computed by the director, which restoration must be completed within a total period of five years of membership service following the member's first resumption of employment or (b) paying the amount required under RCW 41.50.165(2), be returned to the status, either as an original member or new member which the member held at time of separation.

(3) A member who separates or has separated after having completed at least five years of service shall remain a member during the period of absence from service for the exclusive purpose of receiving a retirement allowance to begin at attainment of age sixty-five, however, such a member may on written notice to the director elect to receive a reduced retirement allowance on or after age sixty which allowance shall be the actuarial equivalent of the sum necessary to pay regular retirement benefits as of age sixty-five: PROVIDED, That if such member should withdraw all or part of the member's accumulated contributions except those additional contributions made pursuant to RCW 41.40.330(2), the individual shall thereupon cease to be a member and this section shall not apply.

(4) The recipient of a retirement allowance elected to office or appointed to office directly by the governor, and who shall apply for and be accepted in membership as provided in RCW 41.40.023(3) shall be considered to have terminated his or her retirement status and shall become a member of the retirement system with the status of membership the member held as of the date of retirement. Retirement benefits shall be suspended from the date of return to membership until the date when the member again retires

and the member shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with RCW 41.40.180: PROVIDED, That where any such right to retire is exercised to become effective before the member has rendered six uninterrupted months of service the type of retirement allowance the member had at the time of the member's previous retirement shall be reinstated, but no additional service credit shall be allowed: AND PROVIDED FURTHER, That if such a recipient of a retirement allowance does not elect to apply for reentry into membership as provided in RCW 41.40.023(3), the member shall be considered to remain in a retirement status and the individual's retirement benefits shall continue without interruption.

(5) Any member who leaves the employment of an employer and enters the employ of a public agency or agencies of the state of Washington, other than those within the jurisdiction of this retirement system, and who establishes membership in a retirement system or a pension fund operated by such agency or agencies and who shall continue membership therein until attaining age sixty, shall remain a member for the exclusive purpose of receiving a retirement allowance without the limitation found in RCW 41.40.180(1) to begin on attainment of age sixty-five; however, such a member may on written notice to the director elect to receive a reduced retirement allowance on or after age sixty which allowance shall be the actuarial equivalent of the sum necessary to pay regular retirement benefits commencing at age sixty-five: PROVIDED, That if such member should withdraw all or part of the member's accumulated contributions except those additional contributions made pursuant to RCW 41.40.330(2), the individual shall thereupon cease to be a member and this section shall not apply. [1997 c 254 § 12; 1994 c 197 § 26; 1992 195 § 1; 1990 c 249 § 17. Prior: 1987 c 384 § 1; 1987 c 88 § 1; 1986 c 317 § 3; 1983 c 233 § 2; 1982 1st ex.s. c 52 § 20; 1979 ex.s. c 249 § 10; 1974 ex.s. c 195 § 3; 1973 1st ex.s. c 190 § 6; 1969 c 128 § 6; 1967 c 127 § 4; 1965 c 155 § 3; 1963 c 174 § 8; 1955 c 277 § 3; 1953 c 200 § 7; 1951 c 50 § 3; 1949 c 240 § 10; 1947 c 274 § 16; Rem. Supp. 1949 § 11072-16.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Effective date—1992 c 195 § 1: "Section 1 of this act shall take effect January 1, 1994." [1992 c 195 § 3.]

Findings—1990 c 249: See note following RCW 2.10.146.

Effective dates—1987 c 384: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987. Section 2 of this act shall take effect July 1, 1988." [1987 c 384 § 3.]

Legislative findings—Intent—1986 c 317: "The legislature finds that in the past public employees and teachers who had terminated employment, withdrawn their retirement contributions, and subsequently returned to public employment or teaching either did not receive proper notification of the procedure to reinstate their withdrawn contributions or they did not fully understand the limitation on such reinstatement. In 1973, the legislature recognized this fact and provided an extraordinary reinstatement period for such employees. Further in 1983, the legislature established clear notification procedures for the proper notification of the reinstatement policy for all such returning employees. Therefore, it is the intent of this 1986 act to provide one last opportunity for reinstatement of withdrawn contributions

to those who may have not been properly informed or misunderstood the reinstatement procedure." [1986 c 317 § 1.]

Severability—1986 c 317: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 317 § 11.]

Severability—1983 c 233: See note following RCW 41.32.500.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Severability—1974 ex.s. c 195: See note following RCW 41.40.023.

Severability—1973 1st ex.s. c 190: See note following RCW 41.40.010

Severability—1969 c 128: See note following RCW 41.40.010.

41.40.160 Creditable service. (1) Subject to the provisions of RCW 41.40.150, at retirement the total service credited to a member shall consist of all membership service and, if he or she is an original member, all of the certified prior service.

(2) Employees of a public utility or other private enterprise all or any portion of which has been heretofore or may be hereafter acquired by a public agency as a matter of public convenience and necessity, where it is in the public interest to retain the trained personnel of such enterprise, all service to that enterprise shall, upon the acquiring public agency becoming an employer as defined in RCW 41.40.010(4) be credited on the same basis as if rendered to the said employer: PROVIDED, That this shall apply only to those employees who were in the service of the enterprise at or prior to the time of acquisition by the public agency and who remain in the service of the acquiring agency until they attain membership in the state employees' retirement system; and to those employees who were in the service of the enterprise at the time of acquisition by the public agency and subsequently attain membership through employment with any participating agency: PROVIDED FURTHER, In the event that the acquiring agency is an employer at the time of the acquisition, employer's contributions in connection with members achieving service credit hereunder shall be made on the same basis as set forth in RCW *41.40.045 and 41.40.048 for an employer admitted after April 1, 1949, and before July 23, 1995, and on the same basis as set forth in RCW 41.40.057 for an employer admitted after July 23, 1995. [1995 c 286 § 5; 1991 c 35 § 77; 1989 c 273 § 27; 1965 c 155 § 4; 1963 c 174 § 9; 1953 c 200 § 8; 1951 c 50 § 4; 1949 c 240 § 11; 1947 c 274 § 17; Rem. Supp. 1949 § 11072-17.]

***Reviser's note:** RCW 41.40.045 was repealed by 1995 c 286 § 6.

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1989 c 273: See RCW 41.45.900.

41.40.163 Purchase of service credit—Service at Washington State University. Notwithstanding any provision to the contrary, employees of Washington State University who first established membership in the public employees' retirement system plan I under RCW 41.40.500 through 41.40.507, as existing on July 28, 1991, and RCW 41.40.508, as existing on June 7, 1990, may purchase, as set forth under RCW 41.50.165, plan I service credit for the period of service at Washington State University prior to his or her contributory membership in the Washington State University retirement system. [1998 c 17 § 4.]

41.40.170 Credit for military service. (1) A member who has served or shall serve on active federal service in the military or naval forces of the United States and who left or shall leave an employer to enter such service shall be deemed to be on military leave of absence if he or she has resumed or shall resume employment as an employee within one year from termination thereof.

(2) If he or she has applied or shall apply for reinstatement of employment, within one year from termination of the military service, and is refused employment for reasons beyond his or her control, he or she shall, upon resumption of service within ten years have such service credited to him or her.

(3) In any event, after completing twenty-five years of creditable service, any member may have service in the armed forces credited to him or her as a member whether or not he or she left the employ of an employer to enter the armed service: PROVIDED, That in no instance, described in this section, shall military service in excess of five years be credited: AND PROVIDED FURTHER, That in each instance the member must restore all withdrawn accumulated contributions, which restoration must be completed within five years of membership service following the first resumption of employment or complete twenty-five years of creditable service: AND PROVIDED FURTHER, That this section will not apply to any individual, not a veteran within the meaning of RCW 41.04.005, as now or hereafter amended: AND PROVIDED FURTHER, That in no instance, described in this section, shall military service be credited to any member who is receiving full military retirement benefits pursuant to Title 10 United States Code. [1991 c 35 § 78; 1981 c 294 § 12; 1973 1st ex.s. c 190 § 14; 1972 ex.s. c 151 § 3; 1969 c 128 § 7; 1967 c 127 § 8; 1963 c 174 § 10; 1953 c 200 § 9; 1949 c 240 § 12; 1947 c 274 § 18; Rem. Supp. 1949 § 11072-18.]

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1981 c 294: See note following RCW 41.26.115.

Severability—1973 1st ex.s. c 190: See note following RCW 41.40.010.

Severability—1969 c 128: See note following RCW 41.40.010.

41.40.175 Service credit for paid leave of absence—Application to elected officials of labor organizations. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided under the provisions of RCW 41.40.145 through 41.40.363.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement. [1993 c 95 § 1.]

Retroactive application—1993 c 95: "This act applies on a retroactive basis to members for whom compensation and hours were reported under the circumstances described in sections 1 through 6 of this act. This act may also be applied on a retroactive basis to January 1, 1992, to members for whom compensation and hours would have been reported except for chapter 3. Laws of 1992, or explicit instructions from the department of retirement systems." [1993 c 95 § 9.]

Effective date—1993 c 95: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 21, 1993]." [1993 c 95 § 11.]

41.40.180 Retirement—Length of service. (1) Any member with five years of creditable service who has attained age sixty and any original member who has attained age sixty may retire on written application to the director, setting forth at what time the member desires to be retired; PROVIDED, That in the national interest, during time of war engaged in by the United States, the director may extend beyond age sixty, subject to the provisions of subsection (2) of this section, the age at which any member may be eligible to retire.

(2) Any member who has completed thirty years of service may retire on written application to the director setting forth at what time the member desires to be retired, subject to war measures.

(3) Any member who has completed twenty-five years of service and attained age fifty-five may retire on written application to the director setting forth at what time the member desires to be retired, subject to war measures.

(4) Any individual who is eligible to retire pursuant to subsections (1) through (3) of this section shall be allowed to retire while on any authorized leave of absence not in excess of one hundred and twenty days. [1982 1st ex.s. c 52 § 21; 1973 1st ex.s. c 190 § 7; 1972 ex.s. c 151 § 4; 1971 ex.s. c 271 § 7; 1967 c 127 § 5; 1963 c 174 § 11; 1955 c 277 § 4; 1953 c 200 § 10; 1951 c 81 § 1; 1949 c 240 § 13; 1947 c 274 § 19; Rem. Supp. 1949 § 11072-19.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Severability—1973 1st ex.s. c 190: See note following RCW 41.40.010.

Severability—1971 ex.s. c 271: See note following RCW 41.32.260.

41.40.185 Retirement allowances—Members retiring after February 25, 1972. Upon retirement from service, as provided for in RCW 41.40.180 or 41.40.210, a member shall be eligible for a service retirement allowance computed on the basis of the law in effect at the time of retirement, together with such post-retirement pension increases as may from time to time be expressly authorized by the legislature. The service retirement allowance payable to members retiring on and after February 25, 1972 shall consist of:

(1) An annuity which shall be the actuarial equivalent of his or her additional contributions made pursuant to RCW 41.40.330(2).

(2) A membership service pension, subject to the provisions of subsection (4) of this section, which shall be equal to two percent of his or her average final compensation for each service credit year or fraction of a service credit year of membership service.

(3) A prior service pension which shall be equal to one-seventieth of his or her average final compensation for each year or fraction of a year of prior service not to exceed thirty years credited to his or her service accounts. In no event, except as provided in *this 1972 amendatory act, shall any member receive a retirement allowance pursuant to subsections (2) and (3) of this section of more than sixty percent of his or her average final compensation: PROVIDED, That no member shall receive a pension under this section of less than nine hundred dollars per annum if such member has twelve or more years of service credit, or less than one thousand and two hundred dollars per annum if such member has sixteen or more years of service credit, or less than one thousand five hundred and sixty dollars per annum if such member has twenty or more years of service credit.

(4) Notwithstanding the provisions of subsections (1) through (3) of this section, the retirement allowance payable for service where a member was elected or appointed pursuant to Articles II or III of the Constitution of the state of Washington or RCW 48.02.010 and the implementing statutes shall be a combined pension and annuity. Said retirement allowance shall be equal to three percent of the average final compensation for each year of such service. Any member covered by this subsection who upon retirement has served ten or more years shall receive a retirement allowance of at least one thousand two hundred dollars per annum; such member who has served fifteen or more years shall receive a retirement allowance of at least one thousand eight hundred dollars per annum; and such member who has served twenty or more years shall receive a retirement allowance of at least two thousand four hundred dollars per annum: PROVIDED, That the initial retirement allowance of a member retiring only under the provisions of this subsection shall not exceed the average final compensation upon which the retirement allowance is based. The minimum benefits provided in this subsection shall apply to all retired members or to the surviving spouse of deceased members who were elected to the office of state senator or state representative. [1991 c 343 § 7; 1990 c 249 § 7; 1987 c 143 § 2; 1973 1st ex.s. c 190 § 8; 1972 ex.s. c 151 § 5.]

***Reviser's note:** "this 1972 amendatory act" [1972 ex.s. c 151] consists of the 1972 ex.s. amendments to RCW 41.40.010, 41.40.100, 41.40.170, 41.40.180, 41.40.190, 41.40.210, 41.40.220, 41.40.250, 41.40.270, 41.40.330, and 41.40.361, the repeal of RCW 41.40.240, and the enactment of RCW 41.40.185, 41.40.193, and 41.40.235.

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Findings—1990 c 249: See note following RCW 2.10.146.

Severability—1973 1st ex.s. c 190: See note following RCW 41.40.010.

41.40.188 Retirement allowance—Options—Retirement allowance adjustment. (1) Upon retirement for service as prescribed in RCW 41.40.180 or retirement for disability under RCW 41.40.210 or 41.40.230, a member shall elect to have the retirement allowance paid pursuant to one of the following options calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the

amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(c) A member may elect to include the benefit provided under RCW 41.40.640 along with the retirement options available under this section. This retirement allowance option shall be calculated so as to be actuarially equivalent to the options offered under this subsection.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last. [1998 c 340 § 8; 1996 c 175 § 6; 1995 c 144 § 1; 1990 c 249 § 9.]

Effective date—1998 c 340: See note following RCW 41.31.010.

Findings—1990 c 249: See note following RCW 2.10.146.

41.40.190 Retirement allowance—In lieu of allowance provided in RCW 41.40.185. In lieu of the retirement allowance provided in RCW 41.40.185, an individual employed on or before April 25, 1973 may, after complying with RCW 41.40.180 or 41.40.210, make an irrevocable election to receive the retirement allowance provided by this section which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement; and

(2) A basic service pension of one hundred dollars per annum; and

(3) A membership service pension, subject to the provisions of subdivision (4) of this section, which shall be equal to one one-hundredth of his or her average final compensation for each year or fraction of a year of membership service credited to his or her service account; and

(4) A prior service pension which shall be equal to one-seventieth of his or her average final compensation for each year or fraction of a year of prior service not to exceed thirty years credited to his or her service accounts. In no event shall any original member upon retirement at age seventy with ten or more years of service credit receive less than nine hundred dollars per annum as a retirement allowance, nor shall any member upon retirement at any age receive a retirement allowance of less than nine hundred dollars per annum if such member has twelve or more years of service credit, or less than one thousand and two hundred dollars per annum if such member has sixteen or more years of service credit, or less than one thousand five hundred and sixty dollars per annum if such member has twenty or more years of service credit. In the event that the retirement allowance as to such member provided by subdivisions (1), (2), (3), and (4) hereof shall amount to less than the aforesaid minimum retirement allowance, the basic service pension of the member shall be increased from one hundred dollars to a sum sufficient to make a retirement allowance of the applicable minimum amount.

(5) Notwithstanding the provisions of subsections (1) through (4) of this section, the retirement allowance payable for service where a member was elected or appointed pursuant to Articles II or III of the Constitution of the state of Washington or RCW 48.02.010 and the implementing statutes shall be a combined pension and annuity. Said retirement allowance shall be equal to three percent of the average final compensation for each year of such service. Any member covered by this subsection who upon retirement has served ten or more years shall receive a retirement allowance of at least one thousand two hundred dollars per

annum; such member who has served fifteen or more years shall receive a retirement allowance of at least one thousand eight hundred dollars per annum; and such member who has served twenty or more years shall receive a retirement allowance of at least two thousand four hundred dollars per annum: PROVIDED, That the initial retirement allowance of a member retiring only under the provisions of this subsection shall not exceed the average final compensation upon which the retirement allowance is based. The minimum benefits provided in this subsection shall apply to all retired members or to the surviving spouse of deceased members who were elected under the provisions of Article II of the Washington state Constitution.

(6) Unless payment shall be made under RCW 41.40.270, a joint and one hundred percent survivor benefit under RCW 41.40.188 shall automatically be given effect as if selected for the benefit of the surviving spouse upon the death in service, or while on authorized leave of absence for a period not to exceed one hundred and twenty days from the date of payroll separation, of any member who is qualified for a service retirement allowance or has completed ten years of service at the time of death, except that if the member is not then qualified for a service retirement allowance, such option II benefit shall be based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased member would have first qualified for a service retirement allowance. [1990 c 249 § 8; 1987 c 143 § 3; 1973 1st ex.s. c 190 § 9; 1972 ex.s. c 151 § 6; 1971 ex.s. c 271 § 5; 1969 c 128 § 8; 1967 c 127 § 7; 1961 c 291 § 6; 1953 c 200 § 11; 1951 c 50 § 5; 1949 c 240 § 14; 1947 c 274 § 20; Rem. Supp. 1949 § 11072-20.]

Findings—1990 c 249: See note following RCW 2.10.146.

Severability—1973 1st ex.s. c 190: See note following RCW 41.40.010.

Severability—1971 ex.s. c 271: See note following RCW 41.32.260.

Severability—1969 c 128: See note following RCW 41.40.010.

41.40.193 Dates upon which retirement allowances accrue. Retirement allowances paid to members eligible to retire under the provisions of RCW 41.40.180, 41.40.200, 41.40.210, 41.40.220, 41.40.230, and 41.40.250 shall accrue from the first day of the calendar month immediately following the calendar month during which the member is separated from service. Retirement allowance paid to members eligible to retire under any other provisions of *this 1972 amendatory act shall accrue from the first day of a calendar month but in no event earlier than the first day of the calendar month immediately following the calendar month during which the member is separated from service. [1983 c 3 § 94; 1973 1st ex.s. c 190 § 10; 1972 ex.s. c 151 § 7.]

***Reviser's note:** "this 1972 amendatory act," see note following RCW 41.40.185.

Severability—1973 1st ex.s. c 190: See note following RCW 41.40.010.

41.40.197 Retirement allowance—Annual increases—Eligibility. (1) Beginning July 1, 1995, and annually thereafter, the retirement allowance of a person meeting the requirements of this section shall be increased by the annual increase amount.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary who has received a retirement allowance for at least one year and has attained at least age sixty-six by July 1st in the calendar year in which the annual increase is given; or

(b) A beneficiary whose retirement allowance is lower than the minimum benefit provided under RCW 41.40.1984.

(3) The following persons shall also be eligible for the benefit provided in subsection (1) of this section:

(a) A beneficiary receiving the minimum benefit on June 30, 1995, under *RCW 41.40.198; or

(b) A recipient of a survivor benefit on June 30, 1995, which has been increased by **RCW 41.40.325.

(4) If otherwise eligible, those receiving an annual adjustment under RCW 41.40.188(1)(c) shall be eligible for the annual increase adjustment in addition to the benefit that would have been received absent this section.

(5) Those receiving a benefit under RCW 41.40.220(1), or a survivor of a disabled member under RCW 41.44.170(5) shall be eligible for the benefit provided by this section.

(6) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that time. [1995 c 345 § 5.]

Reviser's note: *(1) RCW 41.40.198 was repealed by 1995 c 345 § 11.

** (2) RCW 41.40.325 was repealed by 1995 c 345 § 11.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.40.1971 Definition—"Beneficiary." For the purposes of RCW 41.40.197, 41.40.1984, and 41.40.1986, "beneficiary" means a beneficiary under RCW 41.40.010 or 41.44.030, or both RCW 41.40.010 and 41.44.030. [1995 c 345 § 6.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.40.1984 Minimum retirement allowance—Annual adjustment—Persons who become beneficiaries after June 30, 1995. (1) Except as provided in subsections (4) and (5) of this section, no one who becomes a beneficiary after June 30, 1995, shall receive a monthly retirement allowance of less than twenty-four dollars and twenty-two cents times the number of years of service creditable to the person whose service is the basis of such retirement allowance.

(2) Where the retirement allowance payable was adjusted at the time benefit payments to the beneficiary commenced, the minimum allowance provided in this section shall be adjusted in a manner consistent with that adjustment.

(3) Beginning July 1, 1996, the minimum benefit set forth in subsection (1) of this section shall be adjusted annually by the annual increase.

(4) Those receiving a benefit under RCW 41.40.220(1) or under RCW 41.44.170 (3) and (5) shall not be eligible for the benefit provided by this section.

(5) For persons who served as elected officials and whose accumulated employee contributions and credited interest was less than seven hundred fifty dollars at the time of retirement, the minimum benefit under subsection (1) of

this section shall be ten dollars per month per each year of creditable service. [1995 c 345 § 7.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.40.1985 Permanent retirement allowance adjustment. The dollar amount of the temporary postretirement allowance adjustment granted by section 1, chapter 519, Laws of 1993 shall be provided as a permanent retirement allowance adjustment as of July 1, 1995. [1994 c 247 § 4.]

Effective date—1994 c 247: See note following RCW 41.32.4991.

Temporary postretirement allowance—1993 c 519: See note following RCW 41.32.4991.

41.40.1986 Permanent increase for specified beneficiaries age seventy or over. (1) The amount of the July 1, 1993, increase to the retirement allowance of beneficiaries under this chapter as a result of the temporary adjustment authorized by section 3, chapter 519, Laws of 1993, shall be made a permanent adjustment on July 1, 1995.

(2) Beneficiaries receiving a benefit under *RCW 41.40.198 who are at least age seventy-nine shall receive on July 1, 1995, a permanent adjustment of one dollar and eighteen cents per month per year of service.

(3) Beneficiaries under this chapter who are not subject to subsection (1) of this section and are not receiving a benefit under *RCW 41.40.198 shall receive the following permanent adjustment to their retirement allowance on July 1, 1995:

(a) Those who are age seventy, thirty-nine cents per month per year of service;

(b) Those who are age seventy-one, seventy-nine cents per month per year of service; and

(c) Those who are at least age seventy-two, one dollar and eighteen cents per month per year of service. [1995 c 345 § 8.]

***Reviser's note:** RCW 41.40.198 was repealed by 1995 c 345 § 11.

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.40.200 Retirement for disability in line of duty—Applicability to certain judges. (1) Subject to the provisions of RCW 41.40.310 and 41.40.320, upon application of a member, or his or her employer, a member who becomes totally incapacitated for duty as the natural and proximate result of an accident occurring in the actual performance of duty or who becomes totally incapacitated for duty and qualifies to receive benefits under Title 51 RCW as a result of an occupational disease, as now or hereafter defined in RCW 51.08.140, while in the service of an employer, without willful negligence on his or her part, shall be retired subject to the following conditions:

(a) That the medical adviser, after a medical examination of such member made by or under the direction of the medical adviser, shall certify in writing that the member is mentally or physically totally incapacitated for the further performance of his or her duty and that such member should be retired;

(b) That the director concurs in the recommendation of the medical adviser;

(c) That no application shall be valid or a claim thereunder enforceable unless, in the case of an accident, the claim is filed within two years after the date upon which the injury occurred or, in the case of an occupational disease, the claim is filed within two years after the member separated from service with the employer; and

(d) That the coverage provided for occupational disease under this section may be restricted in the future by the legislature for all current and future members.

(2) The retirement for disability of a judge, who is a member of the retirement system, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (Amendment 71), with the concurrence of the director, shall be considered a retirement under subsection (1) of this section. [1991 c 35 § 80; 1986 c 207 § 1; 1982 c 18 § 3; 1955 c 277 § 5; 1951 c 50 § 6; 1949 c 240 § 15; 1947 c 274 § 21; Rem. Supp. 1949 § 11072-21.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.210 Duty disability retirement allowance for disability after age sixty. Upon retirement for disability, as provided in RCW 41.40.200, a member who has attained age sixty, regardless of his creditable service shall receive a service retirement allowance. [1972 ex.s. c 151 § 8; 1947 c 274 § 22; Rem. Supp. 1947 § 11072-22.]

41.40.220 Allowance on retirement for duty disability—Before sixty. Upon retirement for disability, as provided in RCW 41.40.200, a member who has not attained age sixty shall receive the following benefits, subject to the provisions of RCW 41.40.310 and 41.40.320:

(1) A disability retirement pension of two-thirds of his or her average final compensation to his or her attainment of age sixty, subject to the provisions of RCW 41.40.310. The disability retirement pension provided by the employer shall not exceed forty-two hundred dollars per annum, and

(2) Upon attainment of age sixty, the disabled member shall receive a service retirement allowance as provided in RCW 41.40.210. The department shall grant the disabled member membership service for the period of time prior to age sixty he or she was out of such service due to disability.

(3) During the period a disabled member is receiving a disability pension, as provided for in subsection (1) of this section, his or her contributions to the employees' savings fund shall be suspended and his or her balance in the employees' savings fund, standing to his or her credit as of the date his or her disability pension is to begin, shall remain in the employees' savings fund. If the disabled member should die before attaining age sixty, while a disability beneficiary, upon receipt by the department of proper proof of death, the member's accumulated contributions standing to his or her credit in the employees' savings fund, shall be paid to the member's estate, or such person or persons, trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department. If there is no designated person or persons still living at the time of the member's death, the accumulated contributions standing to the member's credit in the employees' savings fund shall be paid to his or her surviving spouse, or if there is no surviving spouse, then to the member's legal representative. [1995 c 144 § 2; 1991 c 35 § 81; 1972 ex.s. c 151

§ 9; 1971 ex.s. c 271 § 8; 1961 c 291 § 7; 1953 c 200 § 12; 1949 c 240 § 16; 1947 c 274 § 23; Rem. Supp. 1949 § 11072-23.]

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1971 ex.s. c 271: See note following RCW 41.32.260.

41.40.230 Nonduty disability—Applicability to certain judges. (1) Subject to the provisions of RCW 41.40.310 and 41.40.320, upon application of a member, or his or her employer, a member who has been an employee at least five years, and who becomes totally and permanently incapacitated for duty as the result of causes occurring not in the performance of his or her duty, may be retired by the department, subject to the following conditions:

(a) That the medical adviser, after a medical examination of the member made by or under the direction of the medical adviser, shall certify in writing that the member is mentally or physically incapacitated for the further performance of duty, that the incapacity is likely to be permanent, and that the member should be retired; and

(b) That the department concurs in the recommendation of the medical adviser.

(2) The retirement for disability of a judge, who is a member of the retirement system and who has been an employee at least five years, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (Amendment 71), with the concurrence of the department, shall be considered a retirement under subsection (1) of this section. [1991 c 35 § 82; 1982 c 18 § 4; 1969 c 128 § 9; 1951 c 50 § 7; 1949 c 240 § 17; 1947 c 274 § 24; Rem. Supp. 1949 § 11072-24.]

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1969 c 128: See note following RCW 41.40.010.

41.40.235 Nonduty disability retirement allowance—Amount—Maximum—Death benefit. (1) Upon retirement, a member shall receive a nonduty disability retirement allowance equal to two percent of average final compensation for each service credit year of service: PROVIDED, That this allowance shall be reduced by two percent of itself for each year or fraction thereof that his or her age is less than fifty-five years: PROVIDED FURTHER, That in no case may the allowance provided by this section exceed sixty percent of average final compensation.

(2) If the recipient of a retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director or, if there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse or, if there is neither a designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative. [1995 c 144 § 3. Prior: 1991 c 343 § 8; 1991 c 35 § 83; 1986 c 176 § 4; 1972 ex.s. c 151 § 10.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.250 Allowance on retirement for nonduty disability—Election. An individual who was a member on February 25, 1972, may upon qualifying pursuant to RCW 41.40.230, make an irrevocable election to receive the nonduty disability retirement allowance provided in subsections (1) and (2) of this section subject to the provisions of RCW 41.40.310 and 41.40.320. Upon attaining or becoming disabled after age sixty the member shall receive a service retirement allowance as provided for in RCW 41.40.190 except that the annuity portion thereof shall consist of a continuation of the cash refund annuity previously provided to him or her. The disability retirement allowance prior to age sixty shall consist of:

(1) A cash refund annuity which shall be the actuarial equivalent of the member's accumulated contributions at the time of his or her retirement; and

(2) A pension, in addition to the annuity, equal to one one-hundredth of the member's average final compensation for each year of service. If the recipient of a retirement allowance under this section dies before the total of the annuity portions of the retirement allowance paid to him or her equals the amount of his or her accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization as he or she shall have nominated by written designation duly executed and filed with the department, or if there is no designated person or persons, still living at the time of his or her death, then to his or her surviving spouse, or if there is no designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representatives. [1995 c 144 § 4; 1991 c 35 § 84; 1972 ex.s. c 151 § 11; 1969 c 128 § 10; 1961 c 291 § 8; 1953 c 200 § 13; 1947 c 274 § 26; Rem. Supp. 1947 § 11072-26.]

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1969 c 128: See note following RCW 41.40.010.

Nonduty disability retirement allowance—1972 act: See RCW 41.40.235.

41.40.260 Withdrawal from system—Refund of contributions—Waiver of allowance, when. Subject to the provisions of RCW 41.40.280, should a member cease to be an employee, he or she may request upon a form provided by the department a refund of all or part of the funds standing to his or her credit in the employees' savings fund and this amount shall be paid to him or her. Withdrawal of all or part of the funds, other than additional contributions under RCW 41.40.330(2) by a member who is eligible for a service retirement allowance in RCW 41.40.180 or a disability retirement allowance in RCW 41.40.200, 41.40.210, 41.40.220, 41.40.230, or 41.40.250 shall constitute a waiver of any service or disability retirement allowance. [1991 c 35 § 85; 1983 c 3 § 95; 1971 ex.s. c 271 § 9; 1963 c 174 § 12; 1949 c 240 § 18; 1947 c 274 § 27; Rem. Supp. 1949 § 11072-27.]

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1971 ex.s. c 271: See note following RCW 41.32.260.

41.40.262 Elected officials—Restoration of withdrawn contributions. Any active member or separated member who was not eligible to restore contributions under section 3, chapter 317, Laws of 1986, solely because he or

she was an elected official, other than an elected official under Articles II or III of the Constitution of the state of Washington, shall be permitted to restore withdrawn contributions for periods of nonelected service no later than June 30, 1994, with interest as determined by the director. [1993 c 506 § 2.]

41.40.270 Death before retirement or within sixty days following application for disability retirement—Payment of contributions to nominee, surviving spouse, or legal representative—Waiver of payment, effect—Benefits. (1) Except as specified in subsection (4) of this section, should a member die before the date of retirement the amount of the accumulated contributions standing to the member's credit in the employees' savings fund, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, at the time of death:

(a) Shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there be no such designated person or persons still living at the time of the member's death, or if a member fails to file a new beneficiary designation subsequent to marriage, remarriage, dissolution of marriage, divorce, or reestablishment of membership following termination by withdrawal or retirement, such accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the surviving spouse as if in fact such spouse had been nominated by written designation as aforesaid, or if there be no such surviving spouse, then to the member's legal representatives.

(2) Upon the death in service, or while on authorized leave of absence for a period not to exceed one hundred and twenty days from the date of payroll separation, of any member who is qualified but has not applied for a service retirement allowance or has completed ten years of service at the time of death, the designated beneficiary, or the surviving spouse as provided in subsection (1) of this section, may elect to waive the payment provided by subsection (1) of this section. Upon such an election, a joint and one hundred percent survivor option under RCW 41.40.188, calculated under the retirement allowance described in RCW 41.40.185 or 41.40.190, whichever is greater, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 shall automatically be given effect as if selected for the benefit of the designated beneficiary. If the member is not then qualified for a service retirement allowance, such benefit shall be based upon the actuarial equivalent of the sum necessary to pay the accrued regular retirement allowance commencing when the deceased member would have first qualified for a service retirement allowance.

(3) Subsection (1) of this section, unless elected, shall not apply to any member who has applied for service retirement in RCW 41.40.180, as now or hereafter amended, and thereafter dies between the date of separation from

service and the member's effective retirement date, where the member has selected a survivorship option under RCW 41.40.188. In those cases the beneficiary named in the member's final application for service retirement may elect to receive either a cash refund, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, or monthly payments according to the option selected by the member.

(4) If a member dies within sixty days following application for disability retirement under RCW 41.40.230, the beneficiary named in the application may elect to receive the benefit provided by:

(a) This section; or

(b) RCW 41.40.235, according to the option chosen under RCW 41.40.188 in the disability application. [1997 c 73 § 2; 1996 c 227 § 2; 1995 c 144 § 5; 1991 c 365 § 27; 1990 c 249 § 11; 1979 ex.s. c 249 § 11; 1972 ex.s. c 151 § 12; 1969 c 128 § 11; 1965 c 155 § 5; 1963 c 174 § 13; 1961 c 291 § 9; 1953 c 201 § 1; 1953 c 200 § 14; 1951 c 141 § 1; 1949 c 240 § 19; 1947 c 274 § 28; Rem. Supp. 1949 § 11072-28.]

Effective date—1997 c 73: See note following RCW 41.32.520.

Severability—1991 c 365: See note following RCW 41.50.500.

Findings—1990 c 249: See note following RCW 2.10.146.

Severability—1969 c 128: See note following RCW 41.40.010.

41.40.280 Department may withhold refunds of contributions. The department may, in its discretion, withhold payment of all or part of a member's contributions for not more than six months after a member has ceased to be an employee. A member who files a request for a refund and subsequently enters into employment with an employer prior to the refund being made shall not be eligible for a refund. For purposes of this section, a written or oral employment agreement shall be considered entering into employment. [1994 c 177 § 7; 1991 c 35 § 86; 1973 2nd ex.s. c 14 § 2; 1947 c 274 § 29; Rem. Supp. 1947 § 11072-29.]

Findings—1994 c 177: See note following RCW 41.50.125.

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.300 Benefits offset by workers' compensation or similar benefits. Any amounts which may be paid or payable under the provisions of any workers' compensation, or pension, or similar law on account of any disability shall be offset against and payable in lieu of any benefits payable from funds provided by the employer under the provisions of this chapter on account of the same disability. [1987 c 185 § 14; 1949 c 240 § 21; 1947 c 274 § 31; Rem. Supp. 1949 § 11072-31.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

41.40.310 Periodical examination of disability beneficiaries—Benefits upon resumption of gainful employment. Once each year during the first five years following the retirement of a member on a disability pension or retirement allowance, and at least once in every three year period thereafter the department may, and upon the member's application shall, require any disability beneficia-

ry, who has not attained age sixty years, to undergo a medical examination; such examination to be made by or under the direction of the medical adviser at the place of residence of the beneficiary, or other place mutually agreed upon. Should any disability beneficiary, who has not attained age sixty years, refuse to submit to a medical examination in any period, his or her disability pension or retirement allowance may be discontinued until his or her withdrawal of the refusal, and should the refusal continue for one year, all his or her rights in and to his or her disability pension, or retirement allowance, may be revoked by the department. If upon a medical examination of a disability beneficiary, the medical adviser reports and his or her report is concurred in by the department, that the disability beneficiary is no longer totally incapacitated for duty as the result of the injury or illness for which the disability was granted, or that he or she is engaged in a gainful occupation, his or her disability pension or retirement allowance shall cease.

If the disability beneficiary resumes a gainful occupation and his or her compensation is less than his or her compensation earnable at the date of disability, the department shall continue the disability benefits in an amount which when added to his or her compensation does not exceed his or her compensation earnable at the date of separation, but the disability benefit shall in no event exceed the disability benefit originally awarded. The compensation earnable at the date of separation shall be adjusted July 1 of each year by the ratio of the average consumer price index (Seattle, Washington area) for urban consumers, compiled by the United States department of labor, bureau of labor statistics, for the calendar year prior to the adjustment to the average consumer price index for the calendar year in which separation from service occurred but in no event shall the adjustment result in an amount lower than the original compensation earnable at the date of separation. [1991 c 35 § 87; 1984 c 184 § 14; 1965 c 155 § 7; 1963 c 174 § 14; 1955 c 277 § 7; 1951 c 50 § 9; 1949 c 240 § 22; 1947 c 274 § 32; Rem. Supp. 1949 § 11072-32.]

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1984 c 184: See note following RCW 41.50.150.

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

41.40.320 Disability beneficiary—Restoration to service. A disability beneficiary who has been or shall be reinstated to active service shall from the date of restoration again become a member of the retirement system; and shall contribute to the retirement system in the same manner as prior to the disability retirement. Any prior service and membership service, on the basis of which retirement allowances were computed at the time of retirement, shall be restored to full force and effect, and, except in the case of retirement for nonduty disability as provided in RCW 41.40.230, he or she shall be given membership service for the period of time out of service due to the disability. [1991 c 35 § 88; 1953 c 200 § 16; 1951 c 50 § 10; 1949 c 240 § 23; 1947 c 274 § 33; Rem. Supp. 1949 § 11072-33.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.330 Contributions. (1) Each employee who is a member of the retirement system shall contribute six

percent of his or her total compensation earnable. Effective January 1, 1987, however, no contributions are required for any calendar month in which the member is not granted service credit. The officer responsible for making up the payroll shall deduct from the compensation of each member, on each and every payroll of such member for each and every payroll period subsequent to the date on which he or she became a member of the retirement system the contribution as provided by this section.

(2) Any member may, pursuant to regulations formulated from time to time by the department, provide for himself or herself, by means of an increased rate of contribution to his or her account in the employees' savings fund, an increased prospective retirement allowance pursuant to RCW 41.40.190 and 41.40.185.

(3) The officer responsible for making up the payroll shall deduct from the compensation of each member covered by the provisions of RCW 41.40.190(5) and 41.40.185(4) on each and every payroll of such member for each and every payroll period subsequent to the date on which he or she thereafter becomes a member of the retirement system, an amount equal to seven and one-half percent of such member's compensation earnable. [1990 c 8 § 4; 1986 c 268 § 3; 1973 1st ex.s. c 190 § 12; 1972 ex.s. c 151 § 13; 1971 ex.s. c 271 § 10; 1969 c 128 § 12; 1953 c 200 § 17; 1951 c 50 § 11; 1949 c 240 § 24; 1947 c 274 § 34; Rem. Supp. 1949 § 11072-34.]

Findings—1990 c 8: See note following RCW 41.50.065.

Severability—1973 1st ex.s. c 190: See note following RCW 41.40.010.

Severability—1971 ex.s. c 271: See note following RCW 41.32.260.

Severability—1969 c 128: See note following RCW 41.40.010.

Members' retirement contributions—Payment by employer: RCW 41.04.445.

41.40.363 Employer's contributions—Labor guild, association or organization. Any labor guild, association, or organization qualifying as an employer under this chapter and which is required to make contributions for an elective official qualifying for membership under RCW 41.40.023(11) shall make contributions as any other employer within this chapter: PROVIDED, That the department shall cause an actuarial computation to be made of all prior service liability for which contributions are required from the employer to be computed on an actual dollar basis, and if the department determines that the contributions being made therefor under this chapter are insufficient to defray any cost to the state, the department shall require additional contributions from the employer in amounts and at times as will defray all costs to the state, the additional contributions to be completed within ten years from the date the elective official is accepted by the department. [1991 c 35 § 91; 1963 c 225 § 3.]

Intent—1991 c 35: See note following RCW 41.26.005.

"PLAN II"

41.40.610 Provisions applicable to plan II. RCW 41.40.620 through 41.40.740 shall apply only to plan II members. [1991 c 35 § 97; 1977 ex.s. c 295 § 2.]

Intent—1991 c 35: See note following RCW 41.26.005.

Legislative direction and placement—1977 ex.s. c 295: "Sections 1 through 15 of this 1977 amendatory act shall be added to chapter 41.40 RCW and shall be codified as consecutive sections of the Revised Code of Washington within such chapter." [1977 ex.s. c 295 § 23.]

Section headings—1977 ex.s. c 295: "Section headings used in this 1977 amendatory act shall not constitute any part of the law." [1977 ex.s. c 295 § 22.]

41.40.620 Computation of the retirement allowance.

A member of the retirement system shall receive a retirement allowance equal to two percent of such member's average final compensation for each service credit year of service. [1991 c 343 § 10; 1977 ex.s. c 295 § 3.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.610.

41.40.625 Lump sum retirement allowance—

Reentry—Conditions for reinstatement of service. (1) On or after June 10, 1982, the director may pay a member eligible to receive a retirement allowance or the member's beneficiary, subject to the provisions of subsection (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.40.620 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of the monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A retiree or a beneficiary, subject to the provisions of subsection (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to re-retiring, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations under subsection (3) of this section, reinstatement of all previous service will occur if the member pays the amount required under RCW 41.50.165(2). The amount, however, shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under RCW 41.40.620 or an earned disability allowance under RCW 41.40.670 qualify for participation under this section.

(6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system. [1994 c 197 § 27; 1991 c 35 § 98; 1982 c 144 § 3.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Intent—1991 c 35: See note following RCW 41.26.005.

41.40.630 Retirement for service. (1) **NORMAL RETIREMENT.** Any member with at least five service credit years who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620.

(2) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of RCW 41.40.620, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five. [1991 c 343 § 11; 1977 ex.s. c 295 § 4.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.600.

41.40.640 Post-retirement cost-of-living. Beginning July 1, 1979, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

(1) The original dollar amount of the retirement allowance;

(2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";

(3) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

(a) Produce a retirement allowance which is lower than the original retirement allowance;

(b) Exceed three percent in the initial annual adjustment;

or

(c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's average consumer price index—Seattle, Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor. [1977 ex.s. c 295 § 5.]

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.610.

41.40.650 Employer and member contributions.

The required contribution rates to the retirement system for both members and employers shall be established by the director from time to time as may be necessary upon the advice of the state actuary. The state actuary shall use the aggregate actuarial cost method to calculate contribution rates. The employer contribution rate calculated under this section shall be used only for the purpose of determining the

amount of employer contributions to be deposited in the plan II fund from the total employer contributions collected under RCW 41.40.048.

Contribution rates required to fund the costs of the retirement system shall always be equal for members and employers, except as herein provided. Effective January 1, 1987, however, no member or employer contributions are required for any calendar month in which the member is not granted service credit. Any adjustments in contribution rates required from time to time for future costs shall likewise be shared equally by the members and employers.

Any increase in the contribution rate required as the result of a failure of an employer to make any contribution required by this section shall be borne in full by the employer not making the contribution.

The director shall notify all employers of any pending adjustment in the required contribution rate and such increase shall be announced at least thirty days prior to the effective date of the change.

Members contributions required by this section shall be deducted from the members compensation earnable each payroll period. The members contribution and the employers contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends. [1989 c 273 § 24; 1986 c 268 § 6; 1984 c 184 § 12; 1977 ex.s. c 295 § 6.]

Severability—1989 c 273: See RCW 41.45.900.

Severability—1984 c 184: See note following RCW 41.50.150.

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.610.

Members' retirement contributions—Payment by employer: RCW 41.04.445.

41.40.660 Options for payment of retirement allowances—Retirement allowance adjustment. (1) Upon retirement for service as prescribed in RCW 41.40.630 or retirement for disability under RCW 41.40.670, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the

department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last. [1998 c 340 § 9; 1996 c 175 § 7; 1995 c 144 § 6; 1990 c 249 § 10; 1977 ex.s. c 295 § 7.]

Effective date—1998 c 340: See note following RCW 41.31.010.

Findings—1990 c 249: See note following RCW 2.10.146.

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.610.

41.40.670 Earned disability allowance—Applicability to certain judges—Disposition upon death of recipient. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department upon recommendation of the department shall be eligible to receive an allowance under the provisions of RCW 41.40.610 through 41.40.740. The member shall receive a monthly disability

allowance computed as provided for in RCW 41.40.620 and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) The retirement for disability of a judge, who is a member of the retirement system, by the supreme court under Article IV, section 31 of the Constitution of the state of Washington (Amendment 71), with the concurrence of the department, shall be considered a retirement under subsection (1) of this section.

(3)(a) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is no designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

(b) If a recipient of a monthly retirement allowance under this section died before April 27, 1989, and before the total of the retirement allowance paid to the recipient equaled the amount of his or her accumulated contributions at the date of retirement, then the department shall pay the balance of the accumulated contributions to the member's surviving spouse or, if there is no surviving spouse, then in equal shares to the member's children. If there is no surviving spouse or children, the department shall retain the contributions. [1995 c 144 § 7; 1991 c 35 § 99; 1990 c 249 § 21; 1989 c 191 § 3; 1982 c 18 § 5; 1977 ex.s. c 295 § 8.]

Intent—1991 c 35: See note following RCW 41.26.005.

Findings—1990 c 249: See note following RCW 2.10.146.

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.610.

41.40.680 Application for and effective date of retirement allowances. Any member or beneficiary eligible to receive a retirement allowance under the provisions of RCW 41.40.630, 41.40.670, or 41.40.700 shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members under the provisions of RCW 41.40.630 shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances paid to vested members no longer in service, but qualifying for such an allowance pursuant to RCW 41.40.630, shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members under the provisions of RCW 41.40.670 shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits under the provisions of RCW 41.40.700 shall accrue from the first day of the calendar month immediately following the member's death. [1977 ex.s. c 295 § 9.]

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.610.

41.40.690 Suspension of retirement allowance upon reemployment—Exceptions—Reinstatement. (Effective until September 1, 2000.) (1) Except as provided in RCW 41.40.037, no retiree under the provisions of plan II shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010 or 41.32.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030, except that a retiree who ends his or her membership in the retirement system pursuant to RCW 41.40.023(3)(b) is not subject to this section if the retiree's only employment is as an elective official of a city or town.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(3) The department shall adopt rules implementing this section. [1997 c 254 § 13; 1990 c 274 § 11; 1988 c 109 § 11; 1987 c 379 § 2; 1977 ex.s. c 295 § 10.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Application—Reservation—1991 c 35; 1990 c 274 §§ 11, 12, 14, and 15: "Beginning on June 7, 1990, the 1990 amendments to RCW 41.40.690, 41.26.500, 41.32.800, and 2.10.155 regarding postretirement employment are available prospectively to all members of the retirement systems defined in RCW 2.10.040, 41.26.005(2), 41.32.005(2), and 41.40.005(2), regardless of the member's date of retirement. The legislature reserves the right to revoke or amend the 1990 amendments to RCW 41.40.690, 41.26.500, 41.32.800, and 2.10.155. The 1990 amendments to RCW 41.40.690, 41.26.500, 41.32.800, and 2.10.155 do not grant a contractual right to the members or retirees of the affected systems." [1991 c 35 § 11; 1990 c 274 § 19.]

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Effective date—1988 c 109: See note following RCW 2.10.030.

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.610.

41.40.690 Suspension of retirement allowance upon reemployment—Exceptions—Reinstatement. (Effective September 1, 2000.) (1) Except as provided in RCW 41.40.037, no retiree under the provisions of plan II shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010, 41.32.010, or 41.35.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030, except that a retiree who ends his or her membership in the retirement system pursuant to RCW 41.40.023(3)(b) is not subject to this section if the retiree's only employment is as an elective official of a city or town.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(3) The department shall adopt rules implementing this section. [1997 c 254 § 13; 1990 c 274 § 11; 1988 c 109 § 11; 1987 c 379 § 2; 1977 ex.s. c 295 § 10.]

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(3) The department shall adopt rules implementing this section. [1998 c 341 § 606; 1997 c 254 § 13; 1990 c 274 § 11; 1988 c 109 § 11; 1987 c 379 § 2; 1977 ex.s. c 295 § 10.]

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Application—Reservation—1991 c 35; 1990 c 274 §§ 11, 12, 14, and 15: "Beginning on June 7, 1990, the 1990 amendments to RCW 41.40.690, 41.26.500, 41.32.800, and 2.10.155 regarding postretirement employment are available prospectively to all members of the retirement systems defined in RCW 2.10.040, 41.26.005(2), 41.32.005(2), and 41.40.005(2), regardless of the member's date of retirement. The legislature reserves the right to revoke or amend the 1990 amendments to RCW 41.40.690, 41.26.500, 41.32.800, and 2.10.155. The 1990 amendments to RCW 41.40.690, 41.26.500, 41.32.800, and 2.10.155 do not grant a contractual right to the members or retirees of the affected systems." [1991 c 35 § 11; 1990 c 274 § 19.]

Findings—Construction—1990 c 274: See notes following RCW 41.32.010.

Effective date—1988 c 109: See note following RCW 2.10.030.

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.610.

41.40.700 Death benefits. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.40.630(1), actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under RCW 41.40.660 and if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.40.630(2); if a surviving spouse who

is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance share and share alike calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies after October 1, 1977, and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, estate, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives. [1995 c 144 § 8; 1993 c 236 § 5; 1991 c 365 § 28; 1990 c 249 § 18; 1977 ex.s. c 295 § 11.]

Severability—1991 c 365: See note following RCW 41.50.500.

Findings—1990 c 249: See note following RCW 2.10.146.

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.610.

41.40.710 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of RCW 41.40.610 through 41.40.740.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of

absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes both the plan II employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner; or

(b) If not within five years of resumption of service but prior to retirement, pay the amount required under RCW 41.50.165(2).

The contributions required under (a) of this subsection shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces; and

(ii) The member makes the employee contributions required under RCW 41.40.650 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(b) Upon receipt of member contributions under (a)(ii) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.40.650 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave. [1996 c 61 § 4; 1994 c 197 § 28; 1993 c 95 § 2; 1992 c 119 § 3; 1991 c 35 § 100; 1977 ex.s. c 295 § 12.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Retroactive application—Effective date—1993 c 95: See notes following RCW 41.40.175.

Retroactive application—1992 c 119: See note following RCW 41.26.520.

Intent—1991 c 35: See note following RCW 41.26.005.

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.610.

41.40.720 Vested membership. A member who separates or has separated after having completed at least

five years of service may remain a member during the period of such member's absence from service for the exclusive purpose only of receiving a retirement allowance under the provisions of RCW 41.40.630 if such member maintains the member's accumulated contributions intact. [1977 ex.s. c 295 § 13.]

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.610.

41.40.730 Refund of contributions. A member who ceases to be an employee of an employer except by service or disability retirement may request a refund of the member's accumulated contributions. The refund shall be made within ninety days following the receipt of the request and notification of termination through the contribution reporting system by the employer; except that in the case of death, an initial payment shall be made within thirty days of receipt of request for such payment and notification of termination through the contribution reporting system by the employer. A member who files a request for refund and subsequently enters into employment with another employer prior to the refund being made shall not be eligible for a refund. The refund of accumulated contributions shall terminate all rights to benefits under RCW 41.40.610 through 41.40.740. [1982 1st ex.s. c 52 § 23; 1977 ex.s. c 295 § 14.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.610.

41.40.740 Reentry. (1) A member, who had left service and withdrawn the member's accumulated contributions, shall receive service credit for such prior service if the member restores all withdrawn accumulated contributions together with interest since the time of withdrawal as determined by the department.

The restoration of such funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service credit destroyed by the withdrawn contributions if the amount required under RCW 41.50.165(2) is paid. [1994 c 197 § 29; 1977 ex.s. c 295 § 15.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Legislative direction and placement—Section headings—1977 ex.s. c 295: See notes following RCW 41.40.610.

41.40.750 Transfer of membership and service credit—Restoration of contributions and service credit. (Effective September 1, 2000.) (1) Effective September 1, 2000, the membership of all plan II members currently employed in eligible positions in a school district or educational service district and all plan II service credit for such members, is transferred to the Washington school employees' retirement system plan II. Plan II members who have withdrawn their member contributions for prior plan II service may restore contributions and service credit to the Washington school employees' retirement system plan II as provided under RCW 41.40.740.

(2) The membership and previous service credit of a plan II member not employed in an eligible position on September 1, 2000, will be transferred to the Washington school employees' retirement system plan II when he or she becomes employed in an eligible position. Plan II members not employed in an eligible position on September 1, 2000, who have withdrawn their member contributions for prior plan II service may restore contributions and service credit to the Washington school employees' retirement system plan II as provided under RCW 41.40.740.

(3) Members who restore contributions and service credit under subsection (1) or (2) of this section shall have their contributions and service credit transferred to the Washington school employees' retirement system. [1998 c 341 § 113.]

Effective date—1998 c 341: See RCW 41.35.901.

41.40.900 Severability—1977 ex.s. c 295. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 295 § 24.]

41.40.920 Effective date—1977 ex.s. c 295. This 1977 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect October 1, 1977. [1977 ex.s. c 295 § 25.]

Chapter 41.41

STATE EMPLOYEES' RETIREMENT— FEDERAL SOCIAL SECURITY

Sections

41.41.010	Plan for covering members under OASI approved.
41.41.020	Terms and provisions of plan.
41.41.030	Effective date for coverage of members.
41.41.900	Severability—1957 c 222.

41.41.010 Plan for covering members under OASI approved. The plan for covering the state employee members of the state employees' retirement system under the old age and survivorship provisions of Title II of the federal social security act as amended, required by RCW 41.48.050 as amended by section 5, chapter 4, Laws of the extraordinary session of 1955, approved by the state employees' retirement board of the state employees' retirement system on the 1st day of August, 1955, and approved by the governor of the state of Washington on the 16th day of August, 1955, is hereby approved. [1957 c 222 § 1.]

41.41.020 Terms and provisions of plan. The terms and provisions of the plan are as follows:

(1) Each political subdivision of the state employing members of the state employees' retirement system, and such employees, after approval of this plan by its governing body as provided in RCW 41.48.030(4)(f) and after approval by its eligible employees through referendum as provided in RCW 41.48.030 (3) and (4), and the state itself as such a subdivision, and its employees, after approval of this plan by the legislature as provided in RCW 41.48.050(d) and RCW

41.48.030(4)(f) and after approval by its eligible employees through referendum as provided in RCW 41.48.030 (3) and (4), shall be deemed to have accepted and agreed to be bound by the following terms and conditions in consideration of extension of the existing agreement between the secretary of health, education and welfare and the governor to make the protection of the federal old age and survivors insurance program available and applicable to such employees.

(2) As used in this plan the terms quoted below shall have the meanings assigned thereto in this subsection.

"Political subdivision" means any political subdivision, or instrumentality of one or more such subdivisions, or proprietary enterprise acquired, purchased or originated by one or more such subdivisions after December, 1950, which employs members of the state employees' retirement system. The state, its agencies, instrumentalities and institutions of higher learning shall be grouped and considered as a single political subdivision.

"Employee" means any person who is a member of the state employees' retirement system and is employed by a political subdivision, except persons serving in policeman's or fireman's positions and officials compensated on a fee basis.

"Wages" shall have the meaning given in RCW 41.48.020(1) and section 209 of the social security act (42 U.S.C.A. Sec. 409); and refers to the first four thousand two hundred dollars paid to any employee in any calendar year.

"State", where not otherwise clearly indicated by the context, means the commissioner of employment security or other officer designated by the governor to administer the plan at the state level for all participating political subdivisions.

(3) The terms and conditions of this plan are intended and shall be construed to be in conformity with the requirements of the federal social security act as amended and with the requirements of chapter 41.48 RCW, and particularly RCW 41.48.050, as amended by chapter 4, Laws of the extraordinary session of 1955.

(4) The rights and benefits accruing to employees from membership in the state employees' retirement system shall in no way be altered or impaired by this plan or by the additional and supplementary OASI coverage which such employees may receive hereunder. Nothing herein shall be construed to alter in any way the obligations of any political subdivision or its employees to the retirement system.

(5) There shall be no additional cost to or involvement of the state with respect to OASI coverage for state employee members of the state employees' retirement system until this plan has been approved by the legislature.

(6) OASI coverage shall be applicable to all services performed by its employees for a political subdivision which has approved this plan.

(7) Each employee to whom OASI coverage is made applicable under this plan pursuant to an extension or modification under RCW 41.48.030 of the existing agreement between the secretary of health, education and welfare and the governor shall be required to pay into the *OASI contribution fund established by RCW 41.48.060 during the period of such coverage contributions with respect to his wages in an amount equal to the employee tax imposed by the federal insurance contributions act (section 3101, Internal Revenue Code of 1954), in consideration of the employee's

retention in service by the political subdivision. The subdivision shall withhold such contributions from the wages paid to the employee; and shall remit the contributions so withheld in each calendar quarter to the state for deposit in the *contribution fund not later than the twentieth calendar day of the month following that quarter.

(8) Each political subdivision shall pay into the *contribution fund with respect to the wages of its employees during the period of their OASI coverage pursuant to this plan contributions in an amount equal to the employer tax imposed by the federal insurance contributions act (section 3111, Internal Revenue Code of 1954), from the fund of the subdivision from which such employees' wages are paid. The subdivision shall remit such contributions to the state for deposit in the *contribution fund on a quarterly basis, not later than the twentieth calendar day of the month following each calendar quarter.

(9) If any political subdivision other than that comprising the state, its agencies, instrumentalities and institutions of higher learning fails to remit as provided herein employer contributions or employee contributions, or any part of either, such delinquent contributions may be recovered with interest at the rate of six percent per annum by action in a court of competent jurisdiction against the political subdivision; or such delinquent contributions may at the request of the governor be deducted from any moneys payable to such subdivision by the state.

(10) Each political subdivision shall be charged with a share of the cost of administration of this plan by the state, to be computed as that proportion of the overall cost of administration which its total annual contributions bear to the total annual contributions paid by all subdivisions on behalf of employees covered by the plan. The state shall compute the share of cost allocable to each subdivision and bill the subdivision therefor at the end of each fiscal year. The subdivision shall within ninety days thereafter remit its share of the cost to the state for deposit in the general fund of the state.

(11) Each political subdivision shall submit to the state, through the employment security department, P.O. Box 367, Olympia, Washington, or such other officer or agency as the governor may subsequently designate, on forms furnished by the state, not later than the twentieth calendar day of the month following the end of each calendar quarter, the following information:

- A. The social security account number of each employee;
- B. the name of each employee;
- C. the amount of wages subject to contributions as required hereunder paid to each employee during the quarter;
- D. the total amount of wages subject to contributions paid to all employees during the quarter;
- E. the total amount of employee contributions withheld and remitted for the quarter; and
- F. the total amount of employer contributions paid by the subdivision for the quarter.

(12) Each political subdivision shall furnish in the same manner as provided in subsection (11), upon reasonable notice, such other and further reports or information as the governor may from time to time require. Each subdivision shall comply with such requirements as the secretary of health, education and welfare or the governor may from time

to time establish with respect to any or all of the reports or information which are or may be provided for under subsection (11) or this subsection in order to assure the correctness and verification thereof.

(13) The governing body of each political subdivision shall designate an officer of the subdivision to administer such accounting, reporting and other functions as will be required for the effective operation of this plan within the subdivision, as provided herein. The commissioner of employment security, or such other officer as the governor may designate, shall perform or supervise those functions with respect to employees of the subdivision comprising the state, its agencies, instrumentalities and institutions of higher learning; and shall serve as the representative of the participating political subdivisions in the administration of this plan with the secretary of health, education and welfare.

(14) OASI coverage may be made applicable as provided herein to employees of any political subdivision regardless of the approval or disapproval of this plan by any other subdivision.

(15) Each political subdivision, with the approval of a majority of its employees as indicated by vote thereon in conjunction with the referendum to be held pursuant to RCW 41.48.030 (3) and (4), may designate the first day of any month beginning with January of 1955 as the effective date of OASI coverage for such employees; except that after January 1, 1958, a subdivision may not so designate an effective date prior to the first day of the current calendar year.

(16) The governor may terminate the operation of this plan in its entirety with respect to any political subdivision, in his discretion, if he finds that the subdivision has failed to comply substantially with any requirement or provision of this plan. The plan shall not be so terminated until reasonable notice and opportunity for hearing thereon have been given to the subdivision under such conditions, consistent with the provisions of the social security act, as shall have been established in regulations by the governor. [1957 c 222 § 2.]

***Reviser's note:** The "OASI contribution fund" was redesignated the "OASI contribution account" by 1991 sp.s. c 13 § 112.

41.41.030 Effective date for coverage of members. The effective date of OASI coverage for state employee members of the state employees' retirement system shall be the 1st day of July, 1957; provided the terms and conditions set forth in RCW 41.48.030(3) have been fulfilled. [1957 c 222 § 3.]

41.41.900 Severability—1957 c 222. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1957 c 222 § 4.]

Chapter 41.44

STATE-WIDE CITY EMPLOYEES' RETIREMENT

Sections

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41.44.300	System abolished—Date—Transfer of assets, liabilities and responsibilities.

Portability of public retirement benefits: Chapter 41.54 RCW.

41.44.010 Title of chapter. This chapter shall be known and may be cited as the "State-wide City Employees' Retirement System Law". [1947 c 71 § 1; Rem. Supp. 1947 § 9592-130.]

Severability—1947 c 71: "If any provision of this act, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the provision or application so held invalid, and for such purposes the provisions of this act are declared to be severable." [1947 c 71 § 26.] This applies to RCW 41.44.010 through 41.44.250.

41.44.020 Purpose of chapter. The purpose of this chapter is to provide for an actuarially sound system for the payment of annuities and other benefits to officers and employees and to beneficiaries of officers and employees of cities and towns thereby enabling such employees to provide for themselves and their dependents in case of old age, disability and death, and effecting economy and efficiency in the public service by furnishing an orderly means whereby such employees who have become aged or otherwise incapacitated may, without hardship or prejudice, be retired from active service. [1947 c 71 § 2; Rem. Supp. 1947 § 9592-131.]

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

(1) "Retirement system" means the state-wide city employees retirement system provided for herein.

(2) "City" or "cities" includes town or towns.

(3) "Employee" means any appointive officer or employee and shall include elective officials to the extent specified herein.

(4) "Member" means any person included in the membership of the retirement system as provided herein.

(5) "Board" means the "board of trustees" provided for herein.

(6) "Retirement fund" means "state-wide city employees retirement fund" provided for herein.

(7) "Service" means service rendered to a city for compensation; and for the purpose of this chapter a member shall be considered as being in service only while he is receiving compensation from the city for such service or is on leave granted for service in the armed forces of the United States as contemplated in RCW 41.44.120.

(8) "Prior service" means the service of a member for compensation rendered a city prior to the effective date and shall include service in the armed forces of the United States to the extent specified herein and service specified in RCW 41.44.120(5).

(9) "Current service" means service after the employee has become a member of the system.

(10) "Creditable service" means such service as is evidenced by the record of normal contributions, plus prior service as evidenced by prior service certificate.

(11) "Beneficiary" means any person in receipt of a pension, annuity, retirement allowance, disability allowance, or any other benefit herein.

(12) "Compensation" means the compensation payable in cash, plus the monetary value, as determined by the board of trustees, of any allowance in lieu thereof (but for the purposes of this chapter such "compensation" shall not exceed three hundred dollars per month, except as to those employees of any member city the legislative body of which shall not later than July 1, 1953, have irrevocably elected by resolution or ordinance to increase the limitation herein contained, effective as to all of its employees, from three hundred dollars to four hundred dollars, commencing on said date, or which shall so elect prior to January 1st of any succeeding year, effective as of January 1st of any such succeeding year, and as to such employees shall, commencing on the specified date, not exceed four hundred dollars or an amount equal to such increased limitation established by such ordinance or resolution per month): PROVIDED HOWEVER, That the foregoing limitation shall not apply to uniformed personnel.

(13) "Compensation earnable" means the full rate of compensation that would be payable to an employee if he worked the full normal working time (but for the purposes of this chapter, such "compensation earnable" shall not exceed three hundred dollars per month, except as to those employees of any member city the legislative body of which shall not later than July 1, 1953, have irrevocably elected by resolution or ordinance to increase the limitation herein contained, effective as to all of its employees, from three hundred dollars to four hundred dollars, commencing on said date, or which shall so elect prior to January 1st of any succeeding year, effective as of January 1st of any such succeeding year, and as to such employees shall, commencing on the specified date, not exceed four hundred dollars or an amount equal to such increased limitation established by such ordinance or resolution per month): PROVIDED,

HOWEVER, That the foregoing limitation shall not apply to uniformed personnel: PROVIDED FURTHER, That after January 1, 1968 this term shall mean the full rate of compensation payable to an employee if he worked the full normal working time.

(14) "Final compensation" means the highest average annual compensation earnable in any five consecutive years of actual service rendered during the ten years immediately preceding retirement, or where the employee has less than five consecutive years of actual service, the earnable compensation for the last five years preceding his retirement.

(15) "Matching contribution" means the contribution of the city deposited in an amount equal to the normal contributions of the employee.

(16) "Normal contributions" means the contributions at the rate provided for in RCW 41.44.130, excluding those referred to in subsection (6).

(17) "Released matching contributions" means such "matching contributions" as are no longer held for the benefit of the employee.

(18) "Regular interest" means interest compounded annually at such rate as shall have been adopted by the board of trustees in accordance with the provisions of this chapter.

(19) "Accumulated normal contributions" means the sum of all normal contributions, deducted from the compensation of a member, standing to the credit of his individual account, together with regular interest thereon.

(20) "Pension" means payments derived from contributions made by the city as provided herein.

(21) "Annuity" means payments derived from contributions made by a member as provided herein.

(22) "Retirement allowance" means the pension plus annuity.

(23) "Fiscal year" means any year commencing with January 1st and ending with December 31st next following.

(24) "Miscellaneous personnel" means officers and employees other than those in the uniformed police or fire service: PROVIDED, Those members of the fire department who are ineligible to the benefits of a firemen's pension system established by or pursuant to any other state law, are also included in the miscellaneous personnel.

(25) "Uniformed personnel" means any employee who is a policeman in service or who is subject to call to active service or duty as such.

(26) "Effective date" when used with regard to employees means the date on which any individual or group of employees became members of any retirement system and when used with regard to any city or town shall mean the date on which it became a participant.

(27) "Actuarial equivalent" means a benefit of equal value when computed at regular interest upon the basis of such mortality tables as shall be adopted by the board of trustees.

(28) "Persons having an insurable interest in his life" means and includes only such persons who, because of relationship from ties of blood or marriage, have reason to expect some benefit from the continuation of the life of the member.

(29) "Additional contributions" means contributions made pursuant to subsection (6) of RCW 41.44.130.

(30) "Accumulated additional contributions" means the sum of all "additional contributions" made by a member standing to the credit of the individual account, together with regular interest thereon.

(31) "Part time employees" means those employees who, although regularly and continuously employed, do not regularly perform their duties the full number of hours required of other regular employees, including but not confined to such employees as police judges, city attorneys and other officers and employees who are also engaged in outside employment or occupations.

(32) "Excess interest income" means that interest income earned and received from investments in excess of the interest income on investments required to meet actuarial funding requirements. [1967 ex.s. c 28 § 6; 1961 c 227 § 1; 1959 c 70 § 1; 1953 c 228 § 1; 1951 c 275 § 2; 1947 c 71 § 3; Rem. Supp. 1947 § 9592-132.]

Purpose—1967 ex.s. c 28: "It is the purpose of this act to provide amendments to existing legislation relating to the state-wide city employees retirement system to provide for an increase of investment earnings to be used for costs in purchasing, safekeeping, servicing and handling of securities, to amend the mandatory retirement age of uniformed personnel from attained age fifty-five to the minimum age for social security benefits, to change the time required for vested rights from ten years to five years in accordance with the recommendation of the federal committee on intergovernmental relations and to help meet competition with private industry by providing additional fringe benefits or an incentive program for city employees to attract and retain competent employees in public service." [1967 ex.s. c 28 § 1.]

Severability—1967 ex.s. c 28: "If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this 1967 amendatory act, or the application of the provision to other persons or circumstances is not affected." [1967 ex.s. c 28 § 8.]

The foregoing annotations apply to 1967 ex.s. c 28. For codification of that act, see Codification Tables, Volume 0.

41.44.040 System created—Operative date. A retirement system is hereby authorized for employees of cities, same to become operative after the requisite city or cities or combination thereof, have signified their intention to participate in the retirement system and the board has been appointed and qualified as herein provided. The board may begin to function, establish an office, employ an actuary and such other personnel as necessary and undertake the work of establishing the retirement system but it shall not be required to undertake such work unless necessary moneys are made available through negotiated loans or advances from cities or otherwise.

Whenever cities have notified the governor of election to join the retirement system to an extent which would place three hundred or more employees under the system, the governor shall appoint board members as provided herein and the system so created and established shall be forthwith constituted. The date when the system shall become operative as to any city shall be fixed by the board. [1947 c 71 § 4; Rem. Supp. 1947 § 9592-133.]

Reviser's note: Caption for 1947 c 71 § 4 reads as follows: "Sec. 4. AUTHORIZATION AND CREATION."

41.44.050 Election to participate. Any city or town may elect to participate in the retirement system established by this chapter: PROVIDED, That a first class city may establish or maintain any other retirement system authorized

by any other law or its charter. The manner of election to participate in a retirement system under this chapter shall be as follows:

(1) The legislative body therein by ordinance making such election;

(2) Approval by vote of the people of an ordinance initiated by the voters making such election;

(3) Approval by vote of the people of an ordinance making such election referended to the people by the legislative body.

Any ordinance providing for participation therein may on petition of the voters be referended to the voters for approval or disapproval.

The referendum or initiative herein provided for shall be exercised under the law relating to legislative initiative or referendum of the particular city or town; and if the city or town be one for which the law does not now provide such initiative or referendum, it shall be exercised in the manner provided for legislative initiative and referendum of cities having a commission form of government under chapter 35.17 RCW, the city or town council performing the duties and functions under that law devolving on the commission. A majority vote in the legislative body or by the electorate shall be sufficient to carry or reject. Whenever any city or town has elected to join the retirement system proper authorities in such city [or town] shall immediately file with the board an application for participation under the conditions included in this chapter on a form approved by the board. In such application the city or town shall agree to make the contributions required of participating cities [or towns] in the manner prescribed herein and shall state which employee group or groups are to originally have membership in the system.

In the case of a state association of cities and towns, election to participate shall be by majority vote of the board of directors of the association. [1994 c 81 § 76; 1971 ex.s. c 271 § 13; 1947 c 71 § 5; Rem. Supp. 1947 § 9592-134.]

Severability—1971 ex.s. c 271: See note following RCW 41.32.260.

41.44.060 Persons excluded. Policemen in first class cities and all city firemen shall be excluded from the provisions of this chapter, except those employees of the fire department who are not eligible to the benefits of any firemen's pension system established by or pursuant to state law, and who shall be included in the miscellaneous personnel. [1951 c 275 § 3; 1947 c 71 § 6; Rem. Supp. 1947 § 9592-135.]

Firemen's relief and pensions: Chapters 41.16, 41.18 RCW.

Police relief and pensions in first class cities: Chapter 41.20 RCW.

Volunteer fire fighters' relief and pensions: Chapter 41.24 RCW.

41.44.070 Board of trustees. (1) The board of trustees shall consist of seven members, one of whom shall be the state insurance commissioner, ex officio; three elective city officials eligible to the benefits of the system who shall be appointed by the governor from a list of six city officials submitted by the executive committee of the association of Washington cities as the official representative of cities and towns in the state. Original terms of office of the appointees shall be one, two and three years as designated by the governor; thereafter terms shall be for three

years duration. Appointments to fill vacancies other than those caused by expiration of a term, shall be for the unexpired term. Appointees shall serve until successors have been appointed and qualified.

In addition to these four members, there shall be three city employees who shall be elected by a secret ballot vote of the city employees who are members of the system. The method and details of such election shall be determined by the board of trustees. The first such election shall be held in June of 1968. The original terms of office for the elected city employee members shall be one, two and three years as designated by the board of trustees, and such terms shall begin July 1, 1968; thereafter terms shall be for three years' duration. In the case of vacancies of elected city employee positions the board of trustees shall appoint city employees to serve for the unexpired terms. Such appointees shall serve until successors have been elected.

(2) The board shall annually, dating from the first officially recorded meeting, elect a chairman and secretary. Four members shall constitute a quorum.

(3) Each member of the board shall take an oath of office that he will diligently and honestly administer the affairs of the board, and that he will not knowingly violate or wilfully permit to be violated any of the provisions of this chapter. [1967 ex.s. c 28 § 7; 1947 c 71 § 7; Rem. Supp. 1947 § 9592-136.]

Purpose—Severability—1967 ex.s. c 28: See notes following RCW 41.44.030.

41.44.080 Powers and duties of board—Compensation—Liability. The administration of the system is hereby vested in the board of trustees created in RCW 41.44.070 of this chapter and the board shall:

(1) Keep in convenient form such data as shall be deemed necessary for actuarial valuation purposes;

(2) From time to time, through its actuary, make an actuarial investigation into the mortality and service experience of the beneficiaries under this chapter and the various accounts created for the purpose of showing the financial status of the retirement fund;

(3) Adopt for the retirement system the mortality tables and such other tables as shall be deemed necessary;

(4) Certify annually the amount of appropriation which each city shall pay into the retirement fund in the next fiscal year, at such a time that the local authorities shall have ample opportunity for including such expense in the budget;

(5) Keep a record of all its proceedings, which shall be open to inspection by the public;

(6) From time to time adopt such rules and regulations not inconsistent with this chapter, for the administration of the provisions of this chapter, for the administration of the fund created by this chapter and the several accounts thereof, and for the transaction of the business of the board;

(7) Provide for investment, reinvestment, deposit and withdrawal of funds;

(8) Prepare and publish annually a financial statement showing the condition of the fund and the various accounts thereof, and setting forth such other facts, recommendations and data as may be of use in the advancement of knowledge concerning the state-wide city employees retirement system, and furnish a copy thereof to each city which has joined the

retirement system, and to such members as may request copies thereof;

(9) Serve without compensation but shall be reimbursed for expense incident to service as individual members thereof;

(10) Determine equitable amount of administrative expense and death-in-line-of-duty benefit expense to be borne by each city;

(11) Make available to any city considering participation in the system, the services of the actuary employed by the board for the purpose of ascertaining the probable cost of such participation. The cost of any such calculation or valuation shall be paid by the city requesting same to the retirement system;

(12) Perform such other functions as are required for the execution of the provisions of this chapter;

(13) No member of the board shall be liable for the negligence, default or failure of any employee or of any other member of the board to perform the duties of his office and no member of the board shall be considered or held to be an insurer of the funds or assets of the retirement system but shall be liable only for his own personal default or individual failure to perform his duties as such member and to exercise reasonable diligence to provide for the safeguarding of the funds and assets of the system.

(14) Fix the amount of interest to be credited at a rate which shall be based upon the net annual earnings of the fund for the preceding twelve-month period and from time to time make any necessary changes in such rate.

(15) Distribute excess interest income to retired members on a cost of living index basis, as published by the United States department of health, education and welfare, applied only to the annuity and current service portion of the retired members' retirement allowance: PROVIDED, That such distribution shall not exceed the income earned and received on open end investments. [1961 c 227 § 2; 1951 c 275 § 4; 1949 c 171 § 1; 1947 c 71 § 8; Rem. Supp. 1949 § 9592-137.]

41.44.090 Contributions by cities—Withdrawal from system. (1) There shall be paid into the retirement fund by contributions of each city the amounts necessary to pay the following:

(a) Contributions equal to those deposited by employees;

(b) Prior service credits at such rate as may be selected;

(c) That part of a retirement allowance necessary to raise it to a specified minimum;

(d) An equitable share of the administrative costs, all of which costs are to be paid by the cities;

(e) An equitable share of the cost of the death-in-the-line-of-duty benefit, all of which costs are to be paid by the cities.

Any city having in its employ ten or more employees who are members of the system may elect to contribute, in lieu of its contributions set forth in item (a) above, an amount estimated actuarially necessary to match at retirement the accumulated normal contributions of those of its members who will ultimately retire for service or disability; provided that such election shall be made by resolution or ordinance of the legislative body of such city and, in order to become effective for the remainder of the year 1953, shall

be made on or before July 1, 1953, and thereafter any election so made shall be made prior to January 1, 1954, to become then effective or prior to January 1st of any succeeding year to become effective on January 1st of such succeeding year.

Any city may, with the approval of the board, further elect to contribute in lieu of its contributions set forth in items (b) and (c) above, an amount estimated actuarially, necessary to amortize over a period of not to exceed thirty years, all liabilities on account of the participation of such a city, which are not covered by the contributions of its employees, its funds on hand and its contributions provided for in item (a) above or the contributions elected to be made in lieu thereof in cases where such city shall have elected to make said contribution in lieu of the contributions required in said item (a); provided that such election shall be made by resolution or ordinance of the legislative body of such city and, in order to become effective for the remainder of the year 1953, shall be made on or before July 1, 1953, and thereafter any election so made shall be made prior to January 1, 1954, to become then effective or prior to January 1st of any succeeding year to become effective on January 1st of such succeeding year.

In the event that any city shall be making either of the lieu contributions as hereinabove set forth, the resulting contributions shall be adjusted to conform with facts and conditions disclosed by each succeeding actuarial valuation.

(2) Payment of the obligation set forth in subsection (1) of this section may be made in advance or may be paid currently as contributions are received from employees and pensions are paid to retired members: PROVIDED, That the share of administrative expense and expense of the death-in-the-line-of-duty benefits shall be paid as soon as funds are available to make such payment and the board shall have the right to require any city that has withdrawn from the system, to annually, at the beginning of each calendar year, deposit and pay in cash an amount estimated by the board to be sufficient to meet the obligation of such city for the ensuing year to those of its members receiving a retirement allowance. From time to time each city may apply reserves in payment of the obligations set forth above as contemplated in RCW 41.44.200.

(3) The board shall furnish each city with an estimate of the amount necessary to pay the obligations of the city in the ensuing fiscal year and the city shall provide therefor in its budget. The board shall cause to be kept an account with each city, crediting the account with such advances and payments as are made by the city and debiting the account with such charges as properly accrue against the city. The board shall furnish each city with a monthly statement of the amount of matching contributions, prior service charges and charges for minimum retirement allowances properly accruing by reason of payment of retirement allowances and deposit of contributions of members.

(4) Notwithstanding anything to the contrary, the retirement system shall not be liable for the payment of any retirement allowances or other benefits on account of the employees or retired members of any city under this chapter, for which reserves or guarantees have not been properly set up by such city or its employees to pay such retirement allowances or other benefits: PROVIDED, That nothing herein contained shall be so construed to prevent the

establishment of a reserve account for annuities and pensions in which shall be placed at the time of retirement of any member the balances of the retiring member's contribution and the city's matching funds for such member and from which account all annuities and current service pensions shall be paid.

(5) Any city may, by majority vote of its electors, withdraw from participation in the retirement system two years after giving written notice to the board of such action by the electorate. It is hereby specifically provided, however, that the city's obligation to those members receiving or eligible to a retirement allowance prior to such termination of participation shall continue in full force and effect as provided in this chapter. Members not receiving or being eligible to a retirement allowance at time of such termination shall be paid their accumulated contributions on demand. Should it develop that any such city is entitled to a refund such refund shall be made within one year following demand of city entitled thereto. [1953 c 228 § 2; 1951 c 275 § 5; 1949 c 171 § 2; 1947 c 71 § 9; Rem. Supp. 1949 § 9592-138.]

41.44.100 Retirement fund—Deposit—Investment—

Cost. (1) A fund is hereby created and established to be known as the "state-wide city employees retirement fund," and shall consist of all moneys paid into it in accordance with the provisions of this chapter, whether such moneys shall take the form of cash, securities, or other assets: PROVIDED, That such assets shall be public funds to the extent necessary to authorize any bank to deposit such collateral security necessary and required under the laws of the state to secure the deposit of public funds belonging to a city.

(2) The board of trustees shall be the custodian of the retirement fund and shall arrange for the safekeeping thereof. Subject to such provisions as may be prescribed by law for the deposit of city funds in banks, cash belonging to the retirement fund may be deposited in any licensed national bank or banks in the state, or in any bank, banks or corporations authorized or licensed to do a banking business and organized under the laws of the state of Washington; and may be withdrawn on order of the board for the purpose of making such payments as are authorized and required by this chapter.

(3) The board may invest pension fund moneys in such securities of the United States, states, Dominion of Canada, public housing authorities, municipal corporations and other public bodies, as are designated by the laws of the state as lawful investments for the funds of mutual savings banks, and to invest not to exceed twenty-five percent of the system's total investments in the securities of any corporations or public utility bodies as are designated by the laws of the state as lawful investments for the funds of mutual savings banks: PROVIDED, That not more than five percent of the system's total investments may be made in the securities of any one of such corporations or public utility bodies.

(4) Subject to the limitations hereinafter provided, investment of pension funds may also be made in amounts not to exceed twenty-five percent of the system's total investments in the shares of certain open-end investment companies: PROVIDED, That not more than five percent of

the system's total investments may be made in the shares of any one such open-end investment company. The total amount invested in any one company shall not exceed five percent of the assets of such company, and shall only be made in the shares of such companies as are registered as "open-end companies" under the federal investment company act of 1940, as amended. Such company must be at least ten years old and have net assets of at least five million dollars. It must have no outstanding bonds, debentures, notes, or other evidences of indebtedness, or any stock having priority over the shares being purchased, either as to distribution of assets or payment of dividends. It must have paid dividends from investment income in each of the ten years next preceding purchase. The maximum selling commission on its shares may not exceed seven and one-half percent of the sum of the asset value plus such commission.

(5) Investment of pension funds may also be made in the bonds of any municipal corporation or other public body of the state; and in any of the bonds or warrants, including local improvement bonds or warrants within the protection of the local improvement guaranty fund law, issued by any city or town which is a member of the system. Investment of pension funds may also be made in the bonds or other obligations of any other state or territory of the United States or of any political subdivision, agency or instrumentality of any such state, territory, or political subdivision thereof.

Investment of pension funds may also be made in bonds or other obligations insured or guaranteed or which are covered by a repurchase agreement in whole or in part by the federal government or through any corporation, administrator, agency or instrumentality which is or hereafter may be created by the federal government.

(6) In order to provide for an equitable apportionment of the cost of the making and handling of the system's investments, the board may charge against the annual earnings from the system's investments, including income from the same and gains realized from the purchase and sale of its securities, a portion of such earnings computed on the book value of the investments held by the system at the end of its fiscal year, for the purpose of paying the cost of purchasing, safekeeping, servicing and handling its securities: PROVIDED, That such portion shall not exceed one-half of one percent of such value and shall not exceed the net gain from the operations for the year: PROVIDED FURTHER, That such charge shall not be considered as an administrative expense payable solely by the cities. [1967 ex.s. c 28 § 3; 1965 ex.s. c 99 § 1; 1957 c 158 § 1; 1953 c 228 § 3; 1951 c 275 § 6; 1949 c 171 § 3; 1947 c 71 § 10; Rem. Supp. 1949 § 9592-139.]

Purpose—Severability—1967 ex.s. c 28: See notes following RCW 41.44.030.

41.44.105 Supplemental benefits fund. (1) The board of trustees shall establish, in addition to the several benefits provided for, an additional and separate fund to be known as the "supplemental benefits fund" to provide for the payment of supplemental benefits, as hereinafter provided for employees of municipalities electing to participate in said fund.

(2) Any municipality which has elected to participate in this retirement system may elect to have the employees of the municipality participate in and be covered by the

supplemental benefits fund. Such election is authorized to be made in any manner authorized by RCW 41.44.050, as now or hereafter amended, as it relates to participation in the system.

(3) A municipality which once elects to participate in the supplemental benefits fund shall never discontinue participation in the fund as to members who are covered in the fund.

(4) Membership in the fund shall be terminated by cessation of membership in the system.

(5) Each municipality which elects to participate in the supplemental benefits fund shall contribute to that fund, in addition to normal contributions and prior service contributions as required, such additional percentage of each payment of earnings as may be fixed by the board, on recommendation of the actuary, as necessary to accumulate the reserves needed to pay the anticipated benefit: PROVIDED, That the rate of contribution to the supplemental benefits fund shall be on the full compensation of the member.

(6) The supplemental benefit for covered employees shall be an allowance not to exceed fifteen percent of average final compensation payable at the time of retirement.

(7) Should the service of a member be discontinued by other than death or retirement, the benefits and privileges as provided by RCW 41.44.190 as now or hereafter amended, shall apply.

(8) A municipality which elects to participate in the supplemental benefits fund shall provide such benefits for all members employed by such city. [1967 ex.s. c 28 § 2.]

Purpose—Severability—1967 ex.s. c 28: See notes following RCW 41.44.030.

41.44.110 Membership. (1) Subject to subsection (2) of this section, membership of this retirement system shall be composed of the following groups of employees in any participating city or cities:

(a) Miscellaneous personnel as defined in this chapter;

(b) Uniformed personnel as defined in this chapter;

(c) Elective officials, who shall have the right to membership in this retirement system upon filing written notice of such election with the board of trustees;

(d) Employees of the retirement system itself shall be entitled to membership and any costs in connection with such membership shall be a part of the cost of administration.

(e) Employees of any state association of cities and towns shall be entitled to membership, upon election to participate made by the board of directors pursuant to RCW 41.44.050, and any costs in connection with such membership which would be borne by a city in the case of employees of a city shall be borne by the association.

(2) Any city may, when electing to participate in this retirement system in the manner set forth in RCW 41.44.050, include any one group or combination of the groups mentioned in subsection (1) of this section. For an initial period not to exceed one year from the effective date of any city's entry into this system, if so provided at the time of its election to participate, only a majority of the employees of any group or combination of groups must be members of the system.

At all times subsequent to the effective date of the city's entry into this system, or at all times after expiration of such

initial period, if such initial period is established at the time of the city's election to participate, all employees of any group or combination of groups must be included or excluded as members of this system. Groups (c) and (d) shall be considered as being composed of miscellaneous personnel as far as benefits and obligations are concerned except when the contrary is clearly indicated.

(3) Subject to subsection (2) of this section, membership in the retirement system shall be compulsory for all employees in groups (a) and (b), after qualification as provided in subsection (4) of this section.

(4) Subject to subsection (2) of this section, all employees in city service, on the effective date, or on June 9, 1949, or on expiration of the initial period therein provided if they have completed six consecutive months' service or six months' service in any calendar year prior to the expiration of such initial period, shall be members of the system, provided that such employees who are not regular full time employees and are earning less than one hundred dollars per month, or are part time employees serving in an official or special capacity may with the acquiescence of the legislative body of the city or town in which they are employed, elect on or before January 1, 1950, to discontinue membership by giving written notice of such election to the board. All other regular employees earning more than one hundred dollars per month shall become members upon the completion of six consecutive months' service or six months' service in any calendar year. Any employee otherwise eligible, employed in a permanent position, may elect in writing to become a member of the system at any time during the initial period, or at any time prior to completing such six months' service. Such individual employees other than regular employees, who are earning less than one hundred dollars per month or who are serving in an official or special capacity may elect to become members with the acquiescence of the legislative body of the city or town in which they are employed upon the completion of six months of consecutive service or six months' service in any calendar year.

(5) It shall be the duty of the proper persons in each city to immediately report to the board routine changes in the status of personnel and to immediately furnish such other information regarding the employment of members as the board may from time to time require.

(6) Should any member withdraw more than one-quarter of his accumulated contributions, or should he die or be retired, he shall thereupon cease to be a member.

(7) Transfer of any employee from one city to another shall not cause the employee to lose membership in the system providing the city to which he transfers participates in the retirement system created herein. [1971 ex.s. c 271 § 14; 1965 ex.s. c 99 § 2; 1961 c 227 § 3; 1953 c 228 § 4; 1951 c 275 § 7; 1949 c 171 § 4; 1947 c 71 § 11; Rem. Supp. 1949 § 9592-140.]

Severability—1971 ex.s. c 271: See note following RCW 41.32.260.

41.44.120 Prior service credit. (1) Subject to subsections (4) and (5) of this section the following members shall be entitled to prior service credit:

(a) Each member in service on the effective date.

(b) Each member entering after the effective date if such entry is within one year after rendering service prior to the effective date.

(c) Each member entering in accordance with the provisions and subject to the conditions and limitations prescribed in subsection (5) of this section.

As soon as practicable, the board shall issue to each member entitled to prior service credit a certificate certifying the aggregate length of service rendered prior to the effective date. Such certificate shall be final and conclusive as to his prior service unless hereafter modified by the board, upon application of the member.

(2) Each city joining the system shall have the privilege of selecting the rate at which prior service pensions shall be calculated for its employees and may select any one of the three rates set forth below:

(a) 1.33% of final compensation multiplied by the number of years of prior service credited to the member. This rate may be referred to as "full prior service credit."

(b) 1.00% of final compensation multiplied by the number of years of prior service credited to the member. This rate may be referred to as "full [*three-fourths*] prior service credit."

(c) .667% of final compensation multiplied by the number of years of prior service credited to the member. This rate may be referred to as "one-half prior service credit."

(3) The above rates shall apply at the age of sixty-two or over for members included in the miscellaneous personnel and at age sixty or over for members in the uniformed personnel: PROVIDED, That if a member shall retire before attaining either of the ages above referred to, the total prior service pension shall be reduced to the percentages computed and established in accordance with the following tables, to wit:

Miscellaneous Personnel			
Percent of Full Prior Service Allowable			
Male		Female	
Age	Factor	Age	Factor
45	65.48	45	66.78
46	66.86	46	67.91
47	68.29	47	69.09
48	69.77	48	70.34
49	71.28	49	71.67
50	72.82	50	73.10
51	74.43	51	74.71
52	76.13	52	76.41
53	77.93	53	78.21
54	79.84	54	80.11
55	81.86	55	82.12
56	84.00	56	84.24
57	86.28	57	86.50
58	88.69	58	88.89
59	91.26	59	91.42
60	94.00	60	94.11
61	96.90	61	96.96
62	100.00	62	100.00

Percent of Full Prior Service Allowable
Uniformed Personnel

Age	Factor
45	69.66
46	71.13
47	72.65
48	74.22
49	75.83
50	77.47
51	79.18
52	80.99
53	82.91
54	84.93
55	87.09
56	89.37
57	91.79
58	94.36
59	97.09
60	100.00

(4) If sickness, injury or service in the armed forces of the United States during the national emergency identified with World War I or World War II and/or service in the armed forces of the United States of America for extended active duty by any employee who shall have been regularly granted a leave of absence from the city service by reason thereof, prevents any regular employee from being in service on the effective date, the board shall grant prior service credit to such person when he is again employed. The legislative authority in each participating city shall specify the amount of prior service to be granted or current service credit to be made available to such employees: PROVIDED, That in no case shall such service credit exceed five years. Certificate of honorable discharge from or documentary evidence of such service shall be submitted to the board before any such credit may be granted or made available. Prior or current service rates, or both, for such employees shall not exceed the rates established for fellow employees.

(5) There shall be granted to any person who was an employee of a private enterprise or a portion thereof which shall be hereafter acquired by a city as a matter of public convenience or necessity, where it is in the public interest to retain the trained personnel of such enterprise or portion thereof, credit for prior service for the period such person was actually employed by such private enterprise, except that this shall apply only to those persons who shall be employees of such enterprise or portion thereof at the time of its acquisition by the city and who remain in the service of such city until the effective date of membership of such person under this chapter.

There shall be granted to any person who was an employee of any state association of cities and towns, which association elects to participate in the retirement system established by this chapter, credit for prior service for the period such person was actually employed by such association, except that this shall apply only to those persons who shall be employees of such association on May 21, 1971.

Credit for such prior service shall be given only if payment for the additional cost of including such service has been made or if payment of such additional cost or reimbursement therefor has been otherwise provided for to the satisfaction of the board or if such person be entitled to any

private pension or retirement benefits as a result of such service with such private enterprise, credit will be given only if he agrees at the time of his employment by the municipality to accept a reduction in the payment of any benefits payable under this chapter that are based in whole or in part on such added and accredited service by the amount of these private pension or retirement benefits received. The conditions and limitations provided for in this subsection (5) shall be embodied in any certificate of prior service issued or granted by the board where any portion of the prior service credited under this subsection is included therein.

The city may receive payments for these purposes from a third party and shall make from such payments contributions with respect to such prior service as may be necessary to enable the fund to assume its obligations. [1971 ex.s. c 271 § 15; 1959 c 70 § 2; 1957 c 158 § 2; 1951 c 275 § 8; 1947 c 71 § 12; Rem. Supp. 1947 § 9592-141.]

Reviser's note: In subsection (2)(b), the word "full" was substituted for "three-fourths" in the 1971 amendatory act [1971 ex.s. c 271], but the change was not indicated by deletion and addition marks.

Severability—1971 ex.s. c 271: See note following RCW 41.32.260.

41.44.130 Contributions by employees. (1) The normal rates of contribution of members shall be based on sex and age at time of entry into the system, which age shall be the age at the birthday nearest the date of such entry.

(2) The normal rates of contribution for miscellaneous personnel shall be so fixed as to provide an annuity which, together with the pension provided by the city, shall produce as nearly as may be, a retirement allowance at the age of sixty-two years, of one and one-third percent of the final compensation multiplied by the number of years of service of the retiring employee. The normal rate established for age sixty shall be the rate for any member who has attained a greater age before entrance into the retirement system and the normal contribution established for age twenty-four shall be the rate for any member who enters the system at an earlier age.

(3) The normal rates of contribution for uniformed personnel shall be so fixed as to provide an annuity which, together with the pension that would be derived from equal contributions by the city, shall produce as nearly as may be for members who enter service at age thirty-seven or below, a retirement allowance, at age fifty-five with twenty-five or more years of service, or at an age greater than fifty-five after twenty-five years of service, equal to fifty percent of final compensation; and for members entering service at ages over thirty-seven, a retirement allowance at age sixty-two which shall be the same proportion of fifty percent of final compensation as the member's actual years credited bear to twenty-five years. The normal rate established for age fifty shall be the rate for any member who has attained a greater age before entrance into the retirement system.

(4) Subject to the provisions of this chapter, the board shall adopt rules and regulations governing the making of deductions from the compensation of employees and shall certify to the proper officials in each city the normal rate of contribution for each member provided for in subsections (2) and (3) of this section. The proper officials in each city shall apply such rate of contribution to the full compensation of uniformed personnel and to so much of the compensation of miscellaneous personnel as does not exceed three hundred

dollars per month, or four hundred dollars per month, or to any increased amount of such compensation as to members whose member cities have duly elected to increase the limitation provided for in subsection (12) of RCW 41.44.030 and shall certify to the board on each and every payroll the total amount to be contributed and shall furnish immediately to the board a copy of each and every payroll; and each of said amounts shall be forwarded immediately to the board and the board shall credit the deduction shown on such payroll to individual accounts of the members represented on such payrolls.

(5) Every member shall be deemed to consent and agree to the contribution made and provided for herein, and shall receipt in full for his salary or compensation. Payment less said contributions shall be a full and complete discharge of all claims and demands whatsoever for the service rendered by such person during the period covered by such payment, except his claim to the benefits to which he may be entitled under the provisions of this chapter.

(6) Any member may elect to contribute in excess of the contributions provided for in this section in accordance with rules to be established by the board for the purpose of providing additional benefits, but the exercise of this privilege shall not place on the member city or cities any additional financial obligation. The board shall have authority to fix the rate of interest to be paid or allowed upon the additional contributions and from time to time make any necessary changes in said rate. Refunds of additional contributions shall be governed by the same rules as those covering normal contributions unless the board shall establish separate rules therefor. [1965 ex.s. c 99 § 3; 1961 c 227 § 4; 1957 c 158 § 3; 1951 c 275 § 9; 1947 c 71 § 13; Rem. Supp. 1947 § 9592-142.]

41.44.140 Retirement for service. Retirement of a member for service shall be made by the board as follows:

(1) Each member included in the miscellaneous personnel in service on the effective date, who, on or before such effective date, has attained the age of sixty-five years or over shall be compulsorily retired forthwith: **PROVIDED**, That there shall be no compulsory retirements for a period of two years immediately following the effective date, but any member having attained the age of sixty-five may voluntarily retire at any time after attaining such age. Members included in the miscellaneous personnel attaining age sixty-five after effective date shall be retired on the first day of the calendar month next succeeding the month in which the member shall have attained sixty-five, but none of such members shall be subject to compulsory retirement until two years after the effective date. The legislative authority of the city shall have the privilege at all times of extending time for retirement of any such member to his attainment of any age not exceeding age seventy: **PROVIDED**, That any such extension shall not increase the retirement age of such member in excess of one year at a time.

(2) Any member included in the miscellaneous personnel may retire by filing with the board a written application duly attested, setting forth on what date he desires to be retired, such application to be made at least thirty days prior to date of retirement: **PROVIDED**, That said member, at the time specified for his retirement, shall have attained the age

of sixty years, or shall have thirty years of creditable service regardless of attained age: PROVIDED FURTHER, That during the two years immediately following the effective date voluntary service retirement of such members under sixty-two years of age shall not be granted.

(3) Each member included in the uniformed personnel in service on the effective date who on or before such effective date has attained the minimum age for social security benefits shall be compulsorily retired forthwith: PROVIDED, That there shall be no compulsory service retirements for a period of two years immediately following the effective date, but any such member having attained the minimum age for social security benefits may voluntarily retire at any time after attaining such age. Members included in the uniformed personnel attaining the minimum age for social security benefits after the effective date shall be retired on the first day of the calendar month next succeeding the month in which the members shall have attained the minimum age for social security benefits, but none of such members shall be subject to compulsory retirement until two years after the effective date. The legislative authority shall have the privilege at all times of extending time for retirement of any such member: PROVIDED, That any such extension shall not increase the retirement age of such member in excess of one year at a time.

(4) Any member included in the uniformed personnel may retire by filing with the board a written application duly attested, setting forth on what date he desires to be retired, such application to be made at least thirty days prior to date of retirement: PROVIDED, That said members, at the time specified for retirement, shall have twenty-five years of creditable service regardless of age, or shall have attained the age of fifty-five years regardless of years of creditable service: PROVIDED FURTHER, That during the two years immediately following the effective date voluntary service retirement of such members under the minimum age for social security benefits shall not be granted.

(5) After the retirement of any employee, any member city, by unanimous vote of its legislative body and with the consent of the board, may reemploy or retain such employee in its service to fill a supervisory or key position. [1967 ex.s. c 28 § 4; 1965 ex.s. c 99 § 4; 1961 c 227 § 5; 1953 c 228 § 5; 1951 c 275 § 10; 1947 c 71 § 14; Rem. Supp. 1947 § 9592-143.]

Purpose—Severability—1967 ex.s. c 28: See notes following RCW 41.44.030.

41.44.150 Allowance on retirement for service. (1)

A member upon retirement for service, shall receive a retirement allowance subject to the provisions of subsection (2) of this section, which shall consist of:

(a) An annuity which shall be the actuarial equivalent of his accumulated normal contributions at the time of his retirement; and

(b) A pension provided by the contributions of the city, equal to the annuity purchased by the accumulated normal contributions of the member;

(c) For any member having credit for prior service an additional pension, provided by the contributions of the city, as set forth in RCW 41.44.120 at the rate selected by the city employing the member;

(d) Any member, excepting a part time employee, who has ten or more years of creditable service and who is retired by reason of attaining the age of sixty-five or over if included in the miscellaneous personnel or the age of fifty-five or over if included in the uniformed personnel, and whose retirement allowance is calculated to be less than sixty dollars per month, shall receive such additional pension, provided by the contributions of the city, as will make his total retirement allowance equal to sixty dollars per month. An annuity purchased by accumulated additional contributions in such case shall be paid in addition to the minimum guaranteed as herein provided. A part time employee having ten or more years of creditable service, retired by reason of attaining the ages in this subdivision specified and whose retirement allowance is calculated to be less than forty dollars per month, shall receive such additional pension, provided by the contributions of the city, as will make the total retirement allowance equal to forty dollars per month, together with an annuity purchased by his accumulated additional contributions, if any, in addition to the minimum guaranteed.

Nothing herein contained shall be construed in a manner to increase or to decrease any pension being paid or to be paid to a member retired prior to June 11, 1953.

(e) Any member, excepting a part time employee, who has been or is retired by reason of attaining the age of sixty-five or over if included in the miscellaneous personnel or the age of fifty-five or over if included in the uniformed personnel, and whose retirement allowance is calculated to be less than sixty dollars per month, shall receive such additional pension, provided by the contributions of the city, as will make his total retirement allowance equal to six dollars per month for each year of his creditable service: PROVIDED, That the total additional retirement allowance shall be limited to an amount equal to such amount as will make his total retirement allowance not more than sixty dollars per month. An annuity purchased by accumulated additional contributions, if any, in such case shall be paid in addition to the minimum guaranteed, as herein provided.

Nothing herein contained shall be construed in a manner to increase or to decrease any pension being paid or to be paid to a member retired prior to June 11, 1953.

(f) The normal retirement age for uniformed personnel shall be age fifty-five with twenty-five years of creditable service, or shall be at an age greater than age fifty-five upon the completion of twenty-five years or more of creditable service. Upon retirement at the normal age, the retirement allowance shall be equal to fifty percent of final compensation. If retirement occurs at an age other than the normal age, the retirement allowance shall be the same proportion of fifty percent of final compensation as the member's actual years of service bears to the years of service that were or would have been served up to the normal retirement age: PROVIDED, That if retirement occurs prior to the normal age of retirement, said allowance shall be the actuarial equivalent of said allowance at the normal age of retirement.

Nothing herein contained shall be construed in a manner to increase or to decrease any pension being paid or to be paid to a member retired prior to August 6, 1965.

(2) If the retirement allowance of the member as provided in this section, is in excess of three-fourths of his final compensation, the pension of the member, purchased by

the contributions of the city, shall be reduced to such an amount as shall make the member's retirement allowance equal to three-fourths of his final compensation, except as provided in subdivision (3) of this section.

(3) A member, upon retirement from service, shall receive in addition to the retirement allowance provided in this section, an additional annuity which shall be the actuarial equivalent of any accumulated additional contributions which he has to his credit at the time of his retirement. [1965 ex.s. c 99 § 5; 1961 c 227 § 6; 1957 c 158 § 4; 1953 c 228 § 6; 1951 c 275 § 11; 1949 c 171 § 5; 1947 c 71 § 15; Rem. Supp. 1949 § 9592-144.]

41.44.160 Retirement for disability. Any member who has at least ten years of creditable service within the fifteen years immediately preceding retirement and has not attained the age of sixty-five years, or who attains or has attained the age of sixty-five years prior to two years after the effective date, may be retired by the board for permanent and total disability, either ordinary or accidental not incurred in line of duty, and any member, regardless of his age or years of service, may be retired by the board for any permanent and total disability incurred in line of duty, upon examination as follows:

Any member while in service, or while physically or mentally incapacitated for the performance of duty, if such incapacity has been continuous from discontinuance of city service, shall be examined by such medical authority as the board shall employ, upon the application of the head of the office or department in which the member is employed with approval of the legislative body, or upon application of said member, or a person acting in his behalf, stating that said member is permanently and totally incapacitated, either physically or mentally, for the performance of duty and ought to be retired. If examination shows, to the satisfaction of the board, that the member should be retired, he shall be retired forthwith: **PROVIDED**, That no such application shall be considered or granted upon the application of a member unless said member or someone in his behalf, in case of the incapacity of a member, shall have filed the application within a period of one year from and after the discontinuance of service of said member: **PROVIDED**, The board shall retire the said member for disability forthwith: **PROVIDED**, That the disability retirement allowance shall be effective on the first of the month following that in which the member last received salary or wages in city service.

The board shall secure such medical services and advice as it may deem necessary to carry out the purpose of this section and RCW 41.44.180. [1965 ex.s. c 99 § 6; 1951 c 275 § 12; 1949 c 171 § 6; 1947 c 71 § 16; Rem. Supp. 1947 § 9592-145.]

41.44.170 Allowance on retirement for disability. On retirement for permanent and total disability not incurred in line of duty a member shall receive a retirement allowance which shall consist of:

(1) An annuity which shall be the actuarial equivalent of his accumulated normal contributions; and

(2) A pension provided by the contributions of the city which, together with his annuity provided by his accumulated normal contributions, shall make his retirement allowance

equal to thirty percent of his final compensation for the first ten years of service, which allowance shall be increased by one and one-half percent for each year of service in excess of ten years to a maximum of fifty percent of his final compensation; otherwise he shall receive a retirement allowance of forty dollars per month or, except as to a part time employee, such sum, monthly, not in excess of sixty dollars per month, as is equal to six dollars per month for each year of his creditable service, whichever is greater. If the retirement allowance of a part time employee, based upon the pension hereinabove provided, does not exceed forty dollars per month, then such part time employee shall receive a retirement allowance of forty dollars per month and no more.

Nothing herein contained shall be construed in a manner to increase or to decrease any pension being paid or to be paid to a member retired prior to August 6, 1965.

(3) If it appears to the satisfaction of the board that permanent and total disability was incurred in line of duty, a member shall receive in lieu of the retirement allowance provided under subdivisions (1) and (2) of this section full pay from, and be furnished all hospital and medical care by, the city for a period of six months from the date of his disability, and commencing at the expiration of such six month period, shall receive a retirement allowance, regardless of his age or years of service, equal to fifty percent of his final compensation exclusive of any other benefit he may receive.

(4) No disability retirement allowance shall exceed seventy-five percent of final compensation, anything herein to the contrary notwithstanding, except as provided in subdivision (7) of this section.

(5) Upon the death of a member while in receipt of a disability retirement allowance, his accumulated contributions, as they were at the date of his retirement, less any annuity payments made to him, shall be paid to his estate, or to such persons having an insurable interest in his life as he shall have nominated by written designation duly executed and filed with the board. In the alternative, if there be a surviving spouse, or if no surviving spouse, there are surviving a child or children under the age of eighteen years, upon written notice to the board by such spouse, or if there be no such spouse, by the duly appointed, qualified and acting guardian of such child or children, within sixty days of the date of such member's death, there shall be paid to such spouse during his or her lifetime, or, if there be no such spouse, to such child or children, until they shall reach the age of eighteen years, a monthly pension equal to one-half of the monthly final compensation of such deceased member. If any such spouse or child or children shall marry, then such person so marrying shall thereafter receive no further pension herein provided.

(6) If disability is due to intemperance, wilful misconduct, or violation of law, on the part of the member, the board, in its discretion, may pay to said member, in one lump sum his accumulated contribution, in lieu of a retirement allowance, and such payment shall constitute full satisfaction of all obligations of the city to such member.

(7) In addition to the annuity and pension provided for in subdivisions (1) and (2) of this section, a member shall receive an annuity which shall be the actuarial equivalent of his accumulated additional contributions. [1973 1st ex.s. c

154 § 78; 1965 ex.s. c 99 § 7; 1961 c 227 § 7; 1957 c 158 § 5; 1953 c 228 § 7; 1951 c 275 § 13; 1947 c 71 § 17; Rem. Supp. 1947 § 9592-146.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

41.44.180 Examination of disability beneficiary—

Reentry. (1) The board may, at its pleasure, require any disability beneficiary under age sixty-two in the miscellaneous personnel and under age fifty-five in the uniformed personnel to undergo medical examination by medical authority designated by the board. Upon the basis of such examination the board shall determine whether such disability beneficiary is still totally and permanently incapacitated, either physically or mentally, for service in the office or department of the city where he was employed or in any other position in that city, the duties of which he might reasonably be expected to carry out.

(2) If the board shall determine that the beneficiary is not so incapacitated his retirement allowance shall be canceled and he shall be reinstated forthwith in city service. If the city is unable to find employment for a disability beneficiary found to be no longer totally and permanently disabled, the board shall continue the disability retirement allowance of the beneficiary until such time as employment is available, except as provided in paragraph (4) of this section.

(3) Should a disability beneficiary reenter city service and be eligible for membership in the retirement system, his retirement allowance shall be canceled and he shall immediately become a member of the retirement system, his rate of contribution for future years being that established for his age at the time of such reentry. His individual account shall be credited with his accumulated contributions less the annuity payments made to him. An amount equal to the accumulated normal contributions so credited to him shall again be held for the benefit of said member and shall no longer be included in the amounts available to meet the obligations of the city on account of benefits that have been granted. Such member shall receive credit for prior service in the same manner as if he had never been retired for disability.

(4) Should any disability beneficiary under age sixty-two in the miscellaneous personnel or under age fifty-five in the uniformed personnel, refuse to submit to medical examination, his retirement allowance may be discontinued until his withdrawal of such refusal, and should refusal continue for one year, his retirement allowance may be canceled. Should said disability beneficiary, prior to attaining age sixty-two or age fifty-five, as the case may be, engage in a gainful occupation the board shall reduce the amount of his retirement allowance to an amount, which when added to the compensation earned by him in such occupation, shall not exceed the amount of the final compensation on the basis of which his retirement allowance was determined. Should the earning capacity of such beneficiary be further altered, the board may further alter his retirement allowance as indicated above. When said disability beneficiary reaches age sixty-two, if included in the miscellaneous personnel, or age fifty-five, in the uniformed personnel, his retirement allowance shall be made equal to the amount upon which he was originally retired, and shall not again be

modified for any cause except as provided in RCW 41.44.250.

(5) Should the retirement allowance of any disability beneficiary be canceled for any cause other than reentrance into city service, he shall be paid his accumulated contributions, less annuity payments made to him. [1961 c 227 § 8; 1947 c 71 § 18; Rem. Supp. 1947 § 9592-147.]

41.44.190 Withdrawal from system—Reentry— Payment on death of member.

(1) Should service of a member of the miscellaneous personnel be discontinued except by death or retirement, he shall be paid six months after the day of discontinuance such part of his accumulated contributions as he shall demand. Six months after the date of such discontinuance, unless on leave of absence regularly granted, or unless he has exercised the option hereinafter provided, his rights to all benefits as a member shall cease, without notice, and his accumulated contributions shall be returned to him in any event or held for his account if for any reason the return of the same is prevented. Should service of a member of the uniformed personnel be discontinued except by death or retirement, he shall be paid six months after the day of discontinuance such part of his accumulated contributions as he shall demand, and six months after the date of such discontinuance, unless on leave of absence regularly granted, his rights to all benefits as a member shall cease, without notice, and his accumulated contributions shall be returned to him in any event, or held for his account if for any reason the same is prevented: PROVIDED, That the board may in its discretion, grant the privilege of withdrawal in the amounts above specified at any time following such discontinuance. Any member whose service is discontinued except by death or retirement, and who has five or more years of creditable service when such discontinuance occurs, may, at his option, leave his accumulated contributions in the fund and thereby be entitled to receive a deferred retirement allowance commencing at retirement age sixty for miscellaneous personnel and at age fifty-five for uniformed personnel, such retirement allowance to be computed in the same manner provided in subsection (1) of RCW 41.44.150: PROVIDED, That this option may be revoked at any time prior to commencement of annuity payments by filing a written notice of such intention with the board together with a written application for a refund of such accumulated contributions. The board may establish rules and regulations to govern withdrawal and redeposit of contributions.

(2) Should a former member, within five years after discontinuance of service, return to service in the same city in which he was employed he may restore to the fund in such manner as may be agreed upon by such person and the board, his withdrawn normal accumulated contributions as they were at the time of his separation from service and upon completion of such redeposit all his rights and privileges existing at the time of discontinuance of service shall be restored and his obligations as a member shall begin again. The rate of contribution of such returning member shall be the same as it was at the time he separated from service.

(3) Upon the death of any person who has not been retired, pursuant to the provisions hereof, there shall be paid to his estate, or to such persons having an insurable interest

in his life as he shall have nominated by written designation duly executed and filed with the board, his accumulated contributions less any payments therefrom already made to him. Such payment may be made in one lump sum or may be paid in installments over a period of not to exceed five years, as may be designated by the member or his beneficiary, with such rate of interest as may be determined by the board.

(4) In lieu of the death benefit otherwise payable under subsection (3) of this section, there shall be paid a total allowance equal to one-fourth average final compensation per month to the surviving spouse of a member with at least twenty years service as such, at the time of death and who has not been retired and who, by reason of membership in the system, is covered by the Old Age and Survivors Insurance provisions of the Federal Social Security Act, but not at the time of death qualified to receive the benefits thereof. Said allowance shall become payable upon the death of said member or upon the date the surviving spouse becomes ineligible for any benefit payment from the Federal OASI, if later, and shall cease upon death or remarriage, or upon the date the surviving spouse would become entitled, upon application therefor; to any insurance benefit from the Federal OASI system, whichever event shall first occur: PROVIDED, That said benefit shall cease upon the beneficiary becoming employed by any member city of said system: PROVIDED FURTHER, That this allowance shall consist of:

(a) An amount which shall be the actuarial equivalent of the normal contributions at the time specified for retirement;

(b) An amount provided by the contributions of the city, equal to the annuity purchased by the accumulated normal contributions of the member;

(c) Such additional amount, provided by the contributions of the city, as will make the total allowance equal to one-fourth average final compensation per month;

(d) An annuity purchased by the accumulated additional contributions, if any, in addition to the minimum guaranteed.

(5) In lieu of the death benefit otherwise payable under subsection (3) of this section, the surviving spouse of a member who dies after having attained the minimum requirements for his service retirement as required by RCW 41.44.140 may elect to receive the allowance which would have been paid to such surviving spouse had the member been retired on the date of his death and had he elected to receive the lesser retirement allowances provided for in option C of RCW 41.44.220.

(6) If a former member shall, within one year from date of discontinuance of service, be employed by another city participating in this retirement system he shall have the privilege of redepositing and the matching contributions deposited by the city or cities in which he was formerly employed shall again be held for the benefit of such member. If such redepositing member possessed a prior service certificate the city employing him at time of retirement shall accept the liability evidenced by such certificate.

Reinstatement of a prior service certificate shall be effective only upon a showing that normal contributions are on deposit in the retirement fund, to the credit of the member, covering all current service. [1967 ex.s. c 28 § 5; 1965 ex.s. c 99 § 8; 1961 c 227 § 9; 1951 c 275 § 14; 1947 c 71 § 19; Rem. Supp. 1947 § 9592-148.]

Purpose—Severability—1967 ex.s. c 28: See notes following RCW 41.44.030.

41.44.200 Withdrawal—Procedure as to city's contribution. Whenever a member withdraws his accumulated normal contributions the matching contributions of the city so released shall be transferred to a reserve account created for the purpose of showing the amount of credits due each city through such operation. Such credits may be used by the city to apply on any charges made against the city but only so much thereof as will insure leaving in such account an amount estimated to be sufficient to again match contributions redeposited by employees returning to service as contemplated in RCW 41.44.190. The board may credit such reserve accounts with interest at such rate as the board deems equitable: PROVIDED, That as to any member city which has elected to and is making contributions in lieu of those required in RCW 41.44.090(1)(a), there shall be no release of the city's matching contributions after the date of its commencement to make such lieu contributions: PROVIDED FURTHER, That any released contributions of any such city which have been credited to its reserve account prior to the date of such commencement, shall be available to it for the purposes hereinabove specified, unless the board shall determine that their immediate use for such purposes would result in a harmful effect upon the assets of the system, in which event the board shall have the right to defer their use for a reasonable time in which to permit it to make adjustments in the current assets of the system to prevent the same. [1953 c 228 § 8; 1947 c 71 § 20; Rem. Supp. 1947 § 9592-140.]

41.44.210 Benefit on death in line of duty. Upon the death of any member who dies from injuries or disease arising out of or incurred in the performance of his duty or duties, of which the board of trustees shall be the judge, if death occurs within one year from date of discontinuance of city service caused by such injury, there shall be paid to his estate or to such person or persons having an insurable interest in his life, as he shall have nominated by written designation duly executed and filed with the board, the sum of one thousand dollars, purchased by the contributions of the cities participating in the retirement system; and in addition thereto there shall be paid to the surviving spouse during such spouse's lifetime, or if there be no surviving spouse, then to his minor child or children until they shall have reached the age of eighteen years, a monthly pension equal to one-half the monthly final compensation of such deceased member. If any such spouse, or child or children shall marry, then such person so marrying shall thereafter receive no further pension herein provided. Cost of the lump sum benefit above provided shall be determined by actuarial calculation and prorated equitably to each city. The benefits provided in this section shall be exclusive of any other benefits due the member under this chapter. [1973 1st ex.s. c 154 § 79; 1961 c 227 § 10; 1957 c 158 § 6; 1947 c 71 § 21; Rem. Supp. 1947 § 9592-150.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.

41.44.220 Optional allowance on retirement. A member may elect to receive in lieu of the retirement allowance provided for in RCW 41.44.150, its actuarial equivalent in the form of a lesser retirement allowance, payable in accordance with the terms and conditions of one of the options set forth below in this section. Election of any option must be made by written application filed with the board at least thirty days in advance of retirement, or may be made by any member after he has attained the minimum requirements for his service retirement as required by RCW 41.44.140, and shall not be effective unless approved by the board prior to retirement of the member.

Option A. The lesser retirement allowance shall be payable to the member throughout his life: PROVIDED, That if he die before he receives in annuity payments referred to in paragraph (a) of subsection (1) of RCW 41.44.150 a total amount equal to the amount of his accumulated contributions as it was at date of his retirement, the balance of such accumulated contributions shall be paid in one sum to his estate or to such person having an insurable interest in his life as he shall nominate by written designation duly executed and filed with the board.

Option B. The lesser retirement allowance shall be payable to the member throughout life, and after death of the member, one-half of the lesser retirement allowance shall be continued throughout the life of and paid to the wife or husband of this member.

Option C. The lesser retirement allowance shall be payable to the member throughout life, and after death of the member it shall be continued throughout the life of and paid to the wife or husband of the member.

A member may apply for some other benefit or benefits and the board may grant such application provided such other benefit or benefits, together with the reduced retirement allowance, shall be certified by the actuary to be of equivalent value to his retirement allowance.

The surviving spouse may elect to receive a cash refund of the member's accumulated contributions in lieu of the monthly benefit under either Option B or Option C. [1965 ex.s. c 99 § 9; 1947 c 71 § 22; Rem. Supp. 1947 § 9592-151.]

41.44.230 Monthly payments. A pension, annuity, or a retirement allowance granted under the provisions of this chapter, unless otherwise specified herein, shall be payable in monthly installments, and each installment shall cover for the current calendar month. [1947 c 71 § 23; Rem. Supp. 1947 § 9592-152.]

41.44.240 Rights immune from legal process—Exceptions. The right of a person to a pension, annuity or a retirement allowance, to the return of contribution, the pension, annuity or retirement allowance itself, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and the moneys in the fund created under this chapter shall not be subject to execution, garnishment, or any other process whatsoever. This section shall not apply to child support collection actions taken under chapter 26.18, 26.23, or 74.20A RCW against benefits payable under any such plan or arrangement. Benefits under this chapter shall be payable to a spouse or

ex-spouse to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation. [1989 c 360 § 28; 1979 ex.s. c 205 § 7; 1947 c 71 § 24; Rem. Supp. 1947 § 9592-153.]

41.44.250 Suspension of retirement allowance. The payment of any retirement allowance to a member who has been retired from service shall be suspended during the time that the beneficiary is in receipt of compensation for service to any city or town that is a member of the state-wide city employees' retirement system, except as to the amount by which such retirement allowance may exceed such compensation for the same period. It is the intent of this section to prevent any retired person from being able to receive both his retirement allowance and compensation for service to any city or town that is a member of the state-wide city employees' retirement system: PROVIDED, That nothing in this section shall prevent county or state welfare departments from furnishing to any retired employee under the terms of this chapter the hospital, medical, dental and other benefits granted to pensioners under the provisions of Title 74 RCW. [1951 c 275 § 15; 1947 c 71 § 25; Rem. Supp. 1947 § 9592-154.]

41.44.260 Merger of existing or new systems into state-wide system—Contract. The council or other legislative body of any city or town in which there has been established or may hereafter be established by ordinance or pursuant to authority granted, or hereafter granted, by any of the laws of the state of Washington, any retirement system, pension, relief or disability system, excluding any system directly established by the legislature of the state of Washington and by its terms made compulsory, shall have the right by a legal contract in writing to merge or integrate its existing system with that of the state-wide city employees' retirement system established by chapter 71, Laws of 1947 [chapter 41.44 RCW]. Any such contract shall contain appropriate provisions granting to any member of the systems integrated or merged the right to elect to withdraw his or her accumulated contributions accrued to the effective date of the merger or integration where the contract would result in a reduction or impairment of the benefits provided for in the existing system of which he or she is a member, and no such contracts shall be effective which shall reduce or impair the benefits which employees who are receiving benefits from either of the integrated systems would have received had the integration or merger not been effected. [1949 c 137 § 1; Rem. Supp. 1949 § 9592-133a.]

41.44.270 Agreements between board and cities which accept social security act benefits. Should any member city of the state-wide city employees retirement system established pursuant to this chapter, hereafter take advantage of any benefits lawfully available to its employees and their survivors under the old age and survivors insurance system embodied in the social security act, or should any city which has lawfully taken advantage of such benefits desire to become a member of the state-wide city employees retirement system, such city and the board shall have the

power to enter into an agreement mutually satisfactory to both parties adjusting the contributions to be made by such city and by its employees and the benefits to be paid by the state-wide city employees retirement system, in such a manner to permit the participation of such city in the system as a member with reduced benefits to its employees and reduced contributions by the city and by its employees: PROVIDED, That such adjustment shall be made upon an actuarially sound basis and that as to all matters, other than those changed by such agreement, the provisions of the state-wide city employees retirement system law shall apply: PROVIDED FURTHER, That unless such an agreement is entered into by mutual consent of such city and the board, all of the provisions of the state-wide city employees retirement system law shall be applicable. [1953 c 228 § 9.]

41.44.300 System abolished—Date—Transfer of assets, liabilities and responsibilities. Notwithstanding any provisions of chapter 41.44 RCW to the contrary, the state-wide employees' retirement system shall no longer exist after January 1, 1972, at which time all assets, liabilities, and responsibilities of the state-wide city employees' retirement system shall be transferred to and assumed by the Washington public employees' retirement system as provided for in *RCW 41.40.405 through 41.40.407. [1971 c 75 § 4.]

*Reviser's note: RCW 41.40.405 through 41.40.407 were decodified pursuant to 1991 c 35 § 4.

Chapter 41.45

ACTUARIAL FUNDING OF STATE RETIREMENT SYSTEMS

Sections

41.45.010	Intent—Goals.
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41.45.061	Teachers' retirement system plan II—Contribution rate.
41.45.070	Supplemental rate (as amended by 1998 c 340).
41.45.070	Supplemental rate (as amended by 1998 c 341).
41.45.080	Additional contributions may be required.
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41.45.110	Pension funding council—Audits required.
41.45.120	Pension funding work group.
41.45.130	Public employees' retirement system plan II assets divided—Assets transferred to school employees' retirement system.
41.45.900	Severability—1989 c 273.

41.45.010 Intent—Goals. (Effective until September 1, 2000.) It is the intent of the legislature to provide a dependable and systematic process for funding the benefits provided to members and retirees of the public employees' retirement system, chapter 41.40 RCW; the teachers' re-

tirement system, chapter 41.32 RCW; the law enforcement officers' and fire fighters' retirement system, chapter 41.26 RCW; and the Washington state patrol retirement system, chapter 43.43 RCW.

The funding process established by this chapter is intended to achieve the following goals:

(1) To continue to fully fund the public employees' retirement system plan II, the teachers' retirement system plans II and III, and the law enforcement officers' and fire fighters' retirement system plan II as provided by law;

(2) To fully amortize the total costs of the public employees' retirement system plan I, the teachers' retirement system plan I, and the law enforcement officers' and fire fighters' retirement system plan I not later than June 30, 2024;

(3) To establish predictable long-term employer contribution rates which will remain a relatively constant proportion of the future state budgets; and

(4) To fund, to the extent feasible, benefit increases for plan I members and all benefits for plan II and III members over the working lives of those members so that the cost of those benefits are paid by the taxpayers who receive the benefit of those members' service. [1995 c 239 § 305; 1989 c 273 § 1.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until July 1, 1996: RCW 41.34.100.

41.45.010 Intent—Goals. (Effective September 1, 2000.) It is the intent of the legislature to provide a dependable and systematic process for funding the benefits provided to members and retirees of the public employees' retirement system, chapter 41.40 RCW; the teachers' retirement system, chapter 41.32 RCW; the law enforcement officers' and fire fighters' retirement system, chapter 41.26 RCW; the school employees' retirement system, chapter 41.35 RCW; and the Washington state patrol retirement system, chapter 43.43 RCW.

The funding process established by this chapter is intended to achieve the following goals:

(1) To continue to fully fund the public employees' retirement system plan II, the teachers' retirement system plans II and III, the school employees' retirement system plans II and III, and the law enforcement officers' and fire fighters' retirement system plan II as provided by law;

(2) To fully amortize the total costs of the public employees' retirement system plan I, the teachers' retirement system plan I, and the law enforcement officers' and fire fighters' retirement system plan I not later than June 30, 2024;

(3) To establish predictable long-term employer contribution rates which will remain a relatively constant proportion of the future state budgets; and

(4) To fund, to the extent feasible, benefit increases for plan I members and all benefits for plan II and III members over the working lives of those members so that the cost of those benefits are paid by the taxpayers who receive the benefit of those members' service. [1998 c 341 § 401; 1995 c 239 § 305; 1989 c 273 § 1.]

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.45.020 Definitions. (Effective until September 1, 2000.) As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Council" means the pension funding council created in RCW 41.45.100.

(2) "Department" means the department of retirement systems.

(3) "Law enforcement officers' and fire fighters' retirement system plan I" and "law enforcement officers' and fire fighters' retirement system plan II" mean the benefits and funding provisions under chapter 41.26 RCW.

(4) "Public employees' retirement system plan I" and "public employees' retirement system plan II" mean the benefits and funding provisions under chapter 41.40 RCW.

(5) "Teachers' retirement system plan I," "teachers' retirement system plan II," and "teachers' retirement system plan III" mean the benefits and funding provisions under chapter 41.32 RCW.

(6) "Washington state patrol retirement system" means the retirement benefits provided under chapter 43.43 RCW.

(7) "Unfunded liability" means the unfunded actuarial accrued liability of a retirement system.

(8) "Actuary" or "state actuary" means the state actuary employed under chapter 44.44 RCW.

(9) "State retirement systems" means the retirement systems listed in RCW 41.50.030.

(10) "Work group" means the pension funding work group created in RCW 41.45.120. [1998 c 283 § 1; 1995 c 239 § 306; 1989 c 273 § 2.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.45.020 Definitions. (Effective September 1, 2000.) As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Council" means the pension funding council created in RCW 41.45.100.

(2) "Department" means the department of retirement systems.

(3) "Law enforcement officers' and fire fighters' retirement system plan I" and "law enforcement officers' and fire fighters' retirement system plan II" mean the benefits and funding provisions under chapter 41.26 RCW.

(4) "Public employees' retirement system plan I" and "public employees' retirement system plan II" mean the benefits and funding provisions under chapter 41.40 RCW.

(5) "Teachers' retirement system plan I," "teachers' retirement system plan II," and "teachers' retirement system plan III" mean the benefits and funding provisions under chapter 41.32 RCW.

(6) "School employees' retirement system plan II" and "school employees' retirement system plan III" mean the benefits and funding provisions under chapter 41.35 RCW.

(7) "Washington state patrol retirement system" means the retirement benefits provided under chapter 43.43 RCW.

(8) "Unfunded liability" means the unfunded actuarial accrued liability of a retirement system.

(9) "Actuary" or "state actuary" means the state actuary employed under chapter 44.44 RCW.

(10) "State retirement systems" means the retirement systems listed in RCW 41.50.030.

(11) "Work group" means the pension funding work group created in RCW 41.45.120.

(12) "Classified employee" means a member of the Washington school employees' retirement system plan II or plan III as defined in RCW 41.35.010.

(13) "Teacher" means a member of the teachers' retirement system as defined in RCW 41.32.010(15). [1998 c 341 § 402; 1998 c 283 § 1; 1995 c 239 § 306; 1989 c 273 § 2.]

Reviser's note: This section was amended by 1998 c 283 § 1 and by 1998 c 341 § 402, 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).

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.45.030 State actuary to submit information on the experience and financial condition of each retirement system to the economic and revenue forecast council—Adoption of long-term economic assumptions. (1) Beginning September 1, 1995, and every two years thereafter, the state actuary shall submit to the council information regarding the experience and financial condition of each state retirement system. The council shall review this and such other information as it may require.

(2) By December 31, 1995, and every two years thereafter, the council, by affirmative vote of five councilmembers, shall adopt the following long-term economic assumptions:

(a) Growth in system membership;

(b) Growth in salaries, exclusive of merit or longevity increases;

(c) Growth in inflation; and

(d) Investment rate of return.

The council shall work with the department of retirement systems, the state actuary, and the executive director of the state investment board, and shall consider long-term historical averages, in developing the economic assumptions.

(3) The assumptions adopted by the council shall be used by the state actuary in conducting all actuarial studies of the state retirement systems. [1995 c 233 § 1; 1993 c 519 § 17; 1989 c 273 § 3.]

Effective date—1995 c 233: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 5, 1995]." [1995 c 233 § 4.]

Part headings not law—Effective date—1993 c 519: See notes following RCW 28A.400.212.

41.45.050 Contributions to be based on rates established in this chapter—Allocation formula for contributions. (*Effective until September 1, 2000.*) (1) Employers of members of the public employees' retirement system, the teachers' retirement system, and the Washington state patrol retirement system shall make contributions to those systems based on the rates established in RCW 41.45.060 and 41.45.070.

(2) The state shall make contributions to the law enforcement officers' and fire fighters' retirement system based on the rates established in RCW 41.45.060 and 41.45.070. The state treasurer shall transfer the required contributions each month on the basis of salary data provided by the department.

(3) The department shall bill employers, and the state shall make contributions to the law enforcement officers' and fire fighters' retirement system, using the combined rates established in RCW 41.45.060 and 41.45.070 regardless of the level of pension funding provided in the biennial budget. Any member of an affected retirement system may, by mandamus or other appropriate proceeding, require the transfer and payment of funds as directed in this section.

(4) The contributions received for the public employees' retirement system shall be allocated between the public employees' retirement system plan I fund and public employees' retirement system plan II fund as follows: The contributions necessary to fully fund the public employees' retirement system plan II employer contribution required by RCW 41.40.650 shall first be deposited in the public employees' retirement system plan II fund. All remaining public employees' retirement system employer contributions shall be deposited in the public employees' retirement system plan I fund.

(5) The contributions received for the teachers' retirement system shall be allocated between the plan I fund and the combined plan II and plan III fund as follows: The contributions necessary to fully fund the combined plan II and plan III employer contribution shall first be deposited in the combined plan II and plan III fund. All remaining teachers' retirement system employer contributions shall be deposited in the plan I fund.

(6) The contributions received under RCW 41.26.450 for the law enforcement officers' and fire fighters' retirement system shall be allocated between the law enforcement officers' and fire fighters' retirement system plan I and the law enforcement officers' and fire fighters' retirement system plan II fund as follows: The contributions necessary to fully fund the law enforcement officers' and fire fighters' retirement system plan II employer contributions shall be first deposited in the law enforcement officers' and fire fighters' retirement system plan II fund. All remaining law enforcement officers' and fire fighters' retirement system employer contributions shall be deposited in the law enforcement officers' and fire fighters' retirement system plan I fund. [1995 c 239 § 308; 1989 c 273 § 5.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until July 1, 1996: RCW 41.34.100.

41.45.050 Contributions to be based on rates established in this chapter—Allocation formula for contributions. (*Effective September 1, 2000.*) (1) Employers of members of the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, and the Washington state patrol retirement system shall make contributions to those systems based on the rates established in RCW 41.45.060 and 41.45.070.

(2) The state shall make contributions to the law enforcement officers' and fire fighters' retirement system based on the rates established in RCW 41.45.060 and 41.45.070. The state treasurer shall transfer the required contributions each month on the basis of salary data provided by the department.

(3) The department shall bill employers, and the state shall make contributions to the law enforcement officers' and fire fighters' retirement system, using the combined rates established in RCW 41.45.060 and 41.45.070 regardless of the level of pension funding provided in the biennial budget. Any member of an affected retirement system may, by mandamus or other appropriate proceeding, require the transfer and payment of funds as directed in this section.

(4) The contributions received for the public employees' retirement system shall be allocated between the public employees' retirement system plan I fund and public employees' retirement system plan II fund as follows: The contributions necessary to fully fund the public employees' retirement system plan II employer contribution required by RCW 41.40.650 shall first be deposited in the public employees' retirement system plan II fund. All remaining public employees' retirement system employer contributions shall be deposited in the public employees' retirement system plan I fund.

(5) The contributions received for the teachers' retirement system shall be allocated between the plan I fund and the combined plan II and plan III fund as follows: The contributions necessary to fully fund the combined plan II and plan III employer contribution shall first be deposited in the combined plan II and plan III fund. All remaining teachers' retirement system employer contributions shall be deposited in the plan I fund.

(6) The contributions received for the school employees' retirement system shall be allocated between the public employees' retirement system plan I fund and the school employees' retirement system combined plan II and plan III fund as follows: The contributions necessary to fully fund the combined plan II and plan III employer contribution shall first be deposited in the combined plan II and plan III fund. All remaining school employees' retirement system employer contributions shall be deposited in the public employees' retirement system plan I fund.

(7) The contributions received under RCW 41.26.450 for the law enforcement officers' and fire fighters' retirement system shall be allocated between the law enforcement officers' and fire fighters' retirement system plan I and the law enforcement officers' and fire fighters' retirement system plan II fund as follows: The contributions necessary to fully fund the law enforcement officers' and fire fighters' retirement system plan II employer contributions shall be first deposited in the law enforcement officers' and fire fighters' retirement system plan II fund. All remaining law enforcement officers' and fire fighters' retirement system

employer contributions shall be deposited in the law enforcement officers' and fire fighters' retirement system plan I fund. [1998 c 341 § 403; 1995 c 239 § 308; 1989 c 273 § 5.]

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.45.060 Basic state and employer contribution rates set by council (as amended by 1998 c 283). (1) The state actuary shall provide actuarial valuation results based on the assumptions adopted under RCW 41.45.030.

(2) Not later than September 30, ~~((1996))~~ 1998, and every two years thereafter, consistent with the assumptions adopted under RCW 41.45.030, the council shall adopt ~~((both))~~ changes to: (a) A basic state contribution rate for the law enforcement officers' and fire fighters' retirement system; and (b) basic employer contribution rates for the public employees' retirement system plan I, the teachers' retirement system plan I, and the Washington state patrol retirement system to be used in the ensuing biennial period.

(3) The employer and state contribution rates adopted by the council shall be the level percentages of pay that are needed:

(a) To fully amortize the total costs of the public employees' retirement system plan I, the teachers' retirement system plan I, the law enforcement officers' and fire fighters' retirement system plan I, and the unfunded liability of the Washington state patrol retirement system not later than June 30, 2024; and

(b) To also continue to fully fund the public employees' retirement system plan II, the teachers' retirement system plans II and III, and the law enforcement officers' and fire fighters' retirement system plan II in accordance with RCW 41.40.650, 41.26.450, and this section.

(4) The aggregate actuarial cost method shall be used to calculate a combined plan II and III employer contribution rate.

(5) The council shall immediately notify the directors of the office of financial management and department of retirement systems of the state and employer contribution rates adopted.

(6) The director of the department of retirement systems shall collect those rates adopted by the council. [1998 c 283 § 6; 1995 c 239 § 309; 1993 c 519 § 19; 1992 c 239 § 2; 1990 c 18 § 1; 1989 c 273 § 6.]

41.45.060 Basic state and employer contribution rates set by council (as amended by 1998 c 340). (1) The state actuary shall provide actuarial valuation results based on the assumptions adopted under RCW 41.45.030.

(2) Not later than September 30, 1996, and every two years thereafter, consistent with the assumptions adopted under RCW 41.45.030, the council shall adopt both: (a) A basic state contribution rate for the law enforcement officers' and fire fighters' retirement system; and (b) basic employer contribution rates for the public employees' retirement system plan I, the teachers' retirement system plan I, and the Washington state patrol retirement system to be used in the ensuing biennial period.

(3) The employer and state contribution rates adopted by the council shall be the level percentages of pay that are needed:

(a) To fully amortize the total costs of the public employees' retirement system plan I, the teachers' retirement system plan I, the law enforcement officers' and fire fighters' retirement system plan I, and the unfunded liability of the Washington state patrol retirement system not later than June 30, 2024, except as provided in subsection (5) of this section; and

(b) To also continue to fully fund the public employees' retirement system plan II, the teachers' retirement system plans II and III, and the law enforcement officers' and fire fighters' retirement system plan II in accordance with RCW 41.40.650, 41.26.450, and this section.

(4) The aggregate actuarial cost method shall be used to calculate a combined plan II and III employer contribution rate.

(5) An amount equal to the amount of extraordinary investment gains as defined in RCW 41.31.020 shall be used to shorten the amortization period for the public employees' retirement system plan I and the teachers' retirement system plan I.

(6) The council shall immediately notify the directors of the office of financial management and department of retirement systems of the state and employer contribution rates adopted.

~~((6))~~ (7) The director of the department of retirement systems shall collect those rates adopted by the council. [1998 c 340 § 11; 1995 c 239 § 309; 1993 c 519 § 19; 1992 c 239 § 2; 1990 c 18 § 1; 1989 c 273 § 6.]

Effective date—1998 c 340: See note following RCW 41.31.010.

41.45.060 Basic state and employer contribution rates set by council (as amended by 1998 c 341). (1) The state actuary shall provide actuarial valuation results based on the assumptions adopted under RCW 41.45.030.

(2) Not later than September 30, 1996, and every two years thereafter, consistent with the assumptions adopted under RCW 41.45.030, the council shall adopt both:

(a) A basic state contribution rate for the law enforcement officers' and fire fighters' retirement system; ~~((and))~~

(b) Basic employer contribution rates for the public employees' retirement system plan I, the teachers' retirement system plan I, and the Washington state patrol retirement system to be used in the ensuing biennial period; and

(c) A basic employer contribution rate for the school employees' retirement system for funding the public employees' retirement system plan I.

(3) The employer and state contribution rates adopted by the council shall be the level percentages of pay that are needed:

(a) To fully amortize the total costs of the public employees' retirement system plan I, the teachers' retirement system plan I, the law enforcement officers' and fire fighters' retirement system plan I, and the unfunded liability of the Washington state patrol retirement system not later than June 30, 2024; and

(b) To also continue to fully fund the public employees' retirement system plan II, the teachers' retirement system plans II and III, the school employees' retirement system plans II and III, and the law enforcement officers' and fire fighters' retirement system plan II in accordance with RCW 41.40.650, 41.26.450, and this section.

(4) The aggregate actuarial cost method shall be used to calculate a combined plan II and III employer contribution rate.

(5) The council shall immediately notify the directors of the office of financial management and department of retirement systems of the state and employer contribution rates adopted.

(6) The director of the department of retirement systems shall collect those rates adopted by the council. [1998 c 341 § 404; 1995 c 239 § 309; 1993 c 519 § 19; 1992 c 239 § 2; 1990 c 18 § 1; 1989 c 273 § 6.]

Reviser's note: RCW 41.45.060 was amended three times during the 1998 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—1998 c 341: See note following RCW 41.34.060.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Part headings not law—Effective date—1993 c 519: See notes following RCW 28A.400.212.

Effective date—1992 c 239: "This act shall take effect September 1, 1992." [1992 c 239 § 6.]

Effective date—1990 c 18: "This act shall take effect September 1, 1991." [1990 c 18 § 3.]

Benefits not contractual right until date specified: RCW 41.34.100.

41.45.061 Teachers' retirement system plan II—Contribution rate. (Effective until September 1, 2000.)

(1) The required contribution rate for members of the plan II teachers' retirement system shall be fixed at the rates in effect on July 1, 1996, subject to the following:

(a) Beginning September 1, 1997, except as provided in (b) of this subsection, the employee contribution rate shall not exceed the employer plan II and III rates adopted under RCW 41.45.060 and 41.45.070 for the teachers' retirement system;

(b) In addition, the employee contribution rate for plan II shall be increased by fifty percent of the contribution rate

increase caused by any plan II benefit increase passed after July 1, 1996.

(2) The required plan II and III contribution rates for employers shall be adopted in the manner described in RCW 41.45.060. [1997 c 10 § 2; 1995 c 239 § 311.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until July 1, 1996: RCW 41.34.100.

41.45.061 Teachers' retirement system plan II, school employees' retirement system plan II—Contribution rates. (Effective September 1, 2000.) (1) The required contribution rate for members of the plan II teachers' retirement system shall be fixed at the rates in effect on July 1, 1996, subject to the following:

(a) Beginning September 1, 1997, except as provided in (b) of this subsection, the employee contribution rate shall not exceed the employer plan II and III rates adopted under RCW 41.45.060 and 41.45.070 for the teachers' retirement system;

(b) In addition, the employee contribution rate for plan II shall be increased by fifty percent of the contribution rate increase caused by any plan II benefit increase passed after July 1, 1996;

(c) In addition, the employee contribution rate for plan II shall not be increased as a result of any distributions pursuant to section 309, chapter 341, Laws of 1998 and RCW 41.31A.020.

(2) The required contribution rate for members of the school employees' retirement system plan II shall be fixed at the rates in effect on September 1, 2000, for members of the public employees' retirement system plan II, subject to the following:

(a) Except as provided in (b) of this subsection, the member contribution rate shall not exceed the school employees' retirement system employer plan II and III contribution rate adopted under RCW 41.45.060 and 41.45.070;

(b) The member contribution rate for the school employees' retirement system plan II shall be increased by fifty percent of the contribution rate increase caused by any plan II benefit increase passed after September 1, 2000.

(3) The employee contribution rate for plan II shall not be increased as a result of any distributions pursuant to RCW 41.31A.020 and 41.31A.030.

(4) The required plan II and III contribution rates for employers shall be adopted in the manner described in RCW 41.45.060. [1998 c 341 § 405; 1997 c 10 § 2; 1995 c 239 § 311.]

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.45.070 Supplemental rate (as amended by 1998 c 340). (1) In addition to the basic employer contribution rate established in RCW 41.45.060, the department shall also charge employers of public employees' retirement system, teachers' retirement system, or Washington state patrol retirement system members an additional supplemental rate to pay for the cost of additional benefits, if any, granted to members of those systems. Except as provided in subsection (6) of this section, the supplemental

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contribution rates required by this section shall be calculated by the state actuary and shall be charged regardless of language to the contrary contained in the statute which authorizes additional benefits.

(2) In addition to the basic state contribution rate established in RCW 41.45.060 for the law enforcement officers' and fire fighters' retirement system the department shall also establish a supplemental rate to pay for the cost of additional benefits, if any, granted to members of the law enforcement officers' and fire fighters' retirement system. Except as provided in subsection (6) of this section, this supplemental rate shall be calculated by the state actuary and the state treasurer shall transfer the additional required contributions regardless of language to the contrary contained in the statute which authorizes the additional benefits.

(3) The supplemental rate charged under this section to fund benefit increases provided to active members of the public employees' retirement system plan I, the teachers' retirement system plan I, the law enforcement officers' and fire fighters' retirement system plan I, and Washington state patrol retirement system, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit not later than June 30, 2024.

(4) The supplemental rate charged under this section to fund benefit increases provided to active and retired members of the public employees' retirement system plan II, the teachers' retirement system plan II and plan III, or the law enforcement officers' and fire fighters' retirement system plan II, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit, as calculated under RCW 41.40.650(~~(41.32.775,)~~) or 41.26.450, respectively.

(5) The supplemental rate charged under this section to fund postretirement adjustments which are provided on a nonautomatic basis to current retirees shall be calculated as the percentage of pay needed to fund the adjustments as they are paid to the retirees. The supplemental rate charged under this section to fund automatic postretirement adjustments for active or retired members of the public employees' retirement system plan I and the teachers' retirement system plan I shall be calculated as the level percentage of pay needed to fund the cost of the automatic adjustments not later than June 30, 2024.

(6) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter 340, Laws of 1998. [1998 c 340 § 10; 1995 c 239 § 310; 1990 c 18 § 2; 1989 1st ex.s. c 1 § 1; 1989 c 273 § 7.]

Effective date—1998 c 340: See note following RCW 41.31.010.

41.45.070 Supplemental rate (as amended by 1998 c 341). (Effective September 1, 2000.) (1) In addition to the basic employer contribution rate established in RCW 41.45.060, the department shall also charge employers of public employees' retirement system, teachers' retirement system, school employees' retirement system, or Washington state patrol retirement system members an additional supplemental rate to pay for the cost of additional benefits, if any, granted to members of those systems. Except as provided in subsection (6) of this section, the supplemental contribution rates required by this section shall be calculated by the state actuary and shall be charged regardless of language to the contrary contained in the statute which authorizes additional benefits.

(2) In addition to the basic state contribution rate established in RCW 41.45.060 for the law enforcement officers' and fire fighters' retirement system the department shall also establish a supplemental rate to pay for the cost of additional benefits, if any, granted to members of the law enforcement officers' and fire fighters' retirement system. This supplemental rate shall be calculated by the state actuary and the state treasurer shall transfer the additional required contributions regardless of language to the contrary contained in the statute which authorizes the additional benefits.

(3) The supplemental rate charged under this section to fund benefit increases provided to active members of the public employees' retirement system plan I, the teachers' retirement system plan I, the law enforcement officers' and fire fighters' retirement system plan I, and Washington state patrol retirement system, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit not later than June 30, 2024.

(4) The supplemental rate charged under this section to fund benefit increases provided to active and retired members of the public employees' retirement system plan II, the teachers' retirement system plan II and plan III, the school employees' retirement system plan II and plan III, or the law enforcement officers' and fire fighters' retirement system plan II, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit, as calculated under RCW 41.40.650(~~(41.32.775,)~~) or 41.26.450, respectively.

(5) The supplemental rate charged under this section to fund postretirement adjustments which are provided on a nonautomatic basis to current retirees shall be calculated as the percentage of pay needed to fund the adjustments as they are paid to the retirees. The supplemental rate charged under this section to fund automatic postretirement adjustments for active or retired members of the public employees' retirement system plan I and the teachers' retirement system plan I shall be calculated as the level percentage of pay needed to fund the cost of the automatic adjustments not later than June 30, 2024.

(6) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter 41.31A RCW; section 309, chapter 341, Laws of 1998; or section 701, chapter 341, Laws of 1998. [1998 c 341 § 406; 1995 c 239 § 310; 1990 c 18 § 2; 1989 1st ex.s. c 1 § 1; 1989 c 273 § 7.]

Reviser's note: RCW 41.45.070 was amended twice during the 1998 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Effective date—1990 c 18: See note following RCW 41.45.060.

Benefits not contractual right until date specified: RCW 41.34.100.

41.45.080 Additional contributions may be required. In addition to the basic and supplemental employer contributions required by RCW 41.45.060 and 41.45.070 the department may also require additional employer contributions as provided by law. [1989 c 273 § 8.]

41.45.090 Collection of actuarial data. The department shall collect and keep in convenient form such data as shall be necessary for an actuarial valuation of the assets and liabilities of the state retirement systems, and for making an actuarial investigation into the mortality, service, compensation, and other experience of the members and beneficiaries of those systems. The department and state actuary shall enter into a memorandum of understanding regarding the specific data the department will collect, when it will be collected, and how it will be maintained. The department shall notify the state actuary of any changes it makes, or intends to make, in the collection and maintenance of such data.

At least once in each six-year period, the state actuary shall conduct an actuarial experience study of the mortality, service, compensation and other experience of the members and beneficiaries of each state retirement system, and into the financial condition of each system. The results of each investigation shall be filed with the department, the office of financial management, the budget writing committees of the Washington house of representatives and senate, and the pension funding council. Upon the basis of such actuarial investigation the department shall adopt such tables, schedules, factors, and regulations as are deemed necessary in the light of the findings of the actuary for the proper operation of the state retirement systems. [1998 c 283 § 7; 1989 c 273 § 9.]

41.45.100 Pension funding council—Created. (1) The pension funding council is hereby created. The council consists of the:

- (a) Director of the department of retirement systems;
- (b) Director of the office of financial management;

(c) Chair and ranking minority member of the house of representatives appropriations committee; and

(d) Chair and ranking minority member of the senate ways and means committee.

The council may select officers as the members deem necessary.

(2) The pension funding council shall adopt changes to economic assumptions and contribution rates by an affirmative vote of at least four members. [1998 c 283 § 2.]

41.45.110 Pension funding council—Audits required. The pension funding council shall solicit and administer a biennial actuarial audit of the actuarial valuations used for rate-setting purposes. This audit will be conducted concurrent with the actuarial valuation performed by the state actuary. At least once in each six-year period, the pension funding council shall solicit and administer an actuarial audit of the results of the experience study required in RCW 41.45.090. [1998 c 283 § 3.]

41.45.120 Pension funding work group. (1) A pension funding work group is hereby created. The work group shall consist of one staff member selected by the executive head or chairperson of each of the following agencies or committees:

- (a) Department of retirement systems;
- (b) Office of financial management;
- (c) State investment board;
- (d) Ways and means committee of the senate;
- (e) Appropriations committee of the house of representatives; and
- (f) Economic and revenue forecast council.

(2) The state actuary shall make available to the work group information related to economic assumptions and contribution rates.

(3) The pension funding work group shall provide support to the pension funding council. Meetings of the pension funding work group may be called by any member of the group for the purpose of assisting the pension funding council, reviewing actuarial valuations of the state retirement systems, reviewing economic assumptions, or for any other purpose which may assist the pension funding council.

(4) Recommendations from both affected employee and employer groups will be actively sought during the work group process. The work group shall conduct an open public meeting on these recommendations. [1998 c 283 § 4.]

41.45.130 Public employees' retirement system plan II assets divided—Assets transferred to school employees' retirement system. (*Effective September 1, 2000.*) Upon the advice of the state actuary, the state treasurer shall divide the assets in the public employees' retirement system plan II as of September 1, 2000, in such a manner that sufficient assets remain in plan II to maintain the employee contribution rate calculated in the latest actuarial valuation of the public employees' retirement system plan II. The state actuary shall take into account changes in assets that occur between the latest actuarial valuation and the date of transfer. The balance of the assets shall be transferred to the Washington school employees' retirement system plan II and III. [1998 c 341 § 407.]

Effective date—1998 c 341: See RCW 41.35.901.

41.45.900 Severability—1989 c 273. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 273 § 32.]

Chapter 41.47

ACCEPTANCE OF OLD AGE AND SURVIVORS' INSURANCE—1941 ACT

Sections

- 41.47.010 Benefits of federal act accepted.
- 41.47.020 Wage deductions.
- 41.47.030 Operation of statute limited.
- 41.47.040 Severability as to coverage.
- 41.47.050 Contingent effective date.

Designation of agency to carry out federal social security disability program: RCW 43.17.120, 43.17.130.

41.47.010 Benefits of federal act accepted. The state of Washington in behalf of all its eligible officials and employees and the eligible officials and employees of all its counties, cities and towns, and of any and all other of its municipal corporations and political subdivisions which levy taxes and employ and pay salaries and wages to officials and employees including public utility districts, hereby accepts the benefits of the old age and survivors' insurance benefit provisions of the federal social security act, whenever the provisions of such act are extended to embrace such officials and employees. [1941 c 205 § 1; Rem. Supp. 1941 § 9998-57. Formerly RCW 74.40.010.]

41.47.020 Wage deductions. Any and all officials and boards having charge of the preparation of payrolls and payment of salaries and wages to such eligible officials and employees are hereby authorized and directed to make payroll and salary and wage deductions and to handle and dispose of the same as required by such federal act; and any official or board being authorized to disburse funds respectively for the office, department or division of the state, county, city or town, or other municipal corporation or political subdivision in which any such eligible official or employee is employed is authorized to pay and disburse out of any funds available for the operation and maintenance of such office, department or division such sums and dispose of and handle the same in such manner as is required and necessary to make payments and benefits of said federal act available to such eligible officials and employees. [1941 c 205 § 2; Rem. Supp. 1941 § 9998-58. Formerly RCW 74.40.020.]

41.47.030 Operation of statute limited. Nothing contained in this chapter shall deprive any person of benefits under any existing pension system, nor repeal, amend, modify or supersede any law, charter amendment or ordinance establishing or pertaining to an existing pension system. [1941 c 205 § 3; Rem. Supp. 1941 § 9998-59. Formerly RCW 74.40.030.]

41.47.040 Severability as to coverage. If it is found by any judicial authority of competent jurisdiction that the provisions of this chapter may not become applicable to any group of officials or employees for any reason, such inapplicability shall not prevent the same from becoming applicable as herein provided to the other officials and employees embraced herein. [1941 c 205 § 4; Rem. Supp. 1941 § 9998-60. Formerly RCW 74.40.040.]

41.47.050 Contingent effective date. This chapter shall take effect at the time and in the manner provided by the state Constitution unless at that time the federal social security act has not been amended to cover officials and employees of the state, county, city and other municipal corporations and political subdivisions, in which event it shall take effect and become operative on the first day of the second month following the month when such federal act shall become applicable to such state officials and employees. [1941 c 205 § 5; Rem. Supp. 1941 § 9998-61. Formerly RCW 74.40.050.]

Chapter 41.48

FEDERAL SOCIAL SECURITY FOR PUBLIC EMPLOYEES

Sections

- 41.48.010 Purpose—Construction.
- 41.48.020 Definitions.
- 41.48.030 Agreement with secretary of health, education, and welfare.
- 41.48.040 Employees' contributions.
- 41.48.050 Extension of social security benefits to employees of political subdivisions—Termination, procedure.
- 41.48.060 OASI contribution account.
- 41.48.065 OASI revolving fund.
- 41.48.070 Employees may elect.
- 41.48.080 Administration costs—Allocation.
- 41.48.090 Rules and regulations.
- 41.48.100 Governor may delegate authority.
- 41.48.110 Legislative declaration—Payments to state employees on account of sickness.
- 41.48.120 Sick leave account created—Payments to state employees on account of sickness—Exclusion from wages.
- 41.48.130 Sick leave payments—Accounting plan and payroll procedures.
- 41.48.140 Establishment of sick leave rules by personnel authorities.
- 41.48.150 Definition—"Employee."
- 41.48.160 Political subdivisions—Sick leave payments—Adoption of accounting plan and payroll procedures.
- 41.48.170 Sick leave payments—Transfers of moneys to sick leave account.
- 41.48.180 Sick leave payments—Inclusion in reports to retirement system—Compensation for unused sick leave.

Acceptance of old age and survivors' insurance: Chapter 41.47 RCW.

Application forms—Licenses—Mention of race or religion prohibited: RCW 43.01.100, 43.01.110.

Hours and wages of department of social and health services personnel: RCW 72.01.042, 72.01.043.

Plan for OASI coverage of members of state employees' retirement system: Chapter 41.41 RCW. teachers' retirement system: Chapter 41.33 RCW.

Trusts for employee benefits: Chapter 49.64 RCW.

41.48.010 Purpose—Construction. In order to extend to employees of the state and its political subdivisions and to the dependents and survivors of such employees, the basic protection accorded to others by the old age and

survivors insurance system embodied in the social security act, it is hereby declared to be the policy of the legislature, subject to the limitations of this chapter, that such steps be taken as to provide such protection to employees of the state and its political subdivisions on as broad a basis as is permitted under the social security act. Persons now members of or protected by any state or local pension or retirement plan or system may be covered under the federal social security act only as provided by the federal social security act amendments of 1954. (Public Law No. 761.) It is hereby declared to be the policy of the legislature in enacting the succeeding sections of this title that the protection afforded the employees in positions covered by a retirement system on the date an agreement under this title is made applicable to service performed in such positions, or receiving periodic benefits under such retirement system at such time, will not be impaired as the result of making the agreements so applicable whether the agreement provides for supplementation, integration or coordination. [1955 ex.s. c 4 § 1; 1951 c 184 § 1.]

41.48.020 Definitions. For the purposes of this chapter:

(1) "Wages" means all remuneration for employment as defined herein, including the cash value of all remuneration paid in any medium other than cash, except that such term shall not include that part of such remuneration which, even if it were for "employment" within the meaning of the federal insurance contributions act, would not constitute "wages" within the meaning of that act;

(2) "Employment" means any service performed by an employee in the employ of the state, or any political subdivision thereof, for such employer, except (a) service which in the absence of an agreement entered into under this chapter would constitute "employment" as defined in the social security act; or (b) service which under the social security act may not be included in an agreement between the state and the secretary of health, education, and welfare entered into under this chapter;

(3) "Employee" includes all officers and employees of the state or its political subdivisions except officials compensated on a fee basis;

(4) "Secretary of health, education, and welfare" includes any individual to whom the secretary of health, education, and welfare has delegated any of his functions under the social security act with respect to coverage under such act of employees of states and their political subdivisions, and with respect to any action taken prior to April 11, 1953, includes the federal security administrator and any individual to whom such administrator has delegated any such function;

(5) "Political subdivision" includes an instrumentality of the state, of one or more of its political subdivisions, or of the state and one or more of its political subdivisions. Such term also includes a proprietary enterprise acquired, purchased or originated by the state or any of its political subdivisions subsequent to December, 1950. Such a subdivision may elect to accept federal OASI coverage under this chapter.

(6) "Federal insurance contributions act" means subchapter A of chapter 9 of the federal internal revenue code

of 1939 and subchapters A and B of chapter 21 of the federal internal revenue code of 1954, as such codes have been and may from time to time be amended; and the term "employee tax" means the tax imposed by section 1400 of such code of 1939 and section 3101 of such code of 1954. [1955 ex.s. c 4 § 2; 1953 c 62 § 1; 1951 c 184 § 2.]

41.48.030 Agreement with secretary of health, education, and welfare. (1) The governor is hereby authorized to enter on behalf of the state into an agreement with the secretary of health, education, and welfare consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old-age and survivors insurance system to employees of the state or any political subdivision not members of an existing retirement system, or to members of a retirement system established by the state or by a political subdivision thereof or by an institution of higher learning with respect to services specified in such agreement which constitute "employment" as defined in RCW 41.48.020. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the governor and secretary of health, education, and welfare shall agree upon, but, except as may be otherwise required by or under the social security act as to the services to be covered, such agreement shall provide in effect that—

(a) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of title II of the social security act;

(b) The state will pay to the secretary of the treasury, at such time or times as may be prescribed under the social security act, contributions with respect to wages (as defined in RCW 41.48.020), equal to the sum of the taxes which would be imposed by the federal insurance contributions act if the services covered by the agreement constituted employment within the meaning of that act;

(c) Such agreement shall be effective with respect to services in employment covered by the agreement or modification thereof performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year immediately preceding the calendar year in which such agreement or modification of the agreement is accepted by the secretary of health, education and welfare.

(d) All services which constitute employment as defined in RCW 41.48.020 and are performed in the employ of the state by employees of the state, shall be covered by the agreement;

(e) All services which (i) constitute employment as defined in RCW 41.48.020, (ii) are performed in the employ of a political subdivision of the state, and (iii) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the governor under RCW 41.48.050, shall be covered by the agreement; and

(f) As modified, the agreement shall include all services described in either paragraph (d) or paragraph (e) of this subsection and performed by individuals to whom section 218(c)(3)(C) of the social security act is applicable, and shall

provide that the service of any such individual shall continue to be covered by the agreement in case he thereafter becomes eligible to be a member of a retirement system; and

(g) As modified, the agreement shall include all services described in either paragraph (d) or paragraph (e) of this subsection and performed by individuals in positions covered by a retirement system with respect to which the governor has issued a certificate to the secretary of health, education, and welfare pursuant to subsection (5) of this section.

(h) Law enforcement officers and firemen of each political subdivision of this state who are covered by the Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act (chapter 209, Laws of 1969 ex. sess.) as now in existence or hereafter amended shall constitute a separate "coverage group" for purposes of the agreement entered into under this section and for purposes of section 218 of the social security act. To the extent that the agreement between this state and the federal secretary of health, education, and welfare in existence on the date of adoption of this subsection is inconsistent with this subsection, the governor shall seek to modify the inconsistency.

(2) Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (a) to enter into an agreement with the secretary of health, education, and welfare whereby the benefits of the federal old-age and survivors insurance system shall be extended to employees of such instrumentality, (b) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under RCW 41.48.040(1) if they were covered by an agreement made pursuant to subsection (1) of this section, and (c) to make payments to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of subsection (1) and other provisions of this chapter.

(3) The governor is empowered to authorize a referendum, and to designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the social security act, and subsection (4) of this section on the question of whether service in all positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. If a retirement system covers positions of employees of the state of Washington, of the institutions of higher learning, and positions of employees of one or more of the political subdivisions of the state, then for the purpose of the referendum as provided herein, there may be deemed to be a separate retirement system with respect to employees of the state, or any one or more of the political subdivisions, or institutions of higher learning and the governor shall authorize a referendum upon request of the subdivisions' or institutions' of higher learning governing body: **PROVIDED HOWEVER,** That if a referendum of state employees generally fails to produce a favorable majority vote then the governor may authorize a referendum covering positions of employees in any state department who are compensated in whole or in part from grants made to this state under title III of the federal social security act: **PROVIDED,** That any city or

town affiliated with the state-wide city employees retirement system organized under chapter 41.44 RCW may at its option agree to a plan submitted by the board of trustees of said state-wide city employees retirement system for inclusion under an agreement under this chapter if the referendum to be held as provided herein indicates a favorable result: **PROVIDED FURTHER,** That the teachers' retirement system be considered one system for the purpose of the referendum except as applied to the several *colleges of education. The notice of referendum required by section 218(d)(3)(C) of the social security act to be given to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.

(4) The governor, before authorizing a referendum, shall require the following conditions to be met:

(a) The referendum shall be by secret written ballot on the question of whether service in positions covered by such retirement system shall be excluded from or included under the agreement between the governor and the secretary of health, education, and welfare provided for in RCW 41.48.030(1);

(b) An opportunity to vote in such referendum shall be given and shall be limited to eligible employees;

(c) Not less than ninety days' notice of such referendum shall be given to all such employees;

(d) Such referendum shall be conducted under the supervision (of the governor or) of an agency or individual designated by the governor;

(e) The proposal for coverage shall be approved only if a majority of the eligible employees vote in favor of including services in such positions under the agreement;

(f) The state legislature, in the case of a referendum affecting the rights and liabilities of state employees covered under the state employees' retirement system and employees under the teachers' retirement system, and in all other cases the local legislative authority or governing body, shall have specifically approved the proposed plan and approved any necessary structural adjustment to the existing system to conform with the proposed plan.

(5) Upon receiving satisfactory evidence that with respect to any such referendum the conditions specified in subsection (4) of this section and section 218(d)(3) of the social security act have been met, the governor shall so certify to the secretary of health, education, and welfare.

(6) If the legislative body of any political subdivision of this state certifies to the governor that a referendum has been held under the terms of RCW 41.48.050(1)(i) and gives notice to the governor of termination of social security for any coverage group of the political subdivision, the governor shall give two years advance notice in writing to the federal department of health, education, and welfare of such termination of the agreement entered into under this section with respect to said coverage group. [1971 ex.s. c 257 § 19; 1967 c 5 § 1; 1957 c 170 § 1; 1955 ex.s. c 4 § 3; 1951 c 184 § 3.]

***Reviser's note:** The "colleges of education" were redesignated state colleges by 1961 c 62 § 1, formerly RCW 28.81.005, decodified in the 1969 education code. See also RCW 28B.10.016.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

41.48.040 Employees' contributions. (1) Every employee of the state whose services are covered by an agreement entered into under RCW 41.48.030 shall be required to pay for the period of such coverage, into the *contribution fund established by RCW 41.48.060, contributions, with respect to wages (as defined in RCW 41.48.020), equal to the amount of employee tax which would be imposed by the federal insurance contributions act if such services constituted employment within the meaning of that act. Such liability shall arise in consideration of the employees' retention in the service of the state, or his entry upon such service, after the enactment of this chapter.

(2) The contribution imposed by this section shall be collected by deducting the amount of the contribution from wages as and when paid, but failure to make such deduction shall not relieve the employee from liability for such contribution.

(3) If more or less than the correct amount of the contribution imposed by this section is paid or deducted with respect to any remuneration, proper adjustments, or refund if adjustment is impracticable, shall be made, without interest, in such manner and at such times as the state agency shall prescribe. [1955 ex.s. c 4 § 4; 1951 c 184 § 4.]

***Reviser's note:** The "OASI contribution fund" was redesignated the "OASI contribution account" by 1991 sp.s. c 13 § 112.

41.48.050 Extension of social security benefits to employees of political subdivisions—Termination, procedure. (1) Each political subdivision of the state is hereby authorized to submit for approval by the governor a plan for extending the benefits of title II of the social security act, in conformity with the applicable provisions of such act, to those employees of such political subdivisions who are not covered by an existing pension or retirement system. Each pension or retirement system established by the state or a political subdivision thereof is hereby authorized to submit for approval by the governor a plan for extending the benefits of title II of the social security act, in conformity with applicable provisions of such act, to members of such pension or retirement system. Each such plan and any amendment thereof shall be approved by the governor if he finds that such plan, or such plan as amended, is in conformity with such requirements as are provided in regulations of the governor, except that no such plan shall be approved unless—

(a) It is in conformity with the requirements of the social security act and with the agreement entered into under RCW 41.48.030;

(b) It provides that all services which constitute employment as defined in RCW 41.48.020 and are performed in the employ of the political subdivision by employees thereof, shall be covered by the plan;

(c) It specifies the source or sources from which the funds necessary to make the payments required by paragraph (a) of subsection (3) and by subsection (4) of this section are

expected to be derived and contains reasonable assurance that such sources will be adequate for such purposes;

(d) It provides that in the plan of coverage for members of the state teachers' retirement system or for state employee members of the state employees' retirement system, there shall be no additional cost to or involvement of the state until such plan has received prior approval by the legislature;

(e) It provides for such methods of administration of the plan by the political subdivision as are found by the governor to be necessary for the proper and efficient administration of the plan;

(f) It provides that the political subdivision will make such reports, in such form and containing such information, as the governor may from time to time require and comply with such provisions as the governor or the secretary of health, education, and welfare may from time to time find necessary to assure the correctness and verification of such reports; and

(g) It authorizes the governor to terminate the plan in its entirety, in his discretion, if he finds that there has been a failure to comply substantially with any provision contained in such plan, such termination to take effect at the expiration of such notice and on such conditions as may be provided by regulations of the governor and may be consistent with the provisions of the social security act.

(h) It provides that law enforcement officers and fire fighters of each political subdivision of this state who are covered by the Washington Law Enforcement Officers' and Fire Fighters' Retirement System Act (chapter 209, Laws of 1969 ex. sess.) as now in existence or hereafter amended shall constitute a separate "coverage group" for purposes of the plan or agreement entered into under this section and for purposes of section 216 of the social security act. To the extent that the plan or agreement entered into between the state and any political subdivision of this state is inconsistent with this subsection, the governor shall seek to modify the inconsistency.

(i) It provides that the plan or agreement may be terminated by any political subdivision as to any such coverage group upon giving at least two years advance notice in writing to the governor, effective at the end of the calendar quarter specified in the notice. It shall specify that before notice of such termination is given, a referendum shall be held among the members of the coverage group under the following conditions:

(i) The referendum shall be conducted under the supervision of the legislative body of the political subdivision.

(ii) Not less than sixty days' notice of such referendum shall be given to members of the coverage group.

(iii) An opportunity to vote by secret ballot in such referendum shall be given and shall be limited to all members of the coverage group.

(iv) The proposal for termination shall be approved only if a majority of the coverage group vote in favor of termination.

(v) If a majority of the coverage group vote in favor of termination, the legislative body of the political subdivision shall certify the results of the referendum to the governor and give notice of termination of such coverage group.

(2) The governor shall not finally refuse to approve a plan submitted by a political subdivision under subsection

(1), and shall not terminate an approved plan, without reasonable notice and opportunity for hearing to the political subdivision affected thereby.

(3)(a) Each political subdivision as to which a plan has been approved under this section shall pay into the *contribution fund, with respect to wages (as defined in RCW 41.48.020), at such time or times as the governor may by regulation prescribe, contributions in the amounts and at the rates specified in the applicable agreement entered into by the governor under RCW 41.48.030.

(b) Each political subdivision required to make payments under paragraph (a) of this subsection is authorized, in consideration of the employee's retention in, or entry upon, employment after enactment of this chapter, to impose upon each of its employees, as to services which are covered by an approved plan, a contribution with respect to his wages (as defined in RCW 41.48.020), not exceeding the amount of employee tax which is imposed by the federal insurance contributions act, and to deduct the amount of such contribution from his wages as and when paid. Contributions so collected shall be paid into the *OASI contribution fund in partial discharge of the liability of such political subdivision or instrumentality under paragraph (a) of this subsection. Failure to deduct such contribution shall not relieve the employee or employer of liability therefor.

(4) Delinquent reports and payments due under paragraph (f) of subsection (1) and paragraph (a) of subsection (3) of this section will be subject to an added interest charge of six percent per year or, if higher, the rate chargeable to the state by the secretary by virtue of federal law, if the late report or payment contributes to any federal penalty for late filing of reports or for late deposit of contributions. Delinquent contributions, interest and penalties may be recovered by civil action or may, at the request of the governor, be deducted from any other moneys payable to the political subdivision by any department or agency of the state. [1981 c 119 § 1; 1971 ex.s. c 257 § 20; 1955 ex.s. c 4 § 5; 1951 c 184 § 5.]

***Reviser's note:** The "OASI contribution fund" was redesignated the "OASI contribution account" by 1991 sp.s. c 13 § 112.

Purpose—Severability—1971 ex.s. c 257: See notes following RCW 41.26.030.

Law enforcement officers' and fire fighters' retirement system: Chapter 41.26 RCW.

Public employees' retirement system: Chapter 41.40 RCW.

Teachers' retirement system: Chapter 41.32 RCW.

41.48.060 OASI contribution account. (1) There is hereby established a special account in the state treasury to be known as the OASI contribution account. Such account shall consist of and there shall be deposited in such account: (a) All contributions and penalties collected under RCW 41.48.040 and 41.48.050; (b) all moneys appropriated thereto under this chapter; (c) any property or securities belonging to the account; and (d) all sums recovered upon the bond of the custodian or otherwise for losses sustained by the account and all other moneys received for the account from any other source. All moneys in the account shall be mingled and undivided. Subject to the provisions of this chapter, the governor is vested with full power, authority and jurisdiction over the account, including all moneys and property or securities belonging thereto, and may perform

any and all acts whether or not specifically designated, which are necessary to the administration thereof and are consistent with the provisions of this chapter.

(2) The OASI contribution account shall be established and held separate and apart from any other funds of the state and shall be used and administered exclusively for the purpose of this chapter. Withdrawals from such account shall be made for, and solely for (a) payment of amounts required to be paid to the secretary of the treasury pursuant to an agreement entered into under RCW 41.48.030; (b) payment of refunds provided for in RCW 41.48.040(3); and (c) refunds of overpayments, not otherwise adjustable, made by a political subdivision or instrumentality.

(3) From the OASI contribution account the custodian of the fund [account] shall pay to the secretary of the treasury such amounts and at such time or times as may be directed by the governor in accordance with any agreement entered into under RCW 41.48.030 and the social security act.

(4) The treasurer of the state shall be ex officio treasurer and custodian of the OASI contribution account and shall administer such account in accordance with the provisions of this chapter and the directions of the governor and shall pay all warrants drawn upon it in accordance with the provisions of this section and with the regulations as the governor may prescribe pursuant thereto. [1991 sp.s. c 13 § 112; 1973 c 126 § 14; 1967 c 213 § 1; 1951 c 184 § 6.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

41.48.065 OASI revolving fund. There is hereby established a separate fund in the custody of the state treasurer to be known as the OASI revolving fund. The fund shall consist of all moneys designated for deposit in the fund. The OASI revolving fund shall be used exclusively for the purpose of this section. Withdrawals from the fund shall be made for the payment of amounts the state may be obligated to pay or forfeit by reason of any failure of any public agency to pay assessments on contributions or interest assessments required under the federal-state agreement under this chapter or federal regulations.

The treasurer of the state shall be ex officio treasurer and custodian of the fund and shall administer the fund in accordance with this chapter and the directions of the governor and shall pay all amounts drawn upon it in accordance with this section and with the regulations the governor may prescribe under this section. [1991 sp.s. c 13 § 111; 1983 1st ex.s. c 6 § 1.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Establishment of fund—1983 1st ex.s. c 6: "For the purpose of establishing the OASI revolving fund, the state treasurer shall transfer from the interest earnings accrued in the OASI contribution fund the sum of twenty thousand dollars to the OASI revolving fund." [1983 1st ex.s. c 6 § 2.]

41.48.070 Employees may elect. The governing body of any political subdivision having any coverage group, as the term is defined in title II of the social security act, not covered by a state or municipal retirement system may submit for an advisory vote to the members of such coverage group the question of whether they prefer coverage by

federal old-age and survivors insurance or coverage by a state or municipal retirement system. [1951 c 184 § 7.]

41.48.080 Administration costs—Allocation. All costs allocable to the administration of this chapter shall be charged to and paid to the general fund by the participating divisions and instrumentalities of the state pro rata according to their respective contributions. [1951 c 184 § 9.]

41.48.090 Rules and regulations. The governor shall make and publish such rules and regulations, not inconsistent with the provisions of this chapter, as he finds necessary or appropriate to the efficient administration of the functions with which he is charged under this chapter. [1951 c 184 § 10.]

41.48.100 Governor may delegate authority. Any authority conferred upon the governor by this chapter may be exercised by an official or state agency designated by him. [1951 c 184 § 11.]

41.48.110 Legislative declaration—Payments to state employees on account of sickness. It is the policy of the state of Washington to pay its employees on account of sickness or accident disability in accordance with applicable leave regulations and in such a manner so such payments are excluded from federal old age and survivors' insurance contribution requirements. [1979 ex.s. c 247 § 3.]

41.48.120 Sick leave account created—Payments to state employees on account of sickness—Exclusion from wages. There is created in the general fund a separate account to be known as the sick leave account, to be used for payments made after January 1, 1980, to state employees made on account of sickness, for the purpose of excluding such payments from the meaning of "wages" under federal old age and survivors' insurance. The legislature shall appropriate amounts necessary for the account. [1979 c 152 § 1.]

Severability—1979 c 152: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected" [1979 c 152 § 8]

41.48.130 Sick leave payments—Accounting plan and payroll procedures. The director of the office of financial management shall, by January 1, 1980, develop an accounting plan and payroll procedures sufficient to meet the requirements of federal statutes and regulations for the purpose of implementing RCW 41.48.120. [1979 c 152 § 2.]

Severability—1979 c 152: See note following RCW 41.48.120.

41.48.140 Establishment of sick leave rules by personnel authorities. Nothing in RCW 41.48.120 or 41.48.130 shall affect the power of the Washington personnel resources board or any other state personnel authority to establish sick leave rules except as may be required under RCW 41.48.120 or 41.48.130: PROVIDED, That each personnel board and personnel authority shall establish the maximum number of working days an employee under its

jurisdiction may be absent on account of sickness or accident disability without a medical certificate.

"Personnel authority" as used in this section, means a state agency, board, committee, or similar body having general authority to establish personnel rules. [1993 c 281 § 39; 1979 c 152 § 3.]

Effective date—1993 c 281: See note following RCW 41.06.022

Severability—1979 c 152: See note following RCW 41.48.120.

41.48.150 Definition—"Employee." "Employee," as used in RCW 41.48.120 and 41.48.140, includes all officers and employees of the state, except officials and employees compensated on a fee basis, for whom contributions are made to federal old age and survivors' insurance. [1979 c 152 § 4.]

Severability—1979 c 152: See note following RCW 41.48.120.

41.48.160 Political subdivisions—Sick leave payments—Adoption of accounting plan and payroll procedures. A political subdivision of the state may, pursuant to ordinance or resolution, adopt an accounting plan and payroll procedures sufficient to meet the requirements of federal statutes and regulations and the department of health, education, and welfare for the purpose of excluding payments made on account of sickness, from the meaning of "wages" under federal old age and survivors' insurance. [1979 c 152 § 5.]

Severability—1979 c 152: See note following RCW 41.48.120.

41.48.170 Sick leave payments—Transfers of moneys to sick leave account. The office of financial management shall direct the state treasurer to, and the state treasurer shall, periodically transfer to the sick leave account in the general fund moneys sufficient to reimburse the sick leave account for payments on account of sickness. State agencies shall place in allotment reserve status and cause to be lapsed at the end of the biennium an amount equal to the sick leave pay and the employer's share of all federal old age and survivor's insurance payments rendered unnecessary by reason of RCW 41.48.120. When directing state agencies to place funds in reserve status, the office of financial management shall promulgate allotment instructions which conserve, to the fullest extent possible, state general fund appropriations. [1979 ex.s. c 247 § 2.]

41.48.180 Sick leave payments—Inclusion in reports to retirement system—Compensation for unused sick leave. Payments to employees pursuant to RCW 41.48.120 or 41.48.160 shall be included in compensation reported to the appropriate retirement system. Any compensation for unused sick leave shall not be considered payment on account of sickness and shall not be paid from the sick leave account. [1979 c 152 § 6.]

Severability—1979 c 152: See note following RCW 41.48.120.

Chapter 41.50

DEPARTMENT OF RETIREMENT SYSTEMS

Sections

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41.50.005 Policy and intent. The legislature sets forth as retirement policy and intent:

(1) The retirement systems of the state shall provide similar benefits wherever possible.

(2) Persons hired into eligible positions shall accrue service credit for all service rendered.

(3) The calculation of benefits shall be done in such a manner as to prevent the arithmetic lowering of benefits.

(4) Liberalization of the granting of service credit shall not jeopardize part-time employment of retirees in ineligible positions. [1991 c 343 § 2.]

Findings—1991 c 343: "The legislature finds:

(1) There is a dichotomy in the provision of service credit within the major two retirement systems of the state. Within plan I of the public employees' retirement system, credit is given in whole months upon completing seventy hours per month. Within plan I of the teachers' retirement system, full annual service credit is given for full-time employment of four-fifths or more of a school year and partial annual service credit is given for employment of less than four-fifths of a school year but more than twenty days in a school year. Plan II of both the public employees' and teachers' retirement systems' full monthly service credit is based on completing ninety hours in each month.

(2) There is an expressed interest by public employers in encouraging job-sharing or tandem positions wherein two persons perform one job. This is seen as opening up job opportunities for those persons who have family responsibilities prohibiting full-time employment." [1991 c 343 § 1.]

Effective dates—1991 c 343: "(1) Sections 3 through 11 and 14 through 18 of this act shall take effect September 1, 1991.

(2) The remainder of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 343 § 19.]

41.50.010 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

(1) "Actuarial value" means the present value of a change in actuarial liability;

(2) "Department" means the department of retirement systems; and

(3) "Director" means the director of the department of retirement systems. [1994 c 197 § 30; 1975-'76 2nd ex.s. c 105 § 3.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.50.020 Department of retirement systems—Created—Director. There is created a department of state government to be known as the department of retirement systems. The executive and administrative head of the department shall be the director, who shall be appointed by the governor with the consent of the senate. The director shall serve at the pleasure of the governor and may be removed upon written notification by the governor to the respective retirement boards.

The director shall have complete charge of and supervisory powers over the department and shall be paid a salary fixed by the governor in accordance with the provisions of

RCW 43.03.040. If a vacancy occurs in the position of director while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate at which time he shall present to that body the name of the person appointed to the position of director. [1975-'76 2nd ex.s. c 105 § 4.]

41.50.030 Transfer of powers, duties, and functions of certain systems, administrators, and committees to department of retirement systems. (*Effective until September 1, 2000.*) (1) As soon as possible but not more than one hundred and eighty days after March 19, 1976, there is transferred to the department of retirement systems, except as otherwise provided in this chapter, all powers, duties, and functions of:

(a) The Washington public employees' retirement system;

(b) The Washington state teachers' retirement system;

(c) The Washington law enforcement officers' and fire fighters' retirement system;

(d) The Washington state patrol retirement system;

(e) The Washington judicial retirement system; and

(f) The state treasurer with respect to the administration of the judges' retirement fund imposed pursuant to chapter 2.12 RCW.

(2) On July 1, 1996, there is transferred to the department all powers, duties, and functions of the deferred compensation committee.

(3) The department shall administer chapter 41.34 RCW. [1995 c 239 § 316; 1975-'76 2nd ex.s. c 105 § 5.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until July 1, 1996: RCW 41.34.100.

41.50.030 Transfer of powers, duties, and functions of certain systems, administrators, and committees to department of retirement systems. (*Effective September 1, 2000.*) (1) As soon as possible but not more than one hundred and eighty days after March 19, 1976, there is transferred to the department of retirement systems, except as otherwise provided in this chapter, all powers, duties, and functions of:

(a) The Washington public employees' retirement system;

(b) The Washington state teachers' retirement system;

(c) The Washington law enforcement officers' and fire fighters' retirement system;

(d) The Washington state patrol retirement system;

(e) The Washington judicial retirement system; and

(f) The state treasurer with respect to the administration of the judges' retirement fund imposed pursuant to chapter 2.12 RCW.

(2) On July 1, 1996, there is transferred to the department all powers, duties, and functions of the deferred compensation committee.

(3) The department shall administer chapter 41.34 RCW.

(4) The department shall administer the Washington school employees' retirement system created under chapter 41.35 RCW. [1998 c 341 § 501; 1995 c 239 § 316; 1975-'76 2nd ex.s. c 105 § 5.]

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.50.040 Manner of selection and terms of transferred board members not affected. This chapter shall not affect the manner for selecting members of the boards affected by RCW 41.50.030, nor shall it affect the terms of any members serving on such boards. [1975-'76 2nd ex.s. c 105 § 6.]

41.50.050 Powers, duties, and functions of director. The director shall:

(1) Have the authority to organize the department into not more than four divisions, each headed by an assistant director;

(2) Have free access to all files and records of various funds assigned to the department and inspect and audit the files and records as deemed necessary;

(3) Employ personnel to carry out the general administration of the department;

(4) Submit an annual written report of the activities of the department to the governor and the chairs of the appropriate legislative committees with one copy to the staff of each of the committees, including recommendations for statutory changes the director believes to be desirable;

(5) Adopt such rules and regulations as are necessary to carry out the powers, duties, and functions of the department pursuant to the provisions of chapter 34.05 RCW. [1995 c 239 § 317; 1993 c 61 § 1; 1987 c 505 § 24; 1981 c 3 § 33; 1977 ex.s. c 251 § 1; 1975-'76 2nd ex.s. c 105 § 7.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

Benefits not contractual right until date specified: RCW 41.34.100.

41.50.055 Director of retirement systems to administer Washington law enforcement officers' and fire fighters' retirement system—Duties. The administration of the Washington law enforcement officers' and fire fighters' retirement system is hereby vested in the director of retirement systems, and the director shall:

(1) Keep in convenient form such data as shall be deemed necessary for actuarial evaluation purposes;

(2) As of March 1, 1970, and at least every two years thereafter, through the state actuary, make an actuarial valuation as to the mortality and service experience of the beneficiaries under this chapter and the various accounts created for the purpose of showing the financial status of the retirement fund;

(3) Adopt for the Washington law enforcement officers' and fire fighters' retirement system the mortality tables and such other tables as shall be deemed necessary;

(4) Keep a record of all its proceedings, which shall be open to inspection by the public;

(5) From time to time adopt such rules and regulations not inconsistent with chapter 41.26 RCW, for the administra-

tion of the provisions of this chapter, for the administration of the fund created by this chapter and the several accounts thereof, and for the transaction of the business of the system;

(6) Prepare and publish annually a financial statement showing the condition of the Washington law enforcement officers' and fire fighters' fund and the various accounts thereof, and setting forth such other facts, recommendations and data as may be of use in the advancement of knowledge concerning the Washington law enforcement officers' and fire fighters' retirement system, and furnish a copy thereof to each employer, and to such members as may request copies thereof;

(7) Perform such other functions as are required for the execution of the provisions of chapter 41.26 RCW;

(8) Fix the amount of interest to be credited at a rate which shall be based upon the net annual earnings of the Washington law enforcement officers' and fire fighters' fund for the preceding twelve-month period and from time to time make any necessary changes in such rate;

(9) Pay from the department of retirement systems expense fund the expenses incurred in administration of the Washington law enforcement officers' and fire fighters' retirement system from those funds appropriated for that purpose;

(10) Perform any other duties prescribed elsewhere in chapter 41.26 RCW;

(11) Issue decisions relating to appeals initiated pursuant to RCW 41.16.145 and 41.18.104 as now or hereafter amended and shall be authorized to order increased benefits pursuant to RCW 41.16.145 and 41.18.104 as now or hereafter amended. [1991 c 35 § 16; 1982 c 163 § 6; 1981 c 3 § 27; 1975-'76 2nd ex.s. c 44 § 3; 1971 ex.s. c 216 § 1; 1969 ex.s. c 209 § 6. Formerly RCW 41.26.060.]

Intent—1991 c 35: See note following RCW 41.26.005.

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

Intent of amendment—1981 c 3: See note following RCW 2.10.080.

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

Severability—1971 ex.s. c 216: "If any provision of this act, or its application to any person or circumstance is held invalid the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 ex.s. c 216 § 4.]

41.50.060 Delegation of powers, duties, and functions—Director's responsibilities. (*Effective until September 1, 2000.*) The director may delegate the performance of such powers, duties, and functions, other than those relating to rule making, to employees of the department, but the director shall remain and be responsible for the official acts of the employees of the department.

The director shall be responsible for the public employees' retirement system, the teachers' retirement system, the judicial retirement system, the law enforcement officers' and fire fighters' retirement system, and the Washington state patrol retirement system. The director shall also be responsible for the deferred compensation program. [1995 c 239 § 318; 1975-'76 2nd ex.s. c 105 § 8.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until July 1, 1996: RCW 41.34.100.

41.50.060 Delegation of powers, duties, and functions—Director's responsibilities. (*Effective September 1, 2000.*) The director may delegate the performance of such powers, duties, and functions, other than those relating to rule making, to employees of the department, but the director shall remain and be responsible for the official acts of the employees of the department.

The director shall be responsible for the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, the judicial retirement system, the law enforcement officers' and fire fighters' retirement system, and the Washington state patrol retirement system. The director shall also be responsible for the deferred compensation program. [1998 c 341 § 502; 1995 c 239 § 318; 1975-'76 2nd ex.s. c 105 § 8.]

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.50.065 Accumulated service credit—Annual notification to members. (1) The department shall annually notify each member of each retirement system listed in RCW 41.50.030 of his or her:

(a) Service credit accumulated in the preceding calendar year; and

(b) Total service credit accumulated.

(2) The department shall begin notifying members under this section according to the following schedule:

(a) All members of the teachers' retirement system shall begin receiving annual notification of accumulated service credit and service credit earned within the preceding school year or one school year, as appropriate, no later than January 1, 1991;

(b) All members, other than members of the teachers' retirement system, shall begin receiving annual notification of service credit accumulated within the preceding calendar year or school year, as appropriate, no later than June 30, 1992;

(c) All members within five years of being eligible for service retirement shall begin receiving annual notification of total service credit accumulated no later than October 1, 1993;

(d) Members, other than members of the teachers' retirement system, who are not within five years of being eligible for service retirement shall begin receiving annual notification of total service credit accumulated according to the following schedule:

(i) For members of the law enforcement officers' and fire fighters' retirement system, Washington state patrol retirement system, judicial retirement system, and judges' retirement system, no later than August 30, 1993;

(ii) For employees of the state of Washington who are members of the public employees' retirement system, no later than August 30, 1994;

(iii) For employees of political subdivisions of the state of Washington, no later than January 31, 1995;

(iv) For employees of institutions of higher education as defined in RCW 28B.10.016, no later than June 30, 1995; and

(v) For school district employees who are members of the public employees' retirement system, no later than April 30, 1996.

(3) The department shall adopt rules implementing this section. [1991 c 282 § 1; 1990 c 8 § 2.]

Findings—1990 c 8: "The legislature recognizes that:

(1) It is important that members of the retirement system are informed about the amount of service credit they have earned. Untimely and inaccurate reporting by employers hampers the department's ability to inform members of the service credit they have earned;

(2) Requiring a transfer of funds from the retirement accounts of members of the public employees' retirement system and the law enforcement officers' and fire fighters' retirement system to the expense funds of those systems does not represent added revenue to the systems but is instead a transfer from the trust fund to the expense fund that causes administrative costs and results in a loss to the system or to the member; and

(3) A standardized time period for school administrator contracts and a prohibition against retroactive revision of those contracts is needed to prevent potential abuses of the average final compensation calculation process." [1990 c 8 § 1.]

41.50.067 Adopted employer rates—Notification to employers. The director shall inform all employers in writing as to the employer rates adopted by the economic and revenue forecast council upon the notification of the council as prescribed in RCW 41.45.060. [1993 c 519 § 21.]

Part headings not law—Effective date—1993 c 519: See notes following RCW 28A.400.212.

41.50.070 Personnel. In addition to the exemptions set forth in RCW 41.06.070, the assistant directors, not to exceed two, and an internal auditor shall also be exempt from the application of the state civil service law, chapter 41.06 RCW.

The officers and exempt personnel appointed by the director pursuant to this section shall be paid salaries fixed by the governor in accordance with the procedure established by law for fixing salaries for officers exempt from the operation of the state civil service law.

All employees classified under chapter 41.06 RCW and engaged in duties pertaining to the functions transferred by this chapter shall be assigned to the department to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state merit system. [1975-'76 2nd ex.s. c 105 § 9.]

41.50.075 Funds established. (*Effective until September 1, 2000.*) (1) Two funds are hereby created and established in the state treasury to be known as the Washington law enforcement officers' and fire fighters' system plan I retirement fund, and the Washington law enforcement officers' and fire fighters' system plan II retirement fund which shall consist of all moneys paid into them in accordance with the provisions of this chapter and chapter 41.26 RCW, whether such moneys take the form of cash, securities, or other assets. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the law enforcement officers' and fire fighters' retirement system plan I, and the plan II fund shall consist of all moneys paid to finance the benefits provided to members of the law enforcement officers' and fire fighters' retirement system plan II.

(2) All of the assets of the Washington state teachers' retirement system shall be credited according to the purposes for which they are held, to two funds to be maintained in the state treasury, namely, the teachers' retirement system plan I fund and the teachers' retirement system combined plan II and III fund. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the Washington state teachers' retirement system plan I, and the combined plan II and III fund shall consist of all moneys paid to finance the benefits provided to members of the Washington state teachers' retirement system plan II and III.

(3) There is hereby established in the state treasury two separate funds, namely the public employees' retirement system plan I fund and the public employees' retirement system plan II fund. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the public employees' retirement system plan I, and the plan II fund shall consist of all moneys paid to finance the benefits provided to members of the public employees' retirement system plan II. [1996 c 39 § 16; 1995 c 239 § 312; 1991 c 35 § 108.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Benefits not contractual right until July 1, 1996: RCW 41.34.100.

41.50.075 Funds established. (Effective September 1, 2000.) (1) Two funds are hereby created and established in the state treasury to be known as the Washington law enforcement officers' and fire fighters' system plan I retirement fund, and the Washington law enforcement officers' and fire fighters' system plan II retirement fund which shall consist of all moneys paid into them in accordance with the provisions of this chapter and chapter 41.26 RCW, whether such moneys take the form of cash, securities, or other assets. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the law enforcement officers' and fire fighters' retirement system plan I, and the plan II fund shall consist of all moneys paid to finance the benefits provided to members of the law enforcement officers' and fire fighters' retirement system plan II.

(2) All of the assets of the Washington state teachers' retirement system shall be credited according to the purposes for which they are held, to two funds to be maintained in the state treasury, namely, the teachers' retirement system plan I fund and the teachers' retirement system combined plan II and III fund. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the Washington state teachers' retirement system plan I, and the combined plan II and III fund shall consist of all moneys paid to finance the benefits provided to members of the Washington state teachers' retirement system plan II and III.

(3) There is hereby established in the state treasury two separate funds, namely the public employees' retirement system plan I fund and the public employees' retirement system plan II fund. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the public employees' retirement system plan I, and the plan

II fund shall consist of all moneys paid to finance the benefits provided to members of the public employees' retirement system plan II.

(4) There is hereby established in the state treasury the school employees' retirement system combined plan II and III fund. The combined plan II and III fund shall consist of all moneys paid to finance the benefits provided to members of the school employees' retirement system plan II and plan III. [1998 c 341 § 503; 1996 c 39 § 16; 1995 c 239 § 312; 1991 c 35 § 108.]

Effective date—1998 c 341: See RCW 41.35.901.

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Intent—1991 c 35: See note following RCW 41.26.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.50.077 State treasurer is custodian of funds. The state treasurer is the custodian of, and accountant for, all funds and holdings of the retirement systems listed in RCW 41.50.030. [1991 c 35 § 109.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.50.080 Investment of funds of various systems. (Effective until September 1, 2000.) The state investment board shall provide for the investment of all funds of the Washington public employees' retirement system, the teachers' retirement system, the Washington law enforcement officers' and fire fighters' retirement system, the Washington state patrol retirement system, the Washington judicial retirement system, and the judges' retirement fund, pursuant to RCW 43.84.150, and may sell or exchange investments acquired in the exercise of that authority. [1981 c 3 § 34; 1977 ex.s. c 251 § 2; 1975-'76 2nd ex.s. c 105 § 10.]

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

41.50.080 Investment of funds of various systems. (Effective September 1, 2000.) The state investment board shall provide for the investment of all funds of the Washington public employees' retirement system, the teachers' retirement system, the school employees' retirement system, the Washington law enforcement officers' and fire fighters' retirement system, the Washington state patrol retirement system, the Washington judicial retirement system, and the judges' retirement fund, pursuant to RCW 43.84.150, and may sell or exchange investments acquired in the exercise of that authority. [1998 c 341 § 504; 1981 c 3 § 34; 1977 ex.s. c 251 § 2; 1975-'76 2nd ex.s. c 105 § 10.]

Effective date—1998 c 341: See RCW 41.35.901.

Effective dates—Severability—1981 c 3: See notes following RCW 43.33A.010.

41.50.085 Investments in accordance with established standards. Any investments under RCW 43.84.150 by the state investment board shall be made in accordance with the standards established in RCW 43.33A.140. [1998 c 14 § 2; 1977 ex.s. c 251 § 7.]

41.50.086 Employee retirement benefits board—Created—Membership. (*Expires September 1, 2000.*) (1) The employee retirement benefits board is created within the department of retirement systems.

(2) The board shall be composed of eleven members appointed by the governor and one ex officio member as follows:

(a) Three members representing the public employees' retirement system: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be two years for the retired member, one year for one active member, and three years for the remaining active member.

(b) Three members representing the teachers' retirement system: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be one year for the retired member, two years for one active member, and three years for the remaining active member.

(c) Three members representing classified employees of school districts and educational service districts: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be one year for the retired member, two years for one active member, and three years for the remaining active member.

(d) Two members with experience in defined contribution plan administration. The initial term for these members shall be two years for one member and three years for the remaining member.

(e) The director of the department shall serve ex officio and shall be the chair of the board.

(3) After the initial appointments, members shall be appointed to three-year terms.

(4) The board shall meet at least quarterly during the calendar year, at the call of the chair.

(5) Members of the board shall serve without compensation but shall receive travel expenses as provided for in RCW 43.03.050 and 43.03.060. Such travel expenses shall be reimbursed by the department from the retirement system expense fund.

(6) The board shall adopt rules governing its procedures and conduct of business.

(7) The actuary shall perform all actuarial services for the board and provide advice and support. [1998 c 341 § 505; 1995 c 239 § 301.]

Expiration date—1998 c 341 § 505: "Section 505 of this act expires September 1, 2000." [1998 c 341 § 715.]

Effective date—1998 c 341: See note following RCW 41.34.060.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.50.086 Employee retirement benefits board—Created—Membership. (*Effective September 1, 2000.*) (1) The employee retirement benefits board is created within the department of retirement systems.

(2) The board shall be composed of eleven members appointed by the governor and one ex officio member as follows:

(a) Three members representing the public employees' retirement system: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be two years for the retired member, one year for one active member, and three years for the remaining active member.

(b) Three members representing the teachers' retirement system: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be one year for the retired member, two years for one active member, and three years for the remaining active member.

(c) Three members representing the school employees' retirement system: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be one year for the retired member, two years for one active member, and three years for the remaining active member.

(d) Two members with experience in defined contribution plan administration. The initial term for these members shall be two years for one member and three years for the remaining member.

(e) The director of the department shall serve ex officio and shall be the chair of the board.

(3) After the initial appointments, members shall be appointed to three-year terms.

(4) The board shall meet at least quarterly during the calendar year, at the call of the chair.

(5) Members of the board shall serve without compensation but shall receive travel expenses as provided for in RCW 43.03.050 and 43.03.060. Such travel expenses shall be reimbursed by the department from the retirement system expense fund.

(6) The board shall adopt rules governing its procedures and conduct of business.

(7) The actuary shall perform all actuarial services for the board and provide advice and support. [1998 c 341 § 506; 1995 c 239 § 301.]

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.50.088 Employee retirement benefits board—Duties. (1) The board shall adopt rules as necessary and exercise all the powers and perform all duties prescribed by law with respect to:

(a) The board shall recommend to the state investment board types of options for member self-directed investment in the teachers' retirement system plan III and the school employees' retirement system plan III, as deemed by the board to be reflective of the members' preferences;

(b) The selection of optional benefit payment schedules available to members and survivors of members upon the

death, disability, retirement, or termination of the member. The optional benefit payments may include but not be limited to: Fixed and participating annuities, joint and survivor annuities, and payments that bridge to social security or defined benefit plan payments;

(c) Approval of actuarially equivalent annuities that may be purchased from the combined plan II and plan III funds under RCW 41.50.075 (2) or (3); and

(d) Determination of the basis for administrative charges to the self-directed investment fund to offset self-directed account expenses;

(2) The board shall recommend to the state investment board types of options for participant self-directed investment in the state deferred compensation plan, as deemed by the board to be reflective of the participants' preferences. [1998 c 341 § 507; 1998 c 116 § 10; 1995 c 239 § 302.]

Reviser's note: This section was amended by 1998 c 116 § 10 and by 1998 c 341 § 507, 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).

Effective date—1998 c 341: See note following RCW 41.34.060.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.50.090 Department succeeds to and vested with transferred powers, duties, and functions—Boards to be kept informed—Approval of rules—Disability benefit applications. (1) Except as otherwise provided in this section, on the effective date of transfer as provided in RCW 41.50.030, the department shall succeed to and is vested with all powers, duties, and functions now or by any concurrent act of this 1976 legislature vested in the individual retirement boards set forth in RCW 41.50.030 relating to the administration of their various retirement systems, including but not limited to the power to appoint a staff and define the duties thereof: **PROVIDED,** That actuarial services required by the department shall be performed by the state actuary as provided in RCW 44.44.040.

(2) The department shall keep each retirement board fully informed on the administration of the corresponding retirement system, and shall furnish any information requested by a retirement board.

(3) Rules proposed by the director under RCW 2.10.070, 41.50.055, 41.32.025, or 41.40.020 shall be submitted to the appropriate retirement boards for review prior to adoption. After receiving approval of the members of the appropriate board, such rules shall become effective as provided by the administrative procedure act, chapter 34.05 RCW.

(4) Each retirement board shall continue to perform all functions as are vested in it by law with respect to applications for benefits paid upon either temporary or permanent disability, with such staff assistance from the department as may be required. The director shall perform those functions with respect to disability benefits as are vested in him or her by RCW 41.26.120, 41.26.125, and 41.26.200. [1985 c 102 § 6; 1983 c 3 § 97; 1981 c 294 § 8; 1975-'76 2nd ex.s. c 105 § 11.]

Purpose—Retrospective application—1985 c 102: See notes following RCW 41.26.120.

Severability—1981 c 294: See note following RCW 41.26.115.

41.50.110 Expenses of administration paid from department of retirement systems expense fund—Administrative expense fee. (Effective until September 1, 2000.) (1) Except as provided by RCW 41.50.255 and subsection (6) of this section, all expenses of the administration of the department and the expenses of administration of the retirement systems created in chapters 2.10, 2.12, 41.26, 41.32, 41.40, 41.34, and 43.43 RCW shall be paid from the department of retirement systems expense fund.

(2) In order to reimburse the department of retirement systems expense fund on an equitable basis the department shall ascertain and report to each employer, as defined in RCW 41.26.030, 41.32.010, or 41.40.010, the sum necessary to defray its proportional share of the entire expense of the administration of the retirement system that the employer participates in during the ensuing biennium or fiscal year whichever may be required. Such sum is to be computed in an amount directly proportional to the estimated entire expense of the administration as the ratio of monthly salaries of the employer's members bears to the total salaries of all members in the entire system. It shall then be the duty of all such employers to include in their budgets or otherwise provide the amounts so required.

(3) The department shall compute and bill each employer, as defined in RCW 41.26.030, 41.32.010, or 41.40.010, at the end of each month for the amount due for that month to the department of retirement systems expense fund and the same shall be paid as are its other obligations. Such computation as to each employer shall be made on a percentage rate of salary established by the department. However, the department may at its discretion establish a system of billing based upon calendar year quarters in which event the said billing shall be at the end of each such quarter.

(4) The director may adjust the expense fund contribution rate for each system at any time when necessary to reflect unanticipated costs or savings in administering the department.

(5) An employer who fails to submit timely and accurate reports to the department may be assessed an additional fee related to the increased costs incurred by the department in processing the deficient reports. Fees paid under this subsection shall be deposited in the retirement system expense fund.

(a) Every six months the department shall determine the amount of an employer's fee by reviewing the timeliness and accuracy of the reports submitted by the employer in the preceding six months. If those reports were not both timely and accurate the department may prospectively assess an additional fee under this subsection.

(b) An additional fee assessed by the department under this subsection shall not exceed fifty percent of the standard fee.

(c) The department shall adopt rules implementing this section.

(6) Expenses other than those under RCW 41.34.060(2) shall be paid pursuant to subsection (1) of this section. [1996 c 39 § 17; 1995 c 239 § 313; 1990 c 8 § 3; 1979 ex.s. c 249 § 8.]

Effective dates—1996 c 39: See note following RCW 41.32.010

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Findings—1990 c 8: See note following RCW 41.50.065.

Benefits not contractual right until July 1, 1996: RCW 41.34.100.

41.50.110 Expenses of administration paid from department of retirement systems expense fund—Administrative expense fee. (Effective September 1, 2000.)

(1) Except as provided by RCW 41.50.255 and subsection (6) of this section, all expenses of the administration of the department and the expenses of administration of the retirement systems created in chapters 2.10, 2.12, 41.26, 41.32, 41.40, 41.34, 41.35, and 43.43 RCW shall be paid from the department of retirement systems expense fund.

(2) In order to reimburse the department of retirement systems expense fund on an equitable basis the department shall ascertain and report to each employer, as defined in RCW 41.26.030, 41.32.010, 41.35.010, or 41.40.010, the sum necessary to defray its proportional share of the entire expense of the administration of the retirement system that the employer participates in during the ensuing biennium or fiscal year whichever may be required. Such sum is to be computed in an amount directly proportional to the estimated entire expense of the administration as the ratio of monthly salaries of the employer's members bears to the total salaries of all members in the entire system. It shall then be the duty of all such employers to include in their budgets or otherwise provide the amounts so required.

(3) The department shall compute and bill each employer, as defined in RCW 41.26.030, 41.32.010, 41.35.010, or 41.40.010, at the end of each month for the amount due for that month to the department of retirement systems expense fund and the same shall be paid as are its other obligations. Such computation as to each employer shall be made on a percentage rate of salary established by the department. However, the department may at its discretion establish a system of billing based upon calendar year quarters in which event the said billing shall be at the end of each such quarter.

(4) The director may adjust the expense fund contribution rate for each system at any time when necessary to reflect unanticipated costs or savings in administering the department.

(5) An employer who fails to submit timely and accurate reports to the department may be assessed an additional fee related to the increased costs incurred by the department in processing the deficient reports. Fees paid under this subsection shall be deposited in the retirement system expense fund.

(a) Every six months the department shall determine the amount of an employer's fee by reviewing the timeliness and accuracy of the reports submitted by the employer in the preceding six months. If those reports were not both timely and accurate the department may prospectively assess an additional fee under this subsection.

(b) An additional fee assessed by the department under this subsection shall not exceed fifty percent of the standard fee.

(c) The department shall adopt rules implementing this section.

(6) Expenses other than those under RCW 41.34.060(2) shall be paid pursuant to subsection (1) of this section.

[1998 c 341 § 508; 1996 c 39 § 17; 1995 c 239 § 313; 1990 c 8 § 3; 1979 ex.s. c 249 § 8.]

Effective date—1998 c 341: See RCW 41.35.901.

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Findings—1990 c 8: See note following RCW 41.50.065.

Benefits not contractual right until date specified: RCW 41.34.100.

41.50.120 Payment of moneys due department by employers—Interest. Notwithstanding any provision of law to the contrary, all employers of members of retirement systems administered by the department shall transmit by a warrant or check to the department within fifteen days following the end of each calendar month the moneys due the department as determined by the statutes governing each system together with such reports as the department may require. The director may collect interest on any employer's overdue payments at the rate of one percent per month on the outstanding balance where necessary to secure adherence to timeliness requirements. [1979 ex.s. c 249 § 9.]

41.50.125 Interest on contributions—Department may charge. The department may charge interest, as determined by the director, on member or employer contributions owing to any of the retirement systems listed in RCW 41.50.030. The department's authority to charge interest shall extend to all optional and mandatory billings for contributions where member or employer contributions are paid other than immediately after service is rendered. Except as explicitly limited by statute, the director may delay the imposition of interest charges on late contributions under this section if the delay is necessary to implement required changes in the department's accounting and information systems. [1994 c 177 § 2.]

Findings—1994 c 177: "The legislature finds that:

(1) Whenever employer or member contributions are not made at the time service is rendered, the state retirement system trust funds lose investment income which is a major source of pension funding. The department of retirement systems has broad authority to charge interest to compensate for the loss to the trust funds, subject only to explicit statutory provisions to the contrary.

(2) The inherent authority of the department to recover all overpayments and unauthorized payments from the retirement trust funds, for the benefit of members and taxpayers, should be established clearly in statute." [1994 c 177 § 1.]

41.50.130 Correction of retirement systems' records—Adjustment in payment of benefits—Limitations.

(1) The director may at any time correct errors appearing in the records of the retirement systems listed in RCW 41.50.030. Should any error in such records result in any member, beneficiary, or other person or entity receiving more or less than he or she would have been entitled to had the records been correct, the director, subject to the conditions set forth in this section, shall adjust the payment in such a manner that the benefit to which such member, beneficiary, or other person or entity was correctly entitled shall be paid in accordance with the following:

(a) In the case of underpayments to a member or beneficiary, the retirement system shall correct all future payments from the point of error detection, and shall compute

the additional payment due for the allowable prior period which shall be paid in a lump sum by the appropriate retirement system.

(b) In the case of overpayments to a retiree or other beneficiary, the retirement system shall adjust the payment so that the retiree or beneficiary receives the benefit to which he or she is correctly entitled. The retiree or beneficiary shall either repay the overpayment in a lump sum within ninety days of notification or, if he or she is entitled to a continuing benefit, elect to have that benefit actuarially reduced by an amount equal to the overpayment. The retiree or beneficiary is not responsible for repaying the overpayment if the employer is liable under RCW 41.50.139.

(c) In the case of overpayments to a person or entity other than a member or beneficiary, the overpayment shall constitute a debt from the person or entity to the department, recovery of which shall not be barred by laches or statute of limitations.

(2) Except in the case of actual fraud, in the case of overpayments to a member or beneficiary, the benefits shall be adjusted to reflect only the amount of overpayments made within three years of discovery of the error, notwithstanding any provision to the contrary in chapter 4.16 RCW.

(3) Except in the case of actual fraud, no monthly benefit shall be reduced by more than fifty percent of the member's or beneficiary's corrected benefit. Any overpayment not recovered due to the inability to actuarially reduce a member's benefit due to: (a) The provisions of this subsection; or (b) the fact that the retiree's monthly retirement allowance is less than the monthly payment required to effectuate an actuarial reduction, shall constitute a claim against the estate of a member, beneficiary, or other person or entity in receipt of an overpayment.

(4) Except as provided in subsection (2) of this section, obligations of employers or members until paid to the department shall constitute a debt from the employer or member to the department, recovery of which shall not be barred by laches or statutes of limitation. [1997 c 254 § 15; 1994 c 177 § 3; 1987 c 490 § 1; 1982 c 13 § 1.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

Findings—1994 c 177: See note following RCW 41.50.125.

41.50.131 Correction of errors in reporting compensation earnable. (1) Notwithstanding RCW 41.50.130, the department is not required to correct, nor to cause any employer to correct the reporting error described in subsection (2) of this section.

(2) Standby pay and other similar forms of compensation that are not pay for time worked were not salary or wages for personal services within the meaning of RCW 41.40.010(8). Contrary to RCW 41.40.010(8), some employers have been reporting standby pay to the department as compensation earnable. To avoid unduly impacting the retirement allowances of persons who have retired on or before June 9, 1994, the department is not required to correct, nor cause to be corrected, any misreporting of amounts identified as standby pay through June 9, 1994. Any erroneous reporting of amounts identified as standby pay to the department on or after June 9, 1994, shall be corrected as an error under RCW 41.50.130.

(3) The forgiveness of past misreporting under subsection (2) of this section constitutes a benefit enhancement for those individuals for whom amounts received as standby pay were misreported to the department. Prior to June 9, 1994, no retirement system member had any right, contractual or otherwise, to have amounts identified as standby pay included as compensation earnable. [1994 c 177 § 9.]

Findings—1994 c 177: See note following RCW 41.50.125.

41.50.132 Correction of erroneous deduction or pick-up of contributions.

(1) By December 31, 1992, the department of retirement systems shall implement and complete the following process for those members of the law enforcement officers' and fire fighters' retirement system plan II, public employees' retirement system plans I and II, and teachers' retirement system plan II who erroneously had contributions either deducted or picked-up from their earnings on and after January 1, 1987:

(a) Create a list of transactions by employer for those members whose employer either deducted or picked-up employee contributions during a month where an employee did not work sufficient hours to earn service credit;

(b) Provide the affected employers with direction and guidance for the review of the transmitted lists from this subsection and the employers' preparation of any necessary correcting transactions to the department's records;

(c) Receive all correcting transactions submitted by the employer.

(2) All debits and credits to all member accounts affected by this remedial process shall be reconciled by the department.

(3) All moneys payable to an affected member, or any moneys to be further deducted or picked-up from such member's earnings, shall be determined and accomplished solely by the employer.

(4) After December 31, 1992, no credit of employer contributions shall be made.

(5) Return of contributions to an employee by the department is limited solely to when such member retires or otherwise terminates his or her membership and chooses to withdraw them with any accumulated interest.

(6) Employer contributions forfeited under this section shall be transferred to the department of retirement systems expense account. [1991 c 343 § 13.]

Findings—Effective dates—1991 c 343: See notes following RCW 41.50.005.

41.50.133 Recovery of certain overpayments to surviving beneficiaries under the teachers' retirement system.

(1) The director of the department of retirement systems shall not recover from surviving beneficiaries of members who died in service any pension overpayment based on the application of section 2, chapter 96, Laws of 1979 ex. sess., nor shall such benefits be reduced.

(2) The director of the department of retirement systems shall not recover from retirees any pension overpayments made between July 1, 1990, and February 1, 1992, based upon the application of *RCW 41.40.198, 41.40.1981, 41.40.325, 41.32.485, 41.32.487, or 41.32.575 due to the incorrect calculation of the "age sixty-five allowance" as this

term is defined in *RCW 41.32.575(1)(a) and 41.40.325(1)(a). [1992 c 212 § 21; 1987 c 490 § 2.]

*Reviser's note: RCW 41.40.198, 41.40.1981, 41.40.325, 41.32.487, and 41.32.575 were repealed by 1995 c 345 § 11.

41.50.135 Collection of overpayments—Determination of liability—Administrative process created. (1) If the department finds that any member, beneficiary, or other person or entity has been paid an amount of retirement benefits to which that person or entity is not entitled, and the person is not entitled to a continuing benefit from any of the retirement systems listed in RCW 41.50.030, the department may issue an order and notice of assessment specifying the amount due, including interest, to be remitted to the department. The order and notice of assessment shall be served upon any person or entity who may have received benefits to which the person or entity is not entitled. The order and notice of assessment shall be served by the department in the manner prescribed for the service of a summons in a civil action, or by certified mail to the last known address of the obligor as shown by the records of the department.

(2) Any notice of assessment under subsection (1) of this section shall constitute a determination of liability from which the member, beneficiary, or other person or entity served may appeal by filing a petition for adjudicative proceedings with the director personally or by mail within sixty days from the date the assessment was served. If a petition for adjudicative proceedings is not filed within sixty days of the delivery of the notice of assessment, the determination that was the basis for establishing the overpayment debt and the assessment is conclusive and final.

(3) This section creates an administrative process for the collection of overpayments from persons who are not entitled to a continuing benefit from one of the retirement systems listed in RCW 41.50.030. The collection of overpayments from persons entitled to a continuing benefit from one of the retirement systems listed in RCW 41.50.030 is governed by RCW 41.50.130. [1996 c 56 § 1.]

41.50.136 Collection of overpayments—Issuance of warrant—Lien. Whenever a notice of determination of liability becomes conclusive and final under RCW 41.50.135, the director, upon giving at least twenty days notice by certified mail return receipt requested to the individual's last known address of the intended action, may file with the superior court clerk of any county within the state a warrant in the amount of the notice of determination of liability plus a filing fee of five dollars payable under RCW 36.18.016. The clerk of the county where the warrant is filed shall immediately designate a superior court cause number for the warrant, and the clerk shall cause to be entered in the judgment docket under the superior court cause number assigned to the warrant, the name of the person mentioned in the warrant, the amount of the notice of determination of liability, and the date when the warrant was filed. The amount of the warrant as docketed shall become a lien upon the title to, and any interest in, all real and personal property of the person against whom the warrant is issued, the same as a judgment in a civil case duly docketed in the office of such clerk. A copy of the warrant shall be mailed to the

person mentioned in the warrant by certified mail to the person's last known address within five days of its filing with the clerk. [1996 c 56 § 2.]

41.50.137 Collection of overpayments—Department may issue subpoenas. The department may issue subpoenas to compel the statement of witnesses and the production of any books, records, or documents necessary or relevant to the department's administration of duties under this chapter. It is unlawful for any person or entity, without just cause, to fail to comply with any subpoena issued under this section. [1996 c 56 § 3.]

41.50.138 Collection of overpayments—Waiver of overpayment. (1) The director may waive repayment of all or part of a retirement allowance overpayment, under RCW 41.50.130 only, if:

(a) The overpayment was not the result of the retiree's or the beneficiary's nondisclosure, fraud, misrepresentation, or other fault; and

(b) The director finds in his or her sole discretion that recovery of the overpayment would be a manifest injustice.

(2) The director may not waive an overpayment if the member, retiree, or beneficiary:

(a) Provided incorrect information to the department or the employer which caused the overpayment;

(b) Failed to provide information to the department or the employer which was necessary to correctly calculate the retirement allowance;

(c) Caused the employer to provide incorrect information or fail to provide necessary information; or

(d) Knew or reasonably should have known that he or she was in receipt of an overpayment.

(3) If the director waives an overpayment and the overpayment occurred because the member's or retiree's employer:

(a) Provided incorrect information to the department which caused the overpayment;

(b) Failed to provide information to the department which was necessary to correctly calculate the retirement allowance;

(c) Caused another party to provide incorrect information or fail to provide necessary information; or

(d) Knew or reasonably should have known that the information provided would cause the retiree or beneficiary to be overpaid;

then the department shall bill the member's or retiree's employer for the amount of the overpayment that would have been recoverable under RCW 41.50.130 had the overpayment not been waived pursuant to this section.

(4) Nothing in this section authorizes the director to waive the prospective correction of an overstated retirement allowance.

(5) If the director waives an overpayment he or she must state in writing:

(a) The nature of and reason for the overpayment;

(b) The reason for the waiver; and

(c) The amount of the overpayment that is waived.

The department will maintain a file containing documentation of all overpayments waived. The department will provide the file to any person upon request.

(6) This section applies to overpayments identified on or after September 1, 1994. [1996 c 56 § 4.]

41.50.139 Retirement status reports—Overpayments—Employer obligations. (1) Retirement system employers shall elicit on a written form from all new employees as to their having been retired from a retirement system listed in RCW 41.50.030. Employers must report any retirees in their employ to the department. If a retiree works in excess of applicable postretirement employment restrictions and the employer failed to report the employment of the retiree, that employer is liable for the loss to the trust fund.

(2) If an employer erroneously reports to the department that an employee has separated from service such that a person receives a retirement allowance in contravention of the applicable retirement system statutes, the person's retirement status shall remain unaffected and the employer is liable for the resulting overpayments.

(3) Upon receipt of a billing from the department, the employer shall pay into the appropriate retirement system trust fund the amount of the overpayment plus interest as determined by the director. The employer's liability under this section shall not exceed the amount of overpayments plus interest received by the retiree within three years of the date of discovery, except in the case of fraud. In the case of fraud, the employer is liable for the entire overpayment plus interest. [1997 c 254 § 16.]

Intent—Construction—Application—1997 c 254: See notes following RCW 41.26.490.

41.50.140 Cooperation of employers in administration of systems—Employer contributions for retroactive service credit—Employee contributions paid by employer.

(1) Every employer participating in one or more of the retirement systems listed in RCW 41.50.030 shall fully cooperate in the administration of the systems in which its employees participate, including the distribution of information to employees, and shall accept and carry out all other duties as required by law, regulation, or administrative instruction.

(2) If an employee is entitled to retroactive service credit which was not previously established through no fault of the employee, or through an employer error which has caused a member's compensation or contributions to be understated or overstated so as to cause a loss to the retirement funds, the director may bill the employer for the loss, to include interest, if applicable. The employer contributions, with interest thereon, will be treated as if in fact the interest was part of the normal employer contribution and no distribution of interest received shall be required.

(3) Employer-paid employee contributions will not be credited to a member's account until the employer notifies the director in writing that the employer has been reimbursed by the employee or beneficiary for the payment. The employer shall have the right to collect from the employee the amount of the employee's obligation. Failure on the part of the employer to collect all or any part of the sums which may be due from the employee or beneficiary shall in no way cause the employer obligation for the total liability to be lessened. [1982 1st ex.s. c 52 § 33.]

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

41.50.145 Plan III—Loss of investment return due to error—Liability. (1) If the department determines that due to employer error a member of plan III has suffered a loss of investment return, the employer shall pay the department for credit to the member's account the amount determined by the department as necessary to correct the error.

(2) If the department determines that due to departmental error a member of plan III has suffered a loss of investment return, the department shall credit to the member's account from the school employees' retirement system combined plan II and III fund the amount determined by the department as necessary to correct the error. [1998 c 341 § 515.]

Effective date—1998 c 341: See note following RCW 41.34.060.

41.50.150 Retirement benefits based on excess compensation—Employer liable for extra retirement costs. (Effective until September 1, 2000.)

(1) The employer of any employee whose retirement benefits are based in part on excess compensation, as defined in this section, shall, upon receipt of a billing from the department, pay into the appropriate retirement system the present value at the time of the employee's retirement of the total estimated cost of all present and future benefits from the retirement system attributable to the excess compensation. The state actuary shall determine the estimated cost using the same method and procedure as is used in preparing fiscal note costs for the legislature. However, the director may in the director's discretion decline to bill the employer if the amount due is less than fifty dollars. Accounts unsettled within thirty days of the receipt of the billing shall be assessed an interest penalty of one percent of the amount due for each month or fraction thereof beyond the original thirty-day period.

(2) "Excess compensation," as used in this section, includes the following payments, if used in the calculation of the employee's retirement allowance:

(a) A cash out of unused annual leave in excess of two hundred forty hours of such leave. "Cash out" for purposes of this subsection means:

(i) Any payment in lieu of an accrual of annual leave;

or

(ii) Any payment added to salary or wages, concurrent with a reduction of annual leave;

(b) A cash out of any other form of leave;

(c) A payment for, or in lieu of, any personal expense or transportation allowance to the extent that payment qualifies as reportable compensation in the member's retirement system;

(d) The portion of any payment, including overtime payments, that exceeds twice the regular daily or hourly rate of pay; and

(e) Any termination or severance payment.

(3) This section applies to the retirement systems listed in RCW 41.50.030 and to retirements occurring on or after March 15, 1984. Nothing in this section is intended to amend or determine the meaning of any definition in chapter

2.10, 2.12, 41.26, 41.32, 41.40, or 43.43 RCW or to determine in any manner what payments are includable in the calculation of a retirement allowance under such chapters.

(4) An employer is not relieved of liability under this section because of the death of any person either before or after the billing from the department. [1997 c 221 § 1; 1995 c 244 § 1; 1984 c 184 § 1.]

Intent—Application—1995 c 244 § 1: "The definition of "cash out" added to RCW 41.50.150(2)(a) by this act is a clarification of the legislature's original intent regarding the meaning of the term. The definition of "cash out" applies retroactively to payments made before July 23, 1995." [1995 c 244 § 2.]

Severability—1984 c 184: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 184 § 31.]

41.50.150 Retirement benefits based on excess compensation—Employer liable for extra retirement costs. (Effective September 1, 2000.) (1) The employer of any employee whose retirement benefits are based in part on excess compensation, as defined in this section, shall, upon receipt of a billing from the department, pay into the appropriate retirement system the present value at the time of the employee's retirement of the total estimated cost of all present and future benefits from the retirement system attributable to the excess compensation. The state actuary shall determine the estimated cost using the same method and procedure as is used in preparing fiscal note costs for the legislature. However, the director may in the director's discretion decline to bill the employer if the amount due is less than fifty dollars. Accounts unsettled within thirty days of the receipt of the billing shall be assessed an interest penalty of one percent of the amount due for each month or fraction thereof beyond the original thirty-day period.

(2) "Excess compensation," as used in this section, includes the following payments, if used in the calculation of the employee's retirement allowance:

(a) A cash out of unused annual leave in excess of two hundred forty hours of such leave. "Cash out" for purposes of this subsection means:

(i) Any payment in lieu of an accrual of annual leave; or

(ii) Any payment added to salary or wages, concurrent with a reduction of annual leave;

(b) A cash out of any other form of leave;

(c) A payment for, or in lieu of, any personal expense or transportation allowance to the extent that payment qualifies as reportable compensation in the member's retirement system;

(d) The portion of any payment, including overtime payments, that exceeds twice the regular daily or hourly rate of pay; and

(e) Any termination or severance payment.

(3) This section applies to the retirement systems listed in RCW 41.50.030 and to retirements occurring on or after March 15, 1984. Nothing in this section is intended to amend or determine the meaning of any definition in chapter 2.10, 2.12, 41.26, 41.32, 41.40, 41.35, or 43.43 RCW or to determine in any manner what payments are includable in the calculation of a retirement allowance under such chapters.

(4) An employer is not relieved of liability under this section because of the death of any person either before or after the billing from the department. [1998 c 341 § 509; 1997 c 221 § 1; 1995 c 244 § 1; 1984 c 184 § 1.]

Effective date—1998 c 341: See RCW 41.35.901.

Intent—Application—1995 c 244 § 1: "The definition of "cash out" added to RCW 41.50.150(2)(a) by this act is a clarification of the legislature's original intent regarding the meaning of the term. The definition of "cash out" applies retroactively to payments made before July 23, 1995." [1995 c 244 § 2.]

Severability—1984 c 184: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 184 § 31.]

41.50.152 Payment of excess compensation—Public notice requirements. (Effective until September 1, 2000.)

(1) Except as limited by subsection (3) of this section, the governing body of an employer under chapter 41.32 or 41.40 RCW shall comply with the provisions of subsection (2) of this section prior to executing a contract or collective bargaining agreement with members under chapter 41.32 or 41.40 RCW which provides for:

(a) A cash out of unused annual leave in excess of two hundred forty hours of such leave. "Cash out" for purposes of this subsection means any payment in lieu of an accrual of annual leave or any payment added to regular salary, concurrent with a reduction of annual leave;

(b) A cash out of any other form of leave;

(c) A payment for, or in lieu of, any personal expense or transportation allowance;

(d) The portion of any payment, including overtime payments, that exceeds twice the regular rate of pay; or

(e) Any other termination or severance payment.

(2) Any governing body entering into a contract that includes a compensation provision listed in subsection (1) of this section shall do so only after public notice in compliance with the open public meetings act, chapter 42.30 RCW. This notification requirement may be accomplished as part of the approval process for adopting a contract in whole, and does not require separate or additional open public meetings. At the public meeting, full disclosure shall be made of the nature of the proposed compensation provision, and the employer's estimate of the excess compensation billings under RCW 41.50.150 that the employing entity would have to pay as a result of the proposed compensation provision. The employer shall notify the department of its compliance with this section at the time the department bills the employer under *RCW 41.40.150 for the pension impact of compensation provisions listed in subsection (1) of this section that are adopted after July 23, 1995.

(3) The requirements of subsection (2) of this section shall not apply to the adoption of a compensation provision listed in subsection (1) of this section if the compensation would not be includable in calculating benefits under chapter 41.32 or 41.40 RCW for the employees covered by the compensation provision. [1995 c 387 § 1.]

***Reviser's note:** The reference to RCW 41.40.150 appears to be erroneous. The section governing the subject of billing an employer for excess compensation is RCW 41.50.150.

41.50.152 Payment of excess compensation—Public notice requirements. (Effective September 1, 2000.) (1)

Except as limited by subsection (3) of this section, the governing body of an employer under chapter 41.32, 41.35, or 41.40 RCW shall comply with the provisions of subsection (2) of this section prior to executing a contract or collective bargaining agreement with members under chapter 41.32, 41.35, or 41.40 RCW which provides for:

(a) A cash out of unused annual leave in excess of two hundred forty hours of such leave. "Cash out" for purposes of this subsection means any payment in lieu of an accrual of annual leave or any payment added to regular salary, concurrent with a reduction of annual leave;

(b) A cash out of any other form of leave;

(c) A payment for, or in lieu of, any personal expense or transportation allowance;

(d) The portion of any payment, including overtime payments, that exceeds twice the regular rate of pay; or

(e) Any other termination or severance payment.

(2) Any governing body entering into a contract that includes a compensation provision listed in subsection (1) of this section shall do so only after public notice in compliance with the open public meetings act, chapter 42.30 RCW. This notification requirement may be accomplished as part of the approval process for adopting a contract in whole, and does not require separate or additional open public meetings. At the public meeting, full disclosure shall be made of the nature of the proposed compensation provision, and the employer's estimate of the excess compensation billings under RCW 41.50.150 that the employing entity would have to pay as a result of the proposed compensation provision. The employer shall notify the department of its compliance with this section at the time the department bills the employer under RCW 41.50.150 for the pension impact of compensation provisions listed in subsection (1) of this section that are adopted after July 23, 1995.

(3) The requirements of subsection (2) of this section shall not apply to the adoption of a compensation provision listed in subsection (1) of this section if the compensation would not be includable in calculating benefits under chapter 41.32, 41.35, or 41.40 RCW for the employees covered by the compensation provision. [1998 c 341 § 510; 1995 c 387 § 1.]

Effective date—1998 c 341: See RCW 41.35.901.

41.50.155 Erroneous withdrawals of contributions—Restoration. (1) If a person receives a withdrawal of accumulated contributions from any of the retirement systems listed in RCW 41.50.030 in contravention of the restrictions on withdrawal for the particular system, the member shall no longer be entitled to credit for the period of service represented by the withdrawn contributions. The erroneous withdrawal shall be treated as an authorized withdrawal, subject to all conditions imposed by the member's system for restoration of withdrawn contributions. Failure to restore the contributions within the time permitted by the system shall constitute a waiver by the member of any right to receive a retirement allowance based upon the period of service represented by the withdrawn contributions.

(2) All erroneous withdrawals occurring prior to June 9, 1994, shall be subject to the provisions of this section. The deadline for restoring the prior erroneous withdrawals shall

be five years from June 9, 1994, for members who are currently active members of a system. [1994 c 177 § 4.]

Findings—1994 c 177: See note following RCW 41.50.125.

41.50.160 Restoration of withdrawn contributions.

The department of retirement systems shall incorporate the development of individual member accounts receivable into its information systems projects for fiscal years 1993 and 1994, so that by January 1, 1994, members of state retirement systems who are otherwise eligible to restore previously withdrawn contributions have the option to make restoration in a manner determined by the department. [1994 c 197 § 31; 1992 c 195 § 2.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.50.165 Establishing, restoring service credit—

Conditions. (1) Except for those affected by subsection (4) of this section, a member of a retirement system specified by RCW 41.50.030 or, one previously established by the state but closed to new membership, may, as provided in each retirement system:

(a) Establish allowable membership service not previously credited;

(b) Restore all or a part of that previously credited membership service represented by withdrawn contributions; or

(c) Restore service credit represented by a lump sum payment in lieu of benefits.

(2) Persons who previously have failed to:

(a) Establish service credit for service previously earned;

or

(b) Reestablish service credit by the restoration of withdrawn contributions or repayment of a lump sum payment in lieu of a benefit, may now establish or reestablish such service credit by paying the actuarial value of the resulting increase in their benefit in a manner defined by the department.

(3) Any establishment of service credit for service previously rendered, restoration of service credit destroyed, or repayment of a lump sum received in lieu of benefit must be completed prior to retirement.

(4) Service credit is established for or restored to the period in which the service credit is earned. [1994 c 197 § 2.]

Intent—1994 c 197: "(1) This act removes the time limitations within the state's retirement systems for:

(a) The restoration of service credit represented by employee contributions withdrawn by a member of a state's retirement systems; or

(b) The crediting of certain service that, under the provisions of the system, was not creditable at the time it was performed, such as a probationary period or interrupted military service.

(2) This act expands the current procedures for establishing service credit previously earned, restoring withdrawn contributions, or repaying lump sums received in lieu of a benefit. In so doing, it allows the member of one of the state's retirement systems to obtain additional service credit by paying the value of this added benefit that was previously unavailable." [1994 c 197 § 1.]

Severability—1994 c 197: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 197 § 37.]

Effective date—1994 c 197: "This act shall take effect January 1, 1995." [1994 c 197 § 38.]

41.50.170 Notification of restoration rights. Upon termination for reasons other than retirement, the department shall inform a member withdrawing his or her contributions, and the member shall acknowledge in writing, of the right to restore such contributions upon reestablishment of membership in the respective retirement system and the requirements involved in such restoration. [1994 c 197 § 3.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.50.175 Adoption of rules. The department shall adopt rules under chapter 34.05 RCW implementing and administering chapter 197, Laws of 1994. These rules are to include, but are not limited to:

(1) The application and calculation of actuarial value, with the agreement of the state actuary; and

(2) Establishing the minimum partial payment or the minimum units of restored service, or both. [1994 c 197 § 4.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

41.50.200 Subdivision of retirement system funds. In the records of the teachers' retirement system the teachers' retirement system plan I fund shall be subdivided into the member reserve, the pension reserve, and other funds as may from time to time be created by the director for the purpose of the internal accounting record. The director may adopt rules creating or deleting funds as he or she deems necessary. [1992 c 212 § 2; 1991 c 35 § 32; 1989 c 273 § 16; 1982 1st ex.s. c 52 § 7; 1969 ex.s. c 150 § 1; 1963 ex.s. c 14 § 2; 1955 c 274 § 2; 1947 c 80 § 3; Rem. Supp. 1947 § 4995-28. Prior: 1941 c 97 § 2, part; 1937 c 221 § 3, part; 1923 c 187 § 5, part; Rem. Supp. 1941 § 4995-3, part. Formerly RCW 41.32.030.]

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1989 c 273: See RCW 41.45.900.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Effective date—1969 ex.s. c 150: "The provisions of sections 1 through 20 of this 1969 amendatory act shall take effect on July 1, 1969." [1969 ex.s. c 150 § 21.]

41.50.205 Records—Teachers' retirement system annual report. The department shall keep a record of all its proceedings, which shall be open to public inspection. It shall publish annually a report showing the fiscal transactions of the Washington state teachers' retirement system for the preceding school year; the amount of the accumulated cash and securities of the system, and the last balance sheet showing the financial condition of the system by means of an actuarial valuation of the assets and liabilities of the retirement system. [1991 c 35 § 33; 1969 ex.s. c 150 § 4; 1947 c 80 § 12; Rem. Supp. 1947 § 4995-31. Prior: 1941 c 97 § 2, part; 1937 c 221 § 3, part; Rem. Supp. 1941 § 4995-3, part. Formerly RCW 41.32.120.]

Intent—1991 c 35: See note following RCW 41.26.005.

Effective date—1969 ex.s. c 150: See note following RCW 41.50.200.

41.50.210 Medical director. The director shall designate a medical director. If required, other physicians may be employed to report on special cases. The medical director shall arrange for and pass upon all medical examinations required under the provisions of chapter 41.32 RCW, investigate all essential statements and certificates by or on behalf of a member in connection with an application for a disability allowance, and report in writing to the board of trustees the conclusions and recommendations upon all matters under referral. [1992 c 72 § 10; 1991 c 35 § 34; 1947 c 80 § 13; Rem. Supp. 1947 § 4995-32. Prior: 1941 c 97 § 2, part; 1937 c 221 § 3, part; Rem. Supp. 1941 § 4995-3, part. Formerly RCW 41.32.130.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.50.215 Teacher's retirement system funds—Annual interest to be credited. From interest and other earnings on the moneys of the Washington state teachers' retirement system, and except as otherwise provided in *RCW 41.32.499, at the close of each fiscal year the department shall make an allowance of regular interest on the balance which was on hand at the beginning of the fiscal year in each of the teachers' retirement system funds as they may deem advisable; however, no interest shall be credited to the expense fund. [1992 c 212 § 6; 1991 c 35 § 36; 1973 1st ex.s. c 189 § 7; 1955 c 274 § 5; 1947 c 80 § 19; Rem. Supp. 1947 § 4995-38. Prior: 1941 c 97 § 6, part; 1939 c 86 § 6, part; 1937 c 221 § 7, part; Rem. Supp. 1941 § 4995-7, part. Formerly RCW 41.32.190.]

***Reviser's note:** RCW 41.32.499 was repealed by 1995 c 345 § 11.

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1973 1st ex.s. c 189: "If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 1st ex.s. c 189 § 12.]

41.50.220 Trustees, employees not to guarantee loans. No trustee or employee of the department shall become an endorser or surety or an obligor for moneys loaned by the department. [1991 c 35 § 37; 1947 c 80 § 23; Rem. Supp. 1947 § 4995-42. Prior: 1941 c 97 § 6, part; 1939 c 86 § 6, part; 1937 c 221 § 7, part; Rem. Supp. 1941 § 4995-7, part. Formerly RCW 41.32.230.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.50.230 Employer reports to department. On or before a date specified by the department in each month every employer shall file a report with the department on a form provided, stating the name of the employer and with respect to each employee who is a member or who is required to become a member of the Washington state teachers' retirement system: (1) The full name, (2) the earnable compensation paid, (3) the employee's contribution to the retirement system, and (4) other information as the department shall require. [1991 c 35 § 51; 1983 c 56 § 14; 1975-'76 2nd ex.s. c 16 § 1. Prior: 1975 1st ex.s. c 275 § 150; 1975 c 43 § 32; 1969 ex.s. c 176 § 96; 1967 c 50 § 4; 1963 ex.s. c 14 § 13; 1947 c 80 § 42; Rem. Supp. 1947 § 4995-61. Formerly RCW 41.32.420.]

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1983 c 56: See note following RCW 28A.195.010.

Effective date—Severability—1975 c 43: See notes following RCW 28A.315.230.

Effective date—1969 ex.s. c 176: See note following RCW 41.32.010.

Effective date—Severability—1967 c 50: See notes following RCW 41.32.010.

Savings—Severability—Effective date—1963 ex.s. c 14: See notes following RCW 41.32.010.

41.50.235 Teachers' retirement system salary deductions. Every officer authorized to issue salary warrants to teachers shall deduct from the salary payments to any member of the Washington state teachers' retirement system plan I regularly employed an amount which will result in total deductions of six percent of the amount of earnable compensation paid in any fiscal year. These deductions shall be transmitted and reported to the retirement system as directed by the department. [1991 c 35 § 52; 1967 c 50 § 5; 1963 ex.s. c 14 § 14; 1955 c 274 § 20; 1947 c 80 § 43; Rem. Supp. 1947 § 4995-62. Prior: 1941 c 97 § 5, part; 1939 c 86 § 5, part; 1937 c 221 § 6, part; Rem. Supp. 1941 § 4995-6, part. Formerly RCW 41.32.430.]

Intent—1991 c 35: See note following RCW 41.26.005.

Effective date—Severability—1967 c 50: See notes following RCW 41.32.010.

Savings—Severability—Effective date—1963 ex.s. c 14: See notes following RCW 41.32.010.

41.50.240 Duties of payroll officer. The person responsible for making up the payroll shall transmit promptly to the department at the end of each and every payroll period a copy of the original payroll voucher or such other payroll report as the department may require showing thereon all deductions for contributions for the teachers' retirement system made from the earnable compensation of a member of the teachers' retirement system together with warrants or checks covering the total of such deductions. The department shall place such moneys into the proper funds established in this chapter. [1977 ex.s. c 293 § 17. Formerly RCW 41.32.830.]

Effective date—Severability—Legislative direction and placement—Section headings—1977 ex.s. c 293: See notes following RCW 41.32.755.

41.50.255 Payment of legal and medical expenses of retirement systems. (Effective until September 1, 2000.) The director is authorized to pay from the interest earnings of the trust funds of the public employees' retirement system, the teachers' retirement system, the Washington state patrol retirement system, the Washington judicial retirement system, the judges' retirement system, or the law enforcement officers' and fire fighters' retirement system lawful obligations of the appropriate system for legal expenses and medical expenses which expenses are primarily incurred for the purpose of protecting the appropriate trust fund or are incurred in compliance with statutes governing such funds.

The term "legal expense" includes, but is not limited to, legal services provided through the legal services revolving fund, fees for expert witnesses, travel expenses, fees for court reporters, cost of transcript preparation, and reproduction of documents.

The term "medical costs" includes, but is not limited to, expenses for the medical examination or reexamination of members or retirees, the costs of preparation of medical reports, and fees charged by medical professionals for attendance at discovery proceedings or hearings.

The director may also pay from the interest earnings of the trust funds specified in this section costs incurred in investigating fraud and collecting overpayments, including expenses incurred to review and investigate cases of possible fraud against the trust funds and collection agency fees and other costs incurred in recovering overpayments. Recovered funds must be returned to the appropriate trust funds. [1995 c 281 § 1; 1993 sp.s. c 24 § 916; 1991 c 35 § 73; 1984 c 184 § 7. Formerly RCW 41.40.083.]

Effective date—1995 c 281: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 281 § 2.]

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.165.070.

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1984 c 184: See note following RCW 41.50.150.

41.50.255 Payment of legal and medical expenses of retirement systems. (Effective September 1, 2000.) The director is authorized to pay from the interest earnings of the trust funds of the public employees' retirement system, the teachers' retirement system, the Washington state patrol retirement system, the Washington judicial retirement system, the judges' retirement system, the school district employees' retirement system, or the law enforcement officers' and fire fighters' retirement system lawful obligations of the appropriate system for legal expenses and medical expenses which expenses are primarily incurred for the purpose of protecting the appropriate trust fund or are incurred in compliance with statutes governing such funds.

The term "legal expense" includes, but is not limited to, legal services provided through the legal services revolving fund, fees for expert witnesses, travel expenses, fees for court reporters, cost of transcript preparation, and reproduction of documents.

The term "medical costs" includes, but is not limited to, expenses for the medical examination or reexamination of members or retirees, the costs of preparation of medical reports, and fees charged by medical professionals for attendance at discovery proceedings or hearings.

The director may also pay from the interest earnings of the trust funds specified in this section costs incurred in investigating fraud and collecting overpayments, including expenses incurred to review and investigate cases of possible fraud against the trust funds and collection agency fees and other costs incurred in recovering overpayments. Recovered funds must be returned to the appropriate trust funds. [1998 c 341 § 511; 1995 c 281 § 1; 1993 sp.s. c 24 § 916; 1991 c 35 § 73; 1984 c 184 § 7. Formerly RCW 41.40.083.]

Effective date—1998 c 341: See RCW 41.35.901

Effective date—1995 c 281: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 281 § 2.]

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.165.070.

Intent—1991 c 35: See note following RCW 41.26.005.

Severability—1984 c 184: See note following RCW 41.50.150.

41.50.260 Public employees' retirement system funds created. For the purpose of the internal accounting record of the public employees' retirement system and not the segregation of moneys on deposit with the state treasurer there are hereby created the employees' savings fund, the benefit account fund, and such other funds as the director may from time to time create.

(1) The employees' savings fund shall be the fund in which shall be accumulated the contributions from the compensation of public employees' retirement system members. The director shall provide for the maintenance of an individual account for each member of the public employees' retirement system showing the amount of the member's contributions together with interest accumulations thereon. The contributions of a member returned to the former employee upon the individual's withdrawal from service, or paid in event of the employee's or former employee's death, as provided in chapter 41.40 RCW, shall be paid from the employees' savings fund. The accumulated contributions of a member, upon the commencement of the individual's retirement, shall be transferred from the employees' savings fund to the benefit account fund.

(2) The benefit account fund shall be the fund in which shall be accumulated the reserves for the payment of all public employees' retirement system retirement allowances and death benefits, if any, in respect of any beneficiary. The amounts contributed by all public employees' retirement system employers to provide pension benefits shall be credited to the benefit account fund. The benefit account fund shall be the fund from which shall be paid all public employees' retirement system retirement allowances, or benefits in lieu thereof because of which reserves have been transferred from the employees' savings fund to the benefit account fund. At the time a recipient of a retirement allowance again becomes a member of the public employees' retirement system, the department shall transfer from the benefit account fund to the employees' savings fund and credit to the individual account of such a member a sum equal to the excess, if any, of the individual's account at the date of the member's retirement over any service retirement allowance received since that date. [1992 c 212 § 11; 1991 c 35 § 74; 1982 1st ex.s. c 52 § 18; 1973 1st ex.s. c 190 § 4; 1972 ex.s. c 151 § 2; 1967 c 127 § 2; 1963 c 174 § 7; 1953 c 200 § 4; 1949 c 240 § 6; 1947 c 274 § 11; Rem. Supp. 1949 § 11072-11. Formerly RCW 41.40.100.]

Intent—1991 c 35: See note following RCW 41.26.005.

Effective dates—1982 1st ex.s. c 52: See note following RCW 2.10.180.

Severability—1973 1st ex.s. c 190: See note following RCW 41.40.010.

41.50.265 Public employees' retirement system funds—Report of the state treasurer—Members may receive reports and statements. The state treasurer shall furnish annually to the department a statement of the amount of the funds in the treasurer's custody belonging to the public employees' retirement system. Copies of this annual report shall be available to public employees' retirement system members upon request. The records of the depart-

ment shall be open to public inspection. Any member of the public employees' retirement system shall be furnished with a statement of the amount to the credit of his or her individual account in the employees' savings fund upon his or her written request, provided that the department shall not be required to answer more than one such request of any member in any one year. [1991 c 35 § 75; 1947 c 274 § 12; Rem. Supp. 1947 § 11072-12. Formerly RCW 41.40.110.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.50.270 Transmittal of total of public employees' retirement system members' deductions. The person responsible for making up the payroll shall transmit promptly to the department at the end of each and every payroll period a copy of the original payroll voucher or any other payroll report as the department may require showing thereon all deductions for the public employees' retirement system made from the compensation earnable of each member, together with warrants or checks covering the total of the deductions. The department after making a record of all receipts shall pay them to the state treasurer for use according to the provisions of chapter 41.40 RCW. [1991 c 35 § 90; 1977 ex.s. c 295 § 19; 1947 c 274 § 36; Rem. Supp. 1947 § 11072-36. Formerly RCW 41.40.350.]

Intent—1991 c 35: See note following RCW 41.26.005.

41.50.500 Mandatory assignment of retirement benefits—Definitions. (Effective until September 1, 2000.) Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 41.50.500 through 41.50.650, 41.50.670 through 41.50.720, and 26.09.138.

(1) "Benefits" means periodic retirement payments or a withdrawal of accumulated contributions.

(2) "Disposable benefits" means that part of the benefits of an individual remaining after the deduction from those benefits of any amount required by law to be withheld. The term "required by law to be withheld" does not include any deduction elective to the member.

(3) "Dissolution order" means any judgment, decree, or order of spousal maintenance, property division, or court-approved property settlement incident to a decree of divorce, dissolution, invalidity, or legal separation issued by the superior court of the state of Washington or a judgment, decree, or other order of spousal support issued by a court of competent jurisdiction in another state or country, that has been registered or otherwise made enforceable in this state.

(4) "Mandatory benefits assignment order" means an order issued to the department of retirement systems pursuant to RCW 41.50.570 to withhold and deliver benefits payable to an obligor under chapter 2.10, 2.12, 41.26, 41.32, 41.40, or 43.43 RCW.

(5) "Obligee" means an ex spouse or spouse to whom a duty of spousal maintenance or property division obligation is owed.

(6) "Obligor" means the spouse or ex spouse owing a duty of spousal maintenance or a property division obligation.

(7) "Periodic retirement payments" means periodic payments of retirement allowances, including but not limited to service retirement allowances, disability retirement

allowances, and survivors' allowances. The term does not include a withdrawal of accumulated contributions.

(8) "Property division obligation" means any outstanding court-ordered property division or court-approved property settlement obligation incident to a decree of divorce, dissolution, or legal separation.

(9) "Standard allowance" means a benefit payment option selected under RCW 2.10.146(1)(a), 41.26.460(1)(a), 41.32.785(1)(a), 41.40.188(1)(a), or 41.40.660(1), that ceases upon the death of the retiree. Standard allowance also means the benefit allowance provided under RCW 2.10.110, 2.10.130, 43.43.260, 41.26.100, 41.26.130(1)(a), or chapter 2.12 RCW. Standard allowance also means the maximum retirement allowance available under RCW 41.32.530(1) following member withdrawal of accumulated contributions, if any.

(10) "Withdrawal of accumulated contributions" means a lump sum payment to a retirement system member of all or a part of the member's accumulated contributions, including accrued interest, at the request of the member including any lump sum amount paid upon the death of the member. [1991 c 365 § 1; 1987 c 326 § 1.]

Severability—1991 c 365: "If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 365 § 37.]

41.50.500 Mandatory assignment of retirement benefits—Definitions. (*Effective September 1, 2000.*)

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 41.50.500 through 41.50.650, 41.50.670 through 41.50.720, and 26.09.138.

(1) "Benefits" means periodic retirement payments or a withdrawal of accumulated contributions.

(2) "Disposable benefits" means that part of the benefits of an individual remaining after the deduction from those benefits of any amount required by law to be withheld. The term "required by law to be withheld" does not include any deduction elective to the member.

(3) "Dissolution order" means any judgment, decree, or order of spousal maintenance, property division, or court-approved property settlement incident to a decree of divorce, dissolution, invalidity, or legal separation issued by the superior court of the state of Washington or a judgment, decree, or other order of spousal support issued by a court of competent jurisdiction in another state or country, that has been registered or otherwise made enforceable in this state.

(4) "Mandatory benefits assignment order" means an order issued to the department of retirement systems pursuant to RCW 41.50.570 to withhold and deliver benefits payable to an obligor under chapter 2.10, 2.12, 41.26, 41.32, 41.40, 41.35, or 43.43 RCW.

(5) "Obligee" means an ex spouse or spouse to whom a duty of spousal maintenance or property division obligation is owed.

(6) "Obligor" means the spouse or ex spouse owing a duty of spousal maintenance or a property division obligation.

(7) "Periodic retirement payments" means periodic payments of retirement allowances, including but not limited to service retirement allowances, disability retirement

allowances, and survivors' allowances. The term does not include a withdrawal of accumulated contributions.

(8) "Property division obligation" means any outstanding court-ordered property division or court-approved property settlement obligation incident to a decree of divorce, dissolution, or legal separation.

(9) "Standard allowance" means a benefit payment option selected under RCW 2.10.146(1)(a), 41.26.460(1)(a), 41.32.785(1)(a), 41.40.188(1)(a), 41.40.660(1), or 41.35.220 that ceases upon the death of the retiree. Standard allowance also means the benefit allowance provided under RCW 2.10.110, 2.10.130, 43.43.260, 41.26.100, 41.26.130(1)(a), or chapter 2.12 RCW. Standard allowance also means the maximum retirement allowance available under RCW 41.32.530(1) following member withdrawal of accumulated contributions, if any.

(10) "Withdrawal of accumulated contributions" means a lump sum payment to a retirement system member of all or a part of the member's accumulated contributions, including accrued interest, at the request of the member including any lump sum amount paid upon the death of the member. [1998 c 341 § 512; 1991 c 365 § 1; 1987 c 326 § 1.]

Effective date—1998 c 341: See RCW 41.35.901.

Severability—1991 c 365: "If any provision of this act or its application to any person or circumstances is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 365 § 37.]

41.50.510 Mandatory assignment of retirement benefits—Remedies—Applicability.

(1) The remedies provided in RCW 41.50.530 through 41.50.650 and 26.09.138 are in addition to, and not in substitution for, any other remedies provided by law to enforce a dissolution order against an obligor.

(2) The remedies provided in RCW 41.50.530 through 41.50.630 shall be the exclusive remedies enforceable against the department of retirement systems or the retirement systems listed in RCW 41.50.030 to recover spousal maintenance pursuant to a dissolution, divorce, or legal separation order.

(3) RCW 41.50.530 through 41.50.650 and 26.09.138 apply to all dissolution orders incident to a decree of divorce, dissolution, or legal separation whether entered before or after July 1, 1987. [1991 c 365 § 2; 1987 c 326 § 2.]

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.520 Mandatory assignment of retirement benefits—Other remedies not limited.

Nothing in RCW 41.50.500 through 41.50.650 limits the use of any and all civil and criminal remedies against an obligor to enforce the obligations of a dissolution order. [1987 c 326 § 3.]

41.50.530 Mandatory assignment of retirement benefits—Proceeding to enforce spousal maintenance—Venue—Jurisdiction.

(1) A proceeding to enforce a duty of spousal maintenance through a mandatory benefits assignment order may be commenced by an obligee:

(a) By filing a petition for an original action; or

(b) By motion in an existing action or under an existing cause number.

(2) Venue for the action is in the superior court of the county of the state of Washington where the obligee resides or is present, where the obligor resides, or where the prior dissolution order was entered.

(3) The court retains continuing jurisdiction under RCW 41.50.500 through 41.50.650 and 26.09.138 until the obligor has satisfied all duties of spousal maintenance, including arrearages, to the obligee. [1991 c 365 § 3; 1987 c 326 § 4.]

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.540 Mandatory assignment of retirement benefits—Notice to obligor. (1) Every court order or decree establishing a spousal maintenance obligation may state that if any such payment is more than fifteen days past due and the total of such past due payments is equal to or greater than one hundred dollars or if the obligor requests a withdrawal of accumulated contributions from the department of retirement systems, the obligee may seek a mandatory benefits assignment order without prior notice to the obligor. Failure to include this provision does not affect the validity of the dissolution order.

(2) If the dissolution order under which the obligor owes the duty of spousal maintenance is not in compliance with subsection (1) of this section or if the obligee cannot show that the obligor has approved or received a copy of the court order or decree that complies with subsection (1) of this section, then notice shall be provided to the obligor at least fifteen days before the obligee seeks a mandatory benefits assignment order. The notice shall state that, if a spousal maintenance payment is more than fifteen days past due and the total of such past due payments is equal to or greater than one hundred dollars or if the obligor requests a withdrawal of accumulated contributions from the department of retirement systems, the obligee may seek a mandatory benefits assignment order without further notice to the obligor. Service of the notice shall be by personal service, or by any form of mail requiring a return receipt. The notice requirement under this subsection is not jurisdictional. [1991 c 365 § 4; 1987 c 326 § 5.]

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.550 Mandatory assignment of retirement benefits—Withdrawal of accumulated contributions—Notice to obligee—Payment to obligee. (1) An obligee who wishes to be notified by the department of retirement systems if the obligor seeks a withdrawal of accumulated contributions shall submit such a request to the department in writing on a form supplied by the department. The request shall be filed by certified or registered mail and shall include the obligee's address and a copy of the dissolution order requiring the spousal maintenance owed.

(2) The department shall thereafter promptly send notice to the obligee at the address provided in subsection (1) of this section when the obligor applies for a withdrawal of accumulated contributions. The department shall not process the obligor's request for a withdrawal of accumulated contributions sooner than seventy-five days after sending the notice to the obligee.

(3) The department shall pay directly to an obligee who has not obtained a mandatory benefits assignment order all or part of the accumulated contributions if the dissolution order filed with the department pursuant to subsection (1) of this section includes a provision that states:

"At such time as (the obligor) requests a withdrawal of accumulated contributions as defined in RCW 41.50.500, the department of retirement systems shall pay to (the obligee) dollars from such accumulated contributions or . . . percentage of such accumulated contributions (whichever is provided by the court)." [1991 c 365 § 5; 1987 c 326 § 6.]

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.560 Mandatory assignment of retirement benefits—Petition for order. (1) A petition or motion seeking a mandatory benefits assignment order in an action under RCW 41.50.530 may be filed by an obligee if the obligor is more than fifteen days past due in spousal maintenance payments and the total of such past due payments is equal to or greater than one hundred dollars or if the obligor requests a withdrawal of accumulated contributions from the department of retirement systems. The petition or motion shall include a sworn statement by the obligee, stating the facts authorizing the issuance of the mandatory benefits assignment order, including:

(a) That the obligor, stating his or her name, residence, and social security number, (i) is more than fifteen days past due in spousal maintenance payments and that the total of such past due payments is equal to or greater than one hundred dollars, or (ii) has requested a withdrawal of accumulated contributions from the department of retirement systems;

(b) A description of the terms of the dissolution order requiring payment of spousal maintenance and the amount, if any, past due;

(c) The name of the public retirement system or systems from which the obligor is currently receiving periodic retirement benefits or from which the obligor has requested a withdrawal of accumulated contributions; and

(d) That notice has been provided to the obligor as required by RCW 41.50.540.

(2) If the court in which a mandatory benefits assignment order is sought does not already have a copy of the dissolution order in the court file, then the obligee shall attach a copy of the dissolution order to the petition or motion seeking the mandatory benefits assignment order. [1991 c 365 § 6; 1987 c 326 § 7.]

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.570 Mandatory assignment of retirement benefits—Issuance of order. Upon receipt of a petition or motion seeking a mandatory benefits assignment order that complies with RCW 41.50.560, the court shall issue a mandatory benefits assignment order as provided in RCW 41.50.590, including the information required in RCW 41.50.580 (1)(a) or (2)(a), directed to the department of retirement systems, and commanding the department to answer the order on the forms served with the order that comply with RCW 41.50.610 within twenty days after service of the order upon the department. [1987 c 326 § 8.]

41.50.580 Mandatory assignment of retirement benefits—Order—Contents. (1)(a) The mandatory benefits assignment order issued pursuant to RCW 41.50.570 and directed at periodic retirement benefits shall include:

(i) The maximum amount of current spousal maintenance to be withheld from the obligor's periodic retirement benefits each month;

(ii) The total amount of the arrearage judgments previously entered by the court, if any, together with interest, if any; and

(iii) The maximum amount to be withheld from the obligor's periodic retirement payments each month to satisfy the arrearage judgments specified in (a)(ii) of this subsection.

(b) The total amount to be withheld from the obligor's periodic retirement payments each month pursuant to a mandatory benefits assignment order shall not exceed fifty percent of the disposable benefits of the obligor. If the amounts to be paid toward the arrearage are specified in the assignment order, then the maximum amount to be withheld is the sum of the current maintenance ordered and the amount ordered to be paid toward the arrearage, or fifty percent of the disposable benefits of the obligor, whichever is less.

(c) Fifty percent of the disposable benefits of the obligor are exempt from collection under the assignment order, and may be disbursed by the department to the obligor. The provisions of RCW 6.27.150 do not apply to mandatory benefits assignment orders under this chapter.

(2)(a) A mandatory benefits assignment order issued pursuant to RCW 41.50.570 and directed at a withdrawal of accumulated contributions shall include:

(i) The maximum amount of current spousal maintenance to be withheld from the obligor's accumulated contributions;

(ii) The total amount of the arrearage judgments for spousal maintenance payments entered by the court, if any, together with interest, if any; and

(iii) The amount to be withheld from the obligor's withdrawal of accumulated contributions to satisfy the current maintenance obligation and the arrearage judgments specified in (a) (i) and (ii) of this subsection;

(b) The total amount to be withheld from the obligor's withdrawal of accumulated contributions may be up to one hundred percent of the disposable benefits of the obligor.

(3) If an obligor is subject to two or more mandatory benefits assignment orders on account of different obligees and if the nonexempt portion of the obligor's benefits is not sufficient to respond fully to all the mandatory benefits assignment orders, the department shall apportion the obligor's nonexempt disposable benefits among the various obligees in proportionate shares to the extent permitted by federal law. Any obligee may seek a court order directing the department to reapportion the obligor's nonexempt disposable earnings upon notice to all interested obligees. The order must specifically supersede the terms of previous mandatory benefits assignment orders the terms of which it alters. Notice shall be by personal service, or in a manner provided by the civil rules of superior court or applicable statute. [1991 c 365 § 7; 1987 c 326 § 9.]

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.590 Mandatory assignment of retirement benefits—Order—Form. The mandatory benefits assignment order shall be in the following form:

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN AND FOR THE COUNTY OF

.....
.....
Obligee No.
vs.
Obligor

MANDATORY
BENEFITS ASSIGNMENT
ORDER

.....
The Department of Retirement Systems
of the State of Washington

THE STATE OF WASHINGTON TO: The Department of Retirement Systems

AND TO:
Obligor

The above-named obligee claims that the above-named obligor is more than fifteen days past due in spousal maintenance payments and that the total amount of such past due payments is equal to or greater than one hundred dollars or that the obligor has requested a withdrawal of accumulated contributions from the department of retirement systems. The amount of the accrued past due spousal maintenance debt as of this date is dollars. If the obligor is receiving periodic retirement payments from the department, the amount to be withheld from the obligor's benefits to satisfy such accrued spousal maintenance is dollars per month and the amount to be withheld from the obligor's benefits to satisfy current and continuing spousal maintenance is per month. Upon satisfaction of the accrued past due spousal maintenance debt, the department shall withhold only dollars, the amount necessary to satisfy current and continuing spousal maintenance from the obligor's benefits. If the obligor has requested a withdrawal of accumulated contributions from the department, the amount to be withheld from the obligor's benefits to satisfy such accrued spousal maintenance is . . . dollars.

You are hereby commanded to answer this order by filling in the attached form according to the instructions, and you must mail or deliver the original of the answer to the court, one copy to the obligee or obligee's attorney, and one copy to the obligor within twenty days after service of this benefits assignment order upon you.

(1) If you are currently paying periodic retirement payments to the obligor, then you shall do as follows:

(a) Withhold from the obligor's retirement payments each month the lesser of:

(i) The sum of the specified arrearage payment amount plus the specified current spousal maintenance amount; or

(ii) Fifty percent of the disposable benefits of the obligor.

(b) The total amount withheld above is subject to the mandatory benefits assignment order, and all other sums may be disbursed to the obligor.

You shall continue to withhold the ordered amounts from nonexempt benefits of the obligor until notified by a

court order that the mandatory benefits assignment order has been modified or terminated. You shall promptly notify the court if and when the obligor is no longer receiving periodic retirement payments from the department of retirement systems.

You shall deliver the withheld benefits to the clerk of the court that issued this mandatory benefits assignment order each month, but the first delivery shall occur no sooner than twenty days after your receipt of this mandatory benefits assignment order.

(2) If you are not currently paying periodic retirement payments to the obligor but the obligor has requested a withdrawal of accumulated contributions, then you shall do as follows:

(a) Withhold from the obligor’s benefits the sum of the specified arrearage payment amount plus the specified interest amount, up to one hundred percent of the disposable benefits of the obligor.

(b) The total amount withheld above is subject to the mandatory benefits assignment order, and all other sums may be disbursed to the obligor.

You shall mail a copy of this order and a copy of your answer to the obligor at the mailing address in the department’s files as soon as is reasonably possible. This mandatory benefits assignment order has priority over any assignment or order of execution, garnishment, attachment, levy, or similar legal process authorized by Washington law, except for a wage assignment order for child support under chapter 26.18 RCW or order to withhold or deliver under chapter 74.20A RCW.

NOTICE TO OBLIGOR: YOU HAVE A RIGHT TO REQUEST A HEARING IN THE SUPERIOR COURT THAT ISSUED THIS MANDATORY BENEFITS ASSIGNMENT ORDER, TO REQUEST THAT THE COURT QUASH, MODIFY, OR TERMINATE THE MANDATORY BENEFITS ASSIGNMENT ORDER.

DATED THIS day of, 19. . .

.....
Obligee, Judge/Court Commissioner
or obligee’s attorney

[1991 c 365 § 8; 1987 c 326 § 10.]

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.600 Mandatory assignment of retirement benefits—Duties of department.

(1) The director or the director’s designee shall answer an order by sworn affidavit within twenty days after the date of service. The answer shall state whether the obligor receives periodic payments from the department of retirement systems, whether the obligor has requested a withdrawal of accumulated contributions from the department, whether the department will honor the mandatory benefits assignment order and if not, the reasons why, and whether there are other current court or administrative orders on file with the department directing the department to withhold all or a portion of the obligor’s benefits.

(2)(a) If any periodic retirement payments are currently payable to the obligor, the funds subject to the mandatory benefits assignment order shall be withheld from the next periodic retirement payment due twenty days or more after

receipt of the mandatory benefits assignment order. The withheld amount shall be delivered to the clerk of the court that issued the mandatory benefits assignment order each month, but the first delivery shall occur no sooner than twenty days after receipt of the mandatory benefits assignment order.

(b) The department shall continue to withhold the ordered amount from nonexempt benefits of the obligor until notified by the court that the mandatory benefits assignment order has been modified or terminated. If the department is initially unable to comply, or able to comply only partially, with the withholding obligation, the court’s order shall be interpreted to require the department to comply to the greatest extent possible at the earliest possible date. The department shall notify the court of changes in withholding amounts and the reason for the change. When the obligor is no longer eligible to receive funds from one or more public retirement systems the department shall promptly notify the court.

(3)(a) If no periodic retirement payments are currently payable to the obligor but the obligor has requested a withdrawal of accumulated contributions, the funds subject to the mandatory benefits assignment order shall be withheld from the withdrawal payment. The withheld amount shall be delivered to the clerk of the court that issued the mandatory benefits assignment order.

(b) If the department is unable to comply fully with the withholding obligation, the court’s order shall be interpreted to require the department to comply to the greatest extent possible.

(4) The department may deduct a processing fee from the remainder of the obligor’s funds after withholding under the mandatory benefits assignment order, unless the remainder is exempt under RCW 41.50.580. The processing fee may not exceed (a) twenty-five dollars for the first disbursement made by the department to the superior court clerk; and (b) six dollars for each subsequent disbursement to the clerk. Funds collected pursuant to this subsection shall be deposited in the department of retirement systems expense fund.

(5) A court order for spousal maintenance governed by RCW 41.50.500 through 41.50.650 or 26.09.138 shall have priority over any other assignment or order of execution, garnishment, attachment, levy, or similar legal process authorized under Washington law, except for a mandatory wage assignment for child support under chapter 26.18 RCW, or an order to withhold and deliver under chapter 74.20A RCW.

(6) If the department, without good cause, fails to withhold funds as required by a mandatory benefits assignment order issued under RCW 41.50.570, the department may be held liable to the obligee for any amounts wrongfully disbursed to the obligor in violation of the mandatory benefits assignment order. However, the department shall under no circumstances be held liable for failing to withhold funds from a withdrawal of accumulated contributions unless the mandatory benefits assignment order was properly served on the department at least thirty days before the department made the withdrawal payment to the obligor. If the department is held liable to an obligee for failing to withhold funds as required by a mandatory benefits assignment order, the department may recover such amounts paid to an obligee by thereafter either withholding such amounts from the available

nonexempt benefits of the obligor or filing a legal action against the obligor.

(7) If the department complies with a court order pursuant to RCW 41.50.500 through 41.50.650, neither the department, its officers, its employees, nor any of the retirement systems listed in RCW 41.50.030 may be liable to the obligor or an obligee for wrongful withholding.

(8) The department may combine amounts withheld from various obligors into a single payment to the superior court clerk, if the payment includes a listing of the amounts attributable to each obligor and other information as required by the clerk.

(9) The department shall mail to the obligor at the obligor's last known mailing address appearing in the department's files copies of the mandatory benefits assignment order and the department's answer within twenty days after receiving the mandatory benefits assignment order.

(10) The department shall not consider any withholding allowance that is elective to the employee to be a mandatory deduction for purposes of calculating the member's disposable benefits subject to a mandatory benefits assignment order. The department shall withhold elective withholdings as elected by the employee after deducting from the benefit the amount owing to an obligee pursuant to a mandatory benefits assignment order. [1991 c 365 § 9; 1987 c 326 § 11.]

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.610 Mandatory assignment of retirement benefits—Order—Answer—Form. The answer of the department shall be made on forms, served on the director with the mandatory benefits assignment order, substantially as follows:

IN THE SUPERIOR COURT OF THE
STATE OF WASHINGTON IN AND FOR THE
COUNTY OF

. No.

Obligee

vs.

Obligor

ANSWER TO
MANDATORY BENEFITS
ASSIGNMENT ORDER

Department of Retirement Systems of
the State of Washington

1. At the time of the service of the mandatory benefits assignment order on the department, was the above-named obligor receiving periodic retirement payments from the department of retirement systems?

Yes . . . No (check one).

2. At the time of the service of the mandatory benefits assignment order on the department, had the above-named obligor requested a withdrawal of accumulated contributions from the department?

Yes . . . No (check one).

3. Are there any other court or administrative orders on file with the department currently in effect directing the department to withhold all or a portion of the obligor's benefits?

Yes . . . No (check one).

4. If the answer to question one or two is yes and the department cannot comply fully with the mandatory benefits assignment order, provide an explanation.

I declare under the laws of the state of Washington that the foregoing is true and correct to the best of my knowledge.

.
Signature of director Date and place

or

.
Signature of person Place
answering for director

.
Connection with director

[1987 c 326 § 12.]

41.50.620 Mandatory assignment of retirement benefits—Order—Service. (1) Service of the mandatory benefits assignment order on the department is invalid unless it is served with four answer forms in conformance with RCW 41.50.610, together with stamped envelopes addressed to, respectively, the clerk of the court where the order was issued, the obligee's attorney or the obligee, and the obligor at the last mailing address known to the obligee. The obligee shall also include an extra copy of the mandatory benefits assignment order for the department to mail to the obligor. Service on the department shall be in person or by any form of mail requiring a return receipt.

(2) On or before the date of service of the mandatory benefits assignment order on the department, the obligee shall mail or cause to be mailed by certified or registered mail a copy of the mandatory benefits assignment order to the obligor at the obligor's last mailing address known to the obligee; or, in the alternative, a copy of the mandatory benefits assignment order shall be served on the obligor in the same manner as a summons in a civil action on, before, or within two days after the date of service of the order on the department. This requirement is not jurisdictional, but if the copy is not mailed or served as this subsection requires, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion, may quash the mandatory benefits assignment order, upon motion of the obligor promptly made and supported by an affidavit showing that the obligor has been prejudiced due to the failure to mail or serve the copy. [1991 c 365 § 10; 1987 c 326 § 13.]

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.630 Mandatory assignment of retirement benefits—Hearing to quash, modify, or terminate order. In a hearing to quash, modify, or terminate the mandatory benefits assignment order, the court may grant relief only upon a showing that the mandatory benefits assignment order causes extreme hardship or substantial injustice. Satisfaction by the obligor of all past due payments subsequent to the issuance of the mandatory benefits assignment order is not grounds to quash, modify, or terminate the mandatory benefits assignment order. If a mandatory benefits as-

signment order has been in operation for twelve consecutive months and the obligor's spousal maintenance is current, the court may terminate the order upon motion of the obligor unless the obligee can show good cause as to why the mandatory benefits assignment order should remain in effect. [1991 c 365 § 11; 1987 c 326 § 14.]

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.640 Mandatory assignment of retirement benefits—Award of costs to prevailing party. In any action to enforce a dissolution order by means of a mandatory benefits assignment order pursuant to RCW 41.50.530 through 41.50.630 and 26.09.138, the court may award costs to the prevailing party, including an award for reasonable attorneys' fees consistent with RCW 26.09.140. An obligor shall not be considered a prevailing party under this section unless the obligee has acted in bad faith in connection with the proceeding in question. This section does not authorize an award of attorneys' fees against the department of retirement systems or any of the retirement systems listed in RCW 41.50.030. [1987 c 326 § 15.]

41.50.650 Payments pursuant to court orders entered under prior law. (1) Notwithstanding RCW 2.10.180(1), 2.12.090(1), *41.26.180(1), 41.32.052(1), 41.40.052(1), and 43.43.310(1) as those sections existed between July 1, 1987, and July 28, 1991, the department of retirement systems shall make direct payments of benefits to a spouse or ex spouse pursuant to court orders or decrees entered before July 1, 1987, that complied with all the requirements in RCW 2.10.180(1), 2.12.090(2), *41.26.180(3), 41.32.052(3), 41.40.052(3), 43.43.310(2), and 41.04.310 through 41.04.330, as such requirements existed before July 1, 1987. The department shall be responsible for making direct payments only if the decree or court order expressly orders the department to make direct payments to the spouse or ex spouse and specifies a sum certain or percentage amount of the benefit payments to be made to the spouse or ex spouse.

(2) The department of retirement systems shall notify a spouse or ex spouse who, pursuant to a mandatory benefits assignment order entered between July 1, 1987, and July 28, 1991, is receiving benefits in satisfaction of a court-ordered property division, that he or she is entitled to receive direct payments of a court-ordered property division pursuant to RCW 41.50.670 if the dissolution order fully complies or is modified to fully comply with the requirements of RCW 41.50.670 through 41.50.720 and, as applicable, RCW 2.10.180, 2.12.090, *41.26.180, 41.32.052, 41.40.052, 43.43.310, and 26.09.138. The department shall send notice in writing as soon as reasonably feasible but no later than ninety days after July 28, 1991. The department shall also send notice to the obligor member spouse. [1991 c 365 § 12; 1987 c 326 § 16.]

***Reviser's note:** RCW 41.26.180 was recodified as RCW 41.26.053 pursuant to 1994 c 298 § 5.

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.660 Mandatory assignment of retirement benefits—Rules. The director shall adopt such rules under RCW 41.50.050 as the director may find necessary to carry

out the purposes of RCW 41.50.500 through 41.50.650 and to avoid conflicts with any applicable federal or state laws. [1987 c 326 § 27.]

41.50.670 Property division obligations—Direct payments pursuant to court order. (*Effective until September 1, 2000.*) (1) Nothing in this chapter regarding mandatory assignment of benefits to enforce a spousal maintenance obligation shall abridge the right of an obligee to direct payments of retirement benefits to satisfy a property division obligation ordered pursuant to a court decree of dissolution or legal separation or any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation as provided in RCW 2.10.180, 2.12.090, 41.04.310, 41.04.320, 41.04.330, 41.26.053, 41.32.052, 41.34.070(3), 41.40.052, 43.43.310, or 26.09.138, as those statutes existed before July 1, 1987, and as those statutes exist on and after July 28, 1991. The department shall pay benefits under this chapter in a lump sum or as a portion of periodic retirement payments as expressly provided by the dissolution order. A dissolution order may not order the department to pay a periodic retirement payment or lump sum unless that payment is specifically authorized under the provisions of chapter 2.10, 2.12, 41.26, 41.32, 41.34, 41.40, or 43.43 RCW, as applicable.

(2) The department shall pay directly to an obligee the amount of periodic retirement payments or lump sum payment, as appropriate, specified in the dissolution order if the dissolution order filed with the department pursuant to subsection (1) of this section includes a provision that states in the following form:

If (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to (the obligee) dollars from such payments or . . . percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

If (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to (the obligee) dollars plus interest at the rate paid by the department of retirement systems on member contributions. Such interest to accrue from the date of this order's entry with the court of record.

(3) This section does not require a member to select a standard allowance upon retirement nor does it require the department to recalculate the amount of a retiree's periodic retirement payment based on a change in survivor option.

(4) A court order under this section may not order the department to pay more than seventy-five percent of an obligor's periodic retirement payment to an obligee.

(5) Persons whose court decrees were entered between July 1, 1987, and July 28, 1991, shall also be entitled to receive direct payments of retirement benefits to satisfy court-ordered property divisions if the dissolution orders comply or are modified to comply with this section and

RCW 41.50.680 through 41.50.720 and, as applicable, RCW 2.10.180, 2.12.090, 41.26.053, 41.32.052, 41.34.070, 41.40.052, 43.43.310, and 26.09.138.

(6) The obligee must file a copy of the dissolution order with the department within ninety days of that order's entry with the court of record.

(7) A division of benefits pursuant to a dissolution order under this section shall be based upon the obligor's gross benefit prior to any deductions. If the department is required to withhold a portion of the member's benefit pursuant to 26 U.S.C. Sec. 3402 and the sum of that amount plus the amount owed to the obligee exceeds the total benefit, the department shall satisfy the withholding requirements under 26 U.S.C. Sec. 3402 and then pay the remainder to the obligee. The provisions of this subsection do not apply to amounts withheld pursuant to 26 U.S.C. Sec. 3402(i). [1996 c 39 § 18; 1991 c 365 § 13.]

Effective dates—1996 c 39: See note following RCW 41.32.010.

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.670 Property division obligations—Direct payments pursuant to court order. (Effective September 1, 2000.)

(1) Nothing in this chapter regarding mandatory assignment of benefits to enforce a spousal maintenance obligation shall abridge the right of an obligee to direct payments of retirement benefits to satisfy a property division obligation ordered pursuant to a court decree of dissolution or legal separation or any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation as provided in RCW 2.10.180, 2.12.090, 41.04.310, 41.04.320, 41.04.330, 41.26.053, 41.32.052, 41.35.100, *41.34.070(3), 41.40.052, 43.43.310, or 26.09.138, as those statutes existed before July 1, 1987, and as those statutes exist on and after July 28, 1991. The department shall pay benefits under this chapter in a lump sum or as a portion of periodic retirement payments as expressly provided by the dissolution order. A dissolution order may not order the department to pay a periodic retirement payment or lump sum unless that payment is specifically authorized under the provisions of chapter 2.10, 2.12, 41.26, 41.32, 41.35, 41.34, 41.40, or 43.43 RCW, as applicable.

(2) The department shall pay directly to an obligee the amount of periodic retirement payments or lump sum payment, as appropriate, specified in the dissolution order if the dissolution order filed with the department pursuant to subsection (1) of this section includes a provision that states in the following form:

If . . . (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to . . . (the obligee) . . . dollars from such payments or . . . percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic retirement payment that the obligor would have received had he or she selected a standard allowance.

If . . . (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit,

the department of retirement systems shall pay to . . . (the obligee) . . . dollars plus interest at the rate paid by the department of retirement systems on member contributions. Such interest to accrue from the date of this order's entry with the court of record.

(3) This section does not require a member to select a standard allowance upon retirement nor does it require the department to recalculate the amount of a retiree's periodic retirement payment based on a change in survivor option.

(4) A court order under this section may not order the department to pay more than seventy-five percent of an obligor's periodic retirement payment to an obligee.

(5) Persons whose court decrees were entered between July 1, 1987, and July 28, 1991, shall also be entitled to receive direct payments of retirement benefits to satisfy court-ordered property divisions if the dissolution orders comply or are modified to comply with this section and RCW 41.50.680 through 41.50.720 and, as applicable, RCW 2.10.180, 2.12.090, 41.26.053, 41.32.052, 41.35.100, 41.34.070, 41.40.052, 43.43.310, and 26.09.138.

(6) The obligee must file a copy of the dissolution order with the department within ninety days of that order's entry with the court of record.

(7) A division of benefits pursuant to a dissolution order under this section shall be based upon the obligor's gross benefit prior to any deductions. If the department is required to withhold a portion of the member's benefit pursuant to 26 U.S.C. Sec. 3402 and the sum of that amount plus the amount owed to the obligee exceeds the total benefit, the department shall satisfy the withholding requirements under 26 U.S.C. Sec. 3402 and then pay the remainder to the obligee. The provisions of this subsection do not apply to amounts withheld pursuant to 26 U.S.C. Sec. 3402(i). [1998 c 341 § 513; 1996 c 39 § 18; 1991 c 365 § 13.]

***Reviser's note:** RCW 41.34.070 was amended by 1998 c 117 § 1, changing subsection (3) to subsection (4).

Effective date—1998 c 341: See RCW 41.35.901.

Effective dates—1996 c 39: See note following RCW 41.32.010.

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.680 Property division obligations—Processing fee.

The department may deduct a processing fee for administering direct payments under RCW 41.50.670 according to the dissolution order. The fee may not exceed (1) seventy-five dollars or the actual average administrative costs, whichever is less, for the first disbursement made by the department; and (2) six dollars or the actual average administrative costs, whichever is less for subsequent disbursements. The department shall deduct the fee in equal dollar amounts from the obligee's and obligor's payments. The funds collected pursuant to this section shall be deposited in the department of retirement systems expense account. [1991 c 365 § 14.]

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.690 Property division obligations—Obligee entitled to statement of obligor's retirement benefits—

When. Unless otherwise prohibited by federal law, following both the initial and final postretirement audit of an obligor's retirement benefit, the department shall provide an obligee entitled to direct payment of retirement benefits

pursuant to a dissolution order under RCW 41.50.670 with a statement of monthly retirement benefit allowance to be paid to the obligor, and other retirement benefit information available to the obligor including the average final compensation, total years of service, retirement date, the amount of the employee contributions made prior to implementation of employer pickup under RCW 41.04.445 and 41.04.450, and savings and interest. [1991 c 365 § 15.]

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.700 Property division obligations—Cessation upon death of obligee or obligor—Payment treated as deduction from member's periodic retirement payment.

(1) The department's obligation to provide direct payment of a property division obligation to an obligee under RCW 41.50.670 shall cease upon the death of the obligee or upon the death of the obligor, whichever comes first. However, if an obligor dies and is eligible for a lump sum death benefit, the department shall be obligated to provide direct payment to the obligee of all or a portion of the withdrawal of accumulated contributions pursuant to a court order that complies with RCW 41.50.670.

(2) The direct payment of a property division obligation to an obligee under RCW 41.50.670 shall be paid as a deduction from the member's periodic retirement payment. An obligee may not direct the department to withhold any funds from such payment. [1991 c 365 § 16.]

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.710 Property division obligations—Remedies exclusive—Payment pursuant to court order defense against claims. (1) The remedies provided in RCW 41.50.670 through 41.50.720 are the exclusive remedies enforceable against the department or the retirement systems listed in RCW 41.50.030 for the direct payment of retirement benefits to satisfy a property division obligation pursuant to a dissolution order. The department shall not be required to make payments to an obligee of benefits accruing prior to (a) thirty calendar days following service of the dissolution order on the department; or (b) benefit payments restrained under RCW 41.50.720.

(2) Whenever the department of retirement systems makes direct payments of property division to a spouse or ex spouse under RCW 41.50.670 to the extent expressly provided for in any court decree of dissolution or legal separation or in any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation, it shall be a sufficient answer to any claim of a beneficiary against the department for the department to show that the payments were made pursuant to court decree. [1991 c 365 § 17.]

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.720 Payment of benefits—Restraining orders.

A party to a dissolution proceeding may file a motion with the court requesting the court to enter an order restraining the department from paying any benefits to a member until further order of the court. The department shall not initiate payment of benefits to a member from the time a restraining order is served on the department until the court enters a further order disposing of the benefits. [1991 c 365 § 25.]

Severability—1991 c 365: See note following RCW 41.50.500.

41.50.730 Retirement or termination agreement payments—Effect on pension benefits calculation.

Any payment made by an employer to a member of any retirement system enumerated in RCW 41.50.030 based on either an agreement of the employee to terminate or retire; or notification to the employer of intent to retire; shall affect retirement as follows:

(1) If the agreement does not require the employee to perform additional service, the payment shall not be used in any way to calculate the pension benefit.

(2) If the agreement requires additional service and results in payment at the same or a lower rate than that paid for the same or similar service by other employees it may be included in the pension benefit calculation but shall be deemed excess compensation and is billable to the employer as provided in RCW 41.50.150.

(3) If the agreement requires additional service and results in payment at a rate higher than that paid for the same or similar service by other employees, that portion of the payment which equals the payment for the same or similar service shall be treated as described in subsection (2) of this section, and the balance of the payment shall be treated as described in subsection (1) of this section. [1993 c 270 § 1.]

41.50.740 Retirement or termination agreement payments—Opportunity to change payment options.

Members of the teachers' retirement system who retired prior to January 1, 1993, from service with a community college district whose reported earnable compensation included payments made pursuant to an agreement to terminate or retire, or to provide notice of intent to retire, and whose retirement allowance has been reduced under RCW 41.50.150 or is reduced after July 25, 1993, under RCW 41.50.730, shall have an opportunity to change the retirement allowance payment option selected by the member under RCW 41.32.530. Any request for a change shall be made in writing to the department no later than October 31, 1993, and shall apply prospectively only. [1993 c 270 § 2.]

41.50.750 Retirement or termination agreement payments—Overpayments not required to be repaid.

(1) Retirees whose reported earnable compensation included payments made pursuant to an agreement to terminate or retire, or to provide notice of intent to retire, shall not be required to repay to the trust funds any overpayments resulting from the employer misreporting, subject to the conditions provided in subsection (2) of this section. The retirees' allowances shall be prospectively adjusted to reflect the benefits to which the retirees are correctly entitled.

(2) Subsection (1) of this section shall apply only to members of the teachers' retirement system who retired prior to January 1, 1993, from service with a community college district.

(3) Any retirees under subsection (2) of this section who, since January 1, 1990, have had their retirement allowances reduced under RCW 41.50.130(1)(b) because of the inclusion of retirement agreement payments in calculating their allowances, shall have their allowances adjusted to

reflect the benefits to which the retirees are correctly entitled, but without a reduction to recoup prior overpayments. The retirees shall be reimbursed by the retirement system for the cumulative amount of the reduction in the retirement allowance that has occurred since January 1, 1990, to recoup prior overpayments.

(4) Any retirees covered by subsection (2) of this section who, after January 1, 1990, repaid a previous overpayment in a lump sum under RCW 41.50.130(1)(b) because of the inclusion of retirement agreement payments in calculating their allowances, shall be reimbursed by the retirement system for the amount of the lump sum repayment. [1993 c 270 § 3.]

41.50.760 Cost-of-living adjustments—Alternative calculation—Election. The department of retirement systems may continue to pay cost-of-living adjustments consistent with the provisions of the statutes repealed by section 11, chapter 345, Laws of 1995, in lieu of the benefits provided by RCW 41.32.489, 41.32.4872, 41.40.197, and 41.40.1986, if the department determines that: (1) A member earned service credit under chapter 41.40 or 41.32 RCW on or after May 8, 1989; and (2) a retiree would receive greater increases in the next ten years under the statutes repealed by section 11, chapter 345, Laws of 1995 than under the provisions of RCW 41.32.489, 41.32.4872, 41.40.197, and 41.40.1986; and (3) the retiree does not elect the benefits provided by chapter 345, Laws of 1995 over the benefits provided under the statutes repealed by section 11, chapter 345, Laws of 1995. The election must be made in a manner prescribed by the department. [1995 c 345 § 13.]

Intent—Effective date—1995 c 345: See notes following RCW 41.32.489.

41.50.770 Deferred compensation plans. (1) "Employee" as used in this section and RCW 41.50.780 includes all full-time, part-time, and career seasonal employees of the state, a county, a municipality, or other political subdivision of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of the government, including full-time members of boards, commissions, or committees; justices of the supreme court and judges of the court of appeals and of the superior and district courts; and members of the state legislature or of the legislative authority of any county, city, or town.

(2) The state, through the department, and any county, municipality, or other political subdivision of the state acting through its principal supervising official or governing body is authorized to contract with an employee to defer a portion of that employee's income, which deferred portion shall in no event exceed the amount allowable under 26 U.S.C. Sec. 457, and deposit or invest such deferred portion in a credit union, savings and loan association, bank, or mutual savings bank or purchase life insurance, shares of an investment company, or fixed and/or variable annuity contracts from any insurance company or any investment company licensed to contract business in this state.

(3) Employees participating in the state deferred compensation plan administered by the department shall self-direct the investment of the deferred portion of their income

through the selection of investment options as set forth in subsection (4) of this section.

(4) The department can provide such plans as it deems are in the interests of state employees. In addition to the types of investments described in this section, the state investment board, with respect to the state deferred compensation plan, shall invest the deferred portion of an employee's income, without limitation as to amount, in accordance with RCW 43.84.150, 43.33A.140, and 41.50.780, and pursuant to investment policy established by the state investment board for the state deferred compensation plans. The state investment board, after consultation with the employee retirement benefits board regarding any recommendations made pursuant to RCW 41.50.088(2), shall provide a set of options for participants to choose from for investment of the deferred portion of their income. Any income deferred under such a plan shall continue to be included as regular compensation, for the purpose of computing the state or local retirement and pension benefits earned by any employee.

(5) Coverage of an employee under a deferred compensation plan under this section shall not render such employee ineligible for simultaneous membership and participation in any pension system for public employees. [1998 c 116 § 11; 1995 c 239 § 314.]

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.50.780 Deferred compensation principal and administrative accounts created—Participation in deferred compensation plans. (1) The deferred compensation principal account is hereby created in the state treasury. Any deficiency in the deferred compensation administrative account caused by an excess of administrative expenses disbursed from that account over balances credited to that account shall be eliminated by transferring moneys to that account from the deferred compensation principal account.

(2) The amount of compensation deferred by employees under agreements entered into under the authority contained in RCW 41.50.770 shall be paid into the deferred compensation principal account and shall be sufficient to cover costs of administration and staffing in addition to such other amounts as determined by the department. The deferred compensation principal account shall be used to carry out the purposes of RCW 41.50.770. All eligible state employees shall be given the opportunity to participate in agreements entered into by the department under RCW 41.50.770. State agencies shall cooperate with the department in providing employees with the opportunity to participate.

(3) Any county, municipality, or other subdivision of the state may elect to participate in any agreements entered into by the department under RCW 41.50.770, including the making of payments therefrom to the employees participating in a deferred compensation plan upon their separation from state or other qualifying service. Accordingly, the deferred compensation principal account shall be considered to be a public pension or retirement fund within the meaning of Article XXIX, section 1 of the state Constitution, for the

purpose of determining eligible investments and deposits of the moneys therein.

(4) All moneys in the state deferred compensation principal account and the state deferred compensation administrative account, all property and rights purchased therewith, and all income attributable thereto, shall be held in trust by the state investment board, as set forth under RCW 43.33A.030, for the exclusive benefit of the state deferred compensation plan's participants and their beneficiaries. Neither the participant, nor the participant's beneficiary or beneficiaries, nor any other designee, has any right to commute, sell, assign, transfer, or otherwise convey the right to receive any payments under the plan. These payments and right thereto are nonassignable and nontransferable. Unpaid accumulated deferrals are not subject to attachment, garnishment, or execution and are not transferable by operation of law in event of bankruptcy or insolvency, except to the extent otherwise required by law.

(5) The state investment board has the full power to invest moneys in the state deferred compensation principal account and the state deferred compensation administrative account in accordance with RCW 43.84.150, 43.33A.140, and 41.50.770, and cumulative investment directions received pursuant to RCW 41.50.770. All investment and operating costs of the state investment board associated with the investment of the deferred compensation plan assets shall be paid pursuant to RCW 43.33A.160 and 43.84.160. With the exception of these expenses, one hundred percent of all earnings from these investments shall accrue directly to the deferred compensation principal account.

(6)(a) No state board or commission, agency, or any officer, employee, or member thereof is liable for any loss or deficiency resulting from participant investments selected pursuant to RCW 41.50.770(3).

(b) Neither the employee retirement benefits board nor the state investment board, nor any officer, employee, or member thereof is liable for any loss or deficiency resulting from reasonable efforts to implement investment directions pursuant to RCW 41.50.770(3).

(7) The deferred compensation administrative account is hereby created in the state treasury. All expenses of the department pertaining to the deferred compensation plan including staffing and administrative expenses shall be paid out of the deferred compensation administrative account. Any excess balances credited to this account over administrative expenses disbursed from this account shall be transferred to the deferred compensation principal account at such time and in such amounts as may be determined by the department with the approval of the office of financial management. Any deficiency in the deferred compensation administrative account caused by an excess of administrative expenses disbursed from this account shall be transferred to this account from the deferred compensation principal account.

(8) In addition to the duties specified in this section and RCW 41.50.770, the department shall administer the salary reduction plan established in RCW 41.04.600 through 41.04.645.

(9) The department shall keep or cause to be kept full and adequate accounts and records of the assets of each individual participant, obligations, transactions, and affairs of any deferred compensation plans created under RCW

41.50.770 and this section. The department shall account for and report on the investment of state deferred compensation plan assets or may enter into an agreement with the state investment board for such accounting and reporting.

(10) The department may adopt rules necessary to carry out the purposes of RCW 41.50.770 and this section. [1998 c 245 § 42; 1998 c 116 § 12; 1995 c 239 § 315.]

Reviser's note: This section was amended by 1998 c 116 § 12 and by 1998 c 245 § 42, 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—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.50.790 Survivor benefits—Dissolution orders. (Effective until September 1, 2000.) (1) The department shall designate an obligee as a survivor beneficiary of a member under RCW 2.10.146, 41.26.460, 41.32.530, 41.32.785, 41.40.188, or 41.40.660 if the department has been served by registered or certified mail with a dissolution order as defined in RCW 41.50.500 at least thirty days prior to the member's retirement. The department's duty to comply with the dissolution order arises only if the order contains a provision that states in substantially the following form:

When . . . (the obligor) applies for retirement the department shall designate . . . (the obligee) as survivor beneficiary with a . . . survivor benefit.

The survivor benefit designated in the dissolution order must be consistent with the survivor benefit options authorized by statute or administrative rule.

(2) The obligee's entitlement to a survivor benefit pursuant to a dissolution order filed with the department in compliance with subsection (1) of this section shall cease upon the death of the obligee.

(3)(a) A subsequent dissolution order may order the department to divide a survivor benefit between a survivor beneficiary and an alternate payee. In order to divide a survivor benefit between more than one payee, the dissolution order must:

- (i) Be ordered by a court of competent jurisdiction following notice to the survivor beneficiary;
- (ii) Contain a provision that complies with subsection (1) of this section designating the survivor beneficiary;
- (iii) Contain a provision clearly identifying the alternate payee or payees; and
- (iv) Specify the proportional division of the benefit between the survivor beneficiary and the alternate payee or payees.

(b) The department will calculate actuarial adjustment for the court-ordered survivor benefit based upon the life of the survivor beneficiary.

(c) If the survivor beneficiary dies, the department shall terminate the benefit. If the alternate payee predeceases the survivor beneficiary, all entitlement of the alternate payee to a benefit ceases and the entire benefit will revert to the survivor beneficiary.

(d) For purposes of this section, "survivor beneficiary" means:

(i) The obligee designated in the provision of dissolution filed in compliance with subsection (1) of this section; or

(ii) In the event of more than one dissolution order, the obligee named in the first decree of dissolution received by the department.

(e) For purposes of this section, "alternate payee" means a person, other than the survivor beneficiary, who is granted a percentage of a survivor benefit pursuant to a dissolution order.

(4) The department shall under no circumstances be held liable for not designating an obligee as a survivor beneficiary under subsection (1) of this section if the dissolution order or amendment thereto is not served on the department by registered or certified mail at least thirty days prior to the member's retirement.

(5) If a dissolution order directing designation of a survivor beneficiary has been previously filed with the department in compliance with this section, no additional obligation shall arise on the part of the department upon filing of a subsequent dissolution order unless the subsequent dissolution order:

(a) Specifically amends or supersedes the dissolution order already on file with the department; and

(b) Is filed with the department by registered or certified mail at least thirty days prior to the member's retirement.

(6) The department shall designate a court-ordered survivor beneficiary pursuant to a dissolution order filed with the department before June 6, 1996, only if the order:

(a) Specifically directs the member or department to make such selection;

(b) Specifies the survivor option to be selected; and

(c) The member retires after June 6, 1996. [1996 c 175 § 1.]

41.50.790 Survivor benefits—Dissolution orders. (*Effective September 1, 2000.*) (1) The department shall designate an obligee as a survivor beneficiary of a member under RCW 2.10.146, 41.26.460, 41.32.530, 41.32.785, 41.35.220, 41.40.188, or 41.40.660 if the department has been served by registered or certified mail with a dissolution order as defined in RCW 41.50.500 at least thirty days prior to the member's retirement. The department's duty to comply with the dissolution order arises only if the order contains a provision that states in substantially the following form:

When (the obligor) applies for retirement the department shall designate (the obligee) as survivor beneficiary with a survivor benefit.

The survivor benefit designated in the dissolution order must be consistent with the survivor benefit options authorized by statute or administrative rule.

(2) The obligee's entitlement to a survivor benefit pursuant to a dissolution order filed with the department in compliance with subsection (1) of this section shall cease upon the death of the obligee.

(3)(a) A subsequent dissolution order may order the department to divide a survivor benefit between a survivor

beneficiary and an alternate payee. In order to divide a survivor benefit between more than one payee, the dissolution order must:

(i) Be ordered by a court of competent jurisdiction following notice to the survivor beneficiary;

(ii) Contain a provision that complies with subsection (1) of this section designating the survivor beneficiary;

(iii) Contain a provision clearly identifying the alternate payee or payees; and

(iv) Specify the proportional division of the benefit between the survivor beneficiary and the alternate payee or payees.

(b) The department will calculate actuarial adjustment for the court-ordered survivor benefit based upon the life of the survivor beneficiary.

(c) If the survivor beneficiary dies, the department shall terminate the benefit. If the alternate payee predeceases the survivor beneficiary, all entitlement of the alternate payee to a benefit ceases and the entire benefit will revert to the survivor beneficiary.

(d) For purposes of this section, "survivor beneficiary" means:

(i) The obligee designated in the provision of dissolution filed in compliance with subsection (1) of this section; or

(ii) In the event of more than one dissolution order, the obligee named in the first decree of dissolution received by the department.

(e) For purposes of this section, "alternate payee" means a person, other than the survivor beneficiary, who is granted a percentage of a survivor benefit pursuant to a dissolution order.

(4) The department shall under no circumstances be held liable for not designating an obligee as a survivor beneficiary under subsection (1) of this section if the dissolution order or amendment thereto is not served on the department by registered or certified mail at least thirty days prior to the member's retirement.

(5) If a dissolution order directing designation of a survivor beneficiary has been previously filed with the department in compliance with this section, no additional obligation shall arise on the part of the department upon filing of a subsequent dissolution order unless the subsequent dissolution order:

(a) Specifically amends or supersedes the dissolution order already on file with the department; and

(b) Is filed with the department by registered or certified mail at least thirty days prior to the member's retirement.

(6) The department shall designate a court-ordered survivor beneficiary pursuant to a dissolution order filed with the department before June 6, 1996, only if the order:

(a) Specifically directs the member or department to make such selection;

(b) Specifies the survivor option to be selected; and

(c) The member retires after June 6, 1996. [1998 c 341 § 514; 1996 c 175 § 1.]

Effective date—1998 c 341: See RCW 41.35.901.

41.50.800 Apportionment of budgeted funds of affected agencies. If apportionments of budgeted funds are required because of the transfers herein authorized, the director of financial management shall certify such apportionment.

tionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustment in funds and appropriation accounts and equipment records in accordance with such certification. [1979 c 151 § 64; 1975-'76 2nd ex.s. c 105 § 13.]

41.50.801 Continuation of rules, pending business, contracts, investments, etc. On the effective date of transfer as provided in RCW 41.50.030, all rules and regulations, and all pending business before any of the retirement boards whose powers, duties, and functions are transferred to the department by this chapter shall be continued and acted upon by the department.

All existing contracts and obligations pertaining to the functions herein transferred shall remain in full force and effect, and shall be performed by the department. None of the transfers directed by this chapter shall affect the validity of any act performed by a retirement board or by any official or employee thereof prior to the effective date of transfer as provided in RCW 41.50.030.

None of the transfers involving investment of funds by any of the retirement boards shall affect the validity of any act performed by such boards or by any official or employee thereof prior to the effective date of transfer as provided in RCW 41.50.030. [1975-'76 2nd ex.s. c 105 § 14.]

41.50.802 Transfer of reports, documents, etc., property, funds, assets, appropriations, etc. All reports, documents, surveys, books, records, files, papers, or other writings relating to the administration of the powers, duties, and functions transferred by this chapter shall be made available to the department and to the state actuary.

All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed in carrying out the powers, duties, and functions transferred by this chapter shall be made available to the department.

All funds, credits, or other assets held in connection with powers, duties, and functions transferred by this chapter shall be assigned to the department.

Any appropriations made to any committee, division, board, or any other state agency for the purpose of carrying out the powers, duties, and functions transferred by this chapter shall, in the manner prescribed by the director of financial management, be transferred and credited to the department for the purpose of carrying out such transferred powers, duties, and functions. [1979 c 151 § 65; 1975-'76 2nd ex.s. c 105 § 15.]

41.50.803 Savings. Nothing in this chapter nor in the amendment of RCW 43.17.010, 43.17.020, or 43.33.070 shall be construed to affect any existing rights acquired under RCW 43.17.010, 43.17.020, or 43.33.070 except as to the governmental agencies referred to and their officials and employees, nor as affecting any actions, activities, or proceedings validated thereunder, nor as affecting any civil or criminal proceedings instituted thereunder, nor any rule, regulation, or order promulgated thereunder, nor any administrative action taken thereunder; and neither the abolition of any agency or division thereof nor any transfer of powers, duties, and functions as provided in this chapter shall affect the validity of any act performed by such agency or division

thereof or any officer thereof prior to the effective date of transfer as provided in RCW 41.50.030. [1975-'76 2nd ex.s. c 105 § 16.]

41.50.804 Existing collective bargaining agreements not affected. Nothing contained in this chapter shall be construed to alter any existing collective bargaining agreement until any such agreement has expired or until any such bargaining unit has been modified by action of the Washington personnel resources board as provided by law. [1993 c 281 § 40; 1975-'76 2nd ex.s. c 105 § 17.]

Effective date—1993 c 281: See note following RCW 41.06.022.

41.50.900 Severability—1975-'76 2nd ex.s. c 105. See note following RCW 41.04.270.

41.50.901 Effective date—1987 c 326. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987. [1987 c 326 § 29.]

Chapter 41.52

PUBLIC PENSION COMMISSION

Sections

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41.52.060	Examination of records—Subpoena of witnesses, fees.
41.52.070	Appointment of investment counsel—Qualifications—Duties.

41.52.010 Created—Composition—Qualifications and appointment of members. There is created the state public pension commission. The commission shall consist of five members of the house of representatives to be appointed by the speaker thereof, five members of the senate to be appointed by the president of the senate, and five members to be appointed by the governor: **PROVIDED,** That no more than three senators nor more than three representatives shall be appointed from the same political party. All original legislative members shall be appointed before the close of the 1963 extraordinary session of the legislature and successors shall be appointed before the close of each regular session during an odd-numbered year thereafter: **PROVIDED, FURTHER,** That if prior to the close of each regular session during an odd-numbered year, the governor shall issue a proclamation convening the legislature into special session, or the legislature shall by resolution convene the legislature into special session, following such regular session, then such appointments shall be made as a matter of closing business of such special session. Legislative members shall be subject to confirmation, as to senate members by the senate, and as to house members by the house. No terms of legislative members shall be extended without such confirmation.

The members appointed by the governor shall have the following qualifications: (1) At least one of the members shall be experienced in actuarial principles; (2) one member shall be a trustee or official of a retirement system; and (3) three members shall have had general experience and knowledge in fields pertinent to retirement system operating, but shall not at the time of appointment or during their terms of office be trustees or officials in any retirement system. [1980 c 87 § 16; 1969 c 10 § 2; 1963 ex.s. c 17 § 1.]

41.52.020 Terms—Vacancies. The members of the commission shall be appointed biennially for terms commencing July 1st and expiring on June 30th on each succeeding odd-numbered year and shall serve until their successors are appointed or elected, and qualified. The terms of office of legislative members who shall not continue to be members of the senate and house shall cease as of the date the certificates of election of their successors are issued. Vacancies in office of legislative members shall be filled by appointment from the same house by the remaining legislative members of that house. All vacancies shall be filled for the remainder of the unexpired term. Vacancies in memberships appointed by the governor shall be filled by appointment by the governor. [1963 ex.s. c 17 § 2.]

41.52.030 Expenses—Officers—Personnel—Quorum. The members of the commission shall be reimbursed for their expenses incurred while attending sessions of the commission or meetings of any committees of the commission or while engaged on other commission business authorized by the commission, at the rates provided in RCW 44.04.120, as now or hereafter amended. The commission shall select a chairman, vice chairman and secretary from among its members. The commission shall have authority to select and employ such research, technical, and clerical personnel and consultants as it deems necessary to carry out its powers and duties, whose compensation and salaries shall be fixed by the commission. A majority of the membership shall constitute a quorum. [1967 c 128 § 1; 1963 ex.s. c 17 § 3.]

41.52.040 Powers and duties. The commission shall have the following powers and duties:

(1) Study the pension and benefit laws applicable to officers and employees in governmental service throughout the state and appraise and evaluate the existing laws pertaining to this subject;

(2) Study and consider the financial problems of the several retirement and pension funds and make recommendations as to revisions in financial provisions and methods of amortizing the accrued liabilities of such funds without impairment of any of the rights and equities of participants and beneficiaries but in conformity with sound and established principles of financing pension fund obligations;

(3) Study and make recommendations concerning the extension of pension coverage to public employees to whom pension protection has not been accorded;

(4) Study and make recommendations concerning the preservation and continuity of earned rights and credits in public employment for pension purposes including a thor-

ough study of the legal, financial and other aspects of so-called legal vesting of pension rights;

(5) Evaluate all pension proposals in terms of policy, cost implications, and their impact on other public employee retirement programs;

(6) Consider all aspects of pension planning and operation aiming toward the development of a standard pension policy grounded in fundamental principles;

(7) Consider the feasibility of codifying pension laws;

(8) Make available to such public officers and employees at all levels of government as it shall deem advisable, information as to pension and benefit studies, recommendations, and evaluations as to afford them an opportunity to become familiar with all aspects of pension problems so they may develop sound legislative and fiscal policies in accordance with established concepts of good retirement planning and sound financing;

(9) Prepare an explanatory note for each pension bill introduced in the legislature, which note shall briefly explain the financial impact and policies of the bill, indicate the impact on the relative position of the system affected with the other public pension systems, and which shall be attached to or printed upon the printed bill;

(10) Study and make recommendations on the investment policies and procedures of all public pension systems. [1998 c 245 § 43; 1967 c 128 § 2; 1963 ex.s. c 17 § 4.]

41.52.050 Right of access to files and records of public pension systems—Minutes, reports, etc., to be forwarded to commission. (1) The commission, its staff and consultants as ordered by the commission shall have access to all files and records of the public pension systems in the state for inspection and review;

(2) The governing boards of all public pension systems in the state shall promptly forward to the commission copies of their minutes of meetings, actuarial reports, annual reports, reports on portfolio including changes in investment holdings showing sales, purchases and exchanges, and any other report which is approved for distribution by the board of trustees of any system. [1967 c 128 § 3.]

41.52.060 Examination of records—Subpoena of witnesses, fees. In the discharge of any duty herein imposed, the commission or any personnel under its authority and its subcommittees shall have the authority to examine and inspect all files, records and accounts of any public retirement system or board, and to administer oaths, issue subpoenas, compel the attendance of witnesses and the production of any papers, books, accounts, documents and testimony, and to cause the deposition of witnesses, either residing within or without the state, to be taken in the manner prescribed by law for taking depositions in civil actions in the superior courts.

In the case of the failure on the part of any person to comply with any subpoena issued in behalf of the commission, or on the refusal of any witness to testify to any matters regarding which he may be lawfully interrogated, it shall be the duty of the superior court of any county, or the judge thereof, on application of the commission, to compel obedience by proceedings for contempt, as in the case of

disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein.

Each witness who appears before the commission by its order, other than a state official or employee, shall receive for his attendance the fees and mileage provided for witnesses in civil cases in courts of record in accordance with RCW 2.40.010, which shall be audited and paid upon the presentation of proper vouchers signed by such witness and approved by the secretary and chairman of the commission. [1967 c 128 § 4.]

41.52.070 Appointment of investment counsel—Qualifications—Duties. The state public pension commission shall employ on a contractual basis a qualified investment counsel. Such counsel shall be a business organization having experience in securities analyses and investment counseling for both private and public pension funds on a national basis for a minimum of three consecutive years during the five years immediately prior to employment by the commission. The counsel shall not be engaged in the business of buying, selling, or otherwise marketing securities during the time of its employment by the commission.

The securities counsel shall make periodic examinations of the transactions and portfolio of each public pension system in the state. The administrator of each pension system shall cooperate with and make its records available to the counsel. The counsel shall file a copy of its examination report with the public pension system examined and also with the public pension commission. The securities counsel shall be available on request of the board of trustees of any public retirement system in the state of Washington for investment counseling pertaining to any or all proposed changes in the investment portfolio of that system. [1998 c 245 § 44; 1967 c 160 § 1.]

Chapter 41.54

PORTABILITY OF PUBLIC RETIREMENT BENEFITS

Sections	
41.54.010	Definitions.
41.54.020	Benefits under prior retirement systems—Restoration of contributions.
41.54.030	Calculation of service retirement allowance.
41.54.032	Calculation of disability retirement allowance.
41.54.034	Calculation of surviving spouse's death benefit.
41.54.040	Payment of retirement allowance and postretirement adjustments—Death benefit.
41.54.050	Election to establish membership in public employees' retirement system.
41.54.061	Seattle, Spokane, Tacoma—Irrevocable election for coverage under chapter—Effective date.
41.54.070	Benefits under chapter—Minimum and maximum.
41.54.080	Benefits under chapter—Contractual rights not established.
41.54.090	Benefits under chapter—Lump sum payment.
41.54.100	Transfer of membership under chapter 341, Laws of 1998—Benefits not diminished.
41.54.900	Effective dates—1987 c 192.
41.54.901	Effective date—1988 c 195.

41.54.010 Definitions. (*Effective until September 1, 2000.*) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Base salary" means salaries or wages earned by a member of a system during a payroll period for personal services and includes wages and salaries deferred under provisions of the United States internal revenue code, but shall exclude overtime payments, nonmoney maintenance compensation, and lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, any form of severance pay, any bonus for voluntary retirement, any other form of leave, or any similar lump sum payment.

(2) "Department" means the department of retirement systems.

(3) "Director" means the director of the department of retirement systems.

(4) "Dual member" means a person who (a) is or becomes a member of a system on or after July 1, 1988, (b) has been a member of one or more other systems, and (c) has never been retired for service from a retirement system and is not receiving a disability retirement or disability leave benefit from any retirement system listed in RCW 41.50.030 or subsection (6) of this section.

(5) "Service" means the same as it may be defined in each respective system. For the purposes of RCW 41.54.030, military service granted under RCW 41.40.170(3) or 43.43.260 may only be based on service accrued under chapter 41.40 or 43.43 RCW, respectively.

(6) "System" means the retirement systems established under chapters 41.32, 41.40, 41.44, and 43.43 RCW; plan II of the system established under chapter 41.26 RCW; and the city employee retirement systems for Seattle, Tacoma, and Spokane. The inclusion of an individual first class city system is subject to the procedure set forth in RCW 41.54.061. [1993 c 517 § 8; 1990 c 192 § 1; 1988 c 195 § 1; 1987 c 192 § 1.]

Purpose—1993 c 517: See note following RCW 41.26.420.

41.54.010 Definitions. (*Effective September 1, 2000.*)

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

(1) "Base salary" means salaries or wages earned by a member of a system during a payroll period for personal services and includes wages and salaries deferred under provisions of the United States internal revenue code, but shall exclude overtime payments, nonmoney maintenance compensation, and lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, any form of severance pay, any bonus for voluntary retirement, any other form of leave, or any similar lump sum payment.

(2) "Department" means the department of retirement systems.

(3) "Director" means the director of the department of retirement systems.

(4) "Dual member" means a person who (a) is or becomes a member of a system on or after July 1, 1988, (b) has been a member of one or more other systems, and (c) has never been retired for service from a retirement system and is not receiving a disability retirement or disability leave benefit from any retirement system listed in RCW 41.50.030 or subsection (6) of this section.

(5) "Service" means the same as it may be defined in each respective system. For the purposes of RCW 41.54.030, military service granted under RCW 41.40.170(3) or 43.43.260 may only be based on service accrued under chapter 41.40 or 43.43 RCW, respectively.

(6) "System" means the retirement systems established under chapters 41.32, 41.40, 41.44, 41.35, and 43.43 RCW; plan II of the system established under chapter 41.26 RCW; and the city employee retirement systems for Seattle, Tacoma, and Spokane. The inclusion of an individual first class city system is subject to the procedure set forth in RCW 41.54.061. [1998 c 341 § 702; 1993 c 517 § 8; 1990 c 192 § 1; 1988 c 195 § 1; 1987 c 192 § 1.]

Effective date—1998 c 341: See RCW 41.35.901.

Purpose—1993 c 517: See note following RCW 41.26.420.

41.54.020 Benefits under prior retirement systems—Restoration of contributions. (1) Those persons who are dual members on or after July 1, 1988, shall not receive a retirement benefit from any prior system while dual members without the loss of all benefits under this chapter. Retroactive retirement in any prior system will cancel membership in any subsequent systems except as allowed under RCW 41.04.270 and will result in the refund of all employee and employer contributions made to such systems.

(2) If a member has withdrawn contributions from a prior system, the member may restore the contributions, together with interest since the date of withdrawal as determined by the system, and recover the service represented by the contributions. Such restoration must be completed within two years of establishing dual membership or prior to retirement, whichever occurs first.

(3) If a member does not meet the time limitation under subsection (2) of this section, the member, prior to retirement, may restore the service credit destroyed by the withdrawn contributions by paying the amount required under RCW 41.50.165(2).

(4) Any service accrued in one system by the member shall not accrue in any other system. [1994 c 197 § 32; 1987 c 384 § 2; 1987 c 192 § 2.]

Intent—Severability—Effective date—1994 c 197: See notes following RCW 41.50.165.

Effective dates—1987 c 384: See note following RCW 41.40.150.

41.54.030 Calculation of service retirement allowance. (Effective until September 1, 2000.) (1) A dual member may combine service in all systems for the purpose of:

(a) Determining the member's eligibility to receive a service retirement allowance; and

(b) Qualifying for a benefit under RCW 41.32.840(2).

(2) A dual member who is eligible to retire under any system may elect to retire from all the member's systems and to receive service retirement allowances calculated as provided in this section. Each system shall calculate the allowance using its own criteria except that the member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(3) The service retirement allowances from a system which, but for this section, would not be allowed to be paid

at this date based on the dual member's age may be received immediately or deferred to a later date. The allowances shall be actuarially adjusted from the earliest age upon which the combined service would have made such dual member eligible in that system.

(4) The service retirement eligibility requirements of RCW 41.40.180 shall apply to any dual member whose prior system is plan I of the public employees' retirement system established under chapter 41.40 RCW. [1996 c 55 § 4; 1996 c 55 § 3; 1996 c 39 § 19; 1995 c 239 § 319; 1990 c 192 § 2; 1988 c 195 § 2; 1987 c 192 § 3.]

Reviser's note: This section was amended by 1996 c 39 § 19, 1996 c 55 § 3, and by 1996 c 55 § 4, each without reference to the other. All 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).

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until July 1, 1996: RCW 41.34.100.

41.54.030 Calculation of service retirement allowance. (Effective September 1, 2000.) (1) A dual member may combine service in all systems for the purpose of:

(a) Determining the member's eligibility to receive a service retirement allowance; and

(b) Qualifying for a benefit under RCW 41.32.840(2) or 41.35.620.

(2) A dual member who is eligible to retire under any system may elect to retire from all the member's systems and to receive service retirement allowances calculated as provided in this section. Each system shall calculate the allowance using its own criteria except that the member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(3) The service retirement allowances from a system which, but for this section, would not be allowed to be paid at this date based on the dual member's age may be received immediately or deferred to a later date. The allowances shall be actuarially adjusted from the earliest age upon which the combined service would have made such dual member eligible in that system.

(4) The service retirement eligibility requirements of RCW 41.40.180 shall apply to any dual member whose prior system is plan I of the public employees' retirement system established under chapter 41.40 RCW. [1998 c 341 § 703. Prior: 1996 c 55 § 4; 1996 c 55 § 3; 1996 c 39 § 19; 1995 c 239 § 319; 1990 c 192 § 2; 1988 c 195 § 2; 1987 c 192 § 3.]

Effective date—1998 c 341: See RCW 41.35.901.

Effective dates—1996 c 39: See note following RCW 41.32.010.

Intent—Purpose—1995 c 239: See note following RCW 41.32.831.

Effective date—Part and subchapter headings not law—1995 c 239: See notes following RCW 41.32.005.

Benefits not contractual right until date specified: RCW 41.34.100.

41.54.032 Calculation of disability retirement allowance. (1) If a dual member becomes disabled, the member's service in all systems may be combined for the sole purpose of determining the member's eligibility to

receive a disability retirement allowance from the member's current system.

(2) The member's current system shall use its own criteria to:

(a) Determine the member's eligibility for a disability retirement allowance; and

(b) Calculate the disability retirement allowance based on service actually established in the current system. The member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(3) Subsections (1) and (2) of this section shall not apply to the member's prior system.

(4) A dual member who is eligible to receive a disability retirement under the current system may elect to receive a service retirement from all prior systems and to receive service retirement allowances calculated as provided in this section. Each system shall calculate the service retirement allowance using its own criteria except that the member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the service retirement allowance.

(5) The service retirement allowances from a system which, but for this section, would not be allowed to be paid at this date based on the dual member's age, may be received immediately or deferred to a later date. The allowances shall be actuarially adjusted from the earliest age upon which the combined service would have made such dual member eligible in that system.

(6) This section shall not apply to any disability benefit under:

(a) RCW 41.40.220; or

(b) The Washington state patrol retirement system established under chapter 43.43 RCW. [1996 c 55 § 1.]

41.54.034 Calculation of surviving spouse's death benefit. (1) If a dual member dies in service in any system, the member's service in all systems may be combined for the sole purpose of determining the surviving spouse's eligibility to receive a death benefit from each of the member's current and prior systems.

(2) Each system shall use its own criteria to:

(a) Determine the surviving spouse's eligibility for a death benefit; and

(b) Calculate the death benefit based on service actually established in that system.

(3) The surviving spouse shall receive the same benefit from each system that would have been received if the member were active in the system at the time of death. The spouse shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(4) This section shall not apply to the Washington state patrol retirement system established under chapter 43.43 RCW. [1996 c 55 § 2.]

41.54.040 Payment of retirement allowance and postretirement adjustments—Death benefit. (*Effective until September 1, 2000.*) (1) The allowances calculated under RCW 41.54.030, 41.54.032, and 41.54.034 shall be paid separately by each respective current and prior system.

Any deductions from such separate payments shall be according to the provisions of the respective systems.

(2) Postretirement adjustments, if any, shall be applied by the respective systems based on the payments made under subsection (1) of this section.

(3) The department shall adopt rules under chapter 34.05 RCW to ensure that where a dual member has service in a system established under chapter 41.32, 41.40, 41.44, or 43.43 RCW; service in plan II of the system established under chapter 41.26 RCW; and service under the city employee retirement system for Seattle, Tacoma, or Spokane, the additional cost incurred as a result of the dual member receiving a benefit under this chapter shall be borne by the retirement system incurring the additional cost. [1996 c 55 § 5. Prior: 1993 c 519 § 16; 1993 c 517 § 9; 1990 c 192 § 5; 1988 c 195 § 3; 1987 c 192 § 4.]

Part headings not law—Effective date—1993 c 519: See notes following RCW 28A.400.212.

Purpose—1993 c 517: See note following RCW 41.26.420.

41.54.040 Payment of retirement allowance and postretirement adjustments—Death benefit. (*Effective September 1, 2000.*) (1) The allowances calculated under RCW 41.54.030, 41.54.032, and 41.54.034 shall be paid separately by each respective current and prior system. Any deductions from such separate payments shall be according to the provisions of the respective systems.

(2) Postretirement adjustments, if any, shall be applied by the respective systems based on the payments made under subsection (1) of this section.

(3) The department shall adopt rules under chapter 34.05 RCW to ensure that where a dual member has service in a system established under chapter 41.32, 41.40, 41.44, 41.35, or 43.43 RCW; service in plan II of the system established under chapter 41.26 RCW; and service under the city employee retirement system for Seattle, Tacoma, or Spokane, the additional cost incurred as a result of the dual member receiving a benefit under this chapter shall be borne by the retirement system incurring the additional cost. [1998 c 341 § 704; 1996 c 55 § 5. Prior: 1993 c 519 § 16; 1993 c 517 § 9; 1990 c 192 § 5; 1988 c 195 § 3; 1987 c 192 § 4.]

Effective date—1998 c 341: See RCW 41.35.901.

Part headings not law—Effective date—1993 c 519: See notes following RCW 28A.400.212.

Purpose—1993 c 517: See note following RCW 41.26.420.

41.54.050 Election to establish membership in public employees' retirement system. A person who was eligible to establish membership under RCW 41.40.023(3) prior to October 1, 1977, but failed to do so by that date, is authorized to elect to do so as if such election had been made prior to that date. Such an election must be made not later than June 30, 1988, and all other terms and conditions of RCW 41.40.023(3) shall apply. [1987 c 192 § 5.]

41.54.061 Seattle, Spokane, Tacoma—Irrevocable election for coverage under chapter—Effective date. (1) The cities of Seattle, Spokane, and Tacoma shall each have the option of making an irrevocable election to have its employee retirement system included in the coverage of this chapter by adopting a resolution transmitting it to the

director and the joint committee on pension policy prior to December 31, 1993.

The resolution shall indicate the city's desire to be covered by this chapter and its willingness to pay for the additional cost it may incur as a result of the benefits provided by this chapter.

(2) This chapter shall become effective on January 1, 1994, for each city which adopts a resolution pursuant to subsection (1) of this section. [1993 c 519 § 15; 1990 c 192 § 3.]

Part headings not law—Effective date—1993 c 519: See notes following RCW 28A.400.212.

41.54.070 Benefits under chapter—Minimum and maximum. The benefit granted by this chapter shall not result in a total benefit less than would have been received absent such benefit. The total sum of the retirement allowances received under this chapter shall not exceed the largest amount the dual member would receive if all the service had been rendered in any one system. When calculating the maximum benefit a dual member would receive: (1) Military service granted under RCW 41.40.170(3) or 43.43.260 shall be based only on service accrued under chapter 41.40 or 43.43 RCW, respectively; and (2) the calculation shall be made assuming that the dual member did not defer any allowances pursuant to RCW 41.54.030(3). When a dual member's combined retirement allowances would exceed the limitation imposed by this section, the allowances shall be reduced by the systems on a proportional basis, according to service. [1996 c 55 § 6; 1988 c 195 § 4; 1987 c 192 § 7.]

41.54.080 Benefits under chapter—Contractual rights not established. The benefits provided under RCW 41.54.010 through 41.54.070 are not provided to employees as a matter of contractual right and the legislature retains the right to alter or abolish these benefits at any time prior to a member's retirement. [1987 c 192 § 8.]

41.54.090 Benefits under chapter—Lump sum payment. (1) The systems may pay a dual member a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with RCW 41.54.030 would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of such monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from the system making the lump sum payment. [1988 c 195 § 6.]

41.54.100 Transfer of membership under chapter 341, Laws of 1998—Benefits not diminished. (*Effective September 1, 2000.*) Persons who were members of the public employees' retirement system plan II prior to September 1, 2000, and were transferred or mandated into membership pursuant to chapter 341, Laws of 1998 shall suffer no diminution of benefits guaranteed to public employees' retirement system plan II members as of the date of their change in membership. [1998 c 341 § 705.]

Effective date—1998 c 341: See RCW 41.35.901.

41.54.900 Effective dates—1987 c 192. (1) RCW 41.54.050 is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987.

(2) The remainder of this act shall take effect on July 1, 1988. [1987 c 192 § 11.]

41.54.901 Effective date—1988 c 195. This act shall take effect July 1, 1988. [1988 c 195 § 7.]

Chapter 41.56

PUBLIC EMPLOYEES' COLLECTIVE BARGAINING

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41.56.022	Application of chapter to University of Washington printing craft employees.
41.56.023	Application of chapter to employees of institutions of higher education.
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- 41.56.470 Uniformed personnel—Arbitration panel—Rights of parties.
- 41.56.475 Uniformed personnel—Application of chapter to Washington state patrol—Mediation and arbitration.
- 41.56.480 Uniformed personnel—Refusal to submit to procedures—Invoking jurisdiction of superior court—Contempt.
- 41.56.490 Uniformed employees—Strikes prohibited—Violations—Contempt of court.
- 41.56.492 Application of uniformed personnel collective bargaining provisions to employees of public passenger transportation systems—Conditions.
- 41.56.900 Short title—Effective date—1967 ex.s. c 108.
- 41.56.905 Uniformed personnel—Provisions additional—Liberal construction.
- 41.56.910 Severability—1973 c 131.
- 41.56.950 Retroactive date in collective bargaining agreements allowable, when.

Reviser's note: Throughout chapter 41.56 RCW, the phrase "this act" has been changed to "this chapter." "This act" [1967 ex.s. c 108] is codified as this chapter and RCW 41.06.150.

41.56.010 Declaration of purpose. The intent and purpose of this chapter is to promote the continued improvement of the relationship between public employers and their employees by providing a uniform basis for implementing the right of public employees to join labor organizations of their own choosing and to be represented by such organizations in matters concerning their employment relations with public employers. [1967 ex.s. c 108 § 1.]

41.56.020 Application of chapter. This chapter shall apply to any county or municipal corporation, or any political subdivision of the state of Washington, including district courts and superior courts, except as otherwise provided by RCW 54.04.170, 54.04.180, and chapters 41.59, 47.64, and 53.18 RCW. The Washington state patrol shall be considered a public employer of state patrol officers appointed under RCW 43.43.020. The Washington state bar association shall be considered a public employer of its employees. [1994 c 297 § 1; 1993 c 76 § 2; 1992 c 36 § 1; 1989 c 275 § 1; 1987 c 135 § 1; 1985 c 7 § 107; 1983 c 3 § 98; 1967 ex.s. c 108 § 2.]

Severability—1987 c 135: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 135 § 4.]

41.56.022 Application of chapter to University of Washington printing craft employees. In addition to the entities listed in RCW 41.56.020, this chapter shall apply to the University of Washington with respect to the printing craft employees in the department of printing at the University of Washington. [1987 c 484 § 1.]

41.56.023 Application of chapter to employees of institutions of higher education. In addition to the entities listed in RCW 41.56.020, this chapter shall apply to institutions of higher education with respect to the employees included in a bargaining unit that has exercised the option specified in RCW 41.56.201. [1993 c 379 § 301.]

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

41.56.024 Application of chapter to classified employees of technical colleges. In addition to the entities listed in RCW 41.56.020, this chapter shall apply to classified employees of technical colleges as provided for in RCW 28B.50.874. [1991 c 238 § 112.]

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

41.56.025 Application of chapter to education providers under chapter 28A.193 RCW. This chapter applies to the bargaining unit of classified employees of school districts, educational service districts, or institutions of higher education that are education providers under chapter 28A.193 RCW. Such bargaining units must be limited to the employees working as education providers to juveniles in each adult correctional facility maintained by the department of corrections and must be separate from other bargaining units in school districts, educational service districts, or institutions of higher education. [1998 c 244 § 12.]

Effective date—Severability—1998 c 244: See RCW 28A.193.900 and 28A.193.901.

41.56.030 Definitions. As used in this chapter:

(1) "Public employer" means any officer, board, commission, council, or other person or body acting on behalf of any public body governed by this chapter, or any subdivision of such public body. For the purposes of this section, the public employer of district court or superior court employees for wage-related matters is the respective county legislative authority, or person or body acting on behalf of the legislative authority, and the public employer for nonwage-related matters is the judge or judge's designee of the respective district court or superior court.

(2) "Public employee" means any employee of a public employer except any person (a) elected by popular vote, or (b) appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (c) whose duties as deputy, administrative assistant or secretary necessarily imply a confidential relationship to the executive head or body of the applicable bargaining unit, or any person elected by popular vote or appointed to office pursuant to statute, ordinance or resolution for a specified term of office by the executive head or body of the public employer, or (d) who is a personal assistant to a district court judge, superior court judge, or court commissioner. For the purpose of (d) of this subsection, no more than one assistant for each judge or commissioner may be excluded from a bargaining unit.

(3) "Bargaining representative" means any lawful organization which has as one of its primary purposes the representation of employees in their employment relations with employers.

(4) "Collective bargaining" means the performance of the mutual obligations of the public employer and the exclusive bargaining representative to meet at reasonable times, to confer and negotiate in good faith, and to execute a written agreement with respect to grievance procedures and collective negotiations on personnel matters, including wages, hours and working conditions, which may be peculiar to an appropriate bargaining unit of such public employer,

except that by such obligation neither party shall be compelled to agree to a proposal or be required to make a concession unless otherwise provided in this chapter. In the case of the Washington state patrol, "collective bargaining" shall not include wages and wage-related matters.

(5) "Commission" means the public employment relations commission.

(6) "Executive director" means the executive director of the commission.

(7) "Uniformed personnel" means: (a)(i) Until July 1, 1997, law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of seven thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of thirty-five thousand or more; (ii) beginning on July 1, 1997, law enforcement officers as defined in RCW 41.26.030 employed by the governing body of any city or town with a population of two thousand five hundred or more and law enforcement officers employed by the governing body of any county with a population of ten thousand or more; (b) correctional employees who are uniformed and nonuniformed, commissioned and noncommissioned security personnel employed in a jail as defined in RCW 70.48.020(5), by a county with a population of seventy thousand or more, and who are trained for and charged with the responsibility of controlling and maintaining custody of inmates in the jail and safeguarding inmates from other inmates; (c) general authority Washington peace officers as defined in RCW 10.93.020 employed by a port district in a county with a population of one million or more; (d) security forces established under RCW 43.52.520; (e) fire fighters as that term is defined in RCW 41.26.030; (f) employees of a port district in a county with a population of one million or more whose duties include crash fire rescue or other fire fighting duties; (g) employees of fire departments of public employers who dispatch exclusively either fire or emergency medical services, or both; or (h) employees in the several classes of advanced life support technicians, as defined in RCW 18.71.200, who are employed by a public employer.

(8) "Institution of higher education" means the University of Washington, Washington State University, Central Washington University, Eastern Washington University, Western Washington University, The Evergreen State College, and the various state community colleges. [1995 c 273 § 1. Prior: 1993 c 398 § 1; 1993 c 397 § 1; 1993 c 379 § 302; 1992 c 36 § 2; 1991 c 363 § 119; 1989 c 275 § 2; 1987 c 135 § 2; 1984 c 150 § 1; 1975 1st ex.s. c 296 § 15; 1973 c 131 § 2; 1967 ex.s. c 108 § 3.]

Effective date—1995 c 273: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 273 § 5.]

Effective dates—1993 c 398: "(1) Sections 3 and 5 of this act shall take effect July 1, 1995.

(2) Sections 1, 2, 4, and 6 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 398 § 7.]

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

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

Severability—1987 c 135: See note following RCW 41.56.020.

Effective date—1984 c 150: "This act shall take effect on July 1, 1985." [1984 c 150 § 2.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

Construction—Severability—1973 c 131: See RCW 41.56.905, 41.56.910.

Public employment relations commission: Chapter 41.58 RCW.

41.56.040 Right of employees to organize and designate representatives without interference. No public employer, or other person, shall directly or indirectly, interfere with, restrain, coerce, or discriminate against any public employee or group of public employees in the free exercise of their right to organize and designate representatives of their own choosing for the purpose of collective bargaining, or in the free exercise of any other right under this chapter. [1967 ex.s. c 108 § 4.]

41.56.050 Disagreement in selection of bargaining representative—Intervention by commission. In the event that a public employer and public employees are in disagreement as to the selection of a bargaining representative the commission shall be invited to intervene as is provided in RCW 41.56.060 through 41.56.090. [1975 1st ex.s. c 296 § 16; 1967 ex.s. c 108 § 5.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

41.56.060 Determination of bargaining unit—Bargaining representative. The commission, after hearing upon reasonable notice, shall decide in each application for certification as an exclusive bargaining representative, the unit appropriate for the purpose of collective bargaining. In determining, modifying, or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the public employees; the history of collective bargaining by the public employees and their bargaining representatives; the extent of organization among the public employees; and the desire of the public employees. The commission shall determine the bargaining representative by (1) examination of organization membership rolls, (2) comparison of signatures on organization bargaining authorization cards, or (3) by conducting an election specifically therefor. [1975 1st ex.s. c 296 § 17; 1967 ex.s. c 108 § 6.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

41.56.070 Election to ascertain bargaining representative. In the event the commission elects to conduct an election to ascertain the exclusive bargaining representative, and upon the request of a prospective bargaining representative showing written proof of at least thirty percent representation of the public employees within the unit, the commission shall hold an election by secret ballot to determine the issue. The ballot shall contain the name of such bargaining representative and of any other bargaining representative showing written proof of at least ten percent representation of the public employees within the unit, together with a choice for any public employee to designate that he does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot and neither of the three or more choices receives a majority vote of the public employees within the bargaining unit, a run-off

election shall be held. The run-off ballot shall contain the two choices which received the largest and second-largest number of votes. No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement. Any agreement which contains a provision for automatic renewal or extension of the agreement shall not be a valid agreement; nor shall any agreement be valid if it provides for a term of existence for more than three years. [1975 1st ex.s. c 296 § 18; 1967 ex.s. c 108 § 7.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

41.56.080 Certification of bargaining representative—Scope of representation. The bargaining representative which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent, all the public employees within the unit without regard to membership in said bargaining representative: PROVIDED, That any public employee at any time may present his grievance to the public employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, if the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect, and if the exclusive bargaining representative has been given reasonable opportunity to be present at any initial meeting called for the resolution of such grievance. [1975 1st ex.s. c 296 § 19; 1967 ex.s. c 108 § 8.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

41.56.090 Rules and regulations. The commission shall promulgate, revise or rescind such rules and regulations as it may deem necessary or appropriate to administer the provisions of this chapter in conformity with the intent and purpose of this chapter and consistent with the best standards of labor-management relations. [1975 1st ex.s. c 296 § 20; 1967 ex.s. c 108 § 9.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

41.56.100 Authority and duty of employer to engage in collective bargaining—Limitations—Mediation, grievance procedures upon failure to agree. A public employer shall have the authority to engage in collective bargaining with the exclusive bargaining representative and no public employer shall refuse to engage in collective bargaining with the exclusive bargaining representative: PROVIDED, That nothing contained herein shall require any public employer to bargain collectively with any bargaining representative concerning any matter which by ordinance, resolution or charter of said public employer has been delegated to any civil service commission or personnel board similar in scope, structure and authority to the board created by chapter 41.06 RCW. Upon the failure of the public employer and the exclusive bargaining representative to conclude a collective bargaining agreement, any matter in dispute may be submitted by either party to the commission. If a public employer implements its last and best offer where

there is no contract settlement, allegations that either party is violating the terms of the implemented offer shall be subject to grievance arbitration procedures if and as such procedures are set forth in the implemented offer, or, if not in the implemented offer, if and as such procedures are set forth in the parties' last contract. [1989 c 45 § 1; 1975 1st ex.s. c 296 § 21; 1967 ex.s. c 108 § 10.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

Arbitration of labor disputes: Chapter 49.08 RCW.

41.56.110 Dues—Deduction from pay. Upon the written authorization of any public employee within the bargaining unit and after the certification or recognition of such bargaining representative, the public employer shall deduct from the pay of such public employee the monthly amount of dues as certified by the secretary of the exclusive bargaining representative and shall transmit the same to the treasurer of the exclusive bargaining representative. [1973 c 59 § 1; 1967 ex.s. c 108 § 11.]

41.56.120 Right to strike not granted. Nothing contained in this chapter shall permit or grant any public employee the right to strike or refuse to perform his official duties. [1967 ex.s. c 108 § 12.]

41.56.122 Collective bargaining agreements—Authorized provisions. A collective bargaining agreement may:

(1) Contain union security provisions: PROVIDED, That nothing in this section shall authorize a closed shop provision: PROVIDED FURTHER, That agreements involving union security provisions must safeguard the right of nonassociation of public employees based on bona fide religious tenets or teachings of a church or religious body of which such public employee is a member. Such public employee shall pay an amount of money equivalent to regular union dues and initiation fee to a nonreligious charity or to another charitable organization mutually agreed upon by the public employee affected and the bargaining representative to which such public employee would otherwise pay the dues and initiation fee. The public employee shall furnish written proof that such payment has been made. If the public employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. When there is a conflict between any collective bargaining agreement reached by a public employer and a bargaining representative on a union security provision and any charter, ordinance, rule, or regulation adopted by the public employer or its agents, including but not limited to, a civil service commission, the terms of the collective bargaining agreement shall prevail.

(2) Provide for binding arbitration of a labor dispute arising from the application or the interpretation of the matters contained in a collective bargaining agreement. [1975 1st ex.s. c 296 § 22; 1973 c 59 § 2.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

41.56.123 Collective bargaining agreements—Effect of termination—Application of section. (1) After the termination date of a collective bargaining agreement, all of the terms and conditions specified in the collective bar-

gaining agreement shall remain in effect until the effective date of a subsequent agreement, not to exceed one year from the termination date stated in the agreement. Thereafter, the employer may unilaterally implement according to law.

(2) This section does not apply to provisions of a collective bargaining agreement which both parties agree to exclude from the provisions of subsection (1) of this section and to provisions within the collective bargaining agreement with separate and specific termination dates.

(3) This section shall not apply to the following:

(a) Bargaining units covered by RCW 41.56.430 et seq. for factfinding and interest arbitration;

(b) Collective bargaining agreements authorized by chapter 53.18 RCW; or

(c) Collective bargaining agreements authorized by chapter 54.04 RCW.

(4) This section shall not apply to collective bargaining agreements in effect or being bargained on July 23, 1989. [1993 c 398 § 4; 1989 c 46 § 1.]

Effective dates—1993 c 398: See note following RCW 41.56.030.

41.56.125 Arbitrators—Selection—Additional method. In addition to any other method for selecting arbitrators, the parties may request the public employment relations commission to, and the commission shall, appoint a qualified person who may be an employee of the commission to act as an arbitrator to assist in the resolution of a labor dispute between such public employer and such bargaining representative arising from the application of the matters contained in a collective bargaining agreement. The arbitrator shall conduct such arbitration of such dispute in a manner as provided for in the collective bargaining agreement: **PROVIDED**, That the commission shall not collect any fees or charges from such public employer or such bargaining representative for services performed by the commission under the provisions of this chapter: **PROVIDED FURTHER**, That the provisions of chapter 49.08 RCW shall have no application to this chapter. [1975 1st ex.s. 296 § 23; 1973 c 59 § 3.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

41.56.130 Rules and regulations of Washington state personnel resources board—Mandatory subjects. See RCW 41.06.150.

41.56.140 Unfair labor practices for public employer enumerated. It shall be an unfair labor practice for a public employer:

(1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

(2) To control, dominate or interfere with a bargaining representative;

(3) To discriminate against a public employee who has filed an unfair labor practice charge;

(4) To refuse to engage in collective bargaining. [1969 ex.s. c 215 § 1.]

41.56.150 Unfair labor practices for bargaining representative enumerated. It shall be an unfair labor practice for a bargaining representative:

(1) To interfere with, restrain, or coerce public employees in the exercise of their rights guaranteed by this chapter;

(2) To induce the public employer to commit an unfair labor practice;

(3) To discriminate against a public employee who has filed an unfair labor practice charge;

(4) To refuse to engage in collective bargaining. [1969 ex.s. c 215 § 2.]

41.56.160 Commission to prevent unfair labor practices and issue remedial orders and cease and desist orders. (1) The commission is empowered and directed to prevent any unfair labor practice and to issue appropriate remedial orders: **PROVIDED**, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected or impaired by any means of adjustment, mediation or conciliation in labor disputes that have been or may hereafter be established by law.

(2) If the commission determines that any person has engaged in or is engaging in an unfair labor practice, the commission shall issue and cause to be served upon the person an order requiring the person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and the reinstatement of employees.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or in which the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief. [1994 c 58 § 1; 1983 c 58 § 1; 1975 1st ex.s. c 296 § 24; 1969 ex.s. c 215 § 3.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

41.56.165 Applicability of administrative procedure act to commission action. Actions taken by or on behalf of the commission shall be pursuant to chapter 34.05 RCW, or rules adopted in accordance with chapter 34.05 RCW, and the right of judicial review provided by chapter 34.05 RCW shall be applicable to all such actions and rules. [1994 c 58 § 2.]

41.56.201 Employees of institutions of higher education—Option to have relationship and obligations governed by chapter. (1) At any time after July 1, 1993, an institution of higher education and the exclusive bargaining representative of a bargaining unit of employees classified under chapter *28B.16 or 41.06 RCW as appropriate may exercise their option to have their relationship and corresponding obligations governed entirely by the provisions of this chapter by complying with the following:

(a) The parties will file notice of the parties' intent to be so governed, subject to the mutual adoption of a collective bargaining agreement permitted by this section recognizing the notice of intent. The parties shall provide the notice to the **higher education personnel board or its successor and the commission;

(b) During the negotiation of an initial contract between the parties under this chapter, the parties' scope of bargaining shall be governed by this chapter and any disputes arising out of the collective bargaining rights and obligations under this subsection shall be determined by the commission. If the commission finds that the parties are at impasse, the notice filed under (a) of this subsection shall be void and have no effect; and

(c) On the first day of the month following the month during which the institution of higher education and the exclusive bargaining representative provide notice to the **higher education personnel board or its successor and the commission that they have executed an initial collective bargaining agreement recognizing the notice of intent filed under (a) of this subsection, chapter *28B.16 or 41.06 RCW as appropriate shall cease to apply to all employees in the bargaining unit covered by the agreement.

(2) All collective bargaining rights and obligations concerning relations between an institution of higher education and the exclusive bargaining representative of its employees who have agreed to exercise the option permitted by this section shall be determined under this chapter, subject to the following:

(a) The commission shall recognize, in its current form, the bargaining unit as certified by the **higher education personnel board or its successor and the limitations on collective bargaining contained in RCW 41.56.100 shall not apply to that bargaining unit.

(b) If, on the date of filing the notice under subsection (1)(a) of this section, there is a union shop authorized for the bargaining unit under rules adopted by the **higher education personnel board or its successor, the union shop requirement shall continue in effect for the bargaining unit and shall be deemed incorporated into the collective bargaining agreement applicable to the bargaining unit.

(c) Salary increases negotiated for the employees in the bargaining unit shall be subject to the following:

(i) Salary increases shall continue to be appropriated by the legislature. The exclusive bargaining representative shall meet before a legislative session with the governor or governor's designee and the representative of the institution of higher education concerning the total dollar amount for salary increases and health care contributions that will be contained in the appropriations proposed by the governor under RCW 43.88.060;

(ii) The collective bargaining agreements may provide for salary increases from local efficiency savings that are different from or that exceed the amount or percentage for salary increases provided by the legislature in the omnibus appropriations act for the institution of higher education or allocated to the board of trustees by the state board for community and technical colleges, but the base for salary increases provided by the legislature under (c)(i) of this subsection shall include only those amounts appropriated by the legislature, and the base shall not include any additional salary increases provided under this subsection (2)(c)(ii);

(iii) Any provisions of the collective bargaining agreements pertaining to salary increases provided under (c)(i) of this subsection shall be subject to modification by the legislature. If any provision of a salary increase provided under (c)(i) of this subsection is changed by subsequent modification of the appropriations act by the legislature, both

parties shall immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement for the modified provision.

(3) Nothing in this section may be construed to permit an institution of higher education to bargain collectively with an exclusive bargaining representative concerning any matter covered by: (a) Chapter 41.05 RCW, except for the related cost or dollar contributions or additional or supplemental benefits as permitted by chapter 492, Laws of 1993; or (b) chapter 41.32 or 41.40 RCW. [1993 c 379 § 304.]

Reviser's note: *(1) Chapter 28B.16 RCW was repealed by 1993 c 281, with the exception of RCW 28B.16.015 and 28B.16.240, which was recodified as RCW 41.06.382.

** (2) Powers, duties, and functions of the higher education personnel board and the state personnel board were transferred to the Washington personnel resources board by 1993 c 281, effective July 1, 1994.

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

41.56.210 Department to prevent unfair labor practices and issue remedial orders—Application to state civil service employees. See RCW 41.06.340.

41.56.220 Right of employee representing bargaining unit to be absent from employment during legislative session—Replacement. Any public employee who represents fifty percent or more of a bargaining unit or who represents on a state-wide basis a group of five or more bargaining units shall have the right to absent himself from his employment without pay and without suffering any discrimination in his future employment and without losing benefits incident to his employment while representing his bargaining unit at the legislature of the state of Washington during any regular or special session thereof: **PROVIDED,** That such employee is replaced by his bargaining unit with an employee who shall be paid by the employer and who shall be qualified to perform the duties and obligations of the absent member in accordance with the rules of the civil service or other standards established by his employer for such absent employee. [1980 c 87 § 17; 1969 ex.s. c 174 § 1.]

41.56.430 Uniformed personnel—Legislative declaration. The intent and purpose of *this 1973 amendatory act is to recognize that there exists a public policy in the state of Washington against strikes by uniformed personnel as a means of settling their labor disputes; that the uninterrupted and dedicated service of these classes of employees is vital to the welfare and public safety of the state of Washington; that to promote such dedicated and uninterrupted public service there should exist an effective and adequate alternative means of settling disputes. [1973 c 131 § 1.]

***Reviser's note:** "this 1973 amendatory act" [1973 c 131] consists of RCW 41.56.430 through 41.56.490, 41.56.905, and 41.56.910, and the 1973 c 131 amendments to RCW 41.56.030 and 41.56.420.

Construction—Severability—1973 c 131: See RCW 41.56.905, 41.56.910.

41.56.440 Uniformed personnel—Negotiations—Declaration of an impasse—Appointment of mediator. Negotiations between a public employer and the bargaining

representative in a unit of uniformed personnel shall be commenced at least five months prior to the submission of the budget to the legislative body of the public employer. If no agreement has been reached sixty days after the commencement of such negotiations then, at any time thereafter, either party may declare that an impasse exists and may submit the dispute to the commission for mediation, with or without the concurrence of the other party. The commission shall appoint a mediator, who shall forthwith meet with the representatives of the parties, either jointly or separately, and shall take such other steps as he or she may deem appropriate in order to persuade the parties to resolve their differences and effect an agreement: PROVIDED, That a mediator does not have a power of compulsion. [1979 ex.s. c 184 § 1; 1975-'76 2nd ex.s. c 14 § 1; 1975 1st ex.s. c 296 § 28; 1973 c 131 § 3.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

Construction—Severability—1973 c 131: See RCW 41.56.905, 41.56.910.

41.56.450 Uniformed personnel—Interest arbitration panel—Powers and duties—Hearings—Findings and determination. If an agreement has not been reached following a reasonable period of negotiations and mediation, and the executive director, upon the recommendation of the assigned mediator, finds that the parties remain at impasse, then an interest arbitration panel shall be created to resolve the dispute. The issues for determination by the arbitration panel shall be limited to the issues certified by the executive director. Within seven days following the issuance of the determination of the executive director, each party shall name one person to serve as its arbitrator on the arbitration panel. The two members so appointed shall meet within seven days following the appointment of the later appointed member to attempt to choose a third member to act as the neutral chairman of the arbitration panel. Upon the failure of the arbitrators to select a neutral chairman within seven days, the two appointed members shall use one of the two following options in the appointment of the third member, who shall act as chairman of the panel: (1) By mutual consent, the two appointed members may jointly request the commission, and the commission shall appoint a third member within two days of such request. Costs of each party's appointee shall be borne by each party respectively; other costs of the arbitration proceedings shall be borne by the commission; or (2) either party may apply to the commission, the federal mediation and conciliation service, or the American Arbitration Association to provide a list of five qualified arbitrators from which the neutral chairman shall be chosen. Each party shall pay the fees and expenses of its arbitrator, and the fees and expenses of the neutral chairman shall be shared equally between the parties.

The arbitration panel so constituted shall promptly establish a date, time, and place for a hearing and shall provide reasonable notice thereof to the parties to the dispute. A hearing, which shall be informal, shall be held, and each party shall have the opportunity to present evidence and make argument. No member of the arbitration panel may present the case for a party to the proceedings. The rules of evidence prevailing in judicial proceedings may be considered, but are not binding, and any oral testimony or

documentary evidence or other data deemed relevant by the chairman of the arbitration panel may be received in evidence. A recording of the proceedings shall be taken. The arbitration panel has the power to administer oaths, require the attendance of witnesses, and require the production of such books, papers, contracts, agreements, and documents as may be deemed by the panel to be material to a just determination of the issues in dispute. If any person refuses to obey a subpoena issued by the arbitration panel, or refuses to be sworn or to make an affirmation to testify, or any witness, party, or attorney for a party is guilty of any contempt while in attendance at any hearing held hereunder, the arbitration panel may invoke the jurisdiction of the superior court in the county where the labor dispute exists, and the court has jurisdiction to issue an appropriate order. Any failure to obey the order may be punished by the court as a contempt thereof. The hearing conducted by the arbitration panel shall be concluded within twenty-five days following the selection or designation of the neutral chairman of the arbitration panel, unless the parties agree to a longer period.

The neutral chairman shall consult with the other members of the arbitration panel, and, within thirty days following the conclusion of the hearing, the neutral chairman shall make written findings of fact and a written determination of the issues in dispute, based on the evidence presented. A copy thereof shall be served on the commission, on each of the other members of the arbitration panel, and on each of the parties to the dispute. That determination shall be final and binding upon both parties, subject to review by the superior court upon the application of either party solely upon the question of whether the decision of the panel was arbitrary or capricious. [1983 c 287 § 2; 1979 ex.s. c 184 § 2; 1975-'76 2nd ex.s. c 14 § 2; 1975 1st ex.s. c 296 § 29; 1973 c 131 § 4.]

Severability—1983 c 287: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 287 § 6.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

Construction—Severability—1973 c 131: See RCW 41.56.905, 41.56.910.

41.56.452 Interest arbitration panel a state agency.

An interest arbitration panel created pursuant to RCW 41.56.450, in the performance of its duties under chapter 41.56 RCW, exercises a state function and is, for the purposes of this chapter, a state agency. Chapter 34.05 RCW does not apply to proceedings before an interest arbitration panel under this chapter. [1983 c 287 § 3; 1980 c 87 § 19.]

Severability—1983 c 287: See note following RCW 41.56.450.

41.56.465 Uniformed personnel—Interest arbitration panel—Determinations—Factors to be considered.

(1) In making its determination, the panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, it shall take into consideration the following factors:

- (a) The constitutional and statutory authority of the employer;
- (b) Stipulations of the parties;

(c)(i) For employees listed in RCW 41.56.030(7)(a) through (d), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;

(ii) For employees listed in RCW 41.56.030(7)(e) through (h), comparison of the wages, hours, and conditions of employment of personnel involved in the proceedings with the wages, hours, and conditions of employment of like personnel of public fire departments of similar size on the west coast of the United States. However, when an adequate number of comparable employers exists within the state of Washington, other west coast employers may not be considered;

(d) The average consumer prices for goods and services, commonly known as the cost of living;

(e) Changes in any of the circumstances under (a) through (d) of this subsection during the pendency of the proceedings; and

(f) Such other factors, not confined to the factors under (a) through (e) of this subsection, that are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. For those employees listed in RCW 41.56.030(7)(a) who are employed by the governing body of a city or town with a population of less than fifteen thousand, or a county with a population of less than seventy thousand, consideration must also be given to regional differences in the cost of living.

(2) Subsection (1)(c) of this section may not be construed to authorize the panel to require the employer to pay, directly or indirectly, the increased employee contributions resulting from chapter 502, Laws of 1993 or chapter 517, Laws of 1993 as required under chapter 41.26 RCW. [1995 c 273 § 2; 1993 c 398 § 3.]

Effective date—1995 c 273: See note following RCW 41.56.030.

Effective dates—1993 c 398: See note following RCW 41.56.030.

41.56.470 Uniformed personnel—Arbitration panel—Rights of parties. During the pendency of the proceedings before the arbitration panel, existing wages, hours and other conditions of employment shall not be changed by action of either party without the consent of the other but a party may so consent without prejudice to his rights or position under *this 1973 amendatory act. [1973 c 131 § 6.]

***Reviser's note:** "this 1973 amendatory act," see note following RCW 41.56.430.

Construction—Severability—1973 c 131: See RCW 41.56.905, 41.56.910.

41.56.475 Uniformed personnel—Application of chapter to Washington state patrol—Mediation and arbitration. In addition to the classes of employees listed in RCW 41.56.030(7), the provisions of RCW 41.56.430 through 41.56.452 and 41.56.470, 41.56.480, and 41.56.490 also apply to Washington state patrol officers appointed under RCW 43.43.020 as provided in this section, subject to the following:

(1) The mediator shall not consider wages and wage-related matters.

(2) In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and, as additional standards or guidelines to aid it in reaching a decision, shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) Comparison of the hours and conditions of employment of personnel involved in the proceedings with the hours and conditions of employment of like personnel of like employers of similar size on the west coast of the United States;

(d) Changes in any of the foregoing circumstances during the pendency of the proceedings; and

(e) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of hours and conditions of employment. [1993 c 351 § 1; 1988 c 110 § 2; 1987 c 135 § 3.]

Severability—1987 c 135: See note following RCW 41.56.020.

41.56.480 Uniformed personnel—Refusal to submit to procedures—Invoking jurisdiction of superior court—Contempt. If the representative of either or both the uniformed personnel and the public employer refuse to submit to the procedures set forth in RCW 41.56.440 and 41.56.450, the parties, or the commission on its own motion, may invoke the jurisdiction of the superior court for the county in which the labor dispute exists and such court shall have jurisdiction to issue an appropriate order. A failure to obey such order may be punished by the court as a contempt thereof. A decision of the arbitration panel shall be final and binding on the parties, and may be enforced at the instance of either party, the arbitration panel or the commission in the superior court for the county where the dispute arose. [1975 1st ex.s. c 296 § 30; 1973 c 131 § 7.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

Construction—Severability—1973 c 131: See RCW 41.56.905, 41.56.910.

41.56.490 Uniformed employees—Strikes prohibited—Violations—Contempt of court. The right of uniformed employees to engage in any strike, work slowdown, or stoppage is not granted. An organization recognized as the bargaining representative of uniformed employees subject to this chapter that willfully disobeys a lawful order of enforcement by a superior court pursuant to RCW 41.56.480 and 41.56.490, or willfully offers resistance to such order, whether by strike or otherwise, is in contempt of court as provided in chapter 7.21 RCW. An employer that willfully disobeys a lawful order of enforcement by a superior court pursuant to RCW 41.56.480 or willfully offers resistance to such order is in contempt of court as provided in chapter 7.21 RCW. [1989 c 373 § 24; 1973 c 131 § 8.]

Severability—1989 c 373: See RCW 7.21.900.

Construction—Severability—1973 c 131: See RCW 41.56.905, 41.56.910.

41.56.492 Application of uniformed personnel collective bargaining provisions to employees of public passenger transportation systems—Conditions. In

addition to the classes of employees listed in RCW 41.56.030(7), the provisions of RCW 41.56.430 through 41.56.452, 41.56.470, 41.56.480, and 41.56.490 shall also be applicable to the employees of a public passenger transportation system of a metropolitan municipal corporation, county transportation authority, public transportation benefit area, or city public passenger transportation system, subject to the following:

(1) Negotiations between the public employer and the bargaining representative may commence at any time agreed to by the parties. If no agreement has been reached ninety days after commencement of negotiations, either party may demand that the issues in disagreement be submitted to a mediator. The services of the mediator shall be provided by the commission without cost to the parties, but nothing in this section or RCW 41.56.440 shall be construed to prohibit the public employer and the bargaining representative from agreeing to substitute at their own expense some other mediator or mediation procedure; and

(2) If an agreement has not been reached following a reasonable period of negotiations and mediation, and the mediator finds that the parties remain at impasse, either party may demand that the issues in disagreement be submitted to an arbitration panel for a binding and final determination. In making its determination, the arbitration panel shall be mindful of the legislative purpose enumerated in RCW 41.56.430 and as additional standards or guidelines to aid in reaching a decision, shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) Compensation package comparisons, economic indices, fiscal constraints, and similar factors determined by the arbitration panel to be pertinent to the case; and

(d) Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours, and conditions of employment. [1993 c 473 § 1.]

41.56.900 Short title—Effective date—1967 ex.s. c 108. RCW 41.56.010 through 41.56.900 and 41.06.150 shall be known as the "Public Employees' Collective Bargaining Act" and shall take effect on July 1, 1967. [1967 ex.s. c 108 § 14.]

41.56.905 Uniformed personnel—Provisions additional—Liberal construction. The provisions of this chapter are intended to be additional to other remedies and shall be liberally construed to accomplish their purpose. Except as provided in RCW 53.18.015, if any provision of this chapter conflicts with any other statute, ordinance, rule or regulation of any public employer, the provisions of this chapter shall control. [1983 c 287 § 5; 1973 c 131 § 10.]

Severability—1983 c 287: See note following RCW 41.56.450.

41.56.910 Severability—1973 c 131. If any provisions of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 c 131 § 11.]

41.56.950 Retroactive date in collective bargaining agreements allowable, when. Whenever a collective bargaining agreement between a public employer and a bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the same parties, the effective date of such collective bargaining agreement may be the day after the termination date of the previous collective bargaining agreement and all benefits included in the new collective bargaining agreement including wage increases may accrue beginning with such effective date as established by this section. [1971 ex.s. c 187 § 1.]

Chapter 41.58

PUBLIC EMPLOYMENT LABOR RELATIONS

Sections

41.58.005	Intent—Construction
41.58.010	Public employment relations commission—Created—Membership—Terms—Vacancies—Quorum—Report.
41.58.015	Compensation and travel expenses of members—Executive director—Employees.
41.58.020	Powers and duties of commission.
41.58.030	Office.
41.58.040	Duties of employers and employees.
41.58.050	Rules and regulations.
41.58.060	State ferry system—Chapter 47.64 RCW to govern.
41.58.800	Transfer of employees to commission.
41.58.801	Transfer of reports, documents, records, property, etc., funds, appropriations, etc.
41.58.802	Procedure for transfer of budgeted fund or equipment.
41.58.803	Continuation and savings.
41.58.900	Effective dates—1975-'76 2nd ex.s. c 5.
41.58.901	Effective date—1975 1st ex.s. c 296 §§ 4, 6, and 8 through 39.

41.58.005 Intent—Construction. (1) It is the intent of the legislature by the adoption of *this 1975 amendatory act to provide, in the area of public employment, for the more uniform and impartial (a) adjustment and settlement of complaints, grievances, and disputes arising out of employer-employee relations and, (b) selection and certification of bargaining representatives by transferring jurisdiction of such matters to the public employment relations commission from other boards and commissions. It is further the intent of the legislature, by such transfer, to achieve more efficient and expert administration of public labor relations administration and to thereby ensure the public of quality public services.

(2) Nothing contained in *this 1975 amendatory act shall be construed to alter any existing collective bargaining unit or the provisions of any existing bargaining agreement.

(3) Nothing contained in *this 1975 amendatory act shall be construed to alter any power or authority regarding the scope of collective bargaining in the employment areas affected by *this 1975 amendatory act, but *this amendatory act shall be construed as transferring existing jurisdiction and authority to the public employment relations commission.

(4) Nothing contained in *this 1975 amendatory act shall be construed to prohibit the consideration or adjustment of complaints or grievances by the public employer. [1975 1st ex.s. c 296 § 1.]

***Reviser's note:** "this 1975 amendatory act" or "this amendatory act" [1975 1st ex.s. c 296] consists of chapter 41.58 RCW, amendments to RCW 28A.72.020, 28A.72.060, 28A.72.080, 28A.72.100, 28B.52.020, 28B.52.060, 28B.52.080, 41.56.030, 41.56.050, 41.56.060, 41.56.070, 41.56.080, 41.56.090, 41.56.100, 41.56.122, 41.56.125, 41.56.160, 41.56.170,

41.56.180, 41.56.190, 41.56.440, 41.56.450, 41.56.480, 43.22.260, 43.22.270, 47.64.010, 47.64.030, 47.64.040, 49.08.010, 49.08.020, and 53.18.030, the repeal of RCW 47.64.020, and additions to chapter 41.58 RCW by 1975-'76 2nd ex.s. c 5. RCW 28A.72.020, 28A.72.060, 28A.72.080, and 28A.72.100 were repealed by 1975-'76 2nd ex.s. c 5 § 7. See Table of Disposition of Former RCW Sections, Volume 0.

41.58.010 Public employment relations commission—Created—Membership—Terms—Vacancies—Quorum—Report. (1) There is hereby created the public employment relations commission (hereafter called the "commission") to administer the provisions of this chapter. The commission shall consist of three members who shall be citizens appointed by the governor by and with the advice and consent of the senate. One of the original members shall be appointed for a term of three years, one for a term of four years, and one for a term of five years. Their successors shall be appointed for terms of five years each, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he succeeds. Commission members shall be eligible for reappointment. The governor shall designate one member to serve as chairman of the commission. Any member of the commission may be removed by the governor, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause. Commission members shall not be eligible for state retirement under chapter 41.40 RCW by virtue of their service on the commission.

(2) In making citizen member appointments initially, and subsequently thereafter, the governor shall be cognizant of the desirability of appointing persons knowledgeable in the area of labor relations in the state.

(3) A vacancy in the commission shall not impair the right of the remaining members to exercise all of the powers of the commission, and two members of the commission shall, at all times, constitute a quorum of the commission.

(4) The commission shall at the close of each fiscal year make a report in writing to the legislature and to the governor stating the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the commission, and an account of all moneys it has disbursed. [1981 c 338 § 21; 1975-'76 2nd ex.s. c 5 § 1.]

41.58.015 Compensation and travel expenses of members—Executive director—Employees. (1) Each member of the commission shall be compensated in accordance with RCW 43.03.250. Members of the commission shall also be reimbursed for travel expenses incurred in the discharge of their official duties on the same basis as is provided in RCW 43.03.050 and 43.03.060.

(2) The commission shall appoint an executive director whose annual salary shall be determined under the provisions of RCW 43.03.028. The executive director shall perform such duties and have such powers as the commission shall prescribe in order to implement and enforce the provisions of this chapter. In addition to the performance of administrative duties, the commission may delegate to the executive director authority with respect to, but not limited to, representation proceedings, unfair labor practice proceedings, mediation of labor disputes, arbitration of disputes concerning the interpretation or application of a collective bargaining

agreement, and, in certain cases, fact-finding or arbitration of disputes concerning the terms of a collective bargaining agreement. Such delegation shall not eliminate a party's right of appeal to the commission. The executive director, with such assistance as may be provided by the attorney general and such additional legal assistance consistent with chapter 43.10 RCW, shall have authority on behalf of the commission, when necessary to carry out or enforce any action or decision of the commission, to petition any court of competent jurisdiction for an order requiring compliance with the action or decision.

(3) The commission shall employ such employees as it may from time to time find necessary for the proper performance of its duties, consistent with the provisions of this chapter.

(4) The payment of all of the expenses of the commission, including travel expenses incurred by the members or employees of the commission under its orders, shall be subject to the provisions of RCW 43.03.050 and 43.03.060. [1984 c 287 § 71; 1979 ex.s. c 146 § 2; 1975-'76 2nd ex.s. c 34 § 91; 1975-'76 2nd ex.s. c 5 § 2.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

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

41.58.020 Powers and duties of commission. (1) It shall be the duty of the commission, in order to prevent or minimize interruptions growing out of labor disputes, to assist employers and employees to settle such disputes through mediation and fact-finding.

(2) The commission, through the director, may proffer its services in any labor dispute arising under a collective bargaining statute administered by the commission, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial disruption to the public welfare.

(3) If the director is not able to bring the parties to agreement by mediation within a reasonable time, the director shall seek to induce the parties to voluntarily seek other means of settling the dispute without resort to strike or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the director shall not be deemed a violation of any duty or obligation imposed by this chapter.

(4) Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective bargaining agreement. The commission is directed to make its mediation and fact-finding services available in the settlement of such grievance disputes only as a last resort. [1993 c 379 § 303; 1975 1st ex.s. c 296 § 4.]

Intent—Severability—Effective date—1993 c 379: See notes following RCW 28B.10.029.

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

41.58.030 Office. The principal office of the commission shall be in the city of Olympia, but it may meet and

exercise any or all of its powers at any other place in the state. [1975 1st ex.s. c 296 § 5.]

41.58.040 Duties of employers and employees. In order to prevent or minimize disruptions to the public welfare growing out of labor disputes, employers and employees and their representatives shall:

(1) Exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) Whenever a dispute arises over the terms or application of a collective bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) In case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the commission under this chapter for the purpose of aiding in a settlement of the dispute. [1975 1st ex.s. c 296 § 6.]

Effective date—1975 1st ex.s. c 296: See RCW 41.58.901.

41.58.050 Rules and regulations. The board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the administrative procedure act, chapter 34.05 RCW, such rules and regulations as may be necessary to carry out the provisions of this chapter. [1975 1st ex.s. c 296 § 7.]

41.58.060 State ferry system—Chapter 47.64 RCW to govern. For any matter concerning the state ferry system and employee relations, collective bargaining, or labor disputes or stoppages, the provisions of chapter 47.64 RCW shall govern. [1983 c 15 § 22.]

Severability—1983 c 15: See RCW 47.64.910.

41.58.800 Transfer of employees to commission. All employees of the department of labor and industries classified under the provisions of chapter 41.06 RCW, the state civil service law, whose positions are entirely concerned with functions transferred to the commission by chapter 296, Laws of 1975 1st ex. sess. shall be transferred to the jurisdiction of the commission. [1975-'76 2nd ex.s. c 5 § 3.]

41.58.801 Transfer of reports, documents, records, property, etc., funds, appropriations, etc. All reports, documents, surveys, books, records, files, papers, or other writings in the possession of the marine employee commission, the office of the superintendent of public instruction, the *state board for community college education, and the department of labor and industries and pertaining to the functions transferred to the commission by chapter 296, Laws of 1975 1st ex. sess. shall by January 1, 1976, be delivered to the custody of the commission. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed in carrying out the functions transferred by chapter 296, Laws of 1975 1st ex. sess. shall by January 1, 1976, be transferred to the commission.

Any appropriation or portion thereof remaining as of January 1, 1976, and which is made to an agency for the purpose of carrying out functions transferred from such agency pursuant to chapter 296, Laws of 1975 1st ex. sess., shall, by January 1, 1976, be transferred and credited to the commission for the purpose of carrying out such functions. This paragraph shall not affect the transfer of moneys prior to January 1, 1976, pursuant to section 67, chapter 269, Laws of 1975 1st ex. sess.

Whenever any question arises as to the transfer of any funds, including unexpended balances within any accounts, books, documents, records, papers, files, equipment, or any other tangible property used or held in the exercise of the performance of the functions transferred under chapter 296, Laws of 1975 1st ex. sess., the director of financial management or his successor shall make a determination as to the proper allocation and certify the same to the state agencies concerned. [1979 c 151 § 66; 1975-'76 2nd ex.s. c 5 § 4.]

*Reviser's note: The state board for community college education was renamed the state board for community and technical colleges by 1991 c 238 § 30.

41.58.802 Procedure for transfer of budgeted fund or equipment. Where transfers of budgeted funds or equipment are required under *this act, the director of financial management shall certify such transfers to the agencies affected, the state auditor and the state treasurer all of whom shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with such certification. [1979 c 151 § 67; 1975-'76 2nd ex.s. c 5 § 5.]

*Reviser's note: "this act" [1975-'76 2nd ex.s. c 5], see note following RCW 41.58.005.

41.58.803 Continuation and savings. On January 1, 1976, all rules and regulations, and all business pending before the agencies or divisions thereof from whom functions are transferred pursuant to chapter 296, Laws of 1975 1st ex. sess. and which pertain to such functions shall be continued and acted upon by the commission. All existing contracts and obligations pertaining to such functions shall remain in full force and effect, but shall be performed by the commission in lieu of the agency from whom the functions are transferred. The transfer of any functions shall not affect the validity of any act performed by such agency or division thereof or any officer or employee thereof prior to the effective date of the transferral of such functions.

Notwithstanding any other provisions of *this act, contracts or agreements are authorized between the commission and other agencies with respect to functions transferred from other agencies pursuant to chapter 296, Laws of 1975 1st ex. sess. Such contract or agreement may provide for an employee or employees of such other agencies or other person or persons to continue to provide services relating to pending business which is transferred to the commission as of January 1, 1976, until such pending business is completed. [1975-'76 2nd ex.s. c 5 § 6.]

*Reviser's note: "this act" [1975-'76 2nd ex.s. c 5], see note following RCW 41.58.005.

41.58.900 Effective dates—1975-'76 2nd ex.s. c 5. This act is necessary for the immediate preservation of the

public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on September 8, 1975, except for the provisions of sections 6 and 7 which shall be effective on January 1, 1976. [1975-'76 2nd ex.s. c 5 § 9.]

41.58.901 Effective date—1975 1st ex.s. c 296 §§ 4, 6, and 8 through 39. Sections 4, 6, and 8 through 39 of chapter 296, Laws of 1975 1st ex. sess. shall not be effective until January 1, 1976. [1975-'76 2nd ex.s. c 5 § 8.]

Chapter 41.59

EDUCATIONAL EMPLOYMENT RELATIONS ACT

Sections

41.59.010	Purpose.
41.59.020	Definitions.
41.59.060	Employee rights enumerated—Fees and dues, deduction from pay.
41.59.070	Election to ascertain exclusive bargaining representative, when—Run-off election—Decertification election.
41.59.080	Determination of bargaining unit—Standards.
41.59.090	Certification of exclusive bargaining representative—Scope of representation.
41.59.100	Union security provisions—Scope—Agency shop provision, collection of dues or fees.
41.59.110	Commission, rules and regulations of—Federal precedents as standard.
41.59.120	Resolving impasses in collective bargaining—Mediation—Fact-finding with recommendations—Other.
41.59.130	Binding arbitration procedures authorized.
41.59.140	Unfair labor practices for employer, employee organization, enumerated.
41.59.150	Commission to prevent unfair labor practices—Scope.
41.59.160	Applicability of administrative procedure act provisions to commission action.
41.59.170	Effective date of certain agreements—Increased benefits during agreement authorized, when.
41.59.180	Employees in specialized job category—Exclusion.
41.59.900	Short title.
41.59.910	Construction of chapter—Effect on existing agreements—Collective bargaining agreement prevails where conflict.
41.59.920	Construction of chapter—Employee's rights preserved.
41.59.930	Construction of chapter—Employer's responsibilities and rights preserved.
41.59.935	Construction of chapter—Certain agreements subject to RCW 28A.150.410 and 28A.400.200.
41.59.940	Effective date—1975 1st ex.s. c 288.
41.59.950	Severability—1975 1st ex.s. c 288.

Reviser's note: Phrase "the commission" is used throughout chapter 41.59 RCW; 1975 1st ex.s. c 288 § 4, wherein the commission was created, was vetoed by the governor; reference to the proviso in RCW 41.59.020(3) below, together with amendments and repeals in 1975-'76 2nd ex.s. c 5 (codified in chapter 41.58 RCW) suggests commission to be that created in RCW 41.58.010.

41.59.010 Purpose. It is the purpose of this chapter to prescribe certain rights and obligations of the educational employees of the school districts of the state of Washington, and to establish procedures governing the relationship between such employees and their employers which are designed to meet the special requirements and needs of public employment in education. [1975 1st ex.s. c 288 § 2.]

41.59.020 Definitions. As used in this chapter:

(1) The term "employee organization" means any organization, union, association, agency, committee, council,

or group of any kind in which employees participate, and which exists for the purpose, in whole or in part, of collective bargaining with employers.

(2) The term "collective bargaining" or "bargaining" means the performance of the mutual obligation of the representatives of the employer and the exclusive bargaining representative to meet at reasonable times in light of the time limitations of the budget-making process, and to bargain in good faith in an effort to reach agreement with respect to the wages, hours, and terms and conditions of employment: PROVIDED, That prior law, practice or interpretation shall be neither restrictive, expansive, nor determinative with respect to the scope of bargaining. A written contract incorporating any agreements reached shall be executed if requested by either party. The obligation to bargain does not compel either party to agree to a proposal or to make a concession.

In the event of a dispute between an employer and an exclusive bargaining representative over the matters that are terms and conditions of employment, the commission shall decide which item(s) are mandatory subjects for bargaining and which item(s) are nonmandatory.

(3) The term "commission" means the public employment relations commission established by RCW 41.58.010.

(4) The terms "employee" and "educational employee" means any certificated employee of a school district, except:

(a) The chief executive officer of the employer.

(b) The chief administrative officers of the employer, which shall mean the superintendent of the district, deputy superintendents, administrative assistants to the superintendent, assistant superintendents, and business manager. Title variation from all positions enumerated in this subsection (b) may be appealed to the commission for determination of inclusion in, or exclusion from, the term "educational employee".

(c) Confidential employees, which shall mean:

(i) Any person who participates directly on behalf of an employer in the formulation of labor relations policy, the preparation for or conduct of collective bargaining, or the administration of collective bargaining agreements, except that the role of such person is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment; and

(ii) Any person who assists and acts in a confidential capacity to such person.

(d) Unless included within a bargaining unit pursuant to RCW 41.59.080, any supervisor, which means any employee having authority, in the interest of an employer, to hire, assign, promote, transfer, layoff, recall, suspend, discipline, or discharge other employees, or to adjust their grievances, or to recommend effectively such action, if in connection with the foregoing the exercise of such authority is not merely routine or clerical in nature but calls for the consistent exercise of independent judgment, and shall not include any persons solely by reason of their membership on a faculty tenure or other governance committee or body. The term "supervisor" shall include only those employees who perform a preponderance of the above-specified acts of authority.

(e) Unless included within a bargaining unit pursuant to RCW 41.59.080, principals and assistant principals in school districts.

(5) The term "employer" means any school district.

(6) The term "exclusive bargaining representative" means any employee organization which has:

(a) Been selected or designated pursuant to the provisions of this chapter as the representative of the employees in an appropriate collective bargaining unit; or

(b) Prior to January 1, 1976, been recognized under a predecessor statute as the representative of the employees in an appropriate collective bargaining or negotiations unit.

(7) The term "person" means one or more individuals, organizations, unions, associations, partnerships, corporations, boards, committees, commissions, agencies, or other entities, or their representatives.

(8) The term "nonsupervisory employee" means all educational employees other than principals, assistant principals and supervisors. [1989 c 11 § 11; 1975 1st ex.s. c 288 § 3.]

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

41.59.060 Employee rights enumerated—Fees and dues, deduction from pay. (1) Employees shall have the right to self-organization, to form, join, or assist employee organizations, to bargain collectively through representatives of their own choosing, and shall also have the right to refrain from any or all of such activities except to the extent that employees may be required to pay a fee to any employee organization under an agency shop agreement authorized in this chapter.

(2) The exclusive bargaining representative shall have the right to have deducted from the salary of employees, upon receipt of an appropriate authorization form which shall not be irrevocable for a period of more than one year, an amount equal to the fees and dues required for membership. Such fees and dues shall be deducted monthly from the pay of all appropriate employees by the employer and transmitted as provided for by agreement between the employer and the exclusive bargaining representative, unless an automatic payroll deduction service is established pursuant to law, at which time such fees and dues shall be transmitted as therein provided. If an agency shop provision is agreed to and becomes effective pursuant to RCW 41.59.100, except as provided in that section, the agency fee equal to the fees and dues required of membership in the exclusive bargaining representative shall be deducted from the salary of employees in the bargaining unit. [1975 1st ex.s. c 288 § 7.]

41.59.070 Election to ascertain exclusive bargaining representative, when—Run-off election—Decertification election. (1) Any employee organization may file a request with the commission for recognition as the exclusive representative. Such request shall allege that a majority of the employees in an appropriate collective bargaining unit wish to be represented for the purpose of collective bargaining by such organization, shall describe the grouping of jobs or positions which constitute the unit claimed to be appropriate, shall be supported by credible evidence demonstrating that at least thirty percent of the employees in the appropriate unit desire the organization requesting recognition as their exclusive representative, and shall indicate the name, address, and telephone number of any other interested

employee organization, if known to the requesting organization.

(2) The commission shall determine the exclusive representative by conducting an election by secret ballot, except under the following circumstances:

(a) In instances where a serious unfair labor practice has been committed which interfered with the election process and precluded the holding of a fair election, the commission shall determine the exclusive bargaining representative by an examination of organization membership rolls or a comparison of signatures on organization bargaining authorization cards.

(b) In instances where there is then in effect a lawful written collective bargaining agreement between the employer and another employee organization covering any employees included in the unit described in the request for recognition, the request for recognition shall not be entertained unless it shall be filed within the time limits prescribed in subsection (3) of this section for decertification or a new recognition election.

(c) In instances where within the previous twelve months another employee organization has been lawfully recognized or certified as the exclusive bargaining representative of any employees included in the unit described in the request for recognition, the request for recognition shall not be entertained.

(d) In instances where the commission has within the previous twelve months conducted a secret ballot election involving any employees included in the unit described in the request for recognition in which a majority of the valid ballots cast chose not to be represented by any employee organization, the request for recognition shall not be entertained.

(3) Whenever the commission conducts an election to ascertain the exclusive bargaining representative, the ballot shall contain the name of the proposed bargaining representative and of any other bargaining representative showing written proof of at least ten percent representation of the educational employees within the unit, together with a choice for any educational employee to designate that he or she does not desire to be represented by any bargaining agent. Where more than one organization is on the ballot and neither of the three or more choices receives a majority of the valid ballots cast by the educational employees within the bargaining unit, a run-off election shall be held. The run-off ballot shall contain the two choices which receive the largest and second largest number of votes. No question concerning representation may be raised within one year of a certification or attempted certification. Where there is a valid collective bargaining agreement in effect, no question of representation may be raised except during the period not more than ninety nor less than sixty days prior to the expiration date of the agreement. In the event that a valid collective bargaining agreement, together with any renewals or extensions thereof, has been or will be in existence for three years, then the question of representation may be raised not more than ninety nor less than sixty days prior to the third anniversary date of the agreement or any renewals or extensions thereof as long as such renewals and extensions do not exceed three years; and if the exclusive bargaining representative is removed as a result of such procedure, the then existing collective bargaining agreement shall be

terminable by the new exclusive bargaining representative so selected within sixty days after its certification or terminated on its expiration date, whichever is sooner, or if no exclusive bargaining representative is so selected, then the agreement shall be deemed to be terminated at its expiration date or as of such third anniversary date, whichever is sooner.

(4) Within the time limits prescribed in subsection (3) of this section, a petition may be filed signed by at least thirty percent of the employees of a collective bargaining unit, then represented by an exclusive bargaining representative, alleging that a majority of the employees in that unit do not wish to be represented by an employee organization, requesting that the exclusive bargaining representative be decertified, and indicating the name, address and telephone number of the exclusive bargaining representative and any other interested employee organization, if known. Upon the verification of the signatures on the petition, the commission shall conduct an election by secret ballot as prescribed by subsection (3) of this section. [1975 1st ex.s. c 288 § 8.]

41.59.080 Determination of bargaining unit—Standards. The commission, upon proper application for certification as an exclusive bargaining representative or upon petition for change of unit definition by the employer or any employee organization within the time limits specified in RCW 41.59.070(3), and after hearing upon reasonable notice, shall determine the unit appropriate for the purpose of collective bargaining. In determining, modifying or combining the bargaining unit, the commission shall consider the duties, skills, and working conditions of the educational employees; the history of collective bargaining; the extent of organization among the educational employees; and the desire of the educational employees; except that:

(1) A unit including nonsupervisory educational employees shall not be considered appropriate unless it includes all such nonsupervisory educational employees of the employer; and

(2) A unit that includes only supervisors may be considered appropriate if a majority of the employees in such category indicate by vote that they desire to be included in such a unit; and

(3) A unit that includes only principals and assistant principals may be considered appropriate if a majority of such employees indicate by vote that they desire to be included in such a unit; and

(4) A unit that includes both principals and assistant principals and other supervisory employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(5) A unit that includes supervisors and/or principals and assistant principals and nonsupervisory educational employees may be considered appropriate if a majority of the employees in each category indicate by vote that they desire to be included in such a unit; and

(6) A unit that includes only employees in vocational-technical institutes or occupational skill centers may be considered to constitute an appropriate bargaining unit if the history of bargaining in any such school district so justifies; and

(7) Notwithstanding the definition of collective bargaining, a unit that contains only supervisors and/or principals and assistant principals shall be limited in scope of bargaining to compensation, hours of work, and the number of days of work in the annual employment contracts; and

(8) The bargaining unit of certificated employees of school districts, educational service districts, or institutions of higher education that are education providers under chapter 28A.193 RCW must be limited to the employees working as education providers to juveniles in each adult correctional facility maintained by the department of corrections and must be separate from other bargaining units in school districts, educational service districts, or institutions of higher education. [1998 c 244 § 11; 1975 1st ex.s. c 288 § 9.]

Effective date—Severability—1998 c 244: See RCW 28A.193.900 and 28A.193.901.

41.59.090 Certification of exclusive bargaining representative—Scope of representation. The employee organization which has been determined to represent a majority of the employees in a bargaining unit shall be certified by the commission as the exclusive bargaining representative of, and shall be required to represent all the employees within the unit without regard to membership in that bargaining representative: PROVIDED, That any employee at any time may present his grievance to the employer and have such grievance adjusted without the intervention of the exclusive bargaining representative, as long as such representative has been given an opportunity to be present at that adjustment and to make its views known, and as long as the adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect. [1975 1st ex.s. c 288 § 10.]

41.59.100 Union security provisions—Scope—Agency shop provision, collection of dues or fees. A collective bargaining agreement may include union security provisions including an agency shop, but not a union or closed shop. If an agency shop provision is agreed to, the employer shall enforce it by deducting from the salary payments to members of the bargaining unit the dues required of membership in the bargaining representative, or, for nonmembers thereof, a fee equivalent to such dues. All union security provisions must safeguard the right of nonassociation of employees based on bona fide religious tenets or teachings of a church or religious body of which such employee is a member. Such employee shall pay an amount of money equivalent to regular dues and fees to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the bargaining representative to which such employee would otherwise pay the dues and fees. The employee shall furnish written proof that such payment has been made. If the employee and the bargaining representative do not reach agreement on such matter, the commission shall designate the charitable organization. [1975 1st ex.s. c 288 § 11.]

41.59.110 Commission, rules and regulations of—Federal precedents as standard. (1) The commission shall promulgate, revise, or rescind, in the manner prescribed by

the administrative procedure act, chapter 34.05 RCW, such rules and regulations as it may deem necessary and appropriate to administer the provisions of this chapter, in conformity with the intent and purpose of this chapter, and consistent with the best standards of labor-management relations.

(2) The rules, precedents, and practices of the national labor relations board, provided they are consistent with this chapter, shall be considered by the commission in its interpretation of this chapter, and prior to adoption of any aforesaid commission rules and regulations. [1975 1st ex.s. c 288 § 12.]

41.59.120 Resolving impasses in collective bargaining—Mediation—Fact-finding with recommendations—

Other. (1) Either an employer or an exclusive bargaining representative may declare that an impasse has been reached between them in collective bargaining and may request the commission to appoint a mediator for the purpose of assisting them in reconciling their differences and resolving the controversy on terms which are mutually acceptable. If the commission determines that its assistance is needed, not later than five days after the receipt of a request therefor, it shall appoint a mediator in accordance with rules and regulations for such appointment prescribed by the commission. The mediator shall meet with the parties or their representatives, or both, forthwith, either jointly or separately, and shall take such other steps as he may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement. The mediator, without the consent of both parties, shall not make findings of fact or recommend terms of settlement. The services of the mediator, including, if any, per diem expenses, shall be provided by the commission without cost to the parties. Nothing in this subsection (1) shall be construed to prevent the parties from mutually agreeing upon their own mediation procedure, and in the event of such agreement, the commission shall not appoint its own mediator unless failure to do so would be inconsistent with the effectuation of the purposes and policy of this chapter.

(2) If the mediator is unable to effect settlement of the controversy within ten days after his or her appointment, either party, by written notification to the other, may request that their differences be submitted to fact-finding with recommendations, except that the time for mediation may be extended by mutual agreement between the parties. Within five days after receipt of the aforesaid written request for fact-finding, the parties shall select a person to serve as fact-finder and obtain a commitment from that person to serve. If they are unable to agree upon a fact-finder or to obtain such a commitment within that time, either party may request the commission to designate a fact-finder. The commission, within five days after receipt of such request, shall designate a fact-finder in accordance with rules and regulations for such designation prescribed by the commission. The fact-finder so designated shall not be the same person who was appointed mediator pursuant to subsection (1) of this section without the consent of both parties.

The fact-finder, within five days after his appointment, shall meet with the parties or their representatives, or both, either jointly or separately, and make inquiries and investigations, hold hearings, and take such other steps as he may

deem appropriate. For the purpose of such hearings, investigations and inquiries, the fact-finder shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. If the dispute is not settled within ten days after his appointment, the fact-finder shall make findings of fact and recommend terms of settlement within thirty days after his appointment, which recommendations shall be advisory only.

(3) Such recommendations, together with the findings of fact, shall be submitted in writing to the parties and the commission privately before they are made public. Either the commission, the fact-finder, the employer, or the exclusive bargaining representative may make such findings and recommendations public if the dispute is not settled within five days after their receipt from the fact-finder.

(4) The costs for the services of the fact-finder, including, if any, per diem expenses and actual and necessary travel and subsistence expenses, and any other incurred costs, shall be borne by the commission without cost to the parties.

(5) Nothing in this section shall be construed to prohibit an employer and an exclusive bargaining representative from agreeing to substitute, at their own expense, their own procedure for resolving impasses in collective bargaining for that provided in this section or from agreeing to utilize for the purposes of this section any other governmental or other agency or person in lieu of the commission.

(6) Any fact-finder designated by an employer and an exclusive representative or the commission for the purposes of this section shall be deemed an agent of the state. [1975 1st ex.s. c 288 § 13.]

41.59.130 Binding arbitration procedures authorized. An employer and an exclusive bargaining representative who enter into a collective bargaining agreement may include in such agreement procedures for binding arbitration of such disputes as may arise involving the interpretation or application of such agreement. [1975 1st ex.s. c 288 § 14.]

41.59.140 Unfair labor practices for employer, employee organization, enumerated. (1) It shall be an unfair labor practice for an employer:

(a) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in RCW 41.59.060.

(b) To dominate or interfere with the formation or administration of any employee organization or contribute financial or other support to it: PROVIDED, That subject to rules and regulations made by the commission pursuant to RCW 41.59.110, an employer shall not be prohibited from permitting employees to confer with it or its representatives or agents during working hours without loss of time or pay;

(c) To encourage or discourage membership in any employee organization by discrimination in regard to hire, tenure of employment or any term or condition of employment, but nothing contained in this subsection shall prevent an employer from requiring, as a condition of continued employment, payment of periodic dues and fees uniformly required to an exclusive bargaining representative pursuant to RCW 41.59.100;

(d) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under *this chapter;

(e) To refuse to bargain collectively with the representatives of its employees.

(2) It shall be an unfair labor practice for an employee organization:

(a) To restrain or coerce (i) employees in the exercise of the rights guaranteed in RCW 41.59.060: PROVIDED, That this paragraph shall not impair the right of an employee organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (ii) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(b) To cause or attempt to cause an employer to discriminate against an employee in violation of subsection (1)(c) of this section;

(c) To refuse to bargain collectively with an employer, provided it is the representative of its employees subject to RCW 41.59.090.

(3) The expressing of any views, argument, or opinion, or the dissemination thereof to the public, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of *this chapter, if such expression contains no threat of reprisal or force or promise of benefit. [1975 1st ex.s. c 288 § 15.]

***Reviser's note:** Session law [1975 1st ex.s. c 288 § 15] language here reads "this act" or "this 1975 act"; for codification of 1975 1st ex.s. c 288, see Codification Tables, Volume 0.

41.59.150 Commission to prevent unfair labor practices—Scope. (1) The commission is empowered to prevent any person from engaging in any unfair labor practice as defined in RCW 41.59.140: PROVIDED, That a complaint shall not be processed for any unfair labor practice occurring more than six months before the filing of the complaint with the commission. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, equity or otherwise.

(2) If the commission determines that any person has engaged in or is engaging in any such unfair labor practices as defined in RCW 41.59.140, then the commission shall issue and cause to be served upon such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action as will effectuate the purposes and policy of this chapter, such as the payment of damages and/or the reinstatement of employees.

(3) The commission may petition the superior court for the county in which the main office of the employer is located or wherein the person who has engaged or is engaging in such unfair labor practice resides or transacts business, for the enforcement of its order and for appropriate temporary relief. [1983 c 58 § 3; 1975 1st ex.s. c 288 § 16.]

41.59.160 Applicability of administrative procedure act provisions to commission action. Actions taken by or on behalf of the commission shall be pursuant to chapter 34.05 RCW, or rules and regulations adopted in accordance

therewith, and the right of judicial review provided by chapter 34.05 RCW shall be applicable to all such actions and rules and regulations. [1975 1st ex.s. c 288 § 17.]

41.59.170 Effective date of certain agreements—Increased benefits during agreement authorized, when.

(1) Whenever a collective bargaining agreement between an employer and an exclusive bargaining representative is concluded after the termination date of the previous collective bargaining agreement between the employer and an employee organization representing the same employees, the effective date of such collective bargaining agreement may be the day after the termination date of the previous collective bargaining agreement and all benefits included in the new collective bargaining agreement, including wage or salary increases, may accrue beginning with such effective date as established by this subsection, and may also accrue beginning with the effective date of any individual employee contracts affected thereby.

(2) Any collective bargaining agreement may provide for the increase of any wages, salaries and other benefits during the term of such agreement or the term of any individual employee contracts concerned, in the event that the employer receives by increased appropriation or from other sources, additional moneys for such purposes. [1975 1st ex.s. c 288 § 18.]

41.59.180 Employees in specialized job category—Exclusion. Notwithstanding the definition of "employee" in RCW 41.59.020, the commission may exclude from the coverage of chapter 288, Laws of 1975 1st ex. sess. any specialized job category of an employer where a majority of the persons employed in that job category consists of classified employees. At such time as a majority of such employees are certificated, the job category may be considered an appropriate unit under chapter 288, Laws of 1975 1st ex. sess. [1997 c 13 § 14; 1975 1st ex.s. c 288 § 23.]

41.59.900 Short title. This chapter may be cited as the educational employment relations act. [1975 1st ex.s. c 288 § 1.]

41.59.910 Construction of chapter—Effect on existing agreements—Collective bargaining agreement prevails where conflict. This chapter shall supersede existing statutes not expressly repealed to the extent that there is a conflict between a provision of this chapter and those other statutes. Except as otherwise expressly provided herein, nothing in this chapter shall be construed to annul, modify or preclude the renewal or continuation of any lawful agreement entered into prior to January 1, 1976 between an employer and an employee organization covering wages, hours, and terms and conditions of employment. Where there is a conflict between any collective bargaining agreement and any resolution, rule, policy or regulation of the employer or its agents, the terms of the collective bargaining agreement shall prevail. [1975 1st ex.s. c 288 § 19.]

41.59.920 Construction of chapter—Employee's rights preserved. Except as otherwise expressly provided herein, nothing contained in this chapter shall be construed

to deny or otherwise abridge any rights, privileges or benefits granted by law to employees. [1975 1st ex.s. c 288 § 20.]

41.59.930 Construction of chapter—Employer's responsibilities and rights preserved. Nothing in this chapter shall be construed to interfere with the responsibilities and rights of the employer as specified by federal and state law, including the employer's responsibilities to students, the public, and other constituent elements of the institution. [1975 1st ex.s. c 288 § 24.]

41.59.935 Construction of chapter—Certain agreements subject to RCW 28A.150.410 and 28A.400.200. (Expires June 30, 1999.) (1) Nothing in this chapter shall be construed to grant employers or employees the right to reach agreements regarding:

(a) Salary or compensation increases in excess of those authorized in accordance with RCW 28A.150.410 and 28A.400.200; or

(b) Limiting the employer's authority to grant waivers under RCW 28A.320.017.

(2) *This section expires June 30, 1999. [1997 c 431 § 22; 1990 c 33 § 571; 1987 1st ex.s. c 2 § 206; 1981 c 16 § 3.]

***Reviser's note:** The intent of the expiration of this section was to create a two-year program, not to expire the entire section. For the temporary nature of the waiver program in 1997 c 431 § 22, see 1997 c 431.

Intent—1997 c 431: See note following RCW 28A.320.017.

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

Intent—Severability—Effective dates—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Severability—1981 c 16: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 16 § 5.]

41.59.935 Construction of chapter—Certain agreements subject to RCW 28A.150.410 and 28A.400.200. (Effective June 30, 1999.) Nothing in this chapter shall be construed to grant employers or employees the right to reach agreements regarding salary or compensation increases in excess of those authorized in accordance with RCW 28A.150.410 and 28A.400.200. [1990 c 33 § 571; 1987 1st ex.s. c 2 § 206; 1981 c 16 § 3.]

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

Intent—Severability—Effective dates—1987 1st ex.s. c 2: See notes following RCW 84.52.0531.

Severability—1981 c 16: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 16 § 5.]

41.59.940 Effective date—1975 1st ex.s. c 288. Except for RCW 41.59.040, 41.59.050, 41.59.110 and 41.59.160 which shall take effect ninety days following enactment hereof, this chapter and RCW 28A.150.060 and 28A.405.100 as amended by chapter 288, Laws of 1975 1st ex. sess. shall take effect on January 1, 1976. Where the term "effective date of this chapter" is used elsewhere in this

chapter it shall mean January 1, 1976. [1990 c 33 § 572; 1975 1st ex.s. c 288 § 26.]

Reviser's note: (1) Engrossed Substitute Senate Bill No. 2500, which is chapter 288, Laws of 1975 1st ex. sess., was passed by the senate May 28, 1975, passed by the house of representatives June 2, 1975, and approved by the governor July 2, 1975, with the exception of section 4 thereof, which was vetoed by the governor; it includes the repeal of chapter 28A.72 RCW in section 28 thereof.

(2) RCW 41.59.040 and 41.59.050 were repealed by 1979 ex.s. c 146 § 3.

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

41.59.950 Severability—1975 1st ex.s. c 288. If any provision of *this chapter, or its application to any person or circumstance is held invalid, the remainder of *the chapter, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 288 § 25.]

***Reviser's note:** Session law [1975 1st ex.s. c 288 § 25] language here reads "this 1975 act" or "the act"; for codification of 1975 1st ex.s. c 288, see Codification Tables, Volume 0.

Chapter 41.60

STATE EMPLOYEES' SUGGESTION AWARDS AND INCENTIVE PAY

Sections

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41.60.010 Definitions. As used in this chapter:

(1) "Board" means the productivity board.

(2) "Employee suggestion program" means the program developed by the board under RCW 41.60.020.

(3) "Teamwork incentive program" means the program developed by the board under RCW 41.60.100 through 41.60.120.

(4) "State employees" means present employees in state agencies and institutions of higher education except for elected officials, directors of such agencies and institutions, and their confidential secretaries and administrative assistants and others specifically ruled ineligible by the rules of the productivity board. [1993 c 467 § 1; 1987 c 387 § 1; 1983 c 54 § 1; 1982 c 167 § 6; 1977 ex.s. c 169 § 103; 1969 ex.s. c 152 § 3; 1965 ex.s. c 142 § 1.]

Effective date—1993 c 467: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state

government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 467 § 8.]

Severability—1982 c 167: See note following RCW 41.60.015.

Severability—Nomenclature—Savings—1977 ex.s. c 169: See notes following RCW 28B.10.016.

41.60.015 Productivity board created—Members—Terms—Compensation. (1) There is hereby created the productivity board. The board shall administer the employee suggestion program and the teamwork incentive program under this chapter.

(2) The board shall be composed of:

(a) The secretary of state who shall act as chairperson;

(b) The director of personnel appointed under the provisions of RCW 41.06.130 or the director's designee;

(c) The director of financial management or the director's designee;

(d) The *personnel director appointed under the provisions of **RCW 28B.16.060 or the director's designee;

(e) The director of general administration or the director's designee;

(f) Three persons with experience in administering incentives such as those used by industry, with the governor, lieutenant governor, and speaker of the house of representatives each appointing one person. The governor's appointee shall be a representative of an employee organization certified as an exclusive representative of at least one bargaining unit of classified employees, but no one organization may be represented for two consecutive terms;

(g) One person representing state agencies and institutions with employees subject to chapter 41.06 RCW, and one person representing those subject to **chapter 28B.16 RCW, both to be appointed by the governor; and

(h) In addition, the governor and board chairperson may jointly appoint persons to the board on an ad hoc basis. Ad hoc members shall serve in an advisory capacity and shall not have the right to vote.

Members under subsection (2) (f) and (g) of this section shall be appointed to serve three-year terms.

Members of the board appointed pursuant to subsection (2)(f) of this section may be compensated in accordance with RCW 43.03.240. Any board member who is not a state employee may be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060. [1993 c 467 § 2; 1987 c 387 § 2; 1985 c 114 § 1; 1984 c 287 § 72; 1983 c 54 § 2; 1982 c 167 § 1.]

Reviser's note: *(1) Powers, duties, and functions of the higher education personnel board and the state personnel board were transferred to the Washington personnel resources board by 1993 c 281, effective July 1, 1994.

** (2) Chapter 28B.16 RCW was repealed by 1993 c 281, with the exception of RCW 28B.16.015 and 28B.16.240, which was recodified as RCW 41.06.382. The powers, duties, and functions of the state higher education personnel board were transferred to the Washington personnel resources board.

Effective date—1993 c 467: See note following RCW 41.60.010.

Effective date—1985 c 114: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1985." [1985 c 114 § 8.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Severability—1982 c 167: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of

the act or the application of the provision to other persons or circumstances is not affected." [1982 c 167 § 18.]

41.60.020 Employee suggestion program—Rules for administration of chapter. (1) The board shall formulate, establish, and maintain an employee suggestion program to encourage and reward meritorious suggestions by state employees that will promote efficiency and economy in the performance of any function of state government: PROVIDED, That the program shall include provisions for the processing of suggestions having multi-agency impact and post-implementation auditing of suggestions for fiscal accountability.

(2) The board shall prepare a topical list of all the productivity awards granted and disseminate this information to all the state government agencies that may be able to adapt them to their procedures.

(3) The board shall adopt rules and regulations necessary or appropriate for the proper administration and for the accomplishment of the purposes of this chapter. [1995 c 181 § 1; 1993 c 467 § 3; 1982 c 167 § 7; 1975-'76 2nd ex.s. c 122 § 1; 1969 ex.s. c 152 § 4; 1965 ex.s. c 142 § 2.]

Effective date—1993 c 467: See note following RCW 41.60.010.

Severability—1982 c 167: See note following RCW 41.60.015.

41.60.030 Employee suggestion program—Determination of award. The board shall make the final determination as to whether an employee suggestion award will be made and shall determine the nature and extent of the award.

No employee suggestion award may normally be made to an employee for a suggestion which is within the scope of the employee's regularly assigned responsibilities. [1982 c 167 § 8; 1965 ex.s. c 142 § 3.]

Severability—1982 c 167: See note following RCW 41.60.015.

41.60.041 Employee suggestion program—Amount and payment of award—Transfer of funds to general fund. (1) Cash awards for suggestions generating net savings to the state shall be ten percent of the net savings.

(2) No award may be granted in excess of ten thousand dollars.

(3) If the suggestion is significantly modified when implemented, the percentage specified in subsection (1) of this section may be decreased at the option of the board.

(4) The board shall establish guidelines for making cash awards for suggestions for which benefits to the state are intangible or for which benefits cannot be calculated.

(5) Funds for the awards shall be drawn from the appropriation of the agency benefiting from the employee's suggestion. If the suggestion reduces costs to a nonappropriated fund or reduces costs paid without appropriation from a nonappropriated portion of an appropriated fund, an award may be paid from the benefiting fund or account without appropriation.

(6) Awards may be paid to state employees for suggestions which generate new or additional money for the general fund or any other funds of the state. The director of financial management shall distribute moneys appropriated for this purpose with the concurrence of the productivity board. Transfers shall be made from other funds of the state

to the general fund, in amounts equal to award payments made by the general fund, for suggestions generating new or additional money for those other funds. [1989 c 56 § 1; 1987 c 387 § 3; 1985 c 114 § 2; 1982 c 167 § 9.]

Effective date—1989 c 56: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 56 § 7.]

Effective date—1985 c 114: See note following RCW 41.60.015.

Severability—1982 c 167: See note following RCW 41.60.015.

41.60.050 Appropriations for administrative costs.

The legislature shall appropriate from the department of personnel service fund for the payment of administrative costs of the productivity board. However, during the 1991-93 fiscal biennium, the administrative costs of the productivity board shall be appropriated from the savings recovery account. [1991 sp.s. c 16 § 918; 1987 c 387 § 4; 1985 c 114 § 3; 1983 c 54 § 3; 1982 c 167 § 11; 1975-'76 2nd ex.s. c 122 § 3; 1969 ex.s. c 152 § 6; 1965 ex.s. c 142 § 5.]

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

Effective date—1985 c 114: See note following RCW 41.60.015.

Severability—1982 c 167: See note following RCW 41.60.015.

Department of personnel service fund: RCW 41.06.280.

41.60.080 Employee suggestion program—Contests to encourage participation. The chairman of the board may design and initiate contests between agencies and between agency suggestion evaluators to encourage participation in the suggestion program at management levels. Any tokens of recognition offered during these contests shall be nonmonetary and shall not be considered an award, or subject to RCW 41.60.030. [1982 c 167 § 12; 1975-'76 2nd ex.s. c 122 § 5.]

Severability—1982 c 167: See note following RCW 41.60.015.

41.60.100 Employee teamwork incentive program—Applications. With the exception of agencies of the legislative and judicial branches, any organizational unit composed of employees in any agency or group of agencies of state government with the ability to identify costs, revenues, or both may apply to the board to participate in the teamwork incentive program. The application shall have the approval of the heads of the agency or agencies within which the unit is located.

Applications shall be in the form specified by the board and contain such information as the board requires. This may include, but is not limited to, quantitative measures which establish a data base of program output or performance expectations, or both. This data base is used to evaluate savings in accordance with RCW 41.60.110(1).

The board shall evaluate the applications submitted. From those proposals which are considered to be reasonable and practical and which are found to include developed performance indicators which lend themselves to a judgment of success or failure, the board shall select the units to participate in the teamwork incentive program. [1993 c 467 § 4; 1989 c 56 § 2; 1987 c 387 § 5; 1985 c 114 § 4; 1982 c 167 § 2.]

Effective date—1993 c 467: See note following RCW 41.60.010

Effective date—1989 c 56: See note following RCW 41.60.041.

Effective date—1985 c 114: See note following RCW 41.60.015.

Severability—1982 c 167: See note following RCW 41.60.015.

41.60.110 Employee teamwork incentive program—Evaluation of savings. (1) To qualify for a teamwork incentive program award for its employees, a unit selected shall demonstrate to the satisfaction of the board that it has operated during the period of participation at a lower cost or with an increase in revenue with no decrease in the level of services rendered.

(a) A unit completing its period of participation shall compare costs or revenues during that period of participation to (i) the expenditures or revenues for a comparable span of time immediately preceding the first period of participation, or (ii) an average derived from the unit's historical data, or (iii) engineered standards used in conjunction with an average derived from the unit's historical data, or (iv) anticipated revenue as based on statistical projections or historical data;

(b) A unit participating in the teamwork incentive program for two or more consecutive times may choose to compare its costs during the current period of participation with (i) its costs or revenues for the immediately preceding period, or (ii) an average of its costs or revenues for the preceding two or three comparable spans of time in the teamwork incentive program;

(c) For the purposes of (a) of this subsection, a unit's historical data shall be restricted to data generated during the period of three years or less immediately preceding the unit's first participation in the teamwork incentive program; and

(d) For the purposes of (b) of this subsection, a unit's costs or revenues for preceding periods of time may include the costs or revenues calculated under (a) (i), (ii), or (iii) of this subsection for the periods of time the unit participated in the teamwork incentive program.

(2) The board shall satisfy itself from documentation submitted by the organizational unit that the claimed cost of operation or level of higher revenue is real and not merely apparent and that it is not, in whole or in part, the result of:

(a) Chance;

(b) A lowering of the quality of the service rendered;

(c) Nonrecurrence of expenditures which were single outlay, or one-time expenditures, in the preceding comparable period of time;

(d) Stockpiling inventories in the immediately preceding period so as to reduce requirements in the eligible time period;

(e) Substitution of federal funds, other receipts, or nonstate funds for programs currently receiving state appropriations;

(f) Unreasonable postponement of payments of accounts payable until the period immediately following the eligible period of participation;

(g) Shifting of expenses to another unit of government; or

(h) Any other practice, event, or device which the board decides has caused a distortion which makes it falsely appear that a savings or increase in revenue gains or an increase in level of services has occurred.

(3) The board shall consider as legitimate efficiencies those reductions in expenditures or increases in revenue made possible by such items as the following:

- (a) Reductions in overtime;
- (b) Elimination of consultant fees;
- (c) Less temporary help;
- (d) Improved systems and procedures;
- (e) Better deployment and utilization of personnel;
- (f) Elimination of unnecessary travel;
- (g) Elimination of unnecessary printing and mailing;
- (h) Elimination of unnecessary payments for items such as advertising;
- (i) Elimination of waste, duplication, and operations of doubtful value;
- (j) Improved space utilization;
- (k) Improved methods of collecting revenue or recovering money owed to the state; and
- (l) Any other items determined by the board to represent cost savings or increased revenue. [1993 c 467 § 5; 1989 c 56 § 3; 1987 c 387 § 6; 1985 c 114 § 5; 1982 c 167 § 3.]

Effective date—1993 c 467: See note following RCW 41.60.010.

Effective date—1989 c 56: See note following RCW 41.60.041.

Effective date—1985 c 114: See note following RCW 41.60.015.

Severability—1982 c 167: See note following RCW 41.60.015.

41.60.120 Employee teamwork incentive program—

Awards. At the conclusion of the eligible period, the board shall compare the expenditures or revenues for that period of each unit selected against the expenditures or revenues of that unit for the immediately preceding period or expenditures or revenues determined in accordance with RCW 41.60.110(1) (a) and (b) and, after making such adjustments as in the board's judgment are required to eliminate distortions, shall determine the amount, if any, that the unit has reduced the unit's cost of operations or increased its level of services or generated additional revenues to the state in the eligible period. Adjustments to eliminate distortions may include any legislative increases in employee compensation and inflationary increases in the cost of services, materials, and supplies. Adjustments to additional revenue may include changes in client populations and the effects of legal changes. If the board also determines that a unit qualifies for an award, the board shall award to the employees of that unit a sum up to twenty-five percent of the amount determined to be the savings or revenue increases to the state for the level of services rendered. The amount awarded shall be divided and distributed in accordance with board rules to the employees of the unit, except that employees who worked for that unit less than the full period during which the unit conducted a teamwork incentive program shall receive only a pro rata share based on the fraction of the period worked for that unit. No individual share of the unit award may exceed the maximum award established by rule adopted by the board. Funds for this teamwork incentive award shall be drawn from the agencies in which the unit is located or from the benefiting fund or account without appropriation when additional revenue is generated to the fund or account.

Awards may be paid to teams for process changes which generate new or additional money for the general fund or any other funds of the state. The director of the office of financial management shall distribute moneys appropriated

for this purpose with the concurrence of the productivity board. Transfers shall be made from other funds of the state to the general fund in amounts equal to award payments made by the general fund, for innovations generating new or additional money for those other funds. [1993 c 467 § 6; 1989 c 56 § 4; 1987 c 387 § 7; 1985 c 114 § 6; 1982 c 167 § 4.]

Effective date—1993 c 467: See note following RCW 41.60.010.

Effective date—1989 c 56: See note following RCW 41.60.041.

Effective date—1985 c 114: See note following RCW 41.60.015.

Severability—1982 c 167: See note following RCW 41.60.015.

41.60.140 Incentive pay or awards not included in retirement calculations. Incentive pay or awards provided under this chapter shall not be included for the purpose of computing a retirement allowance under any public retirement system of this state. [1982 c 167 § 10.]

Severability—1982 c 167: See note following RCW 41.60.015.

41.60.150 Recognition awards. Other than suggestion awards and incentive pay unit awards, agencies shall have the authority to recognize employees for accomplishments including outstanding achievements, safety performance, and longevity. Recognition awards may not exceed one hundred dollars in value per award. Such awards may include, but not be limited to, cash or such items as pen and desk sets, plaques, pins, framed certificates, clocks, and calculators. Award costs shall be paid by the agency giving the award. [1989 c 56 § 5; 1985 c 114 § 7.]

Effective date—1989 c 56: See note following RCW 41.60.041.

Effective date—1985 c 114: See note following RCW 41.60.015.

41.60.160 Persons ineligible for awards. No award may be made under this chapter to any elected state official or state agency director. [1993 c 467 § 7; 1987 c 387 § 8.]

Effective date—1993 c 467: See note following RCW 41.60.010.

41.60.910 Severability—1975-'76 2nd ex.s. c 122. If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 122 § 9.]

41.60.911 Effective dates—1987 c 387. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987, except section 10 of this act which shall take effect immediately. [1987 c 387 § 11.]

Chapter 41.64

PERSONNEL APPEALS BOARD

Sections

- 41.64.010 Personnel appeals board—Created—Membership—Definitions.
- 41.64.020 Removal of members—Hearing.
- 41.64.030 Compensation of members—Travel expenses—Disclosure of financial affairs.

- 41.64.040 Election of chairperson—Biennial meetings.
- 41.64.050 Executive secretary—Appointment of assistants.
- 41.64.060 Location of principal office—Hearings—Procedure.
- 41.64.070 Journal of official actions.
- 41.64.080 Employee appeals—Hearings examiners.
- 41.64.090 Employee appeals—Jurisdiction.
- 41.64.100 Employee appeals—Hearing—Decision to be rendered within ninety days, exceptions.
- 41.64.110 Employee appeals—Hearing—Procedure—Official record.
- 41.64.120 Employee appeals—Findings of fact, conclusions of law, order—Notice to employee and employing agency.
- 41.64.130 Employee appeals—Review by superior court—Grounds—Notice, service—Certified transcript.
- 41.64.140 Employee appeals—Review by superior court—Procedure—Appellate review.
- 41.64.910 Severability—1981 c 311.

41.64.010 Personnel appeals board—Created—Membership—Definitions. (1) There is hereby created a "personnel appeals board," hereinafter in this chapter referred to as the "board," which shall consist of three members to be appointed by the governor, subject to confirmation by the senate. The first board shall be appointed within thirty days after May 19, 1981, for terms of two, four, and six years. Thereafter, appointments shall be made for six-year terms. A vacancy shall be filled by appointment by the governor for the unexpired term in which the vacancy exists. Each member shall continue to hold office after the expiration of the member's term until a successor has been appointed. Members may be reappointed to the board for successive terms. Persons appointed to the board shall be qualified by experience and training in the field of administrative procedures and merit principles. Such members:

(a) May not hold any other employment with the state;

(b) May not during the terms to which they are appointed be or become candidates for public office, hold any other public office or trust, engage in any occupation or business which interferes, or is inconsistent, with their duties as members of the board, serve on or under any committee of any political party, and may not have been officers of a political party for a period of one year immediately prior to their appointment; and

(c) May not for a period of one year after the termination of their membership on the board, act in a representative capacity before the board on any matter.

(2) Unless the context clearly indicates otherwise, the following definitions apply to this chapter:

(a) "Agency" means any agency as defined in RCW 41.06.020;

(b) For appeals filed on or after July 1, 1981, under RCW 41.64.090, "board" or "personnel appeals board" means the personnel appeals board created by subsection (1) of this section;

(c) For purposes of RCW 41.64.080 through 41.64.140 for appeals filed before July 1, 1981, under RCW 41.06.170, as it existed prior to or after May 19, 1981, "board" or "personnel appeals board" means the *state personnel board created by RCW 41.06.110. [1981 c 311 § 1.]

***Reviser's note:** Powers, duties, and functions of the higher education personnel board and the state personnel board were transferred to the Washington personnel resources board by 1993 c 281 §§ 1 through 7.

41.64.020 Removal of members—Hearing. Any member of the board may be removed for incapacity,

incompetence, neglect of duty, malfeasance, or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time and the procedure for the hearing, which shall be public. The decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member of the board by the tribunal disqualifies such member for reappointment. [1981 c 311 § 3.]

41.64.030 Compensation of members—Travel expenses—Disclosure of financial affairs. (1) The board shall operate on either a part-time or a full-time basis, as determined by the governor. If it is determined that the board shall operate on a full-time basis, each member of the board shall receive an annual salary to be determined by the governor pursuant to RCW 43.03.040. If it is determined that the board shall operate on a part-time basis, each member of the board shall be compensated in accordance with RCW 43.03.250. Each board member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with RCW 43.03.050 and 43.03.060.

(2) Members of the board shall report their financial affairs to the public disclosure commission pursuant to RCW 42.17.240 and 42.17.241. [1984 c 287 § 73; 1984 c 34 § 4; 1981 c 311 § 4.]

Reviser's note: This section was amended by 1984 c 287 § 73, effective July 1, 1985, and by 1984 c 34 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

41.64.040 Election of chairperson—Biennial meetings. The board shall, as soon as practicable after the initial appointment of its members, meet and elect from among its members a chairperson, and shall at least biennially thereafter meet and elect such a chairperson. [1981 c 311 § 5.]

41.64.050 Executive secretary—Appointment of assistants. The board may appoint and discharge an executive secretary who shall be exempt from the provisions of chapter 41.06 RCW. The executive secretary may appoint and discharge such other clerical, professional, and technical assistants as may be necessary. The salary of the executive secretary shall be fixed by the governor pursuant to RCW 43.03.040, as now existing or hereafter amended. [1981 c 311 § 6.]

41.64.060 Location of principal office—Hearings—Procedure. The principal office of the board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the board shall constitute a quorum for making orders or decisions, promulgating rules necessary for the conduct of its powers and duties, or transacting other official business, and may act though one

position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by the board when authorized by rule or order of the board. The board shall perform all the powers and duties specified in this chapter or as otherwise provided by law. [1981 c 311 § 7.]

41.64.070 Journal of official actions. The board shall maintain at its principal office a journal which shall contain all official actions of the board, with the exception of findings and decisions, together with the vote of each member on such actions. The journal shall be available for public inspection at the principal office of the board at all reasonable times. [1981 c 311 § 8.]

41.64.080 Employee appeals—Hearings examiners. The board may appoint one or more hearings examiners to preside over, conduct, and make recommended decisions, including findings of fact and conclusions of law in all cases of employee appeals to the board. The hearings examiner shall conduct hearings in the same manner and shall have the same authority as provided in hearings by the board. The recommended decisions shall be forthwith served upon the parties and transmitted to the board together with the record of the evidence. Within thirty days of service of the recommended decision, any party adversely affected may file exceptions, and thereafter all parties may present written and oral argument to the board, which shall consider the whole record or such portions thereof as may be cited by the parties. [1981 c 311 § 9.]

41.64.090 Employee appeals—Jurisdiction. (1) The board shall have jurisdiction to decide appeals filed on or after July 1, 1981, of employees under the jurisdiction of the Washington personnel resources board pursuant to RCW 41.06.170, as now or hereafter amended.

(2) The board shall have jurisdiction to decide appeals filed on or after July 1, 1993, of employees of institutions of higher education and related boards under the jurisdiction of the Washington personnel resources board pursuant to RCW 41.06.170. An appeal under this subsection by an employee of an institution of higher education or a related board shall be held in the county in which the institution is located or the county in which the person was employed when the appeal was filed. [1993 c 281 § 41; 1981 c 311 § 10.]

Effective date—1993 c 281: See note following RCW 41.06.022.

41.64.100 Employee appeals—Hearing—Decision to be rendered within ninety days, exceptions. (1) In all appeals over which the board has jurisdiction involving reduction, dismissal, suspension, or demotion, the board shall set the case for hearing, and the final decision, including an appeal to the board from the hearing examiner, if any, shall be rendered within ninety days from the date the appeal was first received. An extension may be permitted if agreed to by the employee and the employing agency. The board shall furnish the agency with a copy of the appeal in advance of the hearing.

(2) Notwithstanding subsection (1) of this section, in a case involving misconduct that has placed a child at serious risk of harm as a result of actions taken or not taken under

chapter 13.32A, 13.34, 13.40, 26.44, 74.13, 74.14A, 74.14B, 74.14C, or 74.15 RCW, the board shall hear the case before all unscheduled cases. The board shall issue its order within forty-five days of hearing the case unless there are extraordinary circumstances, in which case, an additional thirty days may elapse until the case is decided.

(3) In all appeals made pursuant to RCW 41.06.170(4), as now or hereafter amended, the decision of the board is final and not appealable to court. [1997 c 386 § 43; 1981 c 311 § 11.]

Intent—1997 c 386 § 43: "It is the intent of the legislature, in enacting the chapter 386, Laws of 1997 changes to RCW 41.64.100, to provide a prompt and efficient method of expediting employee appeals regarding alleged misconduct that may have placed children at serious risk of harm. The legislature recognizes that children are at risk of harm in cases of abuse or neglect and intends to provide a method of reducing such risk as well as mitigating the potential liability to the state associated with employee misconduct involving children. The legislature does not intend to impair any existing rights of appeals held by employees, nor does it intend to restrict consideration of any appropriate evidence or facts by the personnel appeals board." [1997 c 386 § 42.]

Construction—1997 c 386 § 43: "Section 43 of this act shall not be construed to alter an existing collective bargaining unit or the provisions of any existing bargaining agreement in place on July 27, 1997, before the expiration of such agreement." [1997 c 386 § 44.]

41.64.110 Employee appeals—Hearing—Procedure—Official record. Hearings on such appeals shall be open to the public, except for cases in which the board determines there is substantial reason for not having an open hearing or in cases where the employee so requests, and shall be informal with technical rules of evidence not applying to the proceedings except the rules of privilege recognized by law. Both the employee and his or her appointing agency shall be notified reasonably in advance of the hearing and may select representatives of their choosing, present and cross-examine witnesses, and give evidence before the board. Members of the board or the executive secretary may, and shall at the request of either party, issue subpoenas and subpoenas duces tecum. All testimony shall be on oath administered by a member of the board. The board shall certify to the superior court the facts of any refusals to obey a subpoena, take the oath, or testify. The court shall summarily hear the evidence on such refusal and, if the evidence warrants, punish such refusal in the same manner and to the same extent as for contempt committed before, or in connection with the proceedings of, the court. The board shall prepare an official record of the hearing, including all testimony, recorded manually or by mechanical device, and exhibits; but it may not be required to transcribe such record unless requested by the employee, who shall be furnished with a complete transcript upon payment of a reasonable charge. However, payment of the cost of a transcript used on appeal shall await determination of the appeal and shall be made by the employing agency if the employee prevails. [1985 c 461 § 7; 1981 c 311 § 12.]

Severability—1985 c 461: See note following RCW 41.06.020.

41.64.120 Employee appeals—Findings of fact, conclusions of law, order—Notice to employee and employing agency. (1) Within thirty days after the conclusion of the hearing, the board shall make and fully record in its permanent records the following: (a) Findings of fact; (b)

conclusions of law when the construction of a rule, regulation, or statute is in question; (c) reasons for the action taken; and (d) the board's order based thereon. The order is final, subject to action by the court on appeal as provided in this chapter.

(2) The board shall simultaneously send a copy of the findings, conclusions, and order by certified mail to the employing agency and to the employee or the employee's designated representative. [1981 c 311 § 13.]

41.64.130 Employee appeals—Review by superior court—Grounds—Notice, service—Certified transcript.

(1) Within thirty days after the recording of the order and the mailing thereof, the employee may appeal the decision and order of the board on appeals made pursuant to RCW 41.06.170(2), as now or hereafter amended, to the superior court of Thurston county on one or more of the grounds that the order was:

(a) Founded on or contained an error of law, which shall specifically include error in construction or application of any pertinent rules or regulations;

(b) Contrary to a preponderance of the evidence as disclosed by the entire record with respect to any specified finding or findings of fact;

(c) Materially affected by unlawful procedure;

(d) Based on violation of any constitutional provision;

or

(e) Arbitrary or capricious.

(2) Such grounds shall be stated in a written notice of appeal filed with the court, with copies thereof served on a member of the board or the executive secretary and on the employing agency, all within the time stated.

(3) Within thirty days after service of such notice, or within such further time as the court may allow, the board shall transmit to the court a certified transcript, with exhibits, of the hearing; but by stipulation between the employing agency and the employee the transcript may be shortened, and either party unreasonably refusing to stipulate to such limitation may be ordered by the court to pay the additional cost involved. The court may require or permit subsequent corrections or additions to the transcript. [1981 c 311 § 14.]

41.64.140 Employee appeals—Review by superior court—Procedure—Appellate review. (1) The court shall review the hearing without a jury on the basis of the transcript and exhibits, except that in case of alleged irregularities in procedure before the board not shown by the transcript the court may order testimony to be given thereon. The court shall upon request by either party hear oral argument and receive written briefs.

(2) The court may affirm the order of the board, remand the matter for further proceedings before the board, or reverse or modify the order if it finds that the objection thereto is well taken on any of the grounds stated. Appellate review of the order of the superior court may be sought as in other civil cases. [1988 c 202 § 42; 1981 c 311 § 15.]

Severability—1988 c 202: See note following RCW 2.24.050.

41.64.910 Severability—1981 c 311. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of

the provision to other persons or circumstances is not affected. [1981 c 311 § 24.]

Chapter 41.68

**REPARATIONS TO STATE EMPLOYEES
TERMINATED DURING WORLD WAR II**

Sections

- 41.68.010 Legislative finding.
- 41.68.020 Eligibility for reparation.
- 41.68.030 Submittal of claim.
- 41.68.040 Determination of eligibility.
- 41.68.050 Payment of reparation.

Redress authorized for municipal employees dismissed during World War II: RCW 41.04.580.

41.68.010 Legislative finding. The dismissal or termination of various state employees during World War II resulted from the promulgation of federal Executive Order 9066 which was based mainly on fear and suspicion rather than on factual justification. It is fair and just that reparations be made to those employees who were terminated from state employment during the wartime years because of these circumstances. The legislature therefore finds that equity and fairness will be served by authorizing the filing of claims with the state for salary losses suffered by the state employees directly affected, and by authorizing the payment thereof, subject to the provisions of this chapter. [1983 1st ex.s. c 15 § 1.]

41.68.020 Eligibility for reparation. Any state employee or the living surviving spouse of a state employee who, due to the promulgation of federal Executive Order 9066, was dismissed, terminated from a temporary position, or rejected during the person's probationary period, or who voluntarily resigned in lieu of dismissal from state government employment, and who incurred salary losses as a result thereof, is eligible to file a claim with the state for the reparation of those losses. [1983 1st ex.s. c 15 § 2.]

41.68.030 Submittal of claim. A claim under this chapter may be submitted to the department of personnel for the reparation of salary losses suffered during the years 1942 through 1947. The claim shall be supported by appropriate verification, such as the person's name at the time of the dismissal, the name of the employing department, and a social security number, or by evidence of official action of termination. The claimant shall also provide an address to which the department shall mail notification of its determination regarding the claimant's eligibility. [1983 1st ex.s. c 15 § 3.]

41.68.040 Determination of eligibility. (1) The department of personnel shall determine the eligibility of a claimant to receive reparations authorized by this chapter. The department shall then notify the claimant by mail of its determination regarding the claimant's eligibility.

(2) The department may adopt rules that will assist in the fair determination of eligibility and the processing of claims. The department, however, has no obligation to directly notify any person of possible eligibility for repara-

tion of salary losses under this chapter. [1983 1st ex.s. c 15 § 4.]

41.68.050 Payment of reparation. A claimant under this chapter who is determined eligible by the department of personnel shall receive two thousand five hundred dollars each year for two years. All claims which the department determines are eligible for reparation shall be immediately forwarded to the state treasurer, who shall issue warrants in the appropriate amounts upon demand and verification of identity. If a claimant dies after filing a claim but before receiving full payment, payments shall be made to the claimant's estate upon demand and verification of identity. [1983 1st ex.s. c 15 § 5.]

Chapter 41.72

LAW ENFORCEMENT MEDAL OF HONOR

Sections

- 41.72.010 Law enforcement medal of honor established.
- 41.72.020 Law enforcement medal of honor committee established—Membership—Establishment of qualifications for award.
- 41.72.030 Law enforcement medal of honor awarded—When.
- 41.72.040 Law enforcement medal of honor may be awarded posthumously.
- 41.72.050 Law enforcement medal of honor—Design.

41.72.010 Law enforcement medal of honor established. There is established a decoration of the state law enforcement medal of honor with accompanying ribbons and appurtenances for award by the governor in the name of the state to any law enforcement officer who has been seriously injured or killed while in the performance of duty, or who has been distinguished by exceptionally meritorious conduct, upon nomination of the governor's state law enforcement medal of honor committee. [1994 c 89 § 1.]

41.72.020 Law enforcement medal of honor committee established—Membership—Establishment of qualifications for award. There is created the state law enforcement medal of honor committee for nominating candidates for the award of the state law enforcement medal of honor. The committee membership consists of a representative from the governor's office, the Washington state law enforcement association, the Washington state council of police officers, the Washington association of sheriffs and police chiefs, and the Washington state troopers association. The attorney general shall serve as chair of the committee and shall designate a secretary for the committee. The committee shall meet not less than semiannually to consider candidates for nomination. The committee shall adopt rules establishing the qualifications for the state law enforcement medal of honor, the protocol governing the decoration, and the appurtenances necessary to the implementation of this chapter. [1994 c 89 § 2.]

41.72.030 Law enforcement medal of honor awarded—When. The state law enforcement medal of honor shall be awarded to recipients during the national law enforcement recognition week. The governor may delegate the awarding

of the medal to the lieutenant governor or the attorney general. [1994 c 89 § 3.]

41.72.040 Law enforcement medal of honor may be awarded posthumously. The state law enforcement medal of honor may be awarded posthumously to be presented to the representative of the deceased as may be deemed appropriate by the governor or the designees specified in RCW 41.72.030. [1994 c 89 § 4.]

41.72.050 Law enforcement medal of honor—Design. The decoration of the state law enforcement medal of honor shall be bronze and shall consist of a police shield overlaid by a sheriff's star with the seal of the state of Washington in the center and the words "law enforcement medal of honor" within the design and suspended from a ring attached by either a navy blue ribbon with a gold edge or a green ribbon with a gold edge. Such color choice shall be the recipient's. The reverse of the decoration shall be inscribed with the words "For exceptionally honorable and meritorious conduct in performing services as a law enforcement officer." [1994 c 89 § 5.]

Title 42

PUBLIC OFFICERS AND AGENCIES

Chapters

- 42.04 General provisions.
- 42.08 Official bonds.
- 42.12 Vacancies.
- 42.14 Continuity of government act.
- 42.16 Salaries and fees.
- 42.17 Disclosure—Campaign finances—Lobbying—Records.
- 42.20 Misconduct of public officers.
- 42.23 Code of ethics for municipal officers—Contract interests.
- 42.24 Payment of claims for expenses, material, purchases—Advancements.
- 42.26 Agency vendor payment revolving fund—Petty cash accounts.
- 42.30 Open Public Meetings Act.
- 42.32 Meetings.
- 42.36 Appearance of fairness doctrine—Limitations.
- 42.40 State employee whistleblower protection.
- 42.41 Local government whistleblower protection.
- 42.44 Notaries public.
- 42.48 Release of records for research.
- 42.52 Ethics in public service.

Collection agencies retained to collect public debts—Fees: RCW 19.16.500.
County officers, general provisions: Chapter 36.16 RCW.
Credit card use by local governments: RCW 43.09.2855.
Elections: Title 29 RCW.
Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.
Military leave for public employees: RCW 38.40.060.
Public employment, civil service and pensions: Title 41 RCW.
State officers, general provisions: Chapter 43.01 RCW.

Chapter 42.04 GENERAL PROVISIONS

Sections

- 42.04.020 Eligibility to hold office.
- 42.04.040 Proceedings to impeach, etc., preserved.
- 42.04.060 Offices to be open certain days and hours.
- 42.04.070 Compensation for unofficial services.

42.04.020 Eligibility to hold office. That no person shall be competent to qualify for or hold any elective public office within the state of Washington, or any county, district, precinct, school district, municipal corporation or other district or political subdivision, unless he be a citizen of the United States and state of Washington and an elector of such county, district, precinct, school district, municipality or other district or political subdivision. [1919 c 139 § 1; RRS

§ 9929. FORMER PART OF SECTION: Code 1881 § 3050 codified as RCW 42.04.021.]

Apple advertising commission, qualifications of members: RCW 15.24.020.
Attorney general, qualifications: RCW 43.10.010.
Cemetery board, qualifications of members: RCW 68.05.050.
Cities, council-manager plan, qualifications of city manager: RCW 35.18.040.
Cities and towns, residence qualifications of officials and employees: RCW 35.21.200.
County hospital board of trustees, eligibility: RCW 36.62.140.
Court administrator, qualifications: RCW 2.56.010.
Court commissioners, qualifications: RCW 2.24.010.
Dairy products commission, members, qualifications: RCW 15.44.030.
Electors, qualifications: State Constitution Art. 6 § 1 (Amendment 5).
Engineers and land surveyors' board of registration, qualifications: RCW 18.43.030.
Fire protection district commissioners, qualifications: RCW 52.14.010.
Fish and wildlife commission members, qualifications: RCW 77.04.040.
Flood control districts, qualifications of governing board: RCW 85.38.070.
Fruit commission, qualifications of members: RCW 15.28.030.
Hardwoods commission, qualifications: RCW 15.74.010.
Honey bee commission, qualifications: RCW 15.62.060.
Horse racing commission, qualifications: RCW 67.16.012.
Judges of superior court, eligibility: State Constitution Art. 4 § 17.
Judges of supreme court, eligibility: State Constitution Art. 4 § 17.
Legislators, eligibility: State Constitution Art. 2 § 7; Art. 2 § 14.
Mosquito control district board members, qualifications: RCW 17.28.120.
Municipal court judges, qualifications: RCW 35.20.170.
Precinct committee officers: RCW 29.42.040.
Prosecuting attorney, eligibility: RCW 36.27.010.
Public utility district commissioners, qualifications: RCW 54.12.010.
Religious qualification to hold public office or employment prohibited: State Constitution Art. 1 § 11 (Amendment 4).
Residence for eligibility to public office: State Constitution Art. 6 § 4.
School directors, qualifications: RCW 28A.315.490.
School teachers, qualifications: RCW 28A.410.025, 28A.405.040.
State board of education, eligibility: RCW 28A.305.060.
State hospitals for mentally ill, superintendents' powers: RCW 72.23.030.
State officers, eligibility: State Constitution Art. 3 § 25 (Amendment 31).
State schools for blind and deaf, qualifications of superintendents: RCW 72.40.020.
Subversive activities as disqualification from holding public office: Chapter 9.81 RCW.
Superior court reporters, qualifications: RCW 2.32.180.
Towns, eligibility of officers: RCW 35.27.080.
Utilities and transportation commission, qualifications: RCW 80.01.020.
Veterinary board members, qualifications: RCW 18.92.021.
Weed district director and electors, qualifications: RCW 17.04.070.
Wine commission, qualifications: RCW 15.88.030.

42.04.040 Proceedings to impeach, etc., preserved. The omission to specify or affirm in *this act any ground of

forfeiture of a public office or other trust or special authority conferred by law, or any power conferred by law to impeach, remove, depose or suspend any public officer or other person holding any trust, appointment or other special authority conferred by law, shall not affect such forfeiture or power, or any proceeding authorized by law to carry into effect such impeachment, removal, deposition or suspension. [1909 c 249 § 45; RRS § 2297.]

***Reviser's note:** The term "this act" relates to the criminal code of 1909. For disposition of sections, see note following RCW 9.01.120.

Forfeiture of office for conviction of felony or malfeasance: RCW 9.92.120.

Impeachment and removal: State Constitution Art. 5.

Recall of elective officers: State Constitution Art. 1 § 33 (Amendment 8); chapter 29.82 RCW.

42.04.060 Offices to be open certain days and hours. All state elective and appointive officers shall keep their offices open for the transaction of business from eight o'clock a.m. to five o'clock p.m. of each business day from Monday through Friday, state legal holidays excepted. On Saturday, such offices may be closed.

This section shall not apply to the courts of record of this state or to their officers nor to the office of the attorney general and the lieutenant governor. [1973 2nd ex.s. c 1 § 2; 1955 ex.s. c 9 § 3. Prior: 1951 c 100 §§ 3, 4; 1941 c 113 § 1; Rem. Supp. 1941 § 9963-1.]

Office hours of city, county, precinct: RCW 35.21.175, 36.16.100.

42.04.070 Compensation for unofficial services. That the directors, trustees and commissioners of state institutions in this state, serving as such without any compensation, shall not be precluded by reason of holding such offices from receiving compensation for services not official rendered without being procured or brought about by use of such official position, or by reason thereof, but such officers shall be allowed to receive such reasonable compensation for services not official or connected with their respective offices as they would otherwise be allowed were they not such officers. [1891 c 109 § 1; RRS § 10966.]

Chapter 42.08 OFFICIAL BONDS

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Adjutant general, official bond: RCW 38.12.010.

Apple advertising commission treasurer, bond required: RCW 15.24.150.

Attorney general, official bonds: RCW 43.10.010, 43.10.020.

Cities, code city retaining second class form, bond of officers: RCW 35.23.835.

Cities, commission form, bonds required: RCW 35.17.100.

Cities, council-manager plan, bond of manager: RCW 35.18.050.

Cities, second class, bond required: RCW 35.23.081.

Commissioner of public lands, official bonds: RCW 79.01.064.

County clerk, new bond may be required: RCW 36.23.020.

County commissioners, official bond: RCW 36.32.060.

County officers, official bonds: RCW 36.16.050.

County sheriff, additional bond: RCW 36.28.030.

Dairy products commission treasurer, bond required: RCW 15.44.050.

Flood control districts, official bonds: RCW 86.09.301, 86.09.304, 86.09.307.

Fruit commission treasurer, bond required: RCW 15.28.190.

Horse racing commission, official bonds: RCW 67.16.012.

Insurance commissioner, official bond: RCW 48.02.030.

Irrigation districts, official bonds: RCW 87.03.082.

Liquor control board, official bond: RCW 66.08.014.

Municipal court judge, bond required: RCW 35.20.180.

Public printer, official bond: RCW 43.78.020.

Reclamation district directors, official bonds: RCW 89.30.259.

Reclamation districts, bond of secretary: RCW 89.30.262.

Secretary of state, official bond: RCW 43.07.010.

State administrative officers, official bonds: RCW 43.17.100.

State auditor, official bond: RCW 43.09.010.

State treasurer, official bond: RCW 43.08.020.

Superior court reporters, bond required: RCW 2.32.180.

Suretyship: Chapters 19.72, 48.28 RCW.

Towns, bond of officers: RCW 35.27.120.

University of Washington, board of regents, secretary to give bond: RCW 28B.30.135.

Utilities and transportation commission, official bonds: RCW 80.01.020.

Washington State University, board of regents, bonds required: RCW 28B.30.100, 28B.30.130.

Weed district officers, bond required: RCW 17.04.070.

42.08.005 Official bonds—Payment of premiums.
See RCW 48.28.040.

OFFICIAL BONDS—CODE OF 1881

42.08.010 Scope of coverage. The official bond of a public officer, to the state, or to any county, city, town or other municipal or public corporation of like character therein, shall be deemed a security to the state, or to such county, city, town or other municipal or public corporation, as the case may be, and also to all persons severally, for the official delinquencies against which it is intended to provide. [Code 1881 § 652; 1877 p 135 § 655; 1869 p 152 § 592; RRS § 958.]

Bonds payable to state: RCW 42.08.060.

42.08.020 Who may maintain action. When a public officer by official misconduct or neglect of duty, shall forfeit

his official bond or render his sureties therein liable upon such bond, any person injured by such misconduct or neglect, or who is by law entitled to the benefit of the security, may maintain an action at law thereon in his own name against the officer and his sureties to recover the amount to which he may by reason thereof be entitled. [Code 1881 § 653; 1877 p 135 § 656; 1869 p 152 § 593; RRS § 959.]

Action on official bond: RCW 42.08.080.

42.08.030 Leave of court required. Before an action can be commenced by a plaintiff, other than the state, or the municipal or public corporation named in the bond, leave shall be obtained of the court or judge thereof where the action is triable. Such leave shall be granted upon the production of a certified copy of the bond and an affidavit of the plaintiff, or some person in his behalf, showing the delinquency. But if the matter set forth in his affidavit be such that, if true, the party applying would clearly not be entitled to recover in the action, the leave shall not be granted. If it does not appear from the complaint that the leave herein provided for has been granted, the defendant, on motion, shall be entitled to judgment of nonsuit; if it does, the defendant may controvert the allegation, and if the issue be found in his favor, judgment shall be given accordingly. [Code 1881 § 654; 1877 p 136 § 657; 1869 p 152 § 594; RRS § 960.]

42.08.040 Judgment no bar to further action. A judgment in favor of a party for one delinquency shall not preclude the same or another party from maintaining another action on the same bond for another delinquency. [Code 1881 § 655; 1877 p 136 § 658; 1869 p 153 § 595; RRS § 961.]

42.08.050 Recoveries limited to amount of bond. In an action upon an official bond, if judgments have been recovered against the surety therein other than by confession, equal in the aggregate to the penalty or any part thereof of such bond, and if such recovery be established on the trial, judgment shall not be given against such surety for an amount exceeding such penalty, or such portion thereof as is not already recovered against him. [Code 1881 § 656; 1877 p 136 § 659; 1869 p 153 § 596; RRS § 962.]

Liability of sureties: RCW 42.08.170.

OFFICIAL BONDS—1890 ACT

42.08.060 Form of official bonds. All official bonds required by law of officers shall be in form, joint and several, and made payable to the state of Washington, in such penal sum and with such conditions as may be required by law. [1890 p 34 § 1; RRS § 9930.]

Bonds deemed security to state, county, city, town, etc.: RCW 42.08.010.

County commissioner bond is payable to county: RCW 36.32.060.

42.08.070 Effect of bonds. Every official bond executed by any officer pursuant to law shall be deemed and taken to be in force, and shall be obligatory upon the principal and sureties therein for any and all breach of the condition or conditions thereof committed during the time

such officer shall continue to discharge any of the duties of, or hold such office, and every such bond shall be deemed to be in force and obligatory upon the principal and sureties therein for the faithful discharge of all duties which may be required of such officer by any law enacted subsequent to the execution of such bond, and such condition shall be expressed therein. [1890 p 34 § 2; RRS § 9931.]

42.08.080 Who may bring action on bond. Every official bond executed by any officer pursuant to law, shall be in force and obligatory upon the principal and sureties therein, to and for the state of Washington, and to and for the use and benefit of all persons who may be injured or aggrieved by the wrongful act or default of such officer, in his official capacity, and any person so injured or aggrieved may bring suit on such bond in his or her own name without an assignment thereof. [1890 p 34 § 3; RRS § 9932.]

Action on official bond: RCW 42.08.020.

42.08.090 Defective bonds validated. Whenever any such official bond shall not contain the substantial matter or condition or conditions required by law, or there shall be any defect in the approval or filing thereof, such bond shall not be void so as to discharge such officer and his sureties, but they shall be bound to the state, or party interested, and the state or such party may, by action instituted in any court of competent jurisdiction, suggest the defect of such bond or such approval or filing, and recover his proper and equitable demand or damages from such officer, and the person or persons, who intended to become, and were included in such bond as sureties. [1890 p 35 § 4; RRS § 9933.]

42.08.100 Approval and filing. The official bonds of officers shall be approved and filed as follows, to wit: The official bond of the secretary of state shall be approved by the governor and filed in the office of the state auditor. The official bonds of all other state officers required by law to give bonds, except as otherwise expressly provided by law, shall be approved by the governor and filed in the office of the secretary of state.

The official bonds of all county and township officers, except the county superintendent of schools, shall be approved by the board of county commissioners, if in session, and if not in session, by the chairman of such board, and filed and recorded in the office of the county clerk of their respective counties: PROVIDED, That the bond of the county clerk shall be recorded in the office of the county auditor and filed in the office of the county treasurer. [1955 c 157 § 11. Prior: 1890 p 35 § 5; RRS § 9934.]

Contractor's bonds: Chapter 39.08 RCW.

Official bonds—Payment of premiums: RCW 48.28.040.

Surety insurance: Chapter 48.28 RCW.

42.08.110 Procedure when bond of county or township officer is insufficient. Whenever the sureties, or any one of them, in the official bond of any county or township officer shall die, remove from the state, become insolvent or insufficient, or the penalty of such bond shall become insufficient, on account of recoveries had thereon, or otherwise, it shall be the duty of the board of county commissioners of the proper county, of their own motion, or

on the showing of any person, supported by affidavit, to summon any such officer to appear before them at a stated time, not less than five days after service of such summons, and show cause why he should not execute an additional official bond with good and sufficient sureties. [1890 p 35 § 6; RRS § 9935.]

42.08.120 Additional bond. Should such officer, after due notice, fail to appear at the time appointed, the matter may be heard and determined in his absence; if after examination the board of county commissioners shall be of opinion that the bond of such officer has become insufficient from any cause whatever, they shall require an additional bond with such security as may be deemed necessary, which said additional bond shall be executed and filed within such time as the board of county commissioners may order; and if any such officer shall fail to execute and file such additional bond within the time prescribed by such order, his office shall become vacant. [1890 p 36 § 7; RRS § 9936.]

Failure to give or renew official bond a cause for vacation of office: RCW 42.12.010.

42.08.130 Remedy when bond of state officer becomes insufficient. Whenever the official bond of any state officer shall become insufficient from any cause whatever, the like proceedings may be had before the superior court of the county in which said state officer holds his office with reference thereto: PROVIDED, That such proceedings may be commenced by a written motion supported by affidavit. [1890 p 36 § 8; RRS § 9937.]

42.08.140 Force of additional bond. Every such additional bond shall be of like force and obligation upon the principal and sureties therein, and shall subject the officer and his sureties to the same liabilities as are prescribed respecting the original bonds of officers. [1890 p 36 § 9; RRS § 9938.]

42.08.150 Number of sureties. Unless otherwise expressly provided, there shall be at least two sureties upon the official bond of every officer. [1890 p 36 § 10; RRS § 9939.]

Corporate sureties: Chapter 482 RCW.*

42.08.160 Justification of sureties. In all cases where official bonds are required or may be hereafter required, from state, county, township or precinct officers, the officer or officers whose duty it is or may be to approve such bonds, shall not accept or approve any such bonds except such bond be that of a surety company, unless the sureties thereon shall severally justify before an officer authorized to administer oaths as follows: (1) On a bond given by a state or county officer that he is a resident and freeholder within this state, and on a bond given by a township or precinct officer that he is a resident and freeholder within the county in which such township or precinct is situated. (2) That he is worth double the amount for which he becomes surety over and above all his debts and liabilities, in property situated within this state which is not exempt from seizure and sale under execution. [1901 c 14 § 1; 1890 p 36 § 11; RRS § 9940.]

Qualification of individual sureties: RCW 19.72.030.

42.08.170 Liability of sureties. When the penal sum of any bond amounts to more than two thousand dollars, the sureties may become severally liable for portions, not less than five hundred dollars, of such penal sum, making in the aggregate at least two sureties for the whole penal sum. [1890 p 37 § 12; RRS § 9941.]

Recoveries limited to amount of bond: RCW 42.08.050.

42.08.180 Release of sureties. Release of sureties (1937 act), see chapter 19.72 RCW.

Chapter 42.12 VACANCIES

Sections

- 42.12.010 Causes of vacancy.
- 42.12.020 Resignations, to whom made.
- 42.12.030 Term of person elected to fill vacancy.
- 42.12.040 Vacancy in partisan elective office—Successor elected—When.
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- City offices, vacancies, how filled*
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council-manager plan
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optional municipal code: RCW 35A.13.020.
mayor-council plan, optional municipal code: RCW 35A.12.050.
second class: RCW 35.23.101.
- Congress, vacancies, how filled: RCW 29.68.080 through 29.68.120.*
- County, township, precinct, or road district offices, vacancies, how filled: State Constitution Art. 11 § 6.*
- County annexation review board, vacancies: RCW 35A.14.170.*
- County clerk, failure to file new bond vacates office: RCW 36.23.020, 42.08.120.*
- County commissioners*
removal for misconduct: RCW 36.32.225.
vacancies, how filled: RCW 36.32.070.
- County hospital board of trustees, vacancies, how filled: RCW 36.62.160.*
- County officers*
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vacancies: RCW 29.15.230, 36.16.110, 36.16.115, 42.12.040.
- County treasurer, suspension for misconduct: RCW 36.29.090.*
- Educational service district superintendent: Chapter 28A.310 RCW.*
- Engineers and land surveyors' board of registration, vacancies on: RCW 18.43.030.*
- Fire protection district commissioners, vacancies: RCW 52.14.050.*
- Flood control districts, vacancies in governing board: RCW 85.38.070.*
- Fruit commission, vacancies, how filled: RCW 15.28.080.*
- Governor*
appointive state office, vacancies in, filled by: RCW 43.06.090.
vacancy in office of: State Constitution Art. 3 § 10 (Amendment 6).
- Horse racing commission, vacancies: RCW 67.16.012.*
- Impeachment: State Constitution Art. 5.*
- Irrigation district directors, vacancies, how filled: RCW 87.03.081, 87.04.020.*
- Joint legislative audit and review committee, vacancies, how filled: RCW 44.28.020.*
- Judges*
removal from office: State Constitution Art. 4 § 9.

vacancies, how filled

court of appeals: RCW 2.06.080.

district court: RCW 3.34.100.

superior court: State Constitution Art. 4 § 5; RCW 2.08.069, 2.08.120.

supreme court: State Constitution Art. 4, § 3; RCW 2.04.100.

Judicial officer's absence from state as forfeiting office: State Constitution Art. 4 § 8.

Legislators, expulsion of member: State Constitution Art. 2 § 9.

Legislators, vacancies, how filled: State Constitution Art. 2 § 15 (Amendment 52), RCW 42.12.040.

Liquor control board, vacancies, how filled: RCW 66.08.014.

Militia, vacancies, how filled: RCW 38.12.095 through 38.12.115.

Mosquito control districts, vacancies in board of trustees: RCW 17.28.130.

Partisan elective offices, vacancies, how filled: RCW 29.15.230.

Prosecuting attorney, removal from office: State Constitution Art. 4 § 9.

Public utility district commissioners, vacancies: RCW 54.12.010.

Recall proceedings, grounds: RCW 29.82.010.

Reclamation district directors, vacancies: RCW 89.30.256.

Regional universities—Trustees, appointment, terms, quorum, vacancies: RCW 28B.35.100.

School directors in second and third class districts, vacancies, how filled: RCW 28A.315.530.

State appointive office, vacancy in, how filled: State Constitution Art. 3 § 13; RCW 43.06.090.

State board of education, vacancies, how filled: RCW 28A.305.090.

State elective officers

recall: State Constitution Art. 1 § 33 (Amendment 8).

vacancy, successor elected: RCW 42.12.040.

State officers, removal from office: State Constitution Art. 5.

Statute law committee, vacancies, how filled: RCW 1.08.003.

The Evergreen State College—Trustees, appointment, terms, quorum, vacancies: RCW 28B.40.100.

United States senators, vacancies, how filled: RCW 29.68.070.

University of Washington board of regents, vacancies, how filled: RCW 28B.20.100.

Utilities and transportation commission, vacancies, how filled: RCW 80.01.010.

Washington State University board of regents, vacancies: RCW 28B.30.100.

Water-sewer district commissioners, vacancies: RCW 57.12.020.

Weed district directors, vacancies, how filled: RCW 17.04.070.

42.12.010 Causes of vacancy. Every elective office shall become vacant on the happening of any of the following events:

(1) The death of the incumbent;

(2) His or her resignation. A vacancy caused by resignation shall be deemed to occur upon the effective date of the resignation;

(3) His or her removal;

(4) Except as provided in RCW 3.46.067 and 3.50.057, his or her ceasing to be a legally registered voter of the district, county, city, town, or other municipal or quasi municipal corporation from which he or she shall have been elected or appointed, including where applicable the council district, commissioner district, or ward from which he or she shall have been elected or appointed;

(5) His or her conviction of a felony, or of any offense involving a violation of his or her official oath;

(6) His or her refusal or neglect to take his or her oath of office, or to give or renew his or her official bond, or to deposit such oath or bond within the time prescribed by law;

(7) The decision of a competent tribunal declaring void his or her election or appointment; or

(8) Whenever a judgment shall be obtained against that incumbent for breach of the condition of his or her official bond. [1994 c 223 § 2; 1993 c 317 § 9; 1981 c 180 § 4; Code 1881 § 3063; 1866 p 28 § 2; RRS § 9950.]

Effective date—1994 c 223 § 2: "(1) Section 2 of this act shall take effect January 1, 1995.

*(2) Section 20 of this act shall take effect July 1, 1994." [1994 c 223 § 94.]

***Reviser's note:** The governor vetoed 1994 c 233 § 20.

Severability—Effective date—1993 c 317: See notes following RCW 3.46.155.

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

42.12.020 Resignations, to whom made. Resignations shall be made as follows: By the state officers and members of the legislature, to the governor; by all county officers, to the county commissioners of their respective counties; by all other officers, holding their offices by appointment, to the body, board or officer that appointed them. [Code 1881 § 3062; 1865 p 28 § 1; RRS § 9949.]

Appointments to fill vacancies: State Constitution Art. 2 § 15 (Amendment 32).

42.12.030 Term of person elected to fill vacancy.

Whenever any officer resigns his office before the expiration of his term, or the office becomes vacant from any other cause, and at a subsequent special election such vacancy is filled, the person so elected to fill such vacancy shall hold office for the remainder of the unexpired term. [1981 c 180 § 5; Code 1881 § 3066; 1866 p 30 § 6; RRS § 9951.]

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

42.12.040 Vacancy in partisan elective office—Successor elected—When.

If a vacancy occurs in any partisan elective office in the executive or legislative branches of state government or in any partisan county elective office before the fourth Tuesday prior to the primary for the next general election following the occurrence of the vacancy, a successor shall be elected to that office at that general election. Except during the last year of the term of office, if such a vacancy occurs on or after the fourth Tuesday prior to the primary for that general election, the election of the successor shall occur at the next succeeding general election. The elected successor shall hold office for the remainder of the unexpired term. This section shall not apply to any vacancy occurring in a charter county which has charter provisions inconsistent with this section. [1981 c 180 § 1.]

Reviser's note: 1981 c 180 § 1 directed that this section be added to chapter 29.18 RCW. Since that placement appears inappropriate, this section has been codified as part of chapter 42.12 RCW.

Severability—1981 c 180: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1981 c 180 § 6.]

County office, appointment of acting official: RCW 36.16.115.

Filing period, special: RCW 29.15.230.

42.12.070 Filling nonpartisan vacancies. A vacancy on an elected nonpartisan governing body of a special

purpose district where property ownership is not a qualification to vote, a town, or a city other than a first class city or a charter code city, shall be filled as follows unless the provisions of law relating to the special district, town, or city provide otherwise:

(1) Where one position is vacant, the remaining members of the governing body shall appoint a qualified person to fill the vacant position.

(2) Where two or more positions are vacant and two or more members of the governing body remain in office, the remaining members of the governing body shall appoint a qualified person to fill one of the vacant positions, the remaining members of the governing body and the newly appointed person shall appoint another qualified person to fill another vacant position, and so on until each of the vacant positions is filled with each of the new appointees participating in each appointment that is made after his or her appointment.

(3) If less than two members of a governing body remain in office, the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person or persons to the governing body until the governing body has two members.

(4) If a governing body fails to appoint a qualified person to fill a vacancy within ninety days of the occurrence of the vacancy, the authority of the governing body to fill the vacancy shall cease and the county legislative authority of the county in which all or the largest geographic portion of the city, town, or special district is located shall appoint a qualified person to fill the vacancy.

(5) If the county legislative authority of the county fails to appoint a qualified person within one hundred eighty days of the occurrence of the vacancy, the county legislative authority or the remaining members of the governing body of the city, town, or special district may petition the governor to appoint a qualified person to fill the vacancy. The governor may appoint a qualified person to fill the vacancy after being petitioned if at the time the governor fills the vacancy the county legislative authority has not appointed a qualified person to fill the vacancy.

(6) As provided in RCW 29.15.190 and 29.21.410, each person who is appointed shall serve until a qualified person is elected at the next election at which a member of the governing body normally would be elected that occurs twenty-eight or more days after the occurrence of the vacancy. If needed, special filing periods shall be authorized as provided in RCW 29.15.170 and 29.15.180 for qualified persons to file for the vacant office. A primary shall be held to nominate candidates if sufficient time exists to hold a primary and more than two candidates file for the vacant office. Otherwise, a primary shall not be held and the person receiving the greatest number of votes shall be elected. The person elected shall take office immediately and serve the remainder of the unexpired term.

If an election for the position that became vacant would otherwise have been held at this general election date, only one election to fill the position shall be held and the person elected to fill the succeeding term for that position shall take office immediately when qualified as defined in RCW 29.01.135 and shall service both the remainder of the unexpired term and the succeeding term. [1994 c 223 § 1.]

Chapter 42.14

CONTINUITY OF GOVERNMENT ACT

Sections

42.14.010	Definitions.
42.14.020	Office of governor.
42.14.030	Legislature.
42.14.035	Convening legislature at locations other than usual seat of government.
42.14.040	County commissioners.
42.14.050	City or town officers.
42.14.060	Appointed officers of the state.
42.14.070	Officers of political subdivisions.
42.14.075	Meetings of governing bodies of political subdivisions at other than usual places.
42.14.900	Short title.
42.14.910	Severability—1963 c 203.

Continuity of government: State Constitution Art. 2 § 42 (Amendment 39).

Microfilming of records to provide continuity of civil government: Chapter 40.10 RCW.

42.14.010 Definitions. Unless otherwise clearly required by the context, the following definitions apply:

(1) "Unavailable" means either that a vacancy in the office exists or that the lawful incumbent of the office is absent or unable to exercise the powers and discharge the duties of the office following an attack and a declaration of existing emergency by the governor or his successor.

(2) "Attack" means any acts of warfare taken by an enemy of the United States causing substantial damage or injury to persons or property in the United States and in the state of Washington. [1963 c 203 § 2.]

42.14.020 Office of governor. (1) In the event that all successors to the office of governor as provided by Article 3, section 10, as amended by amendment 6 of the Constitution of the state of Washington are unavailable following an enemy attack, the powers and duties of the office of governor shall be exercised and discharged by the speaker of the house of representatives.

(2) In the event the speaker of the house is unavailable, the powers and duties of the office of governor shall be exercised and discharged by the president pro tem of the senate.

(3) In the event that neither the speaker nor the president pro tem is available, the house of representatives and the senate in joint assembly shall elect an emergency interim governor. [1963 c 203 § 3.]

42.14.030 Legislature. In the event enemy attack reduces the number of legislators available for duty, then those legislators available for duty shall constitute the legislature and shall have full power to act in separate or joint assembly by majority vote of those present. In the event of an attack, (1) quorum requirements for the legislature shall be suspended, and (2) where the affirmative vote of a specified proportion of members for approval of a bill, resolution or other action would otherwise be required, the same proportion of those voting thereon shall be sufficient. In the event of an attack, the governor shall call the legislature into session as soon as practicable, and in any case within thirty days following the inception of the attack. If the governor fails to issue such call, the legislature shall, on

the thirtieth day from the date of inception of the attack, automatically convene at the place where the governor then has his office. Each legislator shall proceed to the place of session as expeditiously as practicable. At such session, at any session in operation at the inception of the attack, and at any subsequent sessions, limitations on the length of session and on the subjects which may be acted upon shall be suspended. [1963 c 203 § 4.]

42.14.035 Convening legislature at locations other than usual seat of government. Whenever, in the judgment of the governor, it becomes impracticable, due to an emergency resulting from enemy attack or natural disaster, to convene the legislature in the usual seat of government at Olympia, the governor may call the legislature into emergency session in any location within this or an adjoining state. The first order of business of any legislature so convened shall be the establishment of temporary emergency seats of government for the state. After any emergency relocation, the affairs of state government shall be lawfully conducted at such emergency temporary location or locations for the duration of the emergency. [1969 ex.s. c 106 § 1.]

42.14.040 County commissioners. In the event enemy attack reduces the number of county commissioners of any county, then those commissioners available for duty shall have full authority to act in all matters as a board of county commissioners. In the event no county commissioner is available for duty, then those elected county officials, except for the members of the county board of education, as are available for duty shall jointly act as the board of county commissioners and shall possess by majority vote the full authority of the board of county commissioners. [1963 c 203 § 5.]

42.14.050 City or town officers. In the event that the executive head of any city or town is unavailable by reason of enemy attack to exercise the powers and discharge the duties of the office, then those members of the city or town council or commission available for duty shall by majority vote select one of their number to act as the executive head of such city or town. In the event enemy attack reduces the number of city or town councilmembers or commission members, then those members available for duty shall have full power to act by majority vote of those present. [1981 c 213 § 8; 1963 c 203 § 6.]

42.14.060 Appointed officers of the state. The governor shall, subject to such rules and regulations as he may adopt, permit each appointed officer of the state to designate temporary interim successors to the office of such officer. [1963 c 203 § 7.]

42.14.070 Officers of political subdivisions. The legislative authority of each political subdivision, subject to the provisions of this chapter, shall adopt rules and regulations providing for appointment of temporary interim successors to the elected and appointed offices of the political subdivisions. [1963 c 203 § 8.]

42.14.075 Meetings of governing bodies of political subdivisions at other than usual places. Whenever, due to a natural disaster, an attack or an attack is imminent, it becomes imprudent, inexpedient or impossible to conduct the affairs of a political subdivision at the regular or usual place or places, the governing body of the political subdivision may meet at any place within or without the territorial limits of the political subdivision on the call of the presiding official or any two members of the governing body. After any emergency relocation, the affairs of political subdivisions shall be lawfully conducted at such emergency temporary location or locations for the duration of the emergency. [1969 ex.s. c 106 § 2.]

42.14.900 Short title. This act shall be known as the "continuity of government act." [1963 c 203 § 1.]

42.14.910 Severability—1963 c 203. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1963 c 203 § 9.]

Chapter 42.16

SALARIES AND FEES

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- 42.16.010 Salaries paid twice each month—Policies and procedures to assure full payment—Exceptions.
- 42.16.011 State payroll revolving account, agency payroll revolving fund—Use.
- 42.16.012 State payroll revolving account, agency payroll revolving fund—Disbursements—Sources.
- 42.16.013 Transfers to state payroll revolving account—Certification by agencies or director of financial management.
- 42.16.014 Disbursements by warrants—Certifications.
- 42.16.015 Cancellation of warrants—Transfer of increased balance amounts in state payroll revolving account.
- 42.16.016 Cancellation of warrants—Refund of increased balance amounts in agency payroll revolving fund.
- 42.16.017 Payroll preparation and accounting—Establishment of policies, procedures, and paydates.
- 42.16.020 Salaried officers not to receive witness fees—Exceptions.
- 42.16.030 Disposition of fees.
- 42.16.040 Official fees payable in advance.

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council-manager plan, salaries: RCW 35.18.220.
optional municipal code
council-manager plan, compensation: RCW 35A.13.040.
mayor-council plan, compensation: RCW 35A.12.070.*

Commissioner of public lands

*fees: RCW 79.01.720.
salary: State Constitution Art. 3 § 23; RCW 43.03.010.*

Compensation not to be increased or diminished during term of office: State Constitution Art. 2 § 13; Art. 2 § 25; Art. 3 § 25 (Amendment 31); Art. 4 § 13; Art. 11 § 8; Art. 28 § 1 (Amendment 20).

County officers, compensation: State Constitution Art. 11 § 8.

County officers, fees: Chapter 36.18 RCW.

County officers, salaries: Chapter 36.17 RCW.

County sheriff, fees payable in advance: RCW 36.28.040.

Court commissioners, salary: RCW 2.24.030.

Courts of limited jurisdiction, salaries and fees: State Constitution Art. 4 § 10 (Amendment 28).

Elected officials, executive branch, salaries: RCW 43.03.011.

Election officials, fees: RCW 29.45.120.

Judges, salaries: RCW 43.03.012.

Judicial officers, salaries, how paid, etc.: State Constitution Art. 4 § 13.

Justices of supreme court, salaries: State Constitution Art. 4 § 14.

Legislators, salaries: RCW 43.03.013.

Militia, salaries and pay: RCW 38.24.050.

Municipal court judges, salaries: RCW 35.20.160.

Reformatory chief executive officer, salary: RCW 72.01.060.

Secretary of state, fees: RCW 43.07.120.

Secretary of transportation, salary: RCW 47.01.041.

State appointive officers, governor may fix salaries, maximum: RCW 43.03.040.

State boards and commissions, part-time, compensation: RCW 43.03.220 through 43.03.250.

State committee on agency officials' salaries: RCW 43.03.028.

State elective officers, salaries: RCW 43.03.011.

Superior court reporters, salaries: RCW 2.32.210.

Supreme court reporter, salary: State Constitution Art. 4 § 18; Rules of court: SAR 17(1).

University of Washington, disposition of fees: RCW 28B.15.210, 28B.15.220.

Utilities and transportation commission, salaries: RCW 80.01.010.

Washington State University, disposition of fees: RCW 28B.15.310.

42.16.010 Salaries paid twice each month—Policies and procedures to assure full payment—Exceptions. (1) Except as provided otherwise in subsection (2) of this section, all state officers and employees shall be paid for services rendered from the first day of the month through the fifteenth day of the month and for services rendered from the sixteenth day of the month through the last calendar day of the month. Paydates for these two pay periods shall be established by the director of financial management through the administrative hearing process and the official paydates shall be established six months prior to the beginning of each subsequent calendar year. Under no circumstance shall the paydate be established more than ten days after the pay period in which the wages are earned except when the designated paydate falls on Sunday, in which case the paydate shall not be later than the following Monday. Payment shall be deemed to have been made by the established paydates if: (a) The salary warrant is available at the geographic work location at which the warrant is normally available to the employee; or (b) the salary has been electronically transferred into the employee's account at the employee's designated financial institution; or (c) the salary warrants are mailed at least two days before the established paydate for those employees engaged in work in remote or varying locations from the geographic location at which the payroll is prepared, provided that the employee has requested payment by mail.

The office of financial management shall develop the necessary policies and operating procedures to assure that all remuneration for services rendered including basic salary, shift differential, standby pay, overtime, penalty pay, salary due based on contractual agreements, and special pay provisions, as provided for by law, Washington personnel resources board rules, agency policy or rule, or contract, shall be available to the employee on the designated paydate.

Overtime, penalty pay, and special pay provisions may be paid by the next following paydate if the postponement of payment is attributable to: The employee's not making a timely or accurate report of the facts which are the basis for the payment, or the employer's lack of reasonable opportunity to verify the claim.

Compensable benefits payable because of separation from state service shall be paid with the earnings for the final period worked unless the employee separating has not provided the agency with the proper notification of intent to terminate.

One-half of the employee's basic monthly salary shall be paid in each pay period. Employees paid on an hourly basis or employees who work less than a full pay period shall be paid for actual salary earned.

(2) Subsection (1) of this section shall not apply in instances where it would conflict with contractual rights or, with the approval of the office of financial management, to short-term, intermittent, noncareer state employees, to student employees of institutions of higher education, and to liquor control agency managers who are paid a percentage of monthly liquor sales. [1993 c 281 § 42; 1983 1st ex.s. c 28 § 1; 1979 c 151 § 68; 1969 c 59 § 1; 1967 ex.s. c 25 § 1; 1891 c 130 § 1; RRS § 10965.]

Effective date—1993 c 281: See note following RCW 41.06.022

Application—1983 1st ex.s. c 28: "This act applies to pay periods beginning January 1, 1984." [1983 1st ex.s. c 28 § 8.] For codification of 1983 1st ex.s. c 28, see Codification Tables, Volume 0.

Effective date—1967 ex.s. c 25: "This 1967 amendatory act shall take effect July 1, 1967: PROVIDED, That the budget director may by regulation postpone the operation of the act for any reasonable time, not extending beyond the 1967-1969 biennium, to facilitate an orderly transition in state payroll procedures." [1967 ex.s. c 25 § 9.] For codification of 1967 ex.s. c 25, see Codification Tables, Volume 0. "Budget director" redesignated "director of financial management"; see RCW 43.41.035 and 43.41.940.

42.16.011 State payroll revolving account, agency payroll revolving fund—Use. A state payroll revolving account and an agency payroll revolving fund are created in the state treasury, for the payment of compensation to employees and officers of the state and distribution of all amounts withheld therefrom pursuant to law and amounts authorized by employees to be withheld pursuant to law; also for the payment of the state's contributions for retirement and insurance and other employee benefits: PROVIDED, That the utilization of the state payroll revolving account shall be optional except for agencies whose payrolls are prepared under a centralized system established pursuant to regulations of the director of financial management: PROVIDED FURTHER, That the utilization of the agency payroll revolving fund shall be optional for agencies whose operations are funded in whole or part other than by funds appropriated from the state treasury. [1985 c 57 § 25; 1981 c 9 § 1; 1979 c 151 § 69; 1969 c 59 § 2; 1967 ex.s. c 25 § 2.]

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

Transfer from state payroll revolving fund: "All moneys in the state treasury to the credit of the state payroll revolving fund shall be transferred on the effective date of this act to the state payroll revolving account." [1981 c 9 § 7.] The effective date of 1981 c 9 was February 27, 1981.

42.16.012 State payroll revolving account, agency payroll revolving fund—Disbursements—Sources. The amounts to be disbursed from the state payroll revolving account from time to time on behalf of agencies utilizing such account shall be transferred thereto by the state treasurer from appropriated funds properly chargeable with the disbursement for the purposes set forth in RCW 42.16.011, on or before the day prior to scheduled disbursement. The amounts to be disbursed from the agency payroll revolving fund from time to time on behalf of agencies electing to utilize such fund shall be deposited therein by such agencies from funds held by the agency pursuant to law outside the state treasury and properly chargeable with the disbursement for the purposes set forth in RCW 42.16.011, on or before the day prior to scheduled disbursement. [1981 c 9 § 2; 1967 ex.s. c 25 § 3.]

42.16.013 Transfers to state payroll revolving account—Certification by agencies or director of financial management. The state treasurer shall make such transfers to the state payroll revolving account in the amounts to be disbursed as certified by the respective agencies: PROVIDED, That if the payroll is prepared on behalf of an agency from data authenticated and certified by the agency under a centralized system established pursuant to regulation of the director of financial management, the state treasurer shall make the transfer upon the certification of the head of the agency preparing the centralized payroll or his designee. [1981 c 9 § 3; 1979 c 151 § 70; 1969 c 59 § 3; 1967 ex.s. c 25 § 4.]

42.16.014 Disbursements by warrants—Certifications. Disbursements from the revolving account and fund created by RCW 42.16.010 through 42.16.017 shall be by warrant in accordance with the provisions of RCW 43.88.160: PROVIDED, That when the payroll is prepared under a centralized system established pursuant to regulations of the director of financial management, disbursements on behalf of the agency shall be certified by the head of the agency preparing the centralized payroll or his designee: PROVIDED FURTHER, That disbursements from a centralized paying agency representing amounts withheld, and/or contributions, for payment to any individual payee on behalf of several agencies, may be by single warrant representing the aggregate amounts payable by all such agencies to such payee. The procedure for disbursement and certification of these aggregate amounts shall be established by the director of financial management.

All payments to employees or other payees, from the revolving account and fund created by RCW 42.16.010 through 42.16.017, whether certified by an agency or by the director of financial management on behalf of such agency, shall be made wherever possible by a single warrant reflecting on its face the amount charged to each revolving account and fund. [1981 c 9 § 4; 1979 c 151 § 71; 1969 c 59 § 4; 1967 ex.s. c 25 § 5.]

42.16.015 Cancellation of warrants—Transfer of increased balance amounts in state payroll revolving account. All amounts increasing the balance in the state payroll revolving account, as a result of the cancellation of

warrants issued therefrom shall be transferred by the state treasurer to the fund from which the canceled warrant would originally have been paid except for the provisions of RCW 42.16.010 through 42.16.017. [1981 c 9 § 5; 1967 ex.s. c 25 § 6.]

42.16.016 Cancellation of warrants—Refund of increased balance amounts in agency payroll revolving fund. All amounts increasing the balance in the agency payroll revolving fund, as a result of the cancellation of warrants issued therefrom shall be refunded by the state treasurer to the appropriate state agency. The refund shall be deposited by the agency to the fund from which such amount was originally withdrawn for deposit in the agency payroll revolving fund. [1967 ex.s. c 25 § 7.]

42.16.017 Payroll preparation and accounting—Establishment of policies, procedures, and paydates. The director of financial management shall adopt the necessary policies and procedures to implement RCW 42.16.010 through 42.16.017, including the establishment of paydates. Such paydates shall conform to RCW 42.16.010. The director of financial management shall have approval over all agency and state payroll systems and shall determine the payroll systems to be used by state agencies to ensure the implementation of RCW 42.16.010 and 41.04.232: PROVIDED, That for purposes of the central personnel payroll system, the provisions of RCW 41.07.020 shall apply. [1998 c 245 § 45; 1983 1st ex.s. c 28 § 6; 1979 c 151 § 72; 1967 ex.s. c 25 § 8.]

Application—1983 1st ex.s. c 28: See note following RCW 42.16.010.

42.16.020 Salaried officers not to receive witness fees—Exceptions. No state, county, municipal or other public officer within the state of Washington, who receives from the state, or from any county or municipality therein, a fixed and stated salary as compensation for services rendered as such public officer shall be allowed or paid any per diem for attending or testifying on behalf of the state of Washington, or any county or municipality therein, at any trial or other judicial proceeding, in any state, county or municipal court within this state; nor shall such officer, in any case, be allowed nor paid any per diem for attending or testifying in any state or municipal court of this state, in regard to matters and information that have come to his knowledge in connection with and as a result of the performance of his duties as a public officer as aforesaid: Provided, This section shall not apply when any deduction shall be made from the regular salary of such officer by reason of his being in attendance upon the superior court, but in such cases regular witness fees shall be paid; and further, that if a public officer be subpoenaed and required to appear or testify in judicial proceedings in a county other than that in which he resides, then said public officer shall be entitled to receive per diem and mileage as provided by statute in other cases; and, provided further, that this section shall not apply to police officers when called as witnesses in the superior courts during hours when they are off duty as such officers. A law enforcement officer who has issued a notice of traffic infraction is not entitled to receive witness fees or mileage

in a contested traffic infraction case. [1981 c 19 § 3; 1903 c 10 § 1; 1901 c 101 § 1; RRS § 499.]

Severability—1981 c 19: See note following RCW 46.63.020.

42.16.030 Disposition of fees. All officers enumerated in *this section, who are paid a salary in lieu of fees, shall collect the fees herein prescribed for the use of the state or county, as the case may be, and shall pay the same into the state or county treasury, as the case may be, on the first Monday of each month. [1907 c 56 § 1, part; RRS § 4217. Prior: 1903 c 151 § 1, part; 1893 c 130 § 1, part.]

***Reviser's note:** The term "this section" refers to 1907 c 56 § 1, of which RCW 42.16.030 is but a part. The other parts of 1907 c 56 § 1, as amended, are codified as RCW 2.32.070 (supreme court clerk's fees), 2.40.010 (witnesses' fees), 36.18.020 (superior court clerks' fees), 36.18.040 (sheriff's fees), 36.18.010 (county auditor's fees), 36.18.030 (county coroner's fees), 2.36.150 (jurors' fees), 3.16.100 (constables' fees), and 42.28.090 (notaries' fees).

Daily remittance of moneys to state treasury required: RCW 43.01.050.

42.16.040 Official fees payable in advance. All fees are invariably due in advance where demanded by the officer required to perform any official act, and no officer shall be required to perform any official act unless his fees are paid when he demands the same: **PROVIDED,** This section shall not apply when the officer performs any official act for his county or the state. [Code 1881 § 2099; 1869 p 374 § 21; RRS § 505. Formerly codified as RCW 42.04.050.]

County officers, fees payable in advance: RCW 36.18.060.

County sheriff, demand of fees payable in advance: RCW 36.28.040.

Chapter 42.17

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42.17.010 Declaration of policy. It is hereby declared by the sovereign people to be the public policy of the state of Washington:

(1) That political campaign and lobbying contributions and expenditures be fully disclosed to the public and that secrecy is to be avoided.

(2) That the people have the right to expect from their elected representatives at all levels of government the utmost of integrity, honesty, and fairness in their dealings.

(3) That the people shall be assured that the private financial dealings of their public officials, and of candidates for those offices, present no conflict of interest between the public trust and private interest.

(4) That our representative form of government is founded on a belief that those entrusted with the offices of government have nothing to fear from full public disclosure of their financial and business holdings, provided those officials deal honestly and fairly with the people.

(5) That public confidence in government at all levels is essential and must be promoted by all possible means.

(6) That public confidence in government at all levels can best be sustained by assuring the people of the impartiality and honesty of the officials in all public transactions and decisions.

(7) That the concept of attempting to increase financial participation of individual contributors in political campaigns is encouraged by the passage of the Revenue Act of 1971 by the Congress of the United States, and in consequence thereof, it is desirable to have implementing legislation at the state level.

(8) That the concepts of disclosure and limitation of election campaign financing are established by the passage of the Federal Election Campaign Act of 1971 by the Congress of the United States, and in consequence thereof it is desirable to have implementing legislation at the state level.

(9) That small contributions by individual contributors are to be encouraged, and that not requiring the reporting of small contributions may tend to encourage such contributions.

(10) That the public's right to know of the financing of political campaigns and lobbying and the financial affairs of elected officials and candidates far outweighs any right that these matters remain secret and private.

(11) That, mindful of the right of individuals to privacy and of the desirability of the efficient administration of government, full access to information concerning the conduct of government on every level must be assured as a fundamental and necessary precondition to the sound governance of a free society.

The provisions of this chapter shall be liberally construed to promote complete disclosure of all information

respecting the financing of political campaigns and lobbying, and the financial affairs of elected officials and candidates, and full access to public records so as to assure continuing public confidence of fairness of elections and governmental processes, and so as to assure that the public interest will be fully protected. In promoting such complete disclosure, however, this chapter shall be enforced so as to insure that the information disclosed will not be misused for arbitrary and capricious purposes and to insure that all persons reporting under this chapter will be protected from harassment and unfounded allegations based on information they have freely disclosed. [1975 1st ex.s. c 294 § 1; 1973 c 1 § 1 (Initiative Measure No. 276, approved November 7, 1972).]

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

(2) "Authorized committee" means the political committee authorized by a candidate, or by the public official against whom recall charges have been filed, to accept contributions or make expenditures on behalf of the candidate or public official.

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

(4) "Benefit" means a commercial, proprietary, financial, economic, or monetary advantage, or the avoidance of a commercial, proprietary, financial, economic, or monetary disadvantage.

(5) "Bona fide political party" means:

(a) An organization that has filed a valid certificate of nomination with the secretary of state under chapter 29.24 RCW;

(b) The governing body of the state organization of a major political party, as defined in RCW 29.01.090, that is the body authorized by the charter or bylaws of the party to exercise authority on behalf of the state party; or

(c) The county central committee or legislative district committee of a major political party. There may be only one legislative district committee for each party in each legislative district.

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

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

(8) "Candidate" means any individual who seeks nomination for election or election to public office. An individual seeks nomination or election when he or she first:

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

(b) Announces publicly or files for office;

(c) Purchases commercial advertising space or broadcast time to promote his or her candidacy; or

(d) Gives his or her consent to another person to take on behalf of the individual any of the actions in (a) or (c) of this subsection.

(9) "Caucus political committee" means a political committee organized and maintained by the members of a major political party in the state senate or state house of representatives.

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

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

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

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

(14)(a) "Contribution" includes:

(i) A loan, gift, deposit, subscription, forgiveness of indebtedness, donation, advance, pledge, payment, transfer of funds between political committees, or anything of value, including personal and professional services for less than full consideration;

(ii) An expenditure made by a person in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate, a political committee, or their agents;

(iii) The financing by a person of the dissemination, distribution, or republication, in whole or in part, of broadcast, written, graphic, or other form of political advertising prepared by a candidate, a political committee, or its authorized agent;

(iv) Sums paid for tickets to fund-raising events such as dinners and parties, except for the actual cost of the consumables furnished at the event.

(b) "Contribution" does not include:

(i) Standard interest on money deposited in a political committee's account;

(ii) Ordinary home hospitality;

(iii) A contribution received by a candidate or political committee that is returned to the contributor within five business days of the date on which it is received by the candidate or political committee;

(iv) A news item, feature, commentary, or editorial in a regularly scheduled news medium that is of primary

interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee;

(v) An internal political communication primarily limited to the members of or contributors to a political party organization or political committee, or to the officers, management staff, or stockholders of a corporation or similar enterprise, or to the members of a labor organization or other membership organization;

(vi) The rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person;

(vii) Messages in the form of reader boards, banners, or yard or window signs displayed on a person's own property or property occupied by a person. However, a facility used for such political advertising for which a rental charge is normally made must be reported as an in-kind contribution and counts towards any applicable contribution limit of the person providing the facility;

(viii) Legal or accounting services rendered to or on behalf of:

(A) A political party or caucus political committee if the person paying for the services is the regular employer of the person rendering such services; or

(B) A candidate or an authorized committee if the person paying for the services is the regular employer of the individual rendering the services and if the services are solely for the purpose of ensuring compliance with state election or public disclosure laws.

(c) Contributions other than money or its equivalent are deemed to have a monetary value equivalent to the fair market value of the contribution. Services or property or rights furnished at less than their fair market value for the purpose of assisting any candidate or political committee are deemed a contribution. Such a contribution must be reported as an in-kind contribution at its fair market value and counts towards any applicable contribution limit of the provider.

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

(16) "Election" includes any primary, general, or special election for public office and any election in which a ballot proposition is submitted to the voters: PROVIDED, That an election in which the qualifications for voting include other than those requirements set forth in Article VI, section 1 (Amendment 63) of the Constitution of the state of Washington shall not be considered an election for purposes of this chapter.

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

(18) "Election cycle" means the period beginning on the first day of December after the date of the last previous general election for the office that the candidate seeks and ending on November 30th after the next election for the office. In the case of a special election to fill a vacancy in

an office, "election cycle" means the period beginning on the day the vacancy occurs and ending on November 30th after the special election.

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

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

(21) "General election" means the election that results in the election of a person to a state office. It does not include a primary.

(22) "Gift," is as defined in RCW 42.52.010.

(23) "Immediate family" includes the spouse, dependent children, and other dependent relatives, if living in the household. For the purposes of RCW 42.17.640 through 42.17.790, "immediate family" means an individual's spouse, and child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual and the spouse of any such person and a child, stepchild, grandchild, parent, stepparent, grandparent, brother, half brother, sister, or half sister of the individual's spouse and the spouse of any such person.

(24) "Independent expenditure" means an expenditure that has each of the following elements:

(a) It is made in support of or in opposition to a candidate for office by a person who is not (i) a candidate for that office, (ii) an authorized committee of that candidate for that office, (iii) a person who has received the candidate's encouragement or approval to make the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office, or (iv) a person with whom the candidate has collaborated for the purpose of making the expenditure, if the expenditure pays in whole or in part for political advertising supporting that candidate or promoting the defeat of any other candidate or candidates for that office;

(b) The expenditure pays in whole or in part for political advertising that either specifically names the candidate supported or opposed, or clearly and beyond any doubt identifies the candidate without using the candidate's name; and

(c) The expenditure, alone or in conjunction with another expenditure or other expenditures of the same person in support of or opposition to that candidate, has a value of *five hundred dollars or more. A series of expenditures, each of which is under five hundred dollars, constitutes one

independent expenditure if their cumulative value is five hundred dollars or more.

(25)(a) "Intermediary" means an individual who transmits a contribution to a candidate or committee from another person unless the contribution is from the individual's employer, immediate family as defined for purposes of RCW 42.17.640 through 42.17.790, or an association to which the individual belongs.

(b) A treasurer or a candidate is not an intermediary for purposes of the committee that the treasurer or candidate serves.

(c) A professional fund-raiser is not an intermediary if the fund-raiser is compensated for fund-raising services at the usual and customary rate.

(d) A volunteer hosting a fund-raising event at the individual's home is not an intermediary for purposes of that event.

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

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

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

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

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

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

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

(33) "Political committee" means any person (except a candidate or an individual dealing with his or her own funds or property) having the expectation of receiving contributions or making expenditures in support of, or opposition to, any candidate or any ballot proposition.

(34) "Primary" means the procedure for nominating a candidate to state office under chapter 29.18 or 29.21 RCW

or any other primary for an election that uses, in large measure, the procedures established in chapter 29.18 or 29.21 RCW.

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

(36) "Public record" includes any writing containing information relating to the conduct of government or the performance of any governmental or proprietary function prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics. For the office of the secretary of the senate and the office of the chief clerk of the house of representatives, public records means legislative records as defined in RCW 40.14.100 and also means the following: All budget and financial records; personnel leave, travel, and payroll records; records of legislative sessions; reports submitted to the legislature; and any other record designated a public record by any official action of the senate or the house of representatives.

(37) "Recall campaign" means the period of time beginning on the date of the filing of recall charges under RCW 29.82.015 and ending thirty days after the recall election.

(38) "State legislative office" means the office of a member of the state house of representatives or the office of a member of the state senate.

(39) "State office" means state legislative office or the office of governor, lieutenant governor, secretary of state, attorney general, commissioner of public lands, insurance commissioner, superintendent of public instruction, state auditor, or state treasurer.

(40) "State official" means a person who holds a state office.

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

(42) "Writing" means handwriting, typewriting, printing, photostating, photographing, and every other means of recording any form of communication or representation, including, but not limited to, letters, words, pictures, sounds, or symbols, or combination thereof, and all papers, maps, magnetic or paper tapes, photographic films and prints, motion picture, film and video recordings, magnetic or punched cards, discs, drums, diskettes, sound recordings, and other documents including existing data compilations from which information may be obtained or translated.

As used in this chapter, the singular shall take the plural and any gender, the other, as the context requires. [1995 c 397 § 1; 1992 c 139 § 1; 1991 sp.s. c 18 § 1; 1990 c 139 § 2. Prior: 1989 c 280 § 1; 1989 c 175 § 89; 1984 c 34 § 5; 1979 ex.s. c 50 § 1; 1977 ex.s. c 313 § 1; 1975 1st ex.s. c 294 § 2; 1973 c 1 § 2 (Initiative Measure No. 276, approved November 7, 1972).]

***Reviser's note:** The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17.690. For current dollar amounts, see chapter 390-05 of the Washington Administrative Code (WAC).

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

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

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

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

Severability—1977 ex.s. c 313: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 313 § 8.]

CAMPAIGN FINANCING

42.17.030 Applicability—Exceptions. The provisions of this chapter relating to the financing of election campaigns shall apply in all election campaigns other than (1) for precinct committee officer; (2) for a federal elective office; and (3) for an office of a political subdivision of the state that does not encompass a whole county and that contains fewer than five thousand registered voters as of the date of the most recent general election in the subdivision, unless required by RCW 42.17.405(2) through (5). [1987 c 295 § 18; 1986 c 12 § 1; 1985 c 367 § 2; 1977 ex.s. c 313 § 2; 1973 c 1 § 3 (Initiative Measure No. 276, approved November 7, 1972).]

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

Cemetery district commissioners exempt from chapter: RCW 68.52.140, 68.52.220.

42.17.040 Statement of organization by political committees. (1) Every political committee, within two weeks after its organization or, within two weeks after the date when it first has the expectation of receiving contributions or making expenditures in any election campaign, whichever is earlier, shall file a statement of organization with the commission and with the county auditor or elections officer of the county in which the candidate resides, or in the case of any other political committee, the county in which the treasurer resides. A political committee organized within the last three weeks before an election and having the expectation of receiving contributions or making expenditures during and for that election campaign shall file a statement of organization within three business days after its organization or when it first has the expectation of receiving contributions or making expenditures in the election campaign.

(2) The statement of organization shall include but not be limited to:

(a) The name and address of the committee;

(b) The names and addresses of all related or affiliated committees or other persons, and the nature of the relationship or affiliation;

(c) The names, addresses, and titles of its officers; or if it has no officers, the names, addresses, and titles of its responsible leaders;

(d) The name and address of its treasurer and depository;

(e) A statement whether the committee is a continuing one;

(f) The name, office sought, and party affiliation of each candidate whom the committee is supporting or opposing, and, if the committee is supporting the entire ticket of any party, the name of the party;

(g) The ballot proposition concerned, if any, and whether the committee is in favor of or opposed to such proposition;

(h) What distribution of surplus funds will be made, in accordance with RCW 42.17.095, in the event of dissolution;

(i) The street address of the place and the hours during which the committee will make available for public inspection its books of account and all reports filed in accordance with RCW 42.17.080; and

(j) Such other information as the commission may by regulation prescribe, in keeping with the policies and purposes of this chapter.

(3) Any material change in information previously submitted in a statement of organization shall be reported to the commission and to the appropriate county elections officer within the ten days following the change. [1989 c 280 § 2; 1982 c 147 § 1; 1977 ex.s. c 336 § 1; 1975 1st ex.s. c 294 § 3; 1973 c 1 § 4 (Initiative Measure No. 276, approved November 7, 1972).]

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

Severability—1977 ex.s. c 336: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 336 § 8.] For codification of 1977 ex.s. c 336, see Codification Tables, Volume 0.

Effective date—1973 c 1: See RCW 42.17.900.

42.17.050 Treasurer—Depositories. (1) Each candidate, within two weeks after becoming a candidate, and each political committee, at the time it is required to file a statement of organization, shall designate and file with the commission and the appropriate county elections officer the names and addresses of:

(a) One legally competent individual, who may be the candidate, to serve as a treasurer; and

(b) A bank, mutual savings bank, savings and loan association, or credit union doing business in this state to serve as depository and the name of the account or accounts maintained in it.

(2) A candidate, a political committee, or a treasurer may appoint as many deputy treasurers as is considered necessary and may designate not more than one additional depository in each other county in which the campaign is conducted. The candidate or political committee shall file the names and addresses of the deputy treasurers and additional depositories with the commission and the appropriate county elections officer.

(3) A candidate may not knowingly establish, use, direct, or control more than one political committee for the purpose of supporting that candidate during a particular election campaign. This does not prohibit: (a) In addition

to a candidate's having his or her own political committee, the candidate's participation in a political committee established to support a slate of candidates which includes the candidate; or (b) joint fund-raising efforts by candidates when a separate political committee is established for that purpose and all contributions are disbursed to and accounted for on a pro rata basis by the benefiting candidates.

(4)(a) A candidate or political committee may at any time remove a treasurer or deputy treasurer or change a designated depository.

(b) In the event of the death, resignation, removal, or change of a treasurer, deputy treasurer, or depository, the candidate or political committee shall designate and file with the commission and the appropriate county elections officer the name and address of any successor.

(5) No treasurer, deputy treasurer, or depository may be deemed to be in compliance with the provisions of this chapter until his name and address is filed with the commission and the appropriate county elections officer. [1989 c 280 § 3; 1985 c 367 § 3; 1982 c 147 § 2; 1973 c 1 § 5 (Initiative Measure No. 276, approved November 7, 1972).]

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

42.17.060 Deposit of contributions—Investment—Unidentified contributions—Cash contributions. (1) All monetary contributions received by a candidate or political committee shall be deposited by the treasurer or deputy treasurer in a depository in an account established and designated for that purpose. Such deposits shall be made within five business days of receipt of the contribution.

(2) Political committees which support or oppose more than one candidate or ballot proposition, or exist for more than one purpose, may maintain multiple separate bank accounts within the same designated depository for such purpose: PROVIDED, That each such account shall bear the same name followed by an appropriate designation which accurately identifies its separate purpose: AND PROVIDED FURTHER, That transfers of funds which must be reported under *RCW 42.17.090(1)(d) may not be made from more than one such account.

(3) Nothing in this section prohibits a candidate or political committee from investing funds on hand in a depository in bonds, certificates, tax-exempt securities, or savings accounts or other similar instruments in financial institutions or mutual funds other than the depository: PROVIDED, That the commission and the appropriate county elections officer is notified in writing of the initiation and the termination of the investment: PROVIDED FURTHER, That the principal of such investment when terminated together with all interest, dividends, and income derived from the investment are deposited in the depository in the account from which the investment was made and properly reported to the commission and the appropriate county elections officer prior to any further disposition or expenditure thereof.

(4) Accumulated unidentified contributions, other than those made by persons whose names must be maintained on a separate and private list by a political committee's treasurer pursuant to RCW 42.17.090(1)(b), which total in excess of one percent of the total accumulated contributions received in the current calendar year or three hundred dollars

(whichever is more), may not be deposited, used, or expended, but shall be returned to the donor, if his identity can be ascertained. If the donor cannot be ascertained, the contribution shall escheat to the state, and shall be paid to the state treasurer for deposit in the state general fund.

(5) A contribution of more than fifty dollars in currency may not be accepted unless a receipt, signed by the contributor and by the candidate, treasurer, or deputy treasurer, is prepared and made a part of the campaign's or political committee's financial records. [1989 c 280 § 4; 1987 c 268 § 1; 1985 c 367 § 4; 1982 c 147 § 3; 1977 ex.s. c 313 § 3; 1975 1st ex.s. c 294 § 4; 1973 c 1 § 6 (Initiative Measure No. 276, approved November 7, 1972).]

***Reviser's note:** RCW 42.17.090 was amended by 1989 c 280 § 9, and the previous subsection (1)(d) was redesignated as subsection (1)(e).

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

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

42.17.065 Filing and reporting by continuing political committee. (1) In addition to the provisions of this section, a continuing political committee shall file and report on the same conditions and at the same times as any other committee in accordance with the provisions of RCW 42.17.040, 42.17.050, and 42.17.060.

(2) A continuing political committee shall file with the commission and the auditor or elections officer of the county in which the committee maintains its office or headquarters and if there is no such office or headquarters then in the county in which the committee treasurer resides a report on the tenth day of the month detailing its activities for the preceding calendar month in which the committee has received a contribution or made an expenditure: PROVIDED, That such report shall only be filed if either the total contributions received or total expenditures made since the last such report exceed two hundred dollars. The report shall be on a form supplied by the commission and shall include the following information:

(a) The information required by RCW 42.17.090;

(b) Each expenditure made to retire previously accumulated debts of the committee; identified by recipient, amount, and date of payments;

(c) Such other information as the commission shall by rule prescribe.

(3) If a continuing political committee shall make a contribution in support of or in opposition to a candidate or ballot proposition within sixty days prior to the date on which such candidate or ballot proposition will be voted upon, such continuing political committee shall report pursuant to RCW 42.17.080.

(4) A continuing political committee shall file reports as required by this chapter until it is dissolved, at which time a final report shall be filed. Upon submitting a final report, the duties of the campaign treasurer shall cease and there shall be no obligation to make any further reports.

(5) The campaign treasurer shall maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure. During the eight days immediately preceding the date of any election, for which the committee has received any contributions or made any expenditures, the books of account shall be kept current within one business

day and shall be open for public inspection for at least two consecutive hours Monday through Friday, excluding legal holidays, between 8:00 a.m. and 8:00 p.m., as specified in the committee's statement of organization filed pursuant to RCW 42.17.040, at the principal campaign headquarters or, if there is no campaign headquarters, at the address of the campaign treasurer or such other place as may be authorized by the commission.

(6) All reports filed pursuant to this section shall be certified as correct by the campaign treasurer.

(7) The campaign treasurer shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred. [1989 c 280 § 5; 1982 c 147 § 4; 1975 1st ex.s. c 294 § 5.]

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

42.17.067 Fund-raising activities—Alternative reporting method. (1) Fund-raising activities which meet the standards of subsection (2) of this section may be reported in accordance with the provisions of this section in lieu of reporting in accordance with RCW 42.17.080.

(2) Standards:

(a) The activity consists of one or more of the following:

(i) The retail sale of goods or services at a reasonable approximation of the fair market value of each item or service sold at the activity; or

(ii) A gambling operation which is licensed, conducted, or operated in accordance with the provisions of chapter 9.46 RCW; or

(iii) A gathering where food and beverages are purchased, where the price of admission or the food and beverages is no more than twenty-five dollars; or

(iv) A concert, dance, theater performance, or similar entertainment event where the price of admission is no more than twenty-five dollars; or

(v) An auction or similar sale where the total fair market value of items donated by any person for sale is no more than fifty dollars; and

(b) No person responsible for receiving money at such activity knowingly accepts payments from a single person at or from such an activity to the candidate or committee aggregating more than fifty dollars unless the name and address of the person making such payment together with the amount paid to the candidate or committee are disclosed in the report filed pursuant to subsection (6) of this section; and

(c) Such other standards as shall be established by rule of the commission to prevent frustration of the purposes of this chapter.

(3) All funds received from a fund-raising activity which conforms with subsection (2) of this section shall be deposited within five business days of receipt by the treasurer or deputy treasurer in the depository.

(4) At the time reports are required under RCW 42.17.080, the treasurer or deputy treasurer making the deposit shall file with the commission and the appropriate county elections officer a report of the fund-raising activity which shall contain the following information:

(a) The date of the activity;

(b) A precise description of the fund-raising methods used in the activity; and

(c) The total amount of cash receipts from persons, each of whom paid no more than fifty dollars.

(5) The treasurer or deputy treasurer shall certify the report is correct.

(6) The treasurer shall report pursuant to RCW 42.17.080 and 42.17.090: (a) The name and address and the amount contributed of each person who contributes goods or services with a fair market value of more than fifty dollars to a fund-raising activity reported under subsection (4) of this section, and (b) the name and address of each person whose identity can be ascertained, and the amount paid, from whom were knowingly received payments to the candidate or committee aggregating more than fifty dollars at or from such a fund-raising activity. [1989 c 280 § 6; 1982 c 147 § 5; 1975-'76 2nd ex.s. c 112 § 9.]

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

42.17.070 Expenditures—Authorization of and restrictions on. No expenditures may be made or incurred by any candidate or political committee except on the authority of the treasurer or the candidate, and a record of all such expenditures shall be maintained by the treasurer.

No expenditure of more than fifty dollars may be made in currency unless a receipt, signed by the recipient and by the candidate or treasurer, is prepared and made a part of the campaign's or political committee's financial records. [1989 c 280 § 7; 1985 c 367 § 5; 1973 c 1 § 7 (Initiative Measure No. 276, approved November 7, 1972).]

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

42.17.080 Candidates' and treasurers' duty to report contributions and expenditures. (1) On the day the treasurer is designated, each candidate or political committee shall file with the commission and the county auditor or elections officer of the county in which the candidate resides, or in the case of a political committee, the county in which the treasurer resides, in addition to any statement of organization required under RCW 42.17.040 or 42.17.050, a report of all contributions received and expenditures made prior to that date, if any.

(2) At the following intervals each treasurer shall file with the commission and the county auditor or elections officer of the county in which the candidate resides, or in the case of a political committee, the county in which the committee maintains its office or headquarters, and if there is no office or headquarters then in the county in which the treasurer resides, a report containing the information required by RCW 42.17.090:

(a) On the twenty-first day and the seventh day immediately preceding the date on which the election is held; and

(b) On the tenth day of the first month after the election: PROVIDED, That this report shall not be required following a primary election from:

(i) A candidate whose name will appear on the subsequent general election ballot; or

(ii) Any continuing political committee; and

(c) On the tenth day of each month in which no other reports are required to be filed under this section: PROVIDED, That such report shall only be filed if the committee has

received a contribution or made an expenditure in the preceding calendar month and either the total contributions received or total expenditures made since the last such report exceed two hundred dollars.

When there is no outstanding debt or obligation, and the campaign fund is closed, and the campaign is concluded in all respects, and in the case of a political committee, the committee has ceased to function and has dissolved, the treasurer shall file a final report. Upon submitting a final report, the duties of the treasurer shall cease and there shall be no obligation to make any further reports.

The report filed twenty-one days before the election shall report all contributions received and expenditures made as of the end of the fifth business day before the date of the report. The report filed seven days before the election shall report all contributions received and expenditures made as of the end of the one business day before the date of the report. Reports filed on the tenth day of the month shall report all contributions received and expenditures made from the closing date of the last report filed through the last day of the month preceding the date of the current report.

(3) For the period beginning the first day of the fourth month preceding the date on which the special or general election is held and ending on the date of that election, each Friday the treasurer shall file with the commission and the appropriate county elections officer a report of each bank deposit made during the previous seven calendar days. The report shall contain the name of each person contributing the funds so deposited and the amount contributed by each person. However, contributions of no more than twenty-five dollars in the aggregate from any one person may be deposited without identifying the contributor. A copy of the report shall be retained by the treasurer for his or her records. In the event of deposits made by a deputy treasurer, the copy shall be forwarded to the treasurer for his or her records. Each report shall be certified as correct by the treasurer or deputy treasurer making the deposit.

(4) The treasurer or candidate shall maintain books of account accurately reflecting all contributions and expenditures on a current basis within five business days of receipt or expenditure. During the eight days immediately preceding the date of the election the books of account shall be kept current within one business day and shall be open for public inspection for at least two consecutive hours Monday through Friday, excluding legal holidays, between 8:00 a.m. and 8:00 p.m., as specified in the committee's statement of organization filed pursuant to RCW 42.17.040, at the principal headquarters or, if there is no headquarters, at the address of the treasurer or such other place as may be authorized by the commission. The treasurer or candidate shall preserve books of account, bills, receipts, and all other financial records of the campaign or political committee for not less than five calendar years following the year during which the transaction occurred.

(5) All reports filed pursuant to subsections (1) or (2) of this section shall be certified as correct by the candidate and the treasurer.

(6) Copies of all reports filed pursuant to this section shall be readily available for public inspection for at least two consecutive hours Monday through Friday, excluding legal holidays, between 8:00 a.m. and 8:00 p.m., as specified in the committee's statement of organization filed pursuant

to RCW 42.17.040, at the principal headquarters or, if there is no headquarters, at the address of the treasurer or such other place as may be authorized by the commission.

(7) The commission shall adopt administrative rules establishing requirements for filer participation in any system designed and implemented by the commission for the electronic filing of reports. [1995 c 397 § 2; 1989 c 280 § 8; 1986 c 28 § 1; 1982 c 147 § 6; 1975 1st ex.s. c 294 § 6; 1973 c 1 § 8 (Initiative Measure No. 276, approved November 7, 1972).]

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

42.17.090 Contents of report. (1) Each report required under RCW 42.17.080 (1) and (2) shall disclose the following:

(a) The funds on hand at the beginning of the period;

(b) The name and address of each person who has made one or more contributions during the period, together with the money value and date of such contributions and the aggregate value of all contributions received from each such person during the campaign or in the case of a continuing political committee, the current calendar year: **PROVIDED**, That pledges in the aggregate of less than one hundred dollars from any one person need not be reported: **PROVIDED FURTHER**, That the income which results from a fund-raising activity conducted in accordance with RCW 42.17.067 may be reported as one lump sum, with the exception of that portion of such income which was received from persons whose names and addresses are required to be included in the report required by RCW 42.17.067: **PROVIDED FURTHER**, That contributions of no more than twenty-five dollars in the aggregate from any one person during the election campaign may be reported as one lump sum so long as the campaign treasurer maintains a separate and private list of the name, address, and amount of each such contributor: **PROVIDED FURTHER**, That the money value of contributions of postage shall be the face value of such postage;

(c) Each loan, promissory note, or security instrument to be used by or for the benefit of the candidate or political committee made by any person, together with the names and addresses of the lender and each person liable directly, indirectly or contingently and the date and amount of each such loan, promissory note, or security instrument;

(d) All other contributions not otherwise listed or exempted;

(e) The name and address of each candidate or political committee to which any transfer of funds was made, together with the amounts and dates of such transfers;

(f) The name and address of each person to whom an expenditure was made in the aggregate amount of more than fifty dollars during the period covered by this report, and the amount, date, and purpose of each such expenditure. A candidate for state executive or state legislative office or the political committee of such a candidate shall report this information for an expenditure under one of the following categories, whichever is appropriate: (i) Expenditures for the election of the candidate; (ii) expenditures for nonreimbursed public office-related expenses; (iii) expenditures required to be reported under (e) of this subsection; or (iv) expenditures of surplus funds and other expenditures. The report of such

a candidate or committee shall contain a separate total of expenditures for each category and a total sum of all expenditures. Other candidates and political committees need not report information regarding expenditures under the categories listed in (i) through (iv) of this subsection or under similar such categories unless required to do so by the commission by rule. The report of such an other candidate or committee shall also contain the total sum of all expenditures;

(g) The name and address of each person to whom any expenditure was made directly or indirectly to compensate the person for soliciting or procuring signatures on an initiative or referendum petition, the amount of such compensation to each such person, and the total of the expenditures made for this purpose. Such expenditures shall be reported under this subsection (1)(g) whether the expenditures are or are not also required to be reported under (f) of this subsection;

(h) The name and address of any person and the amount owed for any debt, obligation, note, unpaid loan, or other liability in the amount of more than two hundred fifty dollars or in the amount of more than fifty dollars that has been outstanding for over thirty days;

(i) The surplus or deficit of contributions over expenditures;

(j) The disposition made in accordance with RCW 42.17.095 of any surplus funds;

(k) Such other information as shall be required by the commission by rule in conformance with the policies and purposes of this chapter; and

(l) Funds received from a political committee not otherwise required to report under this chapter (a "nonreporting committee"). Such funds shall be forfeited to the state of Washington unless the nonreporting committee has filed or within ten days following such receipt files with the commission a statement disclosing: (i) Its name and address; (ii) the purposes of the nonreporting committee; (iii) the names, addresses, and titles of its officers or if it has no officers, the names, addresses, and titles of its responsible leaders; (iv) the name, office sought, and party affiliation of each candidate in the state of Washington whom the nonreporting committee is supporting, and, if such committee is supporting the entire ticket of any party, the name of the party; (v) the ballot proposition supported or opposed in the state of Washington, if any, and whether such committee is in favor of or opposed to such proposition; (vi) the name and address of each person residing in the state of Washington or corporation which has a place of business in the state of Washington who has made one or more contributions in the aggregate of more than twenty-five dollars to the nonreporting committee during the current calendar year, together with the money value and date of such contributions; (vii) the name and address of each person in the state of Washington to whom an expenditure was made by the nonreporting committee on behalf of a candidate or political committee in the aggregate amount of more than fifty dollars, the amount, date, and purpose of such expenditure, and the total sum of such expenditures; (viii) such other information as the commission may prescribe by rule, in keeping with the policies and purposes of this chapter. A nonreporting committee incurring an obligation to file additional reports in a calendar year may satisfy the obliga-

tion by filing with the commission a letter providing updating or amending information.

(2) The treasurer and the candidate shall certify the correctness of each report. [1993 c 256 § 6; 1989 c 280 § 9. Prior: 1986 c 228 § 1; 1986 c 12 § 2; 1983 c 96 § 1; 1982 c 147 § 7; 1977 ex.s. c 336 § 2; 1975-'76 2nd ex.s. c 112 § 3; 1975 1st ex.s. c 294 § 7; 1973 c 1 § 9 (Initiative Measure No. 276, approved November 7, 1972).]

Severability—Effective date—1993 c 256: See notes following RCW 29.79.500.

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

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

Appearance of fairness doctrine—Application to candidates for public office—Campaign contributions. RCW 42.36.040, 42.36.050.

42.17.095 Disposal of surplus funds. The surplus funds of a candidate, or of a political committee supporting or opposing a candidate, may only be disposed of in any one or more of the following ways:

(1) Return the surplus to a contributor in an amount not to exceed that contributor's original contribution;

(2) Transfer the surplus to the candidate's personal account as reimbursement for lost earnings incurred as a result of that candidate's election campaign. Such lost earnings shall be verifiable as unpaid salary or, when the candidate is not salaried, as an amount not to exceed income received by the candidate for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record thereof shall be maintained by the candidate or the candidate's political committee. The committee shall include a copy of such record when its expenditure for such reimbursement is reported pursuant to RCW 42.17.090;

(3) Transfer the surplus without limit to a political party or to a caucus political committee;

(4) Donate the surplus to a charitable organization registered in accordance with chapter 19.09 RCW;

(5) Transmit the surplus to the state treasurer for deposit in the general fund; or

(6) Hold the surplus in the campaign depository or depositories designated in accordance with RCW 42.17.050 for possible use in a future election campaign for the same office last sought by the candidate and report any such disposition in accordance with RCW 42.17.090: PROVIDED, That if the candidate subsequently announces or publicly files for office, information as appropriate is reported to the commission in accordance with RCW 42.17.040 through 42.17.090. If a subsequent office is not sought the surplus held shall be disposed of in accordance with the requirements of this section.

(7) Hold the surplus campaign funds in a separate account for nonreimbursed public office-related expenses or as provided in this section, and report any such disposition in accordance with RCW 42.17.090. The separate account required under this subsection shall not be used for deposits of campaign funds that are not surplus.

(8) No candidate or authorized committee may transfer funds to any other candidate or other political committee.

The disposal of surplus funds under this section shall not be considered a contribution for purposes of this chapter. [1995 c 397 § 31; 1993 c 2 § 20 (Initiative Measure No.

134, approved November 3, 1992); 1982 c 147 § 8; 1977 ex.s. c 336 § 3.]

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

42.17.100 Special reports—Independent expenditures. (1) For the purposes of this section and RCW 42.17.550 the term "independent expenditure" means any expenditure that is made in support of or in opposition to any candidate or ballot proposition and is not otherwise required to be reported pursuant to RCW 42.17.060, 42.17.080, or 42.17.090. "Independent expenditure" does not include: An internal political communication primarily limited to the contributors to a political party organization or political action committee, or the officers, management staff, and stockholders of a corporation or similar enterprise, or the members of a labor organization or other membership organization; or the rendering of personal services of the sort commonly performed by volunteer campaign workers, or incidental expenses personally incurred by volunteer campaign workers not in excess of fifty dollars personally paid for by the worker. "Volunteer services," for the purposes of this section, means services or labor for which the individual is not compensated by any person.

(2) Within five days after the date of making an independent expenditure that by itself or when added to all other such independent expenditures made during the same election campaign by the same person equals one hundred dollars or more, or within five days after the date of making an independent expenditure for which no reasonable estimate of monetary value is practicable, whichever occurs first, the person who made the independent expenditure shall file with the commission and the county elections officer of the county of residence for the candidate supported or opposed by the independent expenditure (or in the case of an expenditure made in support of or in opposition to a local ballot proposition, the county of residence for the person making the expenditure) an initial report of all independent expenditures made during the campaign prior to and including such date.

(3) At the following intervals each person who is required to file an initial report pursuant to subsection (2) of this section shall file with the commission and the county elections officer of the county of residence for the candidate supported or opposed by the independent expenditure (or in the case of an expenditure made in support of or in opposition to a ballot proposition, the county of residence for the person making the expenditure) a further report of the independent expenditures made since the date of the last report:

(a) On the twenty-first day and the seventh day preceding the date on which the election is held; and

(b) On the tenth day of the first month after the election; and

(c) On the tenth day of each month in which no other reports are required to be filed pursuant to this section. However, the further reports required by this subsection (3) shall only be filed if the reporting person has made an independent expenditure since the date of the last previous report filed.

The report filed pursuant to paragraph (a) of this subsection (3) shall be the final report, and upon submitting

such final report the duties of the reporting person shall cease, and there shall be no obligation to make any further reports.

(4) All reports filed pursuant to this section shall be certified as correct by the reporting person.

(5) Each report required by subsections (2) and (3) of this section shall disclose for the period beginning at the end of the period for the last previous report filed or, in the case of an initial report, beginning at the time of the first independent expenditure, and ending not more than one business day before the date the report is due:

(a) The name and address of the person filing the report;

(b) The name and address of each person to whom an independent expenditure was made in the aggregate amount of more than fifty dollars, and the amount, date, and purpose of each such expenditure. If no reasonable estimate of the monetary value of a particular independent expenditure is practicable, it is sufficient to report instead a precise description of services, property, or rights furnished through the expenditure and where appropriate to attach a copy of the item produced or distributed by the expenditure;

(c) The total sum of all independent expenditures made during the campaign to date; and

(d) Such other information as shall be required by the commission by rule in conformance with the policies and purposes of this chapter. [1995 c 397 § 28; 1989 c 280 § 10; 1985 c 367 § 6; 1982 c 147 § 9; 1975-'76 2nd ex.s. c 112 § 4; 1973 c 1 § 10 (Initiative Measure No. 276, approved November 7, 1972).]

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

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

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

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

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

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

(2) If a campaign treasurer files a special report under this section for one or more contributions received from a single entity during a special reporting period, the treasurer shall also file a special report under this section for each

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

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

(4) The special report may be transmitted orally by telephone to the commission to satisfy the delivery period required by subsection (3) of this section if the written form of the report is also mailed to the commission and post-marked within the delivery period established in subsection (3) of this section or the file transfer date of the electronic filing is within the delivery period established in subsection (3) of this section.

(5) The special report shall include at least:

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

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

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

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

(9) Contributions governed by this section include, but are not limited to, contributions made or received indirectly

through a third party or entity whether the contributions are or are not reported to the commission as earmarked contributions under RCW 42.17.135. [1995 c 397 § 4; 1991 c 157 § 1; 1989 c 280 § 11; 1986 c 228 § 2; 1985 c 359 § 1; 1983 c 176 § 1.]

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

42.17.110 Commercial advertisers—Public inspection of documents—Copies to commission. (1) Each commercial advertiser who has accepted or provided political advertising during the election campaign shall maintain open for public inspection during the campaign and for a period of no less than three years after the date of the applicable election, during normal business hours, documents and books of account which shall specify:

(a) The names and addresses of persons from whom it accepted political advertising;

(b) The exact nature and extent of the advertising services rendered; and

(c) The consideration and the manner of paying that consideration for such services.

(2) Each commercial advertiser which must comply with subsection (1) of this section shall deliver to the commission, upon its request, copies of such information as must be maintained open for public inspection pursuant to subsection (1) of this section. [1975-'76 2nd ex.s. c 112 § 5; 1973 c 1 § 11 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.120 Identification of contributions and communications. No contribution shall be made and no expenditure shall be incurred, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the contribution or in any other manner so as to effect concealment. [1975 1st ex.s. c 294 § 8; 1973 c 1 § 12 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.125 Personal use of contributions—When permitted. Contributions received and reported in accordance with RCW 42.17.060 through 42.17.090 may only be transferred to the personal account of a candidate, or of a treasurer or other individual or expended for such individual's personal use under the following circumstances:

(1) Reimbursement for or loans to cover lost earnings incurred as a result of campaigning or services performed for the political committee. Such lost earnings shall be verifiable as unpaid salary, or when the individual is not salaried, as an amount not to exceed income received by the individual for services rendered during an appropriate, corresponding time period. All lost earnings incurred shall be documented and a record thereof shall be maintained by the individual or the individual's political committee. The political committee shall include a copy of such record when its expenditure for such reimbursement is reported pursuant to RCW 42.17.090.

(2) Reimbursement for direct out-of-pocket election campaign and postelection campaign related expenses made by the individual. To receive reimbursement from the political committee, the individual shall provide the political committee with written documentation as to the amount,

date, and description of each expense, and the political committee shall include a copy of such information when its expenditure for such reimbursement is reported pursuant to RCW 42.17.090.

(3) Repayment of loans made by the individual to political committees, which repayment shall be reported pursuant to RCW 42.17.090. However, contributions may not be used to reimburse a candidate for loans totaling more than *three thousand dollars made by the candidate to the candidate's own political committee or campaign. [1995 c 397 § 29; 1993 c 2 § 21 (Initiative Measure No. 134, approved November 3, 1992); 1989 c 280 § 12; 1985 c 367 § 7; 1977 ex.s. c 336 § 6.]

***Reviser's note:** The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17.690. For current dollar amounts, see chapter 390-05 of the Washington Administrative Code (WAC).

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

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

42.17.128 Use of public funds for political purposes. Public funds, whether derived through taxes, fees, penalties, or any other sources, shall not be used to finance political campaigns for state or local office. [1993 c 2 § 24 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.130 Forbids use of public office or agency facilities in campaigns. No elective official nor any employee of his office nor any person appointed to or employed by any public office or agency may use or authorize the use of any of the facilities of a public office or agency, directly or indirectly, for the purpose of assisting a campaign for election of any person to any office or for the promotion of or opposition to any ballot proposition. Facilities of public office or agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of employees of the office or agency during working hours, vehicles, office space, publications of the office or agency, and clientele lists of persons served by the office or agency: PROVIDED, That the foregoing provisions of this section shall not apply to the following activities:

(1) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition so long as (a) any required notice of the meeting includes the title and number of the ballot proposition, and (b) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(2) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry;

(3) Activities which are part of the normal and regular conduct of the office or agency. [1979 ex.s. c 265 § 2; 1975-'76 2nd ex.s. c 112 § 6; 1973 c 1 § 13 (Initiative Measure No. 276, approved November 7, 1972).]

Disposition of violations before January 1, 1995: "Any violations occurring prior to January 1, 1995, of any of the following laws shall be disposed of as if chapter 154, Laws of 1994 were not enacted and such laws

continued in full force and effect: RCW 42.17.130, chapter 42.18 RCW, chapter 42.21 RCW, and chapter 42.22 RCW." [1994 c 154 § 226.]

42.17.131 Exemption from RCW 42.17.130. RCW 42.17.130 does not apply to any person who is a state officer or state employee as defined in RCW 42.52.010. [1994 c 154 § 317.]

Parts and captions not law—Effective date—Severability—1994 c 154: See RCW 42.52.902, 42.52.904, and 42.52.905.

42.17.135 Earmarked contributions. A candidate or political committee receiving a contribution earmarked for the benefit of another candidate or political committee shall:

(1) Report the contribution as required in RCW 42.17.080 and 42.17.090;

(2) Complete a report, entitled "Earmarked contributions," on a form prescribed by the commission by rule, which identifies the name and address of the person who made the contribution, the candidate or political committee for whose benefit the contribution is earmarked, the amount of the contribution, and the date on which the contribution was received; and

(3) Notify the commission and the candidate or political committee for whose benefit the contribution is earmarked regarding the receipt of the contribution by mailing or delivering to the commission and to the candidate or committee a copy of the "Earmarked contributions" report. Such notice shall be given within two working days of receipt of the contribution.

A candidate or political committee receiving notification of an earmarked contribution under subsection (3) of this section shall report the contribution, once the contribution is received by the candidate or committee, in the same manner as the receipt of any other contribution is disclosed in reports required by RCW 42.17.080 and 42.17.090. [1989 c 280 § 13; 1986 c 228 § 3.]

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

LOBBYIST REPORTING

42.17.150 Registration of lobbyists. (1) Before doing any lobbying, or within thirty days after being employed as a lobbyist, whichever occurs first, a lobbyist shall register by filing with the commission a lobbyist registration statement, in such detail as the commission shall prescribe, showing:

(a) His name, permanent business address, and any temporary residential and business addresses in Thurston county during the legislative session;

(b) The name, address and occupation or business of the lobbyist's employer;

(c) The duration of his employment;

(d) His compensation for lobbying; how much he is to be paid for expenses, and what expenses are to be reimbursed;

(e) Whether the person from whom he receives said compensation employs him solely as a lobbyist or whether he is a regular employee performing services for his employer which include but are not limited to the influencing of legislation;

(f) The general subject or subjects of his legislative interest;

(g) A written authorization from each of the lobbyist's employers confirming such employment;

(h) The name and address of the person who will have custody of the accounts, bills, receipts, books, papers, and documents required to be kept under this chapter;

(i) If the lobbyist's employer is an entity (including, but not limited to, business and trade associations) whose members include, or which as a representative entity undertakes lobbying activities for, businesses, groups, associations, or organizations, the name and address of each member of such entity or person represented by such entity whose fees, dues, payments, or other consideration paid to such entity during either of the prior two years have exceeded five hundred dollars or who is obligated to or has agreed to pay fees, dues, payments, or other consideration exceeding five hundred dollars to such entity during the current year.

(2) Any lobbyist who receives or is to receive compensation from more than one person for his services as a lobbyist shall file a separate notice of representation with respect to each such person; except that where a lobbyist whose fee for acting as such in respect to the same legislation or type of legislation is, or is to be, paid or contributed to by more than one person then such lobbyist may file a single statement, in which he shall detail the name, business address and occupation of each person so paying or contributing, and the amount of the respective payments or contributions made by each such person.

(3) Whenever a change, modification, or termination of the lobbyist's employment occurs, the lobbyist shall, within one week of such change, modification or termination, furnish full information regarding the same by filing with the commission an amended registration statement.

(4) Each lobbyist who has registered shall file a new registration statement, revised as appropriate, on the second Monday in January of each odd-numbered year, and failure to do so shall terminate his registration. [1987 c 201 § 1; 1982 c 147 § 10; 1973 c 1 § 15 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.155 Photograph and information—Booklet—Publication. Each lobbyist shall at the time he or she registers submit to the commission a recent photograph of himself or herself of a size and format as determined by rule of the commission, together with the name of the lobbyist's employer, the length of his or her employment as a lobbyist before the legislature, a brief biographical description, and any other information he or she may wish to submit not to exceed fifty words in length. Such photograph and information shall be published at least biennially in a booklet form by the commission for distribution to legislators and the public. [1995 c 397 § 6; 1985 c 367 § 8; 1982 c 147 § 11; 1975 1st ex.s. c 294 § 21.]

42.17.160 Exemption from registration. The following persons and activities shall be exempt from registration and reporting under RCW 42.17.150, 42.17.170, and 42.17.200:

(1) Persons who limit their lobbying activities to appearing before public sessions of committees of the legislature, or public hearings of state agencies;

(2) Activities by lobbyists or other persons whose participation has been solicited by an agency under RCW 34.05.310(2);

(3) News or feature reporting activities and editorial comment by working members of the press, radio, or television and the publication or dissemination thereof by a newspaper, book publisher, regularly published periodical, radio station, or television station;

(4) Persons who lobby without compensation or other consideration for acting as a lobbyist: PROVIDED, Such person makes no expenditure for or on behalf of any member of the legislature or elected official or public officer or employee of the state of Washington in connection with such lobbying. The exemption contained in this subsection is intended to permit and encourage citizens of this state to lobby any legislator, public official, or state agency without incurring any registration or reporting obligation provided they do not exceed the limits stated above. Any person exempt under this subsection (4) may at his or her option register and report under this chapter;

(5) Persons who restrict their lobbying activities to no more than four days or parts thereof during any three-month period and whose total expenditures during such three-month period for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington in connection with such lobbying do not exceed twenty-five dollars: PROVIDED, That the commission shall promulgate regulations to require disclosure by persons exempt under this subsection or their employers or entities which sponsor or coordinate the lobbying activities of such persons if it determines that such regulations are necessary to prevent frustration of the purposes of this chapter. Any person exempt under this subsection (5) may at his or her option register and report under this chapter;

(6) The governor;

(7) The lieutenant governor;

(8) Except as provided by RCW 42.17.190(1), members of the legislature;

(9) Except as provided by RCW 42.17.190(1), persons employed by the legislature for the purpose of aiding in the preparation or enactment of legislation or the performance of legislative duties;

(10) Elected officials, and officers and employees of any agency reporting under RCW 42.17.190(5). [1998 c 55 § 3; 1995 c 397 § 32; 1982 c 147 § 12; 1977 ex.s. c 313 § 4; 1975 1st ex.s. c 294 § 9; 1973 c 1 § 16 (Initiative Measure No. 276, approved November 7, 1972).]

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

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

(2) Each such monthly periodic report shall contain:

(a) The totals of all expenditures for lobbying activities made or incurred by such lobbyist or on behalf of such

lobbyist by the lobbyist's employer during the period covered by the report. Such totals for lobbying activities shall be segregated according to financial category, including compensation; food and refreshments; living accommodations; advertising; travel; contributions; and other expenses or services. Each individual expenditure of more than twenty-five dollars for entertainment shall be identified by date, place, amount, and the names of all persons in the group partaking in or of such entertainment including any portion thereof attributable to the lobbyist's participation therein, and shall include amounts actually expended on each person where calculable, or allocating any portion of the expenditure to individual participants.

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

(i) Unreimbursed personal living and travel expenses not incurred directly for lobbying;

(ii) Any expenses incurred for his or her own living accommodations;

(iii) Any expenses incurred for his or her own travel to and from hearings of the legislature;

(iv) Any expenses incurred for telephone, and any office expenses, including rent and salaries and wages paid for staff and secretarial assistance.

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

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

(d) The subject matter of proposed legislation or other legislative activity or rule-making under chapter 34.05 RCW, the state Administrative Procedure Act, and the state agency considering the same, which the lobbyist has been engaged in supporting or opposing during the reporting period, unless exempt under RCW 42.17.160(2).

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

(f) A listing of each payment for an item specified in RCW 42.52.150(5) in excess of fifty dollars and each item specified in RCW 42.52.010(9) (d) and (f) made to a state elected official, state officer, or state employee. Each item shall be identified by recipient, date, and approximate value of the item.

(g) The total expenditures made during the reporting period by the lobbyist for lobbying purposes, whether

through or on behalf of a lobbyist or otherwise. As used in this subsection, "expenditures" includes amounts paid or incurred during the reporting period for (i) political advertising as defined in RCW 42.17.020; and (ii) public relations, telemarketing, polling, or similar activities if such activities, directly or indirectly, are intended, designed, or calculated to influence legislation or the adoption or rejection of a rule, standard, or rate by an agency under the administrative procedure act. The report shall specify the amount, the person to whom the amount was paid, and a brief description of the activity.

(3) If a state elected official or a member of such an official's immediate family is identified by a lobbyist in such a report as having received from the lobbyist an item specified in RCW 42.52.150(5) or 42.52.010(9) (d) or (f), the lobbyist shall transmit to the official a copy of the completed form used to identify the item in the report at the same time the report is filed with the commission.

(4) The commission may adopt rules to vary the content of lobbyist reports to address specific circumstances, consistent with this section. [1995 c 397 § 33; 1991 sp.s. c 18 § 2; 1990 c 139 § 3; 1989 c 175 § 90; 1987 c 423 § 1; 1985 c 367 § 9; 1982 c 147 § 13; 1977 ex.s. c 313 § 5; 1975 1st ex.s. c 294 § 10; 1973 c 1 § 17 (Initiative Measure No. 276, approved November 7, 1972).]

Effective date—1995 c 397 § 33: "Section 33 of this act takes effect September 1, 1995." [1995 c 397 § 36.]

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

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

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

42.17.172 Notification to person named in report.

When a listing or a report of contributions is made to the commission under RCW 42.17.170(2)(c), a copy of the listing or report must be given to the candidate, elected official, professional staff member of the legislature, or officer or employee of an agency, or a political committee supporting or opposing a ballot proposition named in the listing or report. [1993 c 2 § 32 (Initiative Measure No. 134, approved November 3, 1992).]

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

42.17.180 Reports by employers of registered lobbyists, other persons. (1) Every employer of a lobbyist

registered under this chapter during the preceding calendar year and every person other than an individual that made contributions aggregating to more than *ten thousand dollars or independent expenditures aggregating to more than *five hundred dollars during the preceding calendar year shall file with the commission on or before the last day of February of each year a statement disclosing for the preceding calendar year the following information:

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

(b) The name of each state elected official, successful candidate for state office, or members of his immediate family to whom the person reporting made expenditures, directly or indirectly, either through a lobbyist or otherwise, the amount of the expenditures and the purpose for the expenditures. For the purposes of this subsection, the term expenditure shall not include any expenditure made by the employer in the ordinary course of business if the expenditure is not made for the purpose of influencing, honoring, or benefiting the elected official, successful candidate, or member of his immediate family, as an elected official or candidate.

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

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

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

(f) The names, offices sought, and party affiliations of candidates for state offices supported or opposed by independent expenditures of the person reporting and the amount of each such expenditure.

(g) The identifying proposition number and a brief description of any state-wide ballot proposition supported or opposed by expenditures not reported under (d) of this subsection and the amount of each such expenditure.

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

(2)(a) Except as provided in (b) of this subsection, an employer of a lobbyist registered under this chapter shall file a special report with the commission if the employer makes a contribution or contributions aggregating more than one hundred dollars in a calendar month to any one of the

following: A candidate, elected official, officer or employee of an agency, or political committee. The report shall identify the date and amount of each such contribution and the name of the candidate, elected official, agency officer or employee, or political committee receiving the contribution or to be benefited by the contribution. The report shall be filed on a form prescribed by the commission and shall be filed within fifteen days after the last day of the calendar month during which the contribution was made.

(b) The provisions of (a) of this subsection do not apply to a contribution which is made through a registered lobbyist and reportable under RCW 42.17.170. [1993 c 2 § 27 (Initiative Measure No. 134, approved November 3, 1992); 1990 c 139 § 4; 1987 c 423 § 2; 1984 c 34 § 6; 1975 1st ex.s. c 294 § 11; 1973 c 1 § 18 (Initiative Measure No. 276, approved November 7, 1972).]

***Reviser's note:** The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17.370 or 42.17.690. For current dollar amounts, see Title 390 of the Washington Administrative Code (WAC).

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

42.17.190 Legislative activities of state agencies, other units of government, elective officials, employees.

(1) The house of representatives and the senate shall report annually: The total budget; the portion of the total attributed to staff; and the number of full-time and part-time staff positions by assignment, with dollar figures as well as number of positions.

(2) Unless authorized by subsection (3) of this section or otherwise expressly authorized by law, no public funds may be used directly or indirectly for lobbying: PROVIDED, This does not prevent officers or employees of an agency from communicating with a member of the legislature on the request of that member; or communicating to the legislature, through the proper official channels, requests for legislative action or appropriations which are deemed necessary for the efficient conduct of the public business or actually made in the proper performance of their official duties: PROVIDED FURTHER, That this subsection does not apply to the legislative branch.

(3) Any agency, not otherwise expressly authorized by law, may expend public funds for lobbying, but such lobbying activity shall be limited to (a) providing information or communicating on matters pertaining to official agency business to any elected official or officer or employee of any agency or (b) advocating the official position or interests of the agency to any elected official or officer or employee of any agency: PROVIDED, That public funds may not be expended as a direct or indirect gift or campaign contribution to any elected official or officer or employee of any agency. For the purposes of this subsection, the term "gift" means a voluntary transfer of any thing of value without consideration of equal or greater value, but does not include informational material transferred for the sole purpose of informing the recipient about matters pertaining to official agency business. This section does not permit the printing of a state publication which has been otherwise prohibited by law.

(4) No elective official or any employee of his or her office or any person appointed to or employed by any public office or agency may use or authorize the use of any of the

facilities of a public office or agency, directly or indirectly, in any effort to support or oppose an initiative to the legislature. "Facilities of a public office or agency" has the same meaning as in RCW 42.17.130 and 42.52.180. The provisions of this subsection shall not apply to the following activities:

(a) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose an initiative to the legislature so long as (i) any required notice of the meeting includes the title and number of the initiative to the legislature, and (ii) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(b) A statement by an elected official in support of or in opposition to any initiative to the legislature at an open press conference or in response to a specific inquiry;

(c) Activities which are part of the normal and regular conduct of the office or agency;

(d) Activities conducted regarding an initiative to the legislature that would be permitted under RCW 42.17.130 and 42.52.180 if conducted regarding other ballot measures.

(5) Each state agency, county, city, town, municipal corporation, quasi-municipal corporation, or special purpose district which expends public funds for lobbying shall file with the commission, except as exempted by (d) of this subsection, quarterly statements providing the following information for the quarter just completed:

(a) The name of the agency filing the statement;

(b) The name, title, and job description and salary of each elected official, officer, or employee who lobbied, a general description of the nature of the lobbying, and the proportionate amount of time spent on the lobbying;

(c) A listing of expenditures incurred by the agency for lobbying including but not limited to travel, consultant or other special contractual services, and brochures and other publications, the principal purpose of which is to influence legislation;

(d) For purposes of this subsection the term "lobbying" does not include:

(i) Requests for appropriations by a state agency to the office of financial management pursuant to chapter 43.88 RCW nor requests by the office of financial management to the legislature for appropriations other than its own agency budget requests;

(ii) Recommendations or reports to the legislature in response to a legislative request expressly requesting or directing a specific study, recommendation, or report by an agency on a particular subject;

(iii) Official reports including recommendations submitted to the legislature on an annual or biennial basis by a state agency as required by law;

(iv) Requests, recommendations, or other communication between or within state agencies or between or within local agencies;

(v) Any other lobbying to the extent that it includes:

(A) Telephone conversations or preparation of written correspondence;

(B) In-person lobbying on behalf of an agency of no more than four days or parts thereof during any three-month period by officers or employees of that agency and in-person

lobbying by any elected official of such agency on behalf of such agency or in connection with the powers, duties, or compensation of such official: PROVIDED, That the total expenditures of nonpublic funds made in connection with such lobbying for or on behalf of any one or more members of the legislature or state elected officials or public officers or employees of the state of Washington do not exceed fifteen dollars for any three-month period: PROVIDED FURTHER, That the exemption under this subsection is in addition to the exemption provided in (A) of this subsection;

(C) Preparation or adoption of policy positions.

The statements shall be in the form and the manner prescribed by the commission and shall be filed within one month after the end of the quarter covered by the report.

(6) In lieu of reporting under subsection (5) of this section any county, city, town, municipal corporation, quasi municipal corporation, or special purpose district may determine and so notify the public disclosure commission, that elected officials, officers, or employees who on behalf of any such local agency engage in lobbying reportable under subsection (5) of this section shall register and report such reportable lobbying in the same manner as a lobbyist who is required to register and report under RCW 42.17.150 and 42.17.170. Each such local agency shall report as a lobbyist employer pursuant to RCW 42.17.180.

(7) The provisions of this section do not relieve any elected official or officer or employee of an agency from complying with other provisions of this chapter, if such elected official, officer, or employee is not otherwise exempted.

(8) The purpose of this section is to require each state agency and certain local agencies to report the identities of those persons who lobby on behalf of the agency for compensation, together with certain separately identifiable and measurable expenditures of an agency's funds for that purpose. This section shall be reasonably construed to accomplish that purpose and not to require any agency to report any of its general overhead cost or any other costs which relate only indirectly or incidentally to lobbying or which are equally attributable to or inseparable from nonlobbying activities of the agency.

The public disclosure commission may adopt rules clarifying and implementing this legislative interpretation and policy. [1995 c 397 § 7; 1986 c 239 § 1; 1979 ex.s. c 265 § 1; 1977 ex.s. c 313 § 6; 1975 1st ex.s. c 294 § 12; 1973 c 1 § 19 (Initiative Measure No. 276, approved November 7, 1972).]

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

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

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

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

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

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

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

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

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

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

***Reviser's note:** The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17.370. For current dollar amounts, see chapter 390-20 of the Washington Administrative Code (WAC).

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

42.17.210 Employment of legislators, board or commission members, or state employees—Statement, contents and filing. If any person registered or required to be registered as a lobbyist under this chapter employs, or if any employer of any person registered or required to be registered as a lobbyist under this chapter, employs any member of the legislature, or any member of any state board or commission, or any employee of the legislature, or any full-time state employee, if such new employee shall remain in the partial employment of the state or any agency thereof, then

the new employer shall file a statement under oath with the commission setting out the nature of the employment, the name of the person to be paid thereunder, and the amount of pay or consideration to be paid thereunder. The statement shall be filed within fifteen days after the commencement of such employment. [1973 c 1 § 21 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.220 Employment of unregistered persons. It shall be a violation of this chapter for any person to employ for pay or any consideration, or pay or agree to pay any consideration to, a person to lobby who is not registered under this chapter except upon condition that such person register as a lobbyist as provided by this chapter, and such person does in fact so register as soon as practicable. [1973 c 1 § 22 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.230 Lobbyists' duties, restrictions. A person required to register as a lobbyist under this chapter shall also have the following obligations, the violation of which shall constitute cause for revocation of his registration, and may subject such person, and such person's employer, if such employer aids, abets, ratifies, or confirms any such act, to other civil liabilities, as provided by this chapter:

(1) Such persons shall obtain and preserve all accounts, bills, receipts, books, papers, and documents necessary to substantiate the financial reports required to be made under this chapter for a period of at least five years from the date of the filing of the statement containing such items, which accounts, bills, receipts, books, papers, and documents shall be made available for inspection by the commission at any time: PROVIDED, That if a lobbyist is required under the terms of his employment contract to turn any records over to his employer, responsibility for the preservation of such records under this subsection shall rest with such employer.

(2) In addition, a person required to register as a lobbyist shall not:

(a) Engage in any activity as a lobbyist before registering as such;

(b) Knowingly deceive or attempt to deceive any legislator as to any fact pertaining to any pending or proposed legislation;

(c) Cause or influence the introduction of any bill or amendment thereto for the purpose of thereafter being employed to secure its defeat;

(d) Knowingly represent an interest adverse to any of his employers without first obtaining such employer's written consent thereto after full disclosure to such employer of such adverse interest;

(e) Exercise any undue influence, extortion, or unlawful retaliation upon any legislator by reason of such legislator's position with respect to, or his vote upon, any pending or proposed legislation;

(f) Enter into any agreement, arrangement, or understanding according to which his or her compensation, or any portion thereof, is or will be contingent upon the success of any attempt to influence legislation. [1987 c 201 § 2; 1982 c 147 § 14; 1973 c 1 § 23 (Initiative Measure No. 276, approved November 7, 1972).]

REPORTING OF
PUBLIC OFFICIALS' FINANCIAL AFFAIRS

42.17.240 Elected and appointed officials, candidates, and appointees—Reports of financial affairs and gifts. (1) Every elected official and every executive state officer shall after January 1st and before April 15th of each year file with the commission a statement of financial affairs for the preceding calendar year. However, any local elected official whose term of office expires immediately after December 31st shall file the statement required to be filed by this section for the year that ended on that December 31st.

(2) Every candidate shall within two weeks of becoming a candidate file with the commission a statement of financial affairs for the preceding twelve months.

(3) Every person appointed to a vacancy in an elective office or executive state officer position shall within two weeks of being so appointed file with the commission a statement of financial affairs for the preceding twelve months.

(4) A statement of a candidate or appointee filed during the period from January 1st to April 15th shall cover the period from January 1st of the preceding calendar year to the time of candidacy or appointment if the filing of the statement would relieve the individual of a prior obligation to file a statement covering the entire preceding calendar year.

(5) No individual may be required to file more than once in any calendar year.

(6) Each statement of financial affairs filed under this section shall be sworn as to its truth and accuracy.

(7) Every elected official and every executive state officer shall file with their statement of financial affairs a statement certifying that they have read and are familiar with RCW 42.17.130 or 42.52.180, whichever is applicable.

(8) For the purposes of this section, the term "executive state officer" includes those listed in RCW 42.17.2401.

(9) This section does not apply to incumbents or candidates for a federal office or the office of precinct committee officer. [1995 c 397 § 8; 1993 c 2 § 31 (Initiative Measure No. 134, approved November 3, 1992); 1989 c 158 § 1; 1987 c 295 § 19. Prior: 1984 c 125 § 14; 1984 c 34 § 1; 1983 c 161 § 27; 1982 c 10 § 9; prior: 1981 c 311 § 20; 1981 c 67 § 15; 1979 ex.s. c 265 § 3; 1979 c 151 § 73; prior: 1975-'76 2nd ex.s. c 112 § 7; 1975-'76 2nd ex.s. c 104 § 1 (Ref. Bill No. 36); 1975 1st ex.s. c 294 § 13; 1973 c 1 § 24 (Initiative Measure No. 276, approved November 7, 1972).]

Temporary exemption: "Persons identified as executive officers under RCW 42.17.240(4), who were appointed to their positions before July 23, 1989, and who were not required to file a statement of financial affairs at the time of their appointment, are exempt from the requirements of RCW 42.17.240 until they are reappointed to such positions." [1989 c 158 § 4.]

Severability—Headings—Effective date—1984 c 125: See RCW 43.63A.901 through 43.63A.903.

Severability—Effective dates—1983 c 161: See RCW 43.180.903 and 43.180.904.

Severability—1982 c 10: See note following RCW 6.13.080.

Severability—1981 c 311: See RCW 41.64.910.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Cemetery district commissioners exempt from chapter: RCW 68.52.140, 68.52.220.

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

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

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

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

(4) Central Washington University board of trustees, board of trustees of each community college, each member of the state board for community and technical colleges, state convention and trade center board of directors, committee for deferred compensation, Eastern Washington University board of trustees, Washington economic development finance authority, The Evergreen State College board of trustees, executive ethics board, forest practices appeals board, forest practices board, gambling commission, Washington health care facilities authority, each member of the Washington health services commission, higher education coordinating board, higher education facilities authority, horse racing commission, state housing finance commission, human rights commission, indeterminate sentence review board, board of industrial insurance appeals, information services board, interagency committee for outdoor recreation, state investment board, commission on judicial conduct, legislative ethics board, liquor control board, lottery com-

mission, marine oversight board, Pacific Northwest electric power and conservation planning council, parks and recreation commission, personnel appeals board, board of pilotage commissioners, pollution control hearings board, public disclosure commission, public pension commission, shorelines hearing board, public employees' benefits board, board of tax appeals, transportation commission, University of Washington board of regents, utilities and transportation commission, Washington state maritime commission, Washington personnel resources board, Washington public power supply system executive board, Washington State University board of regents, Western Washington University board of trustees, and fish and wildlife commission. [1996 c 186 § 504. Prior: 1995 c 399 § 60; 1995 c 397 § 10; prior: 1993 sp.s. c 2 § 18; 1993 c 492 § 488; 1993 c 281 § 43; 1991 c 200 § 404; 1991 c 3 § 293; prior: 1989 1st ex.s. c 9 § 812; 1989 c 279 § 22; 1989 c 158 § 2; 1988 c 36 § 13; 1987 c 504 § 14; 1985 c 6 § 8; 1984 c 34 § 2.]

***Reviser's note:** The office of marine safety was transferred to the department of ecology and renamed the integrated oil spill prevention and response program by 1995 2nd sp.s. c 14 § 515, effective January 1, 1996, until June 30, 1997.

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Effective date—1993 sp.s. c 2 §§ 1-6, 8-59, and 61-79: See RCW 43.300.900.

Severability—1993 sp.s. c 2: See RCW 43.300.901.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective date—1993 c 281: See note following RCW 41.06.022.

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

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

Severability—1989 c 279: See RCW 43.163.901

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

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

42.17.241 Contents of report. (1) The statement of financial affairs required by RCW 42.17.240 shall disclose for the reporting individual and each member of his or her immediate family:

(a) Occupation, name of employer, and business address; and

(b) Each bank or savings account or insurance policy in which any such person or persons owned a direct financial interest that exceeded *five thousand dollars at any time during the reporting period; each other item of intangible personal property in which any such person or persons owned a direct financial interest, the value of which exceeded *five hundred dollars during the reporting period; the name, address, and nature of the entity; and the nature and highest value of each such direct financial interest during the reporting period; and

(c) The name and address of each creditor to whom the value of *five hundred dollars or more was owed; the

original amount of each debt to each such creditor; the amount of each debt owed to each creditor as of the date of filing; the terms of repayment of each such debt; and the security given, if any, for each such debt: PROVIDED, That debts arising out of a "retail installment transaction" as defined in chapter 63.14 RCW (Retail Installment Sales Act) need not be reported; and

(d) Every public or private office, directorship, and position held as trustee; and

(e) All persons for whom any legislation, rule, rate, or standard has been prepared, promoted, or opposed for current or deferred compensation: PROVIDED, That for the purposes of this subsection, "compensation" does not include payments made to the person reporting by the governmental entity for which such person serves as an elected official or state executive officer or professional staff member for his service in office; the description of such actual or proposed legislation, rules, rates, or standards; and the amount of current or deferred compensation paid or promised to be paid; and

(f) The name and address of each governmental entity, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from whom compensation has been received in any form of a total value of five hundred dollars or more; the value of the compensation; and the consideration given or performed in exchange for the compensation; and

(g) The name of any corporation, partnership, joint venture, association, union, or other entity in which is held any office, directorship, or any general partnership interest, or an ownership interest of ten percent or more; the name or title of that office, directorship, or partnership; the nature of ownership interest; and with respect to each such entity: (i) With respect to a governmental unit in which the official seeks or holds any office or position, if the entity has received compensation in any form during the preceding twelve months from the governmental unit, the value of the compensation and the consideration given or performed in exchange for the compensation; (ii) the name of each governmental unit, corporation, partnership, joint venture, sole proprietorship, association, union, or other business or commercial entity from which the entity has received compensation in any form in the amount of *two thousand five hundred dollars or more during the preceding twelve months and the consideration given or performed in exchange for the compensation: PROVIDED, That the term "compensation" for purposes of this subsection (1)(g)(ii) does not include payment for water and other utility services at rates approved by the Washington state utilities and transportation commission or the legislative authority of the public entity providing the service: PROVIDED, FURTHER, That with respect to any bank or commercial lending institution in which is held any office, directorship, partnership interest, or ownership interest, it shall only be necessary to report either the name, address, and occupation of every director and officer of the bank or commercial lending institution and the average monthly balance of each account held during the preceding twelve months by the bank or commercial lending institution from the governmental entity for which the individual is an official or candidate or professional staff member, or all interest paid by a borrower on loans from and all interest paid to a depositor by the bank

or commercial lending institution if the interest exceeds *six hundred dollars; and

(h) A list, including legal or other sufficient descriptions as prescribed by the commission, of all real property in the state of Washington, the assessed valuation of which exceeds *two thousand five hundred dollars in which any direct financial interest was acquired during the preceding calendar year, and a statement of the amount and nature of the financial interest and of the consideration given in exchange for that interest; and

(i) A list, including legal or other sufficient descriptions as prescribed by the commission, of all real property in the state of Washington, the assessed valuation of which exceeds *two thousand five hundred dollars in which any direct financial interest was divested during the preceding calendar year, and a statement of the amount and nature of the consideration received in exchange for that interest, and the name and address of the person furnishing the consideration; and

(j) A list, including legal or other sufficient descriptions as prescribed by the commission, of all real property in the state of Washington, the assessed valuation of which exceeds *two thousand five hundred dollars in which a direct financial interest was held: PROVIDED, That if a description of the property has been included in a report previously filed, the property may be listed, for purposes of this provision, by reference to the previously filed report; and

(k) A list, including legal or other sufficient descriptions as prescribed by the commission, of all real property in the state of Washington, the assessed valuation of which exceeds *five thousand dollars, in which a corporation, partnership, firm, enterprise, or other entity had a direct financial interest, in which corporation, partnership, firm, or enterprise a ten percent or greater ownership interest was held; and

(l) A list of each occasion, specifying date, donor, and amount, at which food and beverage in excess of *fifty dollars was accepted under RCW 42.52.150(5); [and]

(m) A list of each occasion, specifying date, donor, and amount, at which items specified in RCW 42.52.010(9) (d) and (f) were accepted; [and]

(n) Such other information as the commission may deem necessary in order to properly carry out the purposes and policies of this chapter, as the commission shall prescribe by rule.

(2) Where an amount is required to be reported under subsection (1) (a) through (m) of this section, it shall be sufficient to comply with the requirement to report whether the amount is less than *one thousand dollars, at least *one thousand dollars but less than *five thousand dollars, at least *five thousand dollars but less than *ten thousand dollars, at least *ten thousand dollars but less than *twenty-five thousand dollars, or *twenty-five thousand dollars or more. An amount of stock may be reported by number of shares instead of by market value. No provision of this subsection may be interpreted to prevent any person from filing more information or more detailed information than required.

(3) Items of value given to an official's or employee's spouse or family member are attributable to the official or employee, except the item is not attributable if an independent business, family, or social relationship exists between the donor and the spouse or family member. [1995 c 397 § 9; 1984 c 34 § 3; 1979 ex.s. c 126 § 42.]

***Reviser's note:** The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17.370. For current dollar amounts, see chapter 390-24 of the Washington Administrative Code (WAC).

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

42.17.242 Concealing identity of source of payment prohibited—Exception. No payment shall be made to any person required to report under RCW 42.17.240 and no payment shall be accepted by any such person, directly or indirectly, in a fictitious name, anonymously, or by one person through an agent, relative, or other person in such a manner as to conceal the identity of the source of the payment or in any other manner so as to effect concealment except that the commission may issue categorical and specific exemptions to the reporting of the actual source when there is an undisclosed principal for recognized legitimate business purposes. [1977 ex.s. c 336 § 4.]

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

42.17.243 Public office fund—What constitutes, restrictions on use—Reporting of—Disposal of remaining funds.

Reviser's note: RCW 42.17.243 was amended by 1991 sp.s. c 18 § 4 without reference to its repeal by 1993 c 2 § 35 (Initiative Measure No. 134). It has been decodified for publication purposes pursuant to RCW 1.12.025.

REPORTING BY PUBLIC TREASURERS

42.17.245 Public accounts of governmental entities held by financial institutions—Statements and reports—Contents—Filing. After January 1st and before April 15th of each calendar year, the state treasurer, each county, public utility district, and port district treasurer, and each treasurer of an incorporated city or town whose population exceeds one thousand shall file with the commission:

(1) A statement under oath that no public funds under that treasurer's control were invested in any institution where the treasurer or, in the case of a county, a member of the county finance committee, held during the reporting period an office, directorship, partnership interest, or ownership interest; or

(2) A report disclosing for the previous calendar year: (a) The name and address of each financial institution in which the treasurer or, in the case of a county, a member of the county finance committee, held during the reporting period an office, directorship, partnership interest, or ownership interest which holds or has held during the reporting period public accounts of the governmental entity for which the treasurer is responsible; (b) the aggregate sum of time and demand deposits held in each such financial institution on December 31; and (c) the highest balance held at any time during such reporting period: PROVIDED, That the state treasurer shall disclose the highest balance information only upon request under RCW 42.17.250 through 42.17.330. The statement or report required by this section shall be filed either with the statement required under RCW 42.17.240 or separately. [1983 c 213 § 1; 1981 c 102 § 1; 1975-'76 2nd ex.s. c 112 § 10.]

PUBLIC RECORDS

42.17.250 Duty to publish procedures. (1) Each state agency shall separately state and currently publish in the Washington Administrative Code and each local agency shall prominently display and make available for inspection and copying at the central office of such local agency, for guidance of the public:

(a) Descriptions of its central and field organization and the established places at which, the employees from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain copies of agency decisions;

(b) Statements of the general course and method by which its operations are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(c) Rules of procedure;

(d) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the agency; and

(e) Each amendment or revision to, or repeal of any of the foregoing.

(2) Except to the extent that he has actual and timely notice of the terms thereof, a person may not in any manner be required to resort to, or be adversely affected by, a matter required to be published or displayed and not so published or displayed. [1973 c 1 § 25 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.251 Construction. The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created. The public records subdivision of this chapter shall be liberally construed and its exemptions narrowly construed to promote this public policy. [1992 c 139 § 2.]

42.17.255 Invasion of privacy, when. A person's "right to privacy," "right of privacy," "privacy," or "personal privacy," as these terms are used in this chapter, is invaded or violated only if disclosure of information about the person: (1) Would be highly offensive to a reasonable person, and (2) is not of legitimate concern to the public. The provisions of this chapter dealing with the right to privacy in certain public records do not create any right of privacy beyond those rights that are specified in this chapter as express exemptions from the public's right to inspect, examine, or copy public records. [1987 c 403 § 2.]

Intent—1987 c 403: "The legislature intends to restore the law relating to the release of public records largely to that which existed prior to the Washington Supreme Court decision in *In Re Rosier*," 105 Wn.2d 606 (1986). The intent of this legislation is to make clear that: (1) Absent statutory provisions to the contrary, agencies possessing records should in responding to requests for disclosure not make any distinctions in releasing or not releasing records based upon the identity of the person or agency which requested the records, and (2) agencies having public records should rely only upon statutory exemptions or prohibitions for refusal to provide public records. Further, to avoid unnecessary confusion, "privacy" as used

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in RCW 42.17.255 is intended to have the same meaning as the definition given that word by the Supreme Court in *Hearst v. Hoppe*," 90 Wn.2d 123, 135 (1978)." [1987 c 403 § 1.]

Severability—1987 c 403: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 403 § 7.]

42.17.258 Disclaimer of public liability. No public agency, public official, public employee, or custodian shall be liable, nor shall a cause of action exist, for any loss or damage based upon the release of a public record if the public agency, public official, public employee, or custodian acted in good faith in attempting to comply with the provisions of this chapter. [1992 c 139 § 11.]

42.17.260 Documents and indexes to be made public. (1) Each agency, in accordance with published rules, shall make available for public inspection and copying all public records, unless the record falls within the specific exemptions of subsection (6) of this section, RCW 42.17.310, 42.17.315, or other statute which exempts or prohibits disclosure of specific information or records. To the extent required to prevent an unreasonable invasion of personal privacy interests protected by RCW 42.17.310 and 42.17.315, an agency shall delete identifying details in a manner consistent with RCW 42.17.310 and 42.17.315 when it makes available or publishes any public record; however, in each case, the justification for the deletion shall be explained fully in writing.

(2) For informational purposes, each agency shall publish and maintain a current list containing every law, other than those listed in this chapter, that the agency believes exempts or prohibits disclosure of specific information or records of the agency. An agency's failure to list an exemption shall not affect the efficacy of any exemption.

(3) Each local agency shall maintain and make available for public inspection and copying a current index providing identifying information as to the following records issued, adopted, or promulgated after January 1, 1973:

(a) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(b) Those statements of policy and interpretations of policy, statute, and the Constitution which have been adopted by the agency;

(c) Administrative staff manuals and instructions to staff that affect a member of the public;

(d) Planning policies and goals, and interim and final planning decisions;

(e) Factual staff reports and studies, factual consultant's reports and studies, scientific reports and studies, and any other factual information derived from tests, studies, reports, or surveys, whether conducted by public employees or others; and

(f) Correspondence, and materials referred to therein, by and with the agency relating to any regulatory, supervisory, or enforcement responsibilities of the agency, whereby the agency determines, or opines upon, or is asked to determine or opine upon, the rights of the state, the public, a subdivision of state government, or of any private party.

(4) A local agency need not maintain such an index, if to do so would be unduly burdensome, but it shall in that event:

(a) Issue and publish a formal order specifying the reasons why and the extent to which compliance would unduly burden or interfere with agency operations; and

(b) Make available for public inspection and copying all indexes maintained for agency use.

(5) Each state agency shall, by rule, establish and implement a system of indexing for the identification and location of the following records:

(a) All records issued before July 1, 1990, for which the agency has maintained an index;

(b) Final orders entered after June 30, 1990, that are issued in adjudicative proceedings as defined in RCW 34.05.010 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(c) Declaratory orders entered after June 30, 1990, that are issued pursuant to RCW 34.05.240 and that contain an analysis or decision of substantial importance to the agency in carrying out its duties;

(d) Interpretive statements as defined in RCW 34.05.010 that were entered after June 30, 1990; and

(e) Policy statements as defined in RCW 34.05.010 that were entered after June 30, 1990.

Rules establishing systems of indexing shall include, but not be limited to, requirements for the form and content of the index, its location and availability to the public, and the schedule for revising or updating the index. State agencies that have maintained indexes for records issued before July 1, 1990, shall continue to make such indexes available for public inspection and copying. Information in such indexes may be incorporated into indexes prepared pursuant to this subsection. State agencies may satisfy the requirements of this subsection by making available to the public indexes prepared by other parties but actually used by the agency in its operations. State agencies shall make indexes available for public inspection and copying. State agencies may charge a fee to cover the actual costs of providing individual mailed copies of indexes.

(6) A public record may be relied on, used, or cited as precedent by an agency against a party other than an agency and it may be invoked by the agency for any other purpose only if—

(a) It has been indexed in an index available to the public; or

(b) Parties affected have timely notice (actual or constructive) of the terms thereof.

(7) Each agency shall establish, maintain, and make available for public inspection and copying a statement of the actual per page cost or other costs, if any, that it charges for providing photocopies of public records and a statement of the factors and manner used to determine the actual per page cost or other costs, if any.

(a) In determining the actual per page cost for providing photocopies of public records, an agency may include all costs directly incident to copying such public records including the actual cost of the paper and the per page cost for use of agency copying equipment. In determining other actual costs for providing photocopies of public records, an agency may include all costs directly incident to shipping

such public records, including the cost of postage or delivery charges and the cost of any container or envelope used.

(b) In determining the actual per page cost or other costs for providing copies of public records, an agency may not include staff salaries, benefits, or other general administrative or overhead charges, unless those costs are directly related to the actual cost of copying the public records. Staff time to copy and mail the requested public records may be included in an agency's costs.

(8) An agency need not calculate the actual per page cost or other costs it charges for providing photocopies of public records if to do so would be unduly burdensome, but in that event: The agency may not charge in excess of fifteen cents per page for photocopies of public records or for the use of agency equipment to photocopy public records and the actual postage or delivery charge and the cost of any container or envelope used to mail the public records to the requestor.

(9) This chapter shall not be construed as giving authority to any agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives to give, sell or provide access to lists of individuals requested for commercial purposes, and agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives shall not do so unless specifically authorized or directed by law: PROVIDED, HOWEVER, That lists of applicants for professional licenses and of professional licensees shall be made available to those professional associations or educational organizations recognized by their professional licensing or examination board, upon payment of a reasonable charge therefor: PROVIDED FURTHER, That such recognition may be refused only for a good cause pursuant to a hearing under the provisions of chapter 34.05 RCW, the Administrative Procedure Act. [1997 c 409 § 601. Prior: 1995 c 397 § 11; 1995 c 341 § 1; 1992 c 139 § 3; 1989 c 175 § 36; 1987 c 403 § 3; 1975 1st ex.s. c 294 § 14; 1973 c 1 § 26 (Initiative Measure No. 276, approved November 7, 1972).]

Part headings—Severability—1997 c 409: See notes following RCW 43.22.051.

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

Intent—Severability—1987 c 403: See notes following RCW 42.17.255.

Exemption for registered trade names: RCW 19.80.065.

42.17.261 Public information access policy task force. A public information access policy task force is hereby created. The task force shall be composed of: The state librarian or the librarian's designee; the director of the department of information services or the director's designee; four members who are representatives of state and local governmental agencies, appointed by the governor; five representatives of the general public who have experience accessing information electronically or have particular interest in the policies that should govern access to information from public agencies, appointed by the governor; two members of the house of representatives, one from each political party, appointed by the speaker of the house of representatives; two members of the senate, one from each political party, appointed by the president of the senate; and, at the option of the chief justice of the state's supreme court, one representative of the state's judicial branch appointed by

the chief justice. The state librarian or the librarian's designee and the director of information services or the director's designee shall serve as the cochairs of the task force. The department of information services and the state library shall provide staff support for the task force.

The purpose of the task force is to identify specific means of encouraging and establishing widespread, public, electronic access to the public records held by state government and by local governments. For the purposes of the task force's study and recommendations, providing such access to the public does not include providing the type of services beyond access, and beyond providing assistance with that access, that would be provided by a vendor for commercial purposes, including but not limited to providing such services by means of a geographic information system.

The task force shall cease to exist on June 30, 1996. [1994 c 40 § 4.]

Findings—Severability—Effective date—1994 c 40: See notes following RCW 42.17.367.

42.17.270 Facilities for copying—Availability of public records. Public records shall be available for inspection and copying, and agencies shall, upon request for identifiable public records, make them promptly available to any person. Agencies shall not distinguish among persons requesting records, and such persons shall not be required to provide information as to the purpose for the request except to establish whether inspection and copying would violate *RCW 42.17.260(5) or other statute which exempts or prohibits disclosure of specific information or records to certain persons. Agency facilities shall be made available to any person for the copying of public records except when and to the extent that this would unreasonably disrupt the operations of the agency. Agencies shall honor requests received by mail for identifiable public records unless exempted by provisions of this chapter. [1987 c 403 § 4; 1975 1st ex.s. c 294 § 15; 1973 c 1 § 27 (Initiative Measure No. 276, approved November 7, 1972).]

***Reviser's note:** RCW 42.17.260 was amended by 1989 c 175 § 36, changing subsection (5) to subsection (6). RCW 42.17.260 was subsequently amended by 1992 c 139 § 3, changing subsection (6) to subsection (7). RCW 42.17.260 was subsequently amended by 1995 c 341 § 1, changing subsection (7) to subsection (9).

Intent—Severability—1987 c 403: See notes following RCW 42.17.255.

42.17.280 Times for inspection and copying. Public records shall be available for inspection and copying during the customary office hours of the agency, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives: PROVIDED, That if the entity does not have customary office hours of at least thirty hours per week, the public records shall be available from nine o'clock a.m. to noon and from one o'clock p.m. to four o'clock p.m. Monday through Friday, excluding legal holidays, unless the person making the request and the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives or its representative agree on a different time. [1995 c 397 § 12; 1973 c 1 § 28 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.290 Protection of public records—Public access. Agencies shall adopt and enforce reasonable rules and regulations, and the office of the secretary of the senate and the office of the chief clerk of the house of representatives shall adopt reasonable procedures allowing for the time, resource, and personnel constraints associated with legislative sessions, consonant with the intent of this chapter to provide full public access to public records, to protect public records from damage or disorganization, and to prevent excessive interference with other essential functions of the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives. Such rules and regulations shall provide for the fullest assistance to inquirers and the most timely possible action on requests for information. Nothing in this section shall relieve agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives from honoring requests received by mail for copies of identifiable public records.

If a public record request is made at a time when such record exists but is scheduled for destruction in the near future, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives shall retain possession of the record, and may not destroy or erase the record until the request is resolved. [1995 c 397 § 13; 1992 c 139 § 4; 1975 1st ex.s. c 294 § 16; 1973 c 1 § 29 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.295 Destruction of information relating to employee misconduct. Nothing in this chapter prevents an agency from destroying information relating to employee misconduct or alleged misconduct, in accordance with RCW 41.06.450, to the extent necessary to ensure fairness to the employee. [1982 c 208 § 13.]

Severability—1982 c 208: See RCW 42.40.900.

42.17.300 Charges for copying. No fee shall be charged for the inspection of public records. No fee shall be charged for locating public documents and making them available for copying. A reasonable charge may be imposed for providing copies of public records and for the use by any person of agency equipment or equipment of the office of the secretary of the senate or the office of the chief clerk of the house of representatives to copy public records, which charges shall not exceed the amount necessary to reimburse the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives for its actual costs directly incident to such copying. Agency charges for photocopies shall be imposed in accordance with the actual per page cost or other costs established and published by the agency. In no event may an agency charge a per page cost greater than the actual per page cost as established and published by the agency. To the extent the agency has not determined the actual per page cost for photocopies of public records, the agency may not charge in excess of fifteen cents per page. [1995 c 397 § 14; 1995 c 341 § 2; 1973 c 1 § 30 (Initiative Measure No. 276, approved November 7, 1972).]

Reviser's note: This section was amended by 1995 c 341 § 2 and by 1995 c 397 § 14, 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).

42.17.305 Other provisions not superseded. The provisions of RCW 42.17.260 (7) and (8) and 42.17.300 that establish or allow agencies to establish the costs charged for photocopies of public records do not supersede other statutory provisions, other than in this chapter, authorizing or governing fees for copying public records. [1995 c 341 § 3.]

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

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

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

(c) Information required of any taxpayer in connection with the assessment or collection of any tax if the disclosure of the information to other persons would (i) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (ii) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer.

(d) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy.

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

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

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

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

(i) Preliminary drafts, notes, recommendations, and intra-agency memorandums in which opinions are expressed or policies formulated or recommended except that a specific

record shall not be exempt when publicly cited by an agency in connection with any agency action.

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

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

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

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

(n) Railroad company contracts filed prior to July 28, 1991, with the utilities and transportation commission under *RCW 81.34.070, except that the summaries of the contracts are open to public inspection and copying as otherwise provided by this chapter.

(o) Financial and commercial information and records supplied by private persons pertaining to export services provided pursuant to chapter 43.163 RCW and chapter 53.31 RCW, and by persons pertaining to export projects pursuant to RCW 43.23.035.

(p) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW.

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

(r) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.163, 43.160, 43.330, and 43.168 RCW, or during application for economic development loans or program services provided by any local agency.

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

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

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

(v) The residential addresses and residential telephone numbers of the customers of a public utility contained in the records or lists held by the public utility of which they are customers, except that this information may be released to the division of child support or the agency or firm providing child support enforcement for another state under Title IV-D

of the federal social security act, for the establishment, enforcement, or modification of a support order.

(w)(i) The federal social security number of individuals governed under chapter 18.130 RCW maintained in the files of the department of health, except this exemption does not apply to requests made directly to the department from federal, state, and local agencies of government, and national and state licensing, credentialing, investigatory, disciplinary, and examination organizations; (ii) the current residential address and current residential telephone number of a health care provider governed under chapter 18.130 RCW maintained in the files of the department, if the provider requests that this information be withheld from public inspection and copying, and provides to the department an accurate alternate or business address and business telephone number. On or after January 1, 1995, the current residential address and residential telephone number of a health care provider governed under RCW 18.130.140 maintained in the files of the department shall automatically be withheld from public inspection and copying unless the provider specifically requests the information be released, and except as provided for under RCW 42.17.260(9).

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

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

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

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

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

(cc) Client records maintained by an agency that is a domestic violence program as defined in RCW 70.123.020 or 70.123.075 or a rape crisis center as defined in RCW 70.125.030.

(dd) Information that identifies a person who, while an agency employee: (i) Seeks advice, under an informal process established by the employing agency, in order to ascertain his or her rights in connection with a possible unfair practice under chapter 49.60 RCW against the person; and (ii) requests his or her identity or any identifying information not be disclosed.

(ee) Investigative records compiled by an employing agency conducting a current investigation of a possible unfair practice under chapter 49.60 RCW or of a possible violation of other federal, state, or local laws prohibiting discrimination in employment.

(ff) Business related information protected from public inspection and copying under RCW 15.86.110.

(gg) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW.

(hh) Information and documents created specifically for, and collected and maintained by a quality improvement committee pursuant to RCW 43.70.510, regardless of which agency is in possession of the information and documents.

(ii) Personal information in files maintained in a data base created under RCW 43.07.360.

(jj) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010.

(kk) Names of individuals residing in emergency or transitional housing that are furnished to the department of revenue or a county assessor in order to substantiate a claim for property tax exemption under RCW 84.36.043.

(ll) The names, residential addresses, residential telephone numbers, and other individually identifiable records held by an agency in relation to a vanpool, carpool, or other ride-sharing program or service. However, these records may be disclosed to other persons who apply for ride-matching services and who need that information in order to identify potential riders or drivers with whom to share rides.

(mm) Proprietary financial and commercial information that the submitting entity, with review by the department of health, specifically identifies at the time it is submitted and that is provided to or obtained by the department of health in connection with an application for, or the supervision of, an antitrust exemption sought by the submitting entity under RCW 43.72.310. If a request for such information is received, the submitting entity must be notified of the request. Within ten business days of receipt of the notice, the submitting entity shall provide a written statement of the continuing need for confidentiality, which shall be provided to the requester. Upon receipt of such notice, the department of health shall continue to treat information designated under this section as exempt from disclosure. If the requester initiates an action to compel disclosure under this chapter, the submitting entity must be joined as a party to demonstrate the continuing need for confidentiality.

(nn) Records maintained by the board of industrial insurance appeals that are related to appeals of crime victims' compensation claims filed with the board under RCW 7.68.110.

(oo) Financial and commercial information supplied by or on behalf of a person, firm, corporation, or entity under chapter 28B.95 RCW relating to the purchase or sale of tuition units and contracts for the purchase of multiple tuition units.

(2) Except for information described in subsection (1)(c)(i) of this section and confidential income data exempted from public inspection pursuant to RCW 84.40.020, the exemptions of this section are inapplicable to the extent that information, the disclosure of which would violate personal privacy or vital governmental interests, can be deleted from the specific records sought. No exemption may be construed to permit the nondisclosure of statistical information not descriptive of any readily identifiable person or persons.

(3) Inspection or copying of any specific records exempt under the provisions of this section may be permitted if the superior court in the county in which the record is maintained finds, after a hearing with notice thereof to every person in interest and the agency, that the exemption of such

records is clearly unnecessary to protect any individual's right of privacy or any vital governmental function.

(4) Agency responses refusing, in whole or in part, inspection of any public record shall include a statement of the specific exemption authorizing the withholding of the record (or part) and a brief explanation of how the exemption applies to the record withheld. [1998 c 69 § 1. Prior: 1997 c 310 § 2; 1997 c 274 § 8; 1997 c 250 § 7; 1997 c 239 § 4; 1997 c 220 § 120 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 58 § 900; prior: 1996 c 305 § 2; 1996 c 253 § 302; 1996 c 191 § 88; 1996 c 80 § 1; 1995 c 267 § 6; prior: 1994 c 233 § 2; 1994 c 182 § 1; prior: 1993 c 360 § 2; 1993 c 320 § 9; 1993 c 280 § 35; prior: 1992 c 139 § 5; 1992 c 71 § 12; 1991 c 301 § 13; 1991 c 87 § 13; 1991 c 23 § 10; 1991 c 1 § 1; 1990 2nd ex.s. c 1 § 1103; 1990 c 256 § 1; prior: 1989 1st ex.s. c 9 § 407; 1989 c 352 § 7; 1989 c 279 § 23; 1989 c 238 § 1; 1989 c 205 § 20; 1989 c 189 § 3; 1989 c 11 § 12; prior: 1987 c 411 § 10; 1987 c 404 § 1; 1987 c 370 § 16; 1987 c 337 § 1; 1987 c 107 § 2; prior: 1986 c 299 § 25; 1986 c 276 § 7; 1985 c 414 § 8; 1984 c 143 § 21; 1983 c 133 § 10; 1982 c 64 § 1; 1977 ex.s. c 314 § 13; 1975-'76 2nd ex.s. c 82 § 5; 1975 1st ex.s. c 294 § 17; 1973 c 1 § 31 (Initiative Measure No. 276, approved November 7, 1972).]

***Reviser's note:** RCW 81.34.070 was repealed by 1991 c 49 § 1.

Effective date—1998 c 69: See note following RCW 28B.95.025.

Effective date—1997 c 274: See note following RCW 41.05.021.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability—1996 c 305: See note following RCW 28B.85.020.

Findings—Purpose—Severability—Part headings not law—1996 c 253: See notes following RCW 43.292.005.

Captions not law—Severability—Effective dates—1995 c 267: See notes following RCW 43.70.052.

Effective date—1994 c 233: See note following RCW 70.123.075.

Effective date—1994 c 182: "This act shall take effect July 1, 1994." [1994 c 182 § 2.]

Effective date—1993 c 360: See note following RCW 18.130.085.

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

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

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

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

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

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

Severability—1989 c 279: See RCW 43.163.901.

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

Severability—1987 c 411: See RCW 69.45.900.

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

Severability—1986 c 276: See RCW 53.31.901.

Basic health plan records: RCW 70.47.150.

Exemptions from public inspection

accounting records of special inquiry judge: RCW 10.29.090.

bill drafting service of code reviser's office: RCW 1.08.027, 44.68.060.

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

commercial fertilizers, sales reports: RCW 15.54.362.

criminal records: Chapter 10.97 RCW.

employer information: RCW 50.13.060.

family and children's ombudsman: RCW 43.06A.050.

joint legislative service center, information: RCW 44.68.060.

medical quality assurance commission, reports required to be filed with: RCW 18.71.0195.

organized crime

advisory board files: RCW 10.29.030.

investigative information: RCW 43.43.856.

salary and fringe benefit survey information: RCW 41.06.160.

42.17.311 Duty to disclose or withhold information—Otherwise provided. Nothing in RCW 42.17.310(1) (t) through (v) shall affect a positive duty of an agency to disclose or a positive duty to withhold information which duty to disclose or withhold is contained in any other law. [1991 c 23 § 11; 1990 c 256 § 2; 1987 c 404 § 3.]

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

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

42.17.313 Application for license or small loan endorsement under chapter 31.45 RCW—Certain information exempt. Information in an application for licensing or a small loan endorsement under chapter 31.45 RCW regarding the personal residential address, telephone number of the applicant, or financial statement is exempt from disclosure under this chapter. [1995 c 18 § 8; 1991 c 355 § 22.]

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

42.17.314 Electrical utility records, request by law enforcement agency. A law enforcement authority may not request inspection or copying of records of any person, which belong to a public utility district or a municipally owned electrical utility, unless the authority provides the public utility district or municipally owned electrical utility with a written statement in which the authority states that it suspects that the particular person to whom the records pertain has committed a crime and the authority has a reasonable belief that the records could determine or help determine whether the suspicion might be true. Information obtained in violation of this rule is inadmissible in any criminal proceeding. [1987 c 403 § 6.]

Intent—Severability—1987 c 403: See notes following RCW 42.17.255.

42.17.315 Certain records obtained by colleges, universities, libraries, or archives exempt. Notwithstanding the provisions of RCW 42.17.260 through 42.17.340, as now or hereafter amended, no state college, university, library, or archive shall be required by chapter 42.17 RCW to make available for public inspection and copying any records or documents obtained by said college, university,

library, or archive through or concerning any gift, grant, conveyance, bequest, or devise, the terms of which restrict or regulate public access to such records or documents: PROVIDED, That this section shall not apply to any public records as defined in RCW 40.14.010. [1975 1st ex.s. c 294 § 22.]

42.17.316 Certain records of impaired physician program exempt. The disclosure requirements of this chapter shall not apply to records of the *committee obtained in an action under RCW 18.71.300 through 18.71.340. [1994 sp.s. c 9 § 726; 1987 c 416 § 7.]

***Reviser's note:** RCW 18.71.300 was amended by 1998 c 132 § 3, changing the definition of "committee" to "entity."

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—1987 c 416: See note following RCW 18.71.300.

42.17.317 Information on commercial fertilizer distribution exempt. Information provided under RCW 15.54.362 is exempt from disclosure under this chapter. [1987 c 45 § 15.]

Construction—Severability—1987 c 45: See notes following RCW 15.54.270.

42.17.318 Information on concealed pistol licenses exempt. The license applications under RCW 9.41.070 are exempt from the disclosure requirements of this chapter. Copies of license applications or information on the applications may be released to law enforcement or corrections agencies. [1988 c 219 § 2.]

42.17.319 Certain records of investment opportunities office exempt. Notwithstanding the provisions of RCW 42.17.260 through 42.17.340, no financial or proprietary information supplied by investors or entrepreneurs under chapter 43.330 RCW shall be made available to the public. [1993 c 280 § 36; 1989 c 312 § 7.]

Effective date—Severability—1993 c 280: See RCW 43.330.902 and 43.330.903.

Severability—1989 c 312: See note following RCW 43.31.403.

42.17.31901 Identity of child victims of sexual assault exempt. Information revealing the identity of child victims of sexual assault who are under age eighteen is confidential and not subject to public disclosure. Identifying information means the child victim's name, address, location, photograph, and in cases in which the child victim is a relative or stepchild of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. [1992 c 188 § 6.]

Findings—Intent—Severability—1992 c 188: See notes following RCW 7.69A.020.

42.17.31902 Infant mortality review. Notwithstanding the provisions of RCW 42.17.250 through 42.17.340, no local health department may be required under this chapter to make available for public inspection or copying any records or documents obtained, prepared, or maintained by the local health department for the purposes of an infant mortality review conducted by the department pursuant to RCW

70.05.170. This section shall not apply to published statistical compilations and reports relating to the infant mortality review studies that do not identify individual cases and sources of information. [1992 c 179 § 2.]

42.17.31903 Identification of viators regulated by the insurance commissioner exempt. The names and individual identification data of all viators regulated by the insurance commissioner under chapter 48.102 RCW are exempt from the disclosure and reporting requirements of this chapter. [1995 c 161 § 15.]

Short title—1995 c 161: See RCW 48.102.900.

42.17.31904 Insurance antifraud plans exempt. Information provided under RCW 48.30A.045 through 48.30A.060 are exempt from disclosure under this chapter. [1995 c 285 § 15.]

Effective date—1995 c 285: See RCW 48.30A.900.

42.17.31905 Insurance information on certain material transactions exempt. Information provided under RCW 48.05.510 through 48.05.535, 48.43.200 through 48.43.225, 48.44.530 through 48.44.555, and 48.46.600 through 48.46.625 is exempt from disclosure under this chapter. [1995 c 86 § 25.]

42.17.31906 Fireworks records exempt. All records obtained and all reports produced, as required under chapter 70.77 RCW, are not subject to the disclosure requirements under this chapter. [1995 c 61 § 30.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

42.17.31907 Agricultural business and commodity commission records exempt. The following agricultural business and commodity commission records are exempt from the disclosure requirements of this chapter:

(1) Production or sales records required to determine assessment levels and actual assessment payments to commodity commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, and 16.67 RCW or required by the department of agriculture under RCW 15.13.310(4) or 15.49.370(6);

(2) Consignment information contained on phytosanitary certificates issued by the department of agriculture under chapters 15.13, 15.49, and 15.17 RCW or federal phytosanitary certificates issued under 7 C.F.R. 353 through cooperative agreements with the animal and plant health inspection service, United States department of agriculture, or on applications for phytosanitary certification required by the department of agriculture; and

(3) Financial and commercial information and records supplied by persons to commodity commissions formed under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, and 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information. [1996 c 80 § 3.]

42.17.31908 Business information gathered under certain regulatory activities exempt. The disclosure

requirements of this chapter do not apply to information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business. [1996 c 102 § 1.]

42.17.31909 American ginseng growers or dealers— Certain information exempt. Except under RCW 15.19.080, information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer is exempt from disclosure under this chapter. [1998 c 154 § 33; 1996 c 188 § 6.]

42.17.31910 Uniform Disciplinary Act complaints exempt. Complaints filed under chapter 18.130 RCW after July 27, 1997, are exempt from disclosure under this chapter to the extent provided in RCW 18.130.095(1). [1997 c 270 § 2.]

42.17.31911 Examination reports and information from financial institutions exempt. Examination reports and information obtained by the department of financial institutions from banks under RCW 30.04.075, from savings banks under RCW 32.04.220, from savings and loan associations under RCW 33.04.110, from credit unions under RCW 31.12.565, from check cashers and sellers under RCW 31.45.030(3), and from securities brokers and investment advisers under RCW 21.20.100 are confidential and privileged information and not subject to public disclosure under this chapter. [1997 c 258 § 1.]

42.17.320 Prompt responses required. Responses to requests for public records shall be made promptly by agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representatives. Within five business days of receiving a public record request, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives must respond by either (1) providing the record; (2) acknowledging that the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives has received the request and providing a reasonable estimate of the time the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives will require to respond to the request; or (3) denying the public record request. Additional time required to respond to a request may be based upon the need to clarify the intent of the request, to locate and assemble the information requested, to notify third persons or agencies affected by the request, or to determine whether any of the information requested is exempt and that a denial should be made as to all or part of the request. In acknowledging receipt of a public record request that is unclear, an agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives may ask the requestor to clarify what information the requestor is seeking. If the requestor fails to clarify the request, the agency, the office of the secretary of the senate, or the office of the chief clerk of the house of representatives need not respond to it. Denials of requests must be accompanied by a written statement of the specific reasons therefor. Agencies, the office of the secretary of the senate, and the office of the chief clerk of the house of representa-

tives shall establish mechanisms for the most prompt possible review of decisions denying inspection, and such review shall be deemed completed at the end of the second business day following the denial of inspection and shall constitute final agency action or final action by the office of the secretary of the senate or the office of the chief clerk of the house of representatives for the purposes of judicial review. [1995 c 397 § 15; 1992 c 139 § 6; 1975 1st ex.s. c 294 § 18; 1973 c 1 § 32 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.325 Review of agency denial. Whenever a state agency concludes that a public record is exempt from disclosure and denies a person opportunity to inspect or copy a public record for that reason, the person may request the attorney general to review the matter. The attorney general shall provide the person with his or her written opinion on whether the record is exempt.

Nothing in this section shall be deemed to establish an attorney-client relationship between the attorney general and a person making a request under this section. [1992 c 139 § 10.]

42.17.330 Court protection of public records. The examination of any specific public record may be enjoined if, upon motion and affidavit by an agency or its representative or a person who is named in the record or to whom the record specifically pertains, the superior court for the county in which the movant resides or in which the record is maintained, finds that such examination would clearly not be in the public interest and would substantially and irreparably damage any person, or would substantially and irreparably damage vital governmental functions. An agency has the option of notifying persons named in the record or to whom a record specifically pertains, that release of a record has been requested. However, this option does not exist where the agency is required by law to provide such notice. [1992 c 139 § 7; 1975 1st ex.s. c 294 § 19; 1973 c 1 § 33 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.340 Judicial review of agency actions. (1) Upon the motion of any person having been denied an opportunity to inspect or copy a public record by an agency, the superior court in the county in which a record is maintained may require the responsible agency to show cause why it has refused to allow inspection or copying of a specific public record or class of records. The burden of proof shall be on the agency to establish that refusal to permit public inspection and copying is in accordance with a statute that exempts or prohibits disclosure in whole or in part of specific information or records.

(2) Upon the motion of any person who believes that an agency has not made a reasonable estimate of the time that the agency requires to respond to a public record request, the superior court in the county in which a record is maintained may require the responsible agency to show that the estimate it provided is reasonable. The burden of proof shall be on the agency to show that the estimate it provided is reasonable.

(3) Judicial review of all agency actions taken or challenged under RCW 42.17.250 through 42.17.320 shall be

de novo. Courts shall take into account the policy of this chapter that free and open examination of public records is in the public interest, even though such examination may cause inconvenience or embarrassment to public officials or others. Courts may examine any record in camera in any proceeding brought under this section. The court may conduct a hearing based solely on affidavits.

(4) Any person who prevails against an agency in any action in the courts seeking the right to inspect or copy any public record or the right to receive a response to a public record request within a reasonable amount of time shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. In addition, it shall be within the discretion of the court to award such person an amount not less than five dollars and not to exceed one hundred dollars for each day that he was denied the right to inspect or copy said public record. [1992 c 139 § 8; 1987 c 403 § 5; 1975 1st ex.s. c 294 § 20; 1973 c 1 § 34 (Initiative Measure No. 276, approved November 7, 1972).]

Intent—Severability—1987 c 403: See notes following RCW 42.17.255.

42.17.341 Application of RCW 42.17.340. The procedures in RCW 42.17.340 govern denials of an opportunity to inspect or copy a public record by the office of the secretary of the senate or the office of the chief clerk of the house of representatives. [1995 c 397 § 16.]

42.17.348 Explanatory pamphlet. The attorney general's office shall publish, and update when appropriate, a pamphlet, written in plain language, explaining the provisions of the public records subdivision of this chapter. [1992 c 139 § 9.]

ADMINISTRATION AND ENFORCEMENT

42.17.350 Public disclosure commission—Established—Membership—Prohibited activities—Compensation, travel expenses. (1) There is hereby established a "public disclosure commission" which shall be composed of five members who shall be appointed by the governor, with the consent of the senate. All appointees shall be persons of the highest integrity and qualifications. No more than three members shall have an identification with the same political party.

(2) The term of each member shall be five years. No member is eligible for appointment to more than one full term. Any member may be removed by the governor, but only upon grounds of neglect of duty or misconduct in office.

(3) During his or her tenure, a member of the commission is prohibited from engaging in any of the following activities, either within or outside the state of Washington:

(a) Holding or campaigning for elective office;

(b) Serving as an officer of any political party or political committee;

(c) Permitting his or her name to be used in support of or in opposition to a candidate or proposition;

(d) Soliciting or making contributions to a candidate or in support of or in opposition to any candidate or proposition;

(e) Participating in any way in any election campaign; or

(f) Lobbying, employing, or assisting a lobbyist, except that a member or the staff of the commission may lobby to the limited extent permitted by RCW 42.17.190 on matters directly affecting this chapter.

(4) A vacancy on the commission shall be filled within thirty days of the vacancy by the governor, with the consent of the senate, and the appointee shall serve for the remaining term of his or her predecessor. A vacancy shall not impair the powers of the remaining members to exercise all of the powers of the commission.

(5) Three members of the commission shall constitute a quorum. The commission shall elect its own chair and adopt its own rules of procedure in the manner provided in chapter 34.05 RCW.

(6) Members shall be compensated in accordance with RCW 43.03.250 and in addition shall be reimbursed for travel expenses incurred while engaged in the business of the commission as provided in RCW 43.03.050 and 43.03.060. The compensation provided pursuant to this section shall not be considered salary for purposes of the provisions of any retirement system created pursuant to the general laws of this state. [1998 c 30 § 1; 1984 c 287 § 74; 1982 c 147 § 15; 1975-'76 2nd ex.s. c 112 § 8; 1975-'76 2nd ex.s. c 34 § 93; 1975 1st ex.s. c 294 § 23; 1973 c 1 § 35 (Initiative Measure No. 276, approved November 7, 1972).]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

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

42.17.360 Commission—Duties. The commission shall:

(1) Develop and provide forms for the reports and statements required to be made under this chapter;

(2) Prepare and publish a manual setting forth recommended uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter;

(3) Compile and maintain a current list of all filed reports and statements;

(4) Investigate whether properly completed statements and reports have been filed within the times required by this chapter;

(5) Upon complaint or upon its own motion, investigate and report apparent violations of this chapter to the appropriate law enforcement authorities;

(6) Prepare and publish an annual report to the governor as to the effectiveness of this chapter and its enforcement by appropriate law enforcement authorities; and

(7) Enforce this chapter according to the powers granted it by law. [1973 c 1 § 36 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.365 Audits and investigations. The commission shall conduct a sufficient number of audits and field investigations so as to provide a statistically valid finding

regarding the degree of compliance with the provisions of this chapter by all required filers. [1993 c 2 § 29 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.367 Electronic access to commission documents. By January 1, 1995, the public disclosure commission shall design a program for electronic access to public documents filed with the commission. The program may include on-line access to the commission's magic and electronic bulletin board systems, providing information for the internet system, fax-request service, automated telephone service, electronic filing of reports, and other service delivery options. Documents available in the program shall include, but are not limited to, public documents filed with the public disclosure commission, including, but not limited to, commission meeting schedules, financial affairs reports, contribution reports, expenditure reports, and gift reports. Implementation of the program is contingent on the availability of funds. [1994 c 40 § 2.]

Findings—1994 c 40: "The legislature finds that government information is a strategic resource and needs to be managed as such and that broad public access to nonrestricted public information and records must be guaranteed. The legislature further finds that reengineering government processes along with capitalizing on advancements made in digital technology can build greater efficiencies in government service delivery. The legislature further finds that providing citizen electronic access to presently available public documents will allow increased citizen involvement in state policies and empower citizens to participate in state policy decision making." [1994 c 40 § 1]

Severability—1994 c 40: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 40 § 6.]

Effective date—1994 c 40: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 21, 1994]." [1994 c 40 § 7.]

42.17.370 Commission—Additional powers. The commission is empowered to:

(1) Adopt, promulgate, amend, and rescind suitable administrative rules to carry out the policies and purposes of this chapter, which rules shall be adopted under chapter 34.05 RCW. Any rule relating to campaign finance, political advertising, or related forms that would otherwise take effect after June 30th of a general election year shall take effect no earlier than the day following the general election in that year;

(2) Appoint and set, within the limits established by the committee on agency officials' salaries under RCW 43.03.028, the compensation of an executive director who shall perform such duties and have such powers as the commission may prescribe and delegate to implement and enforce this chapter efficiently and effectively. The commission shall not delegate its authority to adopt, amend, or rescind rules nor shall it delegate authority to determine whether an actual violation of this chapter has occurred or to assess penalties for such violations;

(3) Prepare and publish such reports and technical studies as in its judgment will tend to promote the purposes of this chapter, including reports and statistics concerning campaign financing, lobbying, financial interests of elected officials, and enforcement of this chapter;

(4) Make from time to time, on its own motion, audits and field investigations;

(5) Make public the time and date of any formal hearing set to determine whether a violation has occurred, the question or questions to be considered, and the results thereof;

(6) Administer oaths and affirmations, issue subpoenas, and compel attendance, take evidence and require the production of any books, papers, correspondence, memorandums, or other records relevant or material for the purpose of any investigation authorized under this chapter, or any other proceeding under this chapter;

(7) Adopt and promulgate a code of fair campaign practices;

(8) Relieve, by rule, candidates or political committees of obligations to comply with the provisions of this chapter relating to election campaigns, if they have not received contributions nor made expenditures in connection with any election campaign of more than *one thousand dollars;

(9) Adopt rules prescribing reasonable requirements for keeping accounts of and reporting on a quarterly basis costs incurred by state agencies, counties, cities, and other municipalities and political subdivisions in preparing, publishing, and distributing legislative information. The term "legislative information," for the purposes of this subsection, means books, pamphlets, reports, and other materials prepared, published, or distributed at substantial cost, a substantial purpose of which is to influence the passage or defeat of any legislation. The state auditor in his or her regular examination of each agency under chapter 43.09 RCW shall review the rules, accounts, and reports and make appropriate findings, comments, and recommendations in his or her examination reports concerning those agencies;

(10) After hearing, by order approved and ratified by a majority of the membership of the commission, suspend or modify any of the reporting requirements of this chapter in a particular case if it finds that literal application of this chapter works a manifestly unreasonable hardship and if it also finds that the suspension or modification will not frustrate the purposes of the chapter. The commission shall find that a manifestly unreasonable hardship exists if reporting the name of an entity required to be reported under RCW 42.17.241(1)(g)(ii) would be likely to adversely affect the competitive position of any entity in which the person filing the report or any member of his or her immediate family holds any office, directorship, general partnership interest, or an ownership interest of ten percent or more. Any suspension or modification shall be only to the extent necessary to substantially relieve the hardship. The commission shall act to suspend or modify any reporting requirements only if it determines that facts exist that are clear and convincing proof of the findings required under this section. Requests for renewals of reporting modifications may be heard in a brief adjudicative proceeding as set forth in RCW 34.05.482 through 34.05.494 and in accordance with the standards established in this section. No initial request may be heard in a brief adjudicative proceeding and no request for renewal may be heard in a brief adjudicative proceeding if the initial request was granted more than three years previously or if the applicant is holding an office or position of employment different from the office or position held when the initial request was granted. The commission shall

adopt administrative rules governing the proceedings. Any citizen has standing to bring an action in Thurston county superior court to contest the propriety of any order entered under this section within one year from the date of the entry of the order; and

(11) Revise, at least once every five years but no more often than every two years, the monetary reporting thresholds and reporting code values of this chapter. The revisions shall be only for the purpose of recognizing economic changes as reflected by an inflationary index recommended by the office of financial management. The revisions shall be guided by the change in the index for the period commencing with the month of December preceding the last revision and concluding with the month of December preceding the month the revision is adopted. As to each of the three general categories of this chapter (reports of campaign finance, reports of lobbyist activity, and reports of the financial affairs of elected and appointed officials), the revisions shall equally affect all thresholds within each category. Revisions shall be adopted as rules under chapter 34.05 RCW. The first revision authorized by this subsection shall reflect economic changes from the time of the last legislative enactment affecting the respective code or threshold through December 1985;

(12) Develop and provide to filers a system for certification of reports required under this chapter which are transmitted by facsimile or electronically to the commission. Implementation of the program is contingent on the availability of funds. [1995 c 397 § 17; 1994 c 40 § 3; 1986 c 155 § 11; 1985 c 367 § 11; 1984 c 34 § 7; 1977 ex.s. c 336 § 7; 1975 1st ex.s. c 294 § 25; 1973 c 1 § 37 (Initiative Measure No. 276, approved November 7, 1972).]

***Reviser's note:** The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of subsection (11) of this section. For current dollar amounts, see chapter 390-16 of the Washington Administrative Code (WAC).

Findings—Severability—Effective date—1994 c 40: See notes following RCW 42.17.367.

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

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

42.17.375 Reports filed with county elections official—Rules governing. With regard to the reports required by this chapter to be filed with a county auditor or county elections official, the commission shall adopt rules governing the arrangement, handling, indexing, and disclosing of those reports by the county auditor or county elections official. The rules shall ensure ease of access by the public to the reports and shall include, but not be limited to, requirements for indexing the reports by the names of candidates or political committees and by the ballot proposition for or against which a political committee is receiving contributions or making expenditures. [1983 c 294 § 1.]

42.17.380 Secretary of state, attorney general—Duties. (1) The office of the secretary of state shall be designated as a place where the public may file papers or correspond with the commission and receive any form or instruction from the commission.

(2) The attorney general, through his office, shall supply such assistance as the commission may require in order to

carry out its responsibilities under this chapter. The commission may employ attorneys who are neither the attorney general nor an assistant attorney general to carry out any function of the attorney general prescribed in this chapter. [1982 c 35 § 196; 1975 1st ex.s. c 294 § 26; 1973 c 1 § 38 (Initiative Measure No. 276, approved November 7, 1972).]

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

42.17.390 Civil remedies and sanctions. One or more of the following civil remedies and sanctions may be imposed by court order in addition to any other remedies provided by law:

(1) If the court finds that the violation of any provision of this chapter by any candidate or political committee probably affected the outcome of any election, the result of said election may be held void and a special election held within sixty days of such finding. Any action to void an election shall be commenced within one year of the date of the election in question. It is intended that this remedy be imposed freely in all appropriate cases to protect the right of the electorate to an informed and knowledgeable vote.

(2) If any lobbyist or sponsor of any grass roots lobbying campaign violates any of the provisions of this chapter, his registration may be revoked or suspended and he may be enjoined from receiving compensation or making expenditures for lobbying: PROVIDED, HOWEVER, That imposition of such sanction shall not excuse said lobbyist from filing statements and reports required by this chapter.

(3) Any person who violates any of the provisions of this chapter may be subject to a civil penalty of not more than ten thousand dollars for each such violation. However, a person or entity who violates RCW 42.17.640 may be subject to a civil penalty of ten thousand dollars or three times the amount of the contribution illegally made or accepted, whichever is greater.

(4) Any person who fails to file a properly completed statement or report within the time required by this chapter may be subject to a civil penalty of ten dollars per day for each day each such delinquency continues.

(5) Any person who fails to report a contribution or expenditure may be subject to a civil penalty equivalent to the amount he failed to report.

(6) The court may enjoin any person to prevent the doing of any act herein prohibited, or to compel the performance of any act required herein. [1993 c 2 § 28 (Initiative Measure No. 134, approved November 3, 1992); 1973 c 1 § 39 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.395 Violations—Determination by commission—Procedure. (1) The commission may (a) determine whether an actual violation of this chapter has occurred; and (b) issue and enforce an appropriate order following such determination.

(2) The commission, in cases where it chooses to determine whether an actual violation of this chapter has occurred, shall hold a hearing pursuant to the Administrative Procedure Act, chapter 34.05 RCW, to make such determination. Any order that the commission issues under this section shall be pursuant to such hearing.

(3) In lieu of holding a hearing or issuing an order under this section, the commission may refer the matter to the attorney general or other enforcement agency as provided in RCW 42.17.360.

(4) The person against whom an order is directed under this section shall be designated as the respondent. The order may require the respondent to cease and desist from the activity that constitutes a violation and in addition, or alternatively, may impose one or more of the remedies provided in *RCW 42.17.390(1) (b), (c), (d), or (e): PROVIDED, That no individual penalty assessed by the commission may exceed one thousand dollars, and in any case where multiple violations are involved in a single complaint or hearing, the maximum aggregate penalty may not exceed two thousand five hundred dollars.

(5) An order issued by the commission under this section shall be subject to judicial review under the Administrative Procedure Act, chapter 34.05 RCW. If the commission's order is not satisfied and no petition for review is filed within thirty days as provided in RCW 34.05.542, the commission may petition a court of competent jurisdiction of any county in which a petition for review could be filed under that section, for an order of enforcement. Proceedings in connection with the commission's petition shall be in accordance with RCW 42.17.397. [1989 c 175 § 91; 1985 c 367 § 12; 1982 c 147 § 16; 1975-'76 2nd ex.s. c 112 § 12.]

*Reviser's note: RCW 42.17.390 was amended by 1993 c 2 § 28, and subsection (1) (b), (c), (d), and (e) was changed to subsections (2), (3), (4), and (5).

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

42.17.397 Procedure upon petition for enforcement of order of commission—Court's order of enforcement. The following procedure shall apply in all cases where the commission has petitioned a court of competent jurisdiction for enforcement of any order it has issued pursuant to this chapter:

(1) A copy of the petition shall be served by certified mail directed to the respondent at his last known address. The court shall issue an order directing the respondent to appear at a time designated in the order, not less than five days from the date thereof, and show cause why the commission's order should not be enforced according to its terms.

(2) The commission's order shall be enforced by the court if the respondent does not appear, or if the respondent appears and the court finds, pursuant to a hearing held for that purpose:

- (a) That the commission's order is unsatisfied; and
- (b) That the order is regular on its face; and

(c) That the respondent's answer discloses no valid reason why the commission's order should not be enforced or that the respondent had an appropriate remedy by review under RCW 34.05.570(3) and failed to avail himself of that remedy without valid excuse.

(3) Upon appropriate application by the respondent, the court may, after hearing and for good cause, alter, amend, revise, suspend, or postpone all or part of the commission's order. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in writing, and such action

shall be subject to review by the appellate courts by certiorari or other appropriate proceeding.

(4) The court's order of enforcement, when entered, shall have the same force and effect as a civil judgment.

(5) Notwithstanding RCW 34.05.578 through 34.05.590, this section is the exclusive method for enforcing an order of the commission. [1989 c 175 § 92; 1982 c 147 § 17; 1975-'76 2nd ex.s. c 112 § 13.]

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

42.17.400 Enforcement. (1) The attorney general and the prosecuting authorities of political subdivisions of this state may bring civil actions in the name of the state for any appropriate civil remedy, including but not limited to the special remedies provided in RCW 42.17.390.

(2) The attorney general and the prosecuting authorities of political subdivisions of this state may investigate or cause to be investigated the activities of any person who there is reason to believe is or has been acting in violation of this chapter, and may require any such person or any other person reasonably believed to have information concerning the activities of such person to appear at a time and place designated in the county in which such person resides or is found, to give such information under oath and to produce all accounts, bills, receipts, books, paper and documents which may be relevant or material to any investigation authorized under this chapter.

(3) When the attorney general or the prosecuting authority of any political subdivision of this state requires the attendance of any person to obtain such information or the production of the accounts, bills, receipts, books, papers, and documents which may be relevant or material to any investigation authorized under this chapter, he shall issue an order setting forth the time when and the place where attendance is required and shall cause the same to be delivered to or sent by registered mail to the person at least fourteen days before the date fixed for attendance. Such order shall have the same force and effect as a subpoena, shall be effective state-wide, and, upon application of the attorney general or said prosecuting authority, obedience to the order may be enforced by any superior court judge in the county where the person receiving it resides or is found, in the same manner as though the order were a subpoena. The court, after hearing, for good cause, and upon application of any person aggrieved by the order, shall have the right to alter, amend, revise, suspend, or postpone all or any part of its provisions. In any case where the order is not enforced by the court according to its terms, the reasons for the court's actions shall be clearly stated in writing, and such action shall be subject to review by the appellate courts by certiorari or other appropriate proceeding.

(4) Any person who has notified the attorney general and the prosecuting attorney in the county in which the violation occurred in writing that there is reason to believe that some provision of this chapter is being or has been violated may himself bring in the name of the state any of the actions (hereinafter referred to as a citizen's action) authorized under this chapter. This citizen action may be brought only if the attorney general and the prosecuting attorney have failed to commence an action hereunder within forty-five days after such notice and such person has thereafter

further notified the attorney general and prosecuting attorney that said person will commence a citizen's action within ten days upon their failure so to do, and the attorney general and the prosecuting attorney have in fact failed to bring such action within ten days of receipt of said second notice. If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but he shall be entitled to be reimbursed by the state of Washington for costs and attorney's fees he has incurred: PROVIDED, That in the case of a citizen's action which is dismissed and which the court also finds was brought without reasonable cause, the court may order the person commencing the action to pay all costs of trial and reasonable attorney's fees incurred by the defendant.

(5) In any action brought under this section, the court may award to the state all costs of investigation and trial, including a reasonable attorney's fee to be fixed by the court. If the violation is found to have been intentional, the amount of the judgment, which shall for this purpose include the costs, may be trebled as punitive damages. If damages or trebled damages are awarded in such an action brought against a lobbyist, the judgment may be awarded against the lobbyist, and the lobbyist's employer or employers joined as defendants, jointly, severally, or both. If the defendant prevails, he shall be awarded all costs of trial, and may be awarded a reasonable attorney's fee to be fixed by the court to be paid by the state of Washington. [1975 1st ex.s. c 294 § 27; 1973 c 1 § 40 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.405 Suspension, reapplication of reporting requirements in small political subdivisions. (1) Except as provided in subsections (2) and (3) of this section, the reporting provisions of this chapter do not apply to candidates, elected officials, and agencies in political subdivisions with less than one thousand registered voters as of the date of the most recent general election in the jurisdiction, to political committees formed to support or oppose candidates or ballot propositions in such political subdivisions, or to persons making independent expenditures in support of or opposition to such ballot propositions.

(2) The reporting provisions of this chapter apply in any exempt political subdivision from which a "petition for disclosure" containing the valid signatures of fifteen percent of the number of registered voters, as of the date of the most recent general election in the political subdivision, is filed with the commission. The commission shall by rule prescribe the form of the petition. After the signatures are gathered, the petition shall be presented to the auditor or elections officer of the county, or counties, in which the political subdivision is located. The auditor or elections officer shall verify the signatures and certify to the commission that the petition contains no less than the required number of valid signatures. The commission, upon receipt of a valid petition, shall order every known affected person in the political subdivision to file the initially required statement and reports within fourteen days of the date of the order.

(3) The reporting provisions of this chapter apply in any exempt political subdivision that by ordinance, resolution, or other official action has petitioned the commission to make

the provisions applicable to elected officials and candidates of the exempt political subdivision. A copy of the action shall be sent to the commission. If the commission finds the petition to be a valid action of the appropriate governing body or authority, the commission shall order every known affected person in the political subdivision to file the initially required statement and reports within fourteen days of the date of the order.

(4) The commission shall void any order issued by it pursuant to subsection (2) or (3) of this section when, at least four years after issuing the order, the commission is presented a petition or official action so requesting from the affected political subdivision. Such petition or official action shall meet the respective requirements of subsection (2) or (3) of this section.

(5) Any petition for disclosure, ordinance, resolution, or official action of an agency petitioning the commission to void the exemption in RCW 42.17.030(3) shall not be considered unless it has been filed with the commission:

(a) In the case of a ballot measure, at least sixty days before the date of any election in which campaign finance reporting is to be required;

(b) In the case of a candidate, at least sixty days before the first day on which a person may file a declaration of candidacy for any election in which campaign finance reporting is to be required.

(6) Any person exempted from reporting under this chapter may at his or her option file the statement and reports. [1986 c 12 § 3; 1985 c 367 § 13; 1982 c 60 § 1.]

42.17.410 Limitation on actions. Any action brought under the provisions of this chapter must be commenced within five years after the date when the violation occurred. [1982 c 147 § 18; 1973 c 1 § 41 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.420 Date of mailing deemed date of receipt—Exceptions—Electronic filings. (1) Except as provided in subsection (2) of this section, when any application, report, statement, notice, or payment required to be made under the provisions of this chapter has been deposited postpaid in the United States mail properly addressed, it shall be deemed to have been received on the date of mailing. It shall be presumed that the date shown by the post office cancellation mark on the envelope is the date of mailing. The provisions of this section do not apply to reports required to be delivered under RCW 42.17.105 and 42.17.175.

(2) When a report is filed electronically with the commission, it is deemed to have been received on the file transfer date. Electronic filing may be used for purposes of filing the special reports required to be delivered under RCW 42.17.105 and 42.17.175. [1995 c 397 § 18; 1983 c 176 § 2; 1973 c 1 § 42 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.430 Certification of reports. Every report and statement required to be filed under this chapter shall identify the person preparing it, and shall be certified as complete and correct, both by the person preparing it and by the person on whose behalf it is filed. [1973 c 1 § 43 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.440 Statements and reports public records.

All statements and reports filed under this chapter shall be public records of the agency where they are filed, and shall be available for public inspection and copying during normal business hours at the expense of the person requesting copies, provided that the charge for such copies shall not exceed actual cost to the agency. [1973 c 1 § 44 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.450 Duty to preserve statements and reports.

Persons with whom statements or reports or copies of statements or reports are required to be filed under this chapter shall preserve them for not less than six years. The commission, however, shall preserve such statements or reports for not less than ten years. [1973 c 1 § 45 (Initiative Measure No. 276, approved November 7, 1972).]

POLITICAL ADVERTISING

42.17.505 Definitions. The definitions set forth in this section apply throughout RCW 42.17.510 through 42.17.540.

(1) "Actual malice" means to act with knowledge of falsity or with reckless disregard as to truth or falsity.

(2) "Sponsor" means the candidate, political committee, or person paying for the advertisement. If a person acts as an agent for another or is reimbursed by another for the payment, the original source of the payment is the sponsor.

(3) "Incumbent" means a person who is in present possession of an elected office. [1988 c 199 § 1.]

42.17.510 Identification of sponsor—Exemptions.

(1) All written political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name and address. All radio and television political advertising, whether relating to candidates or ballot propositions, shall include the sponsor's name. The use of an assumed name shall be unlawful. The party with which a candidate files shall be clearly identified in political advertising for partisan office.

(2) In addition to the materials required by subsection (1) of this section, all political advertising undertaken as an independent expenditure by a person or entity other than a party organization must include the following statement on the communication "NOTICE TO VOTERS (Required by law): This advertisement is not authorized or approved by any candidate. It is paid for by (name, address, city, state)." If the advertisement undertaken as an independent expenditure is undertaken by a nonindividual other than a party organization, then the following notation must also be included: "Top Five Contributors," followed by a listing of the names of the five persons or entities making the largest contributions reportable under this chapter during the twelve-month period before the date of the advertisement.

(3) The statements and listings of contributors required by subsections (1) and (2) of this section shall:

(a) Appear on the first page or fold of the written communication in at least ten-point type, or in type at least ten percent of the largest size type used in a written communication directed at more than one voter, such as a billboard or poster, whichever is larger;

(b) Not be subject to the half-tone or screening process;

(c) Be set apart from any other printed matter; and

(d) Be clearly spoken on any broadcast advertisement.

(4) Political yard signs are exempt from the requirement of subsections (1) and (2) of this section that the name and address of the sponsor of political advertising be listed on the advertising. In addition, the public disclosure commission shall, by rule, exempt from the identification requirements of subsections (1) and (2) of this section forms of political advertising such as campaign buttons, balloons, pens, pencils, sky-writing, inscriptions, and other forms of advertising where identification is impractical.

(5) For the purposes of this section, "yard sign" means any outdoor sign with dimensions no greater than eight feet by four feet. [1995 c 397 § 19; 1993 c 2 § 22 (Initiative Measure No. 134, approved November 3, 1992); 1984 c 216 § 1.]

Advertising rates for political candidates: RCW 65.16.095.

42.17.520 Picture of candidate. At least one picture of the candidate used in any political advertising shall have been taken within the last five years and shall be no smaller than the largest picture of the same candidate used in the same advertisement. [1984 c 216 § 2.]

42.17.530 False political advertising. (1) It is a violation of this chapter for a person to sponsor with actual malice:

(a) Political advertising that contains a false statement of material fact;

(b) Political advertising that falsely represents that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent;

(c) Political advertising that makes either directly or indirectly, a false claim stating or implying the support or endorsement of any person or organization when in fact the candidate does not have such support or endorsement.

(2) Any violation of this section shall be proven by clear and convincing evidence. [1988 c 199 § 2; 1984 c 216 § 3.]

42.17.540 Responsibility for compliance. (1) Except as provided in subsection (2) of this section, the responsibility for compliance with RCW 42.17.510 through 42.17.530 shall rest with the sponsor of the political advertising and not with the broadcasting station or other medium.

(2) If a broadcasting station or other medium changes the content of a political advertisement, the station or medium shall be responsible for any failure of the advertisement to comply with RCW 42.17.510 through 42.17.530 that results from that change. [1984 c 216 § 4.]

42.17.550 Independent expenditure disclosure. A person or entity other than a party organization making an independent expenditure by mailing one thousand or more identical or nearly identical cumulative pieces of political advertising in a single calendar year shall, within two working days after the date of the mailing, file a statement disclosing the number of pieces in the mailing and an example of the mailed political advertising with the election officer of the county or residence for the candidate supported or opposed by the independent campaign expenditure or, in

the case of an expenditure made in support of or in opposition to a ballot proposition, the county of residence for the person making the expenditure. [1993 c 2 § 23 (Initiative Measure No. 134, approved November 3, 1992).]

CAMPAIGN CONTRIBUTION LIMITATIONS

42.17.610 Findings. The people of the state of Washington find and declare that:

(1) The financial strength of certain individuals or organizations should not permit them to exercise a disproportionate or controlling influence on the election of candidates.

(2) Rapidly increasing political campaign costs have led many candidates to raise larger percentages of money from special interests with a specific financial stake in matters before state government. This has caused the public perception that decisions of elected officials are being improperly influenced by monetary contributions.

(3) Candidates are raising less money in small contributions from individuals and more money from special interests. This has created the public perception that individuals have an insignificant role to play in the political process. [1993 c 2 § 1 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.620 Intent. By limiting campaign contributions, the people intend to:

(1) Ensure that individuals and interest groups have fair and equal opportunity to influence elective and governmental processes;

(2) Reduce the influence of large organizational contributors; and

(3) Restore public trust in governmental institutions and the electoral process. [1993 c 2 § 2 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.640 Limits specified—Exemptions. (1) No person, other than a bona fide political party or a caucus political committee, may make contributions to a candidate for a state legislative office that in the aggregate exceed *five hundred dollars or to a candidate for a state office other than a state legislative office that in the aggregate exceed *one thousand dollars for each election in which the candidate is on the ballot or appears as a write-in candidate. Contributions made with respect to a primary may not be made after the date of the primary. Contributions made with respect to a general election may not be made after the final day of the applicable election cycle.

(2) No person, other than a bona fide political party or a caucus political committee, may make contributions to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the state official, during a recall campaign that in the aggregate exceed *five hundred dollars if for a state legislative office or *one thousand dollars if for a state office other than a state legislative office.

(3)(a) Notwithstanding subsection (1) of this section, no bona fide political party or caucus political committee may make contributions to a candidate during an election cycle that in the aggregate exceed (i) *fifty cents multiplied by the

number of eligible registered voters in the jurisdiction from which the candidate is elected if the contributor is a caucus political committee or the governing body of a state organization, or (ii) *twenty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No candidate may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed *twenty-five cents times the number of registered voters in the jurisdiction from which the candidate is elected.

(4)(a) Notwithstanding subsection (2) of this section, no bona fide political party or caucus political committee may make contributions to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the state official, during a recall campaign that in the aggregate exceed (i) *fifty cents multiplied by the number of eligible registered voters in the jurisdiction entitled to recall the state official if the contributor is a caucus political committee or the governing body of a state organization, or (ii) *twenty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected if the contributor is a county central committee or a legislative district committee.

(b) No state official against whom recall charges have been filed, no authorized committee of the official, and no political committee having the expectation of making expenditures in support of the recall of a state official may accept contributions from a county central committee or a legislative district committee during an election cycle that when combined with contributions from other county central committees or legislative district committees would in the aggregate exceed *twenty-five cents multiplied by the number of registered voters in the jurisdiction from which the candidate is elected.

(5) For purposes of determining contribution limits under subsections (3) and (4) of this section, the number of eligible registered voters in a jurisdiction is the number at the time of the most recent general election in the jurisdiction.

(6) Notwithstanding subsections (1) through (4) of this section, no person other than an individual, bona fide political party, or caucus political committee may make contributions reportable under this chapter to a caucus political committee that in the aggregate exceed *five hundred dollars in a calendar year or to a bona fide political party that in the aggregate exceed *two thousand five hundred dollars in a calendar year. This subsection does not apply to loans made in the ordinary course of business.

(7) For the purposes of RCW 42.17.640 through 42.17.790, a contribution to the authorized political committee of a candidate, or of a state official against whom recall charges have been filed, is considered to be a contribution to the candidate or state official.

(8) A contribution received within the twelve-month period after a recall election concerning a state office is considered to be a contribution during that recall campaign

if the contribution is used to pay a debt or obligation incurred to influence the outcome of that recall campaign.

(9) The contributions allowed by subsection (2) of this section are in addition to those allowed by subsection (1) of this section, and the contributions allowed by subsection (4) of this section are in addition to those allowed by subsection (3) of this section.

(10) RCW 42.17.640 through 42.17.790 apply to a special election conducted to fill a vacancy in a state office. However, the contributions made to a candidate or received by a candidate for a primary or special election conducted to fill such a vacancy shall not be counted toward any of the limitations that apply to the candidate or to contributions made to the candidate for any other primary or election.

(11) Notwithstanding the other subsections of this section, no corporation or business entity not doing business in Washington state, no labor union with fewer than ten members who reside in Washington state, and no political committee that has not received contributions of ten dollars or more from at least ten persons registered to vote in Washington state during the preceding one hundred eighty days may make contributions reportable under this chapter to a candidate, to a state official against whom recall charges have been filed, or to a political committee having the expectation of making expenditures in support of the recall of the official. This subsection does not apply to loans made in the ordinary course of business.

(12) Notwithstanding the other subsections of this section, no county central committee or legislative district committee may make contributions reportable under this chapter to a candidate, state official against whom recall charges have been filed, or political committee having the expectation of making expenditures in support of the recall of a state official if the county central committee or legislative district committee is outside of the jurisdiction entitled to elect the candidate or recall the state official.

(13) No person may accept contributions that exceed the contribution limitations provided in this section.

(14) The following contributions are exempt from the contribution limits of this section:

(a) An expenditure or contribution earmarked for voter registration, for absentee ballot information, for precinct caucuses, for get-out-the-vote campaigns, for precinct judges or inspectors, for sample ballots, or for ballot counting, all without promotion of or political advertising for individual candidates; or

(b) An expenditure by a political committee for its own internal organization or fund raising without direct association with individual candidates. [1995 c 397 § 20; 1993 c 2 § 4 (Initiative Measure No. 134, approved November 3, 1992).]

***Reviser's note:** The monetary amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17.690. For current dollar amounts, see chapter 390-05 of the Washington Administration Code (WAC).

42.17.650 Attribution and aggregation of family contributions. (1) Contributions by a husband and wife are considered separate contributions.

(2) Contributions by unemancipated children under eighteen years of age are considered contributions by their parents and are attributed proportionately to each parent.

Fifty percent of the contributions are attributed to each parent or, in the case of a single custodial parent, the total amount is attributed to the parent. [1993 c 2 § 5 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.660 Attribution of contributions by controlled entities. For purposes of this chapter:

(1) A contribution by a political committee with funds that have all been contributed by one person who exercises exclusive control over the distribution of the funds of the political committee is a contribution by the controlling person.

(2) Two or more entities are treated as a single entity if one of the two or more entities is a subsidiary, branch, or department of a corporation or a local unit, branch, or affiliate of a trade association, labor union, or collective bargaining association. All contributions made by a person or political committee whose contribution or expenditure activity is financed, maintained, or controlled by a trade association, labor union, collective bargaining organization, or the local unit of a trade association, labor union, or collective bargaining organization are considered made by the same person or entity. [1993 c 2 § 6 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.670 Attribution of contributions generally—"Earmarking." All contributions made by a person or entity, either directly or indirectly, to a candidate, to a state official against whom recall charges have been filed, or to a political committee, are considered to be contributions from that person or entity to the candidate, state official, or political committee, as are contributions that are in any way earmarked or otherwise directed through an intermediary or conduit to the candidate, state official, or political committee. For the purposes of this section, "earmarked" means a designation, instruction, or encumbrance, whether direct or indirect, expressed or implied, or oral or written, that is intended to result in or does result in all or any part of a contribution being made to a certain candidate or state official. If a conduit or intermediary exercises any direction or control over the choice of the recipient candidate or state official, the contribution is considered to be by both the original contributor and the conduit or intermediary. [1993 c 2 § 7 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.680 Limitations on employers or labor organizations. (1) No employer or labor organization may increase the salary of an officer or employee, or give an emolument to an officer, employee, or other person or entity, with the intention that the increase in salary, or the emolument, or a part of it, be contributed or spent to support or oppose a candidate, state official against whom recall charges have been filed, political party, or political committee.

(2) No employer or labor organization may discriminate against an officer or employee in the terms or conditions of employment for (a) the failure to contribute to, (b) the failure in any way to support or oppose, or (c) in any way supporting or opposing a candidate, ballot proposition, political party, or political committee.

(3) No employer or other person or entity responsible for the disbursement of funds in payment of wages or salaries may withhold or divert a portion of an employee's wages or salaries for contributions to political committees or for use as political contributions except upon the written request of the employee. The request must be made on a form prescribed by the commission informing the employee of the prohibition against employer and labor organization discrimination described in subsection (2) of this section. The request is valid for no more than twelve months from the date it is made by the employee.

(4) Each person or entity who withholds contributions under subsection (3) of this section shall maintain open for public inspection for a period of no less than three years, during normal business hours, documents and books of accounts that shall include a copy of each employee's request, the amounts and dates funds were actually withheld, and the amounts and dates funds were transferred to a political committee. Copies of such information shall be delivered to the commission upon request. [1993 c 2 § 8 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.690 Changing monetary limits. At the beginning of each even-numbered calendar year, the commission shall increase or decrease all dollar amounts in this chapter based on changes in economic conditions as reflected in the inflationary index used by the commission under RCW 42.17.370. The new dollar amounts established by the commission under this section shall be rounded off by the commission to amounts as judged most convenient for public understanding and so as to be within ten percent of the target amount equal to the base amount provided in this chapter multiplied by the increase in the inflationary index since December 3, 1992. [1993 c 2 § 9 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.700 Contributions before December 3, 1992. Contributions made and received before December 3, 1992, are considered to be contributions under RCW 42.17.640 through 42.17.790. Monetary contributions that exceed the contribution limitations and that have not been spent by the recipient of the contribution by December 3, 1992, must be disposed of in accordance with RCW 42.17.095. [1993 c 2 § 10 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.710 Time limit for state official to solicit or accept contributions. During the period beginning on the thirtieth day before the date a regular legislative session convenes and continuing thirty days past the date of final adjournment, and during the period beginning on the date a special legislative session convenes and continuing through the date that session adjourns, no state official or a person employed by or acting on behalf of a state official or state legislator may solicit or accept contributions to a public office fund, to a candidate or authorized committee, or to retire a campaign debt. [1993 c 2 § 11 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.720 Restriction on loans. (1) A loan is considered to be a contribution from the lender and any

guarantor of the loan and is subject to the contribution limitations of this chapter. The full amount of the loan shall be attributed to the lender and to each guarantor.

(2) A loan to a candidate for public office or the candidate's political committee must be by written agreement.

(3) The proceeds of a loan made to a candidate for public office:

(a) By a commercial lending institution;

(b) Made in the regular course of business; and

(c) On the same terms ordinarily available to members of the public, are not subject to the contribution limits of this chapter. [1995 c 397 § 22; 1993 c 2 § 12 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.730 Contributions on behalf of another. (1) A person, other than an individual, may not be an intermediary or an agent for a contribution.

(2) An individual may not make a contribution on behalf of another person or entity, or while acting as the intermediary or agent of another person or entity, without disclosing to the recipient of the contribution both his or her full name, street address, occupation, name of employer, if any, or place of business if self-employed, and the same information for each contributor for whom the individual serves as intermediary or agent. [1993 c 2 § 13 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.740 Certain contributions required to be by written instrument. (1) A person may not make a contribution of more than *fifty dollars, other than an in-kind contribution, except by a written instrument containing the name of the donor and the name of the payee.

(2) A political committee may not make a contribution, other than in-kind, except by a written instrument containing the name of the donor and the name of the payee. [1995 c 397 § 23; 1993 c 2 § 14 (Initiative Measure No. 134, approved November 3, 1992).]

***Reviser's note:** The dollar amounts in this section have been adjusted for inflation by rule of the commission adopted under the authority of RCW 42.17.690. For current dollar amounts, see chapter 390-05 of the Washington Administrative Code (WAC).

42.17.750 Solicitation of contributions by public officials or employees. (1) No state or local official or state or local official's agent may knowingly solicit, directly or indirectly, a contribution to a candidate for public office, political party, or political committee from an employee in the state or local official's agency.

(2) No state or local official or public employee may provide an advantage or disadvantage to an employee or applicant for employment in the classified civil service concerning the applicant's or employee's:

(a) Employment;

(b) Conditions of employment; or

(c) Application for employment,

based on the employee's or applicant's contribution or promise to contribute or failure to make a contribution or contribute to a political party or political committee. [1995 c 397 § 24; 1993 c 2 § 15 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.760 Agency shop fees as contributions. A labor organization may not use agency shop fees paid by an individual who is not a member of the organization to make contributions or expenditures to influence an election or to operate a political committee, unless affirmatively authorized by the individual. [1993 c 2 § 16 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.770 Solicitation of endorsement fees. A person may not solicit from a candidate for public office, political committee, political party, or other person money or other property as a condition or consideration for an endorsement, article, or other communication in the news media promoting or opposing a candidate for public office, political committee, or political party. [1995 c 397 § 25; 1993 c 2 § 17 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.780 Reimbursement for contributions. A person may not, directly or indirectly, reimburse another person for a contribution to a candidate for public office, political committee, or political party. [1995 c 397 § 26; 1993 c 2 § 18 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.790 Prohibition on use of contributions for a different office. (1) Except as provided in subsection (2) of this section, a candidate for public office or the candidate's political committee may not use or permit the use of contributions, whether or not surplus, solicited for or received by the candidate for public office or the candidate's political committee to further the candidacy of the individual for an office other than the office designated on the statement of organization. A contribution solicited for or received on behalf of the candidate for public office is considered solicited or received for the candidacy for which the individual is then a candidate if the contribution is solicited or received before the general elections for which the candidate for public office is a nominee or is unopposed.

(2) With the written approval of the contributor, a candidate for public office or the candidate's political committee may use or permit the use of contributions, whether or not surplus, solicited for or received by the candidate for public office or the candidate's political committee from that contributor to further the candidacy of the individual for an office other than the office designated on the statement of organization. If the contributor does not approve the use of his or her contribution to further the candidacy of the individual for an office other than the office designated on the statement of organization at the time of the contribution, the contribution must be considered surplus funds and disposed of in accordance with RCW 42.17.095. [1995 c 397 § 27; 1993 c 2 § 19 (Initiative Measure No. 134, approved November 3, 1992).]

TECHNICAL PROVISIONS

42.17.900 Effective date—1973 c 1. The effective date of this act shall be January 1, 1973. [1973 c 1 § 49 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.910 Severability—1973 c 1. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 c 1 § 46 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.911 Severability—1975 1st ex.s. c 294. If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 294 § 29.]

42.17.912 Severability—1975-'76 2nd ex.s. c 112. If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 112 § 16.]

42.17.920 Construction—1973 c 1. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern. [1973 c 1 § 47 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.930 Chapter, section headings not part of law. Chapter and section captions or headings as used in this act do not constitute any part of the law. [1973 c 1 § 48 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.940 Repealer—1973 c 1. Chapter 9, Laws of 1965, as amended by section 9, chapter 150, Laws of 1965 ex. sess., and RCW 29.18.140; and chapter 131, Laws of 1967 ex. sess. and RCW 44.64 [chapter 44.64 RCW]; and chapter 82, Laws of 1972 (42nd Leg. 2nd Ex. Sess.) and Referendum Bill No. 24; and chapter 98, Laws of 1972 (42nd Leg. 2nd Ex. Sess.) and Referendum Bill No. 25 are each hereby repealed. [1973 c 1 § 50 (Initiative Measure No. 276, approved November 7, 1972).]

42.17.945 Construction—1975-'76 2nd ex.s. c 112. The provisions of this 1976 amendatory act are intended to be remedial and shall be liberally construed, and nothing in this 1976 amendatory act shall be construed to limit the power of the commission under any other provision of chapter 42.17 RCW. [1975-'76 2nd ex.s. c 112 § 15.]

42.17.950 Captions. Section captions and part headings used in this act do not constitute any part of the law. [1993 c 2 § 34 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.955 Short title—1993 c 2. This act may be known and cited as the Fair Campaign Practices Act. [1993 c 2 § 36 (Initiative Measure No. 134, approved November 3, 1992).]

42.17.960 Effective date—1995 c 397. Sections 1 through 32, 34, and 37 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995. [1995 c 397 § 35.]

42.17.961 Captions—1995 c 397. Captions as used in chapter 397, Laws of 1995 constitute no part of the law. [1995 c 397 § 37.]

42.17.962 Severability—1995 c 397. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 397 § 38.]

Chapter 42.20

MISCONDUCT OF PUBLIC OFFICERS

Sections

- 42.20.020 Powers may not be delegated for profit.
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 42.20.040 False report.
 42.20.050 Public officer making false certificate.
 42.20.060 Falsely auditing and paying claims.
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 42.20.080 Other violations by officers.
 42.20.090 Misappropriation, etc., by treasurer.
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optional municipal code, council-manager plan, forfeiture of office for misconduct: RCW 35A.13.020.
optional municipal code, mayor-council plan, forfeiture of office for misconduct: RCW 35A.12.060.
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revocation or suspension of certificate or permit to teach—investigation by superintendent of public instruction—mandatory revocation for crimes against children: RCW 28A.410.090.

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State treasurer, embezzlement: RCW 43.08.140.

Subversive activities, disqualification from holding public office: RCW 9.81.040

Utilities and transportation commission members and employees, interest in regulated companies prohibited: RCW 80.01.020.

42.20.020 Powers may not be delegated for profit. Every public officer who, for any reward, consideration or gratuity paid or agreed to be paid, shall, directly or indirectly, grant to another the right or authority to discharge any function of his office, or permit another to perform any of his duties, shall be guilty of a gross misdemeanor. [1909 c 249 § 83; RRS § 2335.]

Reviser's note: Caption for 1909 c 249 § 83 reads as follows: "Sec. 83. *Grant of Official Powers.*"

42.20.030 Intrusion into and refusal to surrender public office. Every person who shall falsely personate or represent any public officer, or who shall wilfully intrude himself into a public office to which he has not been duly elected or appointed, or who shall wilfully exercise any of the functions or perform any of the duties of such officer, without having duly qualified therefor, as required by law, or who, having been an executive or administrative officer, shall wilfully exercise any of the functions of his office after his right to do so has ceased, or wrongfully refuse to surrender the official seal or any books or papers appertaining to such office, upon the demand of his lawful successor, shall be guilty of a gross misdemeanor. [1909 c 249 § 84; RRS § 2336.]

Impersonating a public officer: RCW 9A.60.040.

Quo warranto: Chapter 7.56 RCW.

42.20.040 False report. Every public officer who shall knowingly make any false or misleading statement in any official report or statement, under circumstances not otherwise prohibited by law, shall be guilty of a gross misdemeanor. [1909 c 249 § 98; RRS § 2350.]

42.20.050 Public officer making false certificate. Every public officer who, being authorized by law to make or give a certificate or other writing, shall knowingly make and deliver as true such a certificate or writing containing any statement which he knows to be false, in a case where the punishment thereof is not expressly prescribed by law, shall be guilty of a gross misdemeanor. [1909 c 249 § 128; RRS § 2380.]

42.20.060 Falsely auditing and paying claims. Every public officer, or person holding or discharging the duties of any public office or place of trust under the state or in any county, town or city, a part of whose duty it is to audit, allow or pay, or take part in auditing, allowing or paying, claims or demands upon the state or such county, town or city, who shall knowingly audit, allow or pay, or, directly or indirectly, consent to or in any way connive at the

auditing, allowance or payment of any claim or demand against the state or such county, town or city, which is false or fraudulent or contains any charge, item or claim which is false or fraudulent, shall be guilty of a gross misdemeanor. [1909 c 249 § 129; RRS § 2381.]

42.20.070 Misappropriation and falsification of accounts by public officer. Every public officer, and every other person receiving money on behalf or for or on account of the people of the state or of any department of the state government or of any bureau or fund created by law in which the people are directly or indirectly interested, or for or on account of any county, city, town, or any school, diking, drainage, or irrigation district, who:

(1) Shall appropriate to his or her own use or the use of any person not entitled thereto, without authority of law, any money so received by him or her as such officer or otherwise; or

(2) Shall knowingly keep any false account, or make any false entry or erasure in any account, of or relating to any money so received by him or her; or

(3) Shall fraudulently alter, falsify, conceal, destroy or obliterate any such account; or

(4) Shall willfully omit or refuse to pay over to the state, its officer or agent authorized by law to receive the same, or to such county, city, town, or such school, diking, drainage, or irrigation district or to the proper officer or authority empowered to demand and receive the same, any money received by him or her as such officer when it is a duty imposed upon him or her by law to pay over and account for the same, shall be punished by imprisonment in a state correctional facility for not more than fifteen years. [1992 c 7 § 37; 1909 c 249 § 317; RRS § 2569. Prior: Code 1881 § 890; 1873 p 202 § 92; 1854 p 91 § 83.]

42.20.080 Other violations by officers. Every officer or other person mentioned in RCW 42.20.070, who shall wilfully disobey any provision of law regulating his official conduct in cases other than those specified in said section, shall be guilty of a gross misdemeanor. [1909 c 249 § 318; RRS § 2570.]

42.20.090 Misappropriation, etc., by treasurer. Every state, county, city, or town treasurer who willfully misappropriates any moneys, funds, or securities received by or deposited with him or her as such treasurer, or who shall be guilty of any other malfeasance or willful neglect of duty in his or her office, shall be punished by imprisonment in a state correctional facility for not more than five years or by a fine of not more than five thousand dollars. [1992 c 7 § 38; 1909 c 249 § 319; RRS § 2571.]

County treasurer, suspension for misconduct: RCW 36.29.090.

State treasurer, embezzlement: RCW 43.08.140.

42.20.100 Failure of duty by public officer a misdemeanor. Whenever any duty is enjoined by law upon any public officer or other person holding any public trust or employment, their wilful neglect to perform such duty, except where otherwise specially provided for, shall be a

misdemeanor. [1909 c 249 § 16; RRS § 2268. Prior: Code 1881 § 889; 1854 p 90 § 82.]

Official misconduct by public servant: RCW 9A.80.010.

42.20.110 Improper conduct by certain justices. It shall be a misdemeanor for any judge or justice of any court not of record, during the hearing of any cause or proceeding therein, to address any person in his presence in unfit, unseemly or improper language. [1911 c 115 § 1; RRS § 2696-1.]

Chapter 42.23

CODE OF ETHICS FOR MUNICIPAL OFFICERS— CONTRACT INTERESTS

Sections

42.23.010	Declaration of purpose.
42.23.020	Definitions.
42.23.030	Interest in contracts prohibited—Exceptions.
42.23.040	Remote interests.
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42.23.060	City charter paramount to act.
42.23.070	Prohibited acts.

Cities, free passes, services prohibited: RCW 35.17.150.

County officers, general provisions: Chapter 36.16 RCW.

Ethics in public service act: Chapter 42.52 RCW.

Public employment, civil service: Title 41 RCW.

State officers, general provisions: Chapter 43.01 RCW.

42.23.010 Declaration of purpose. It is the purpose and intent of this chapter to revise and make uniform the laws of this state concerning the transaction of business by municipal officers, as defined in *this act, in conflict with the proper performance of their duties in the public interest; and to promote the efficiency of local government by prohibiting certain instances and areas of conflict while at the same time sanctioning, under sufficient controls, certain other instances and areas of conflict wherein the private interest of the municipal officer is deemed to be only remote, to the end that, without sacrificing necessary public responsibility and enforceability in areas of significant and clearly conflicting interests, the selection of municipal officers may be made from a wider group of responsible citizens of the communities which they are called upon to serve. [1961 c 268 § 2.]

***Reviser's note:** This act [1961 c 268] is codified as RCW 28A.58.310, 35.17.150, 35.17.160, 35.23.230, 42.22.030, and 42.23.010 through 42.23.060.

42.23.020 Definitions. For the purpose of *this act:

(1) "Municipality" shall include all counties, cities, towns, districts, and other municipal corporations and quasi municipal corporations organized under the laws of the state of Washington;

(2) "Municipal officer" and "officer" shall each include all elected and appointed officers of a municipality, together with all deputies and assistants of such an officer, and all persons exercising or undertaking to exercise any of the powers or functions of a municipal officer;

(3) "Contract" shall include any contract, sale, lease or purchase;

(4) "Contracting party" shall include any person, partnership, association, cooperative, corporation, or other business entity which is a party to a contract with a municipality. [1961 c 268 § 3.]

*Reviser's note: For meaning of "this act," see note following RCW 42.23.010.

42.23.030 Interest in contracts prohibited—

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

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

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

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

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

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

(6) The letting of any other contract (except a sale or lease as seller or lessor) by a municipality, other than a county with a population of one hundred twenty-five thousand or more, a city with a population of ten thousand or more, or an irrigation district encompassing in excess of fifty thousand acres: PROVIDED, That the total volume of business represented by such contract or contracts in which a particular officer is interested, singly or in the aggregate, as measured by the dollar amount of the municipality's liability thereunder, shall not exceed seven hundred fifty dollars in any calendar month: PROVIDED FURTHER, That in the case of a particular officer of a second class city or town, or a noncharter optional code city, or a member of any county fair board in a county which has not established a county purchasing department pursuant to RCW 36.32.240, the total volume of such contract or contracts authorized in this subsection may exceed seven hundred fifty dollars in any calendar month but shall not exceed nine thousand dollars in any calendar year: PROVIDED FURTHER, That there shall be public disclosure by having an available list of such purchases or contracts, and if the supplier or contractor is an official of the municipality, he or she shall not vote on the authorization: PROVIDED FURTHER, That in the case of a first class school district, there shall be notice of the proposed contract by publication given in one or more newspapers of general circulation within the district;

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

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

(9) The letting of any employment contract to the spouse of an officer of a second class school district in which less than two hundred full time equivalent students are enrolled at the start of the school year as defined in RCW 28A.150.040, when such contract is solely for employment as a certificated or classified employee of the school district, or the letting of any contract to the spouse of an officer of a school district, when such contract is solely for employment as a substitute teacher for the school district: PROVIDED, That the terms of such contract shall be commensurate with the pay plan or collective bargaining agreement applicable to all district employees and the board of directors has found, consistent with the written policy under RCW 28A.330.240, that there is a shortage of substitute teachers in the school district;

(10) The letting of any employment contract to the spouse of an officer of a school district if the spouse was under contract as a certificated or classified employee with the school district before the date in which the officer assumes office: PROVIDED, That the terms of such contract shall be commensurate with the pay plan or collective bargaining agreement operating in the district;

(11) The authorization, approval, or ratification of any employment contract with the spouse of a public hospital district commissioner if: (a) The spouse was employed by the public hospital district before the date the commissioner was initially elected; (b) the terms of the contract are commensurate with the pay plan or collective bargaining agreement operating in the district for similar employees; (c) the interest of the commissioner is disclosed to the board of commissioners and noted in the official minutes or similar records of the public hospital district prior to the letting or continuation of the contract; [and] (d) and the commissioner does not vote on the authorization, approval, or ratification of the contract or any conditions in the contract. [1997 c 98 § 1; 1996 c 246 § 1. Prior: 1994 c 81 § 77; 1994 c 20 § 1; 1993 c 308 § 1; 1991 c 363 § 120; 1990 c 33 § 573; 1989 c 263 § 1; 1983 1st ex.s. c 44 § 1; prior: 1980 c 39 § 1; 1979 ex.s. c 4 § 1; 1971 ex.s. c 242 § 1; 1961 c 268 § 4.]

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

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

Severability—1989 c 263: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 263 § 3.]

Severability—1980 c 39: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1980 c 39 § 3.]

42.23.040 Remote interests. A municipal officer shall not be deemed to be interested in a contract, within the meaning of RCW 42.23.030, if he has only a remote interest in the contract and if the fact and extent of such interest is disclosed to the governing body of the municipality of which he is an officer and noted in the official minutes or similar records of the municipality prior to the formation of the contract, and thereafter the governing body authorizes, approves, or ratifies the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote or votes of the officer having the remote interest. As used in this section "remote interest" means:

- (1) That of a nonsalaried officer of a nonprofit corporation;
- (2) That of an employee or agent of a contracting party where the compensation of such employee or agent consists entirely of fixed wages or salary;
- (3) That of a landlord or tenant of a contracting party;
- (4) That of a holder of less than one percent of the shares of a corporation or cooperative which is a contracting party.

None of the provisions of this section shall be applicable to any officer interested in a contract, though his interest be only remote, who influences or attempts to influence any other officer of the municipality of which he is an officer to enter into the contract. [1961 c 268 § 5.]

42.23.050 Prohibited contracts void—Penalties for violation of chapter. Any contract made in violation of the provisions of *this act shall be void and the performance thereof, in full or in part, by a contracting party shall not be the basis of any claim against the municipality. Any officer violating the provisions of *this act shall be liable to the municipality of which he is an officer for a penalty in the amount of three hundred dollars, in addition to such other civil or criminal liability or penalty as may otherwise be imposed upon him by law.

In addition to all other penalties, civil or criminal, the violation by any officer of the provisions of *this act shall work a forfeiture of his office. [1961 c 268 § 6.]

***Reviser's note:** For meaning of "this act," see note following RCW 42.23.010.

42.23.060 City charter paramount to act. If any provision of *this act conflicts with any provision of a city charter, the city charter shall control. [1961 c 268 § 16.]

***Reviser's note:** For meaning of "this act," see note following RCW 42.23.010.

42.23.070 Prohibited acts. (1) No municipal officer may use his or her position to secure special privileges or exemptions for himself, herself, or others.

(2) No municipal officer may, directly or indirectly, give or receive or agree to receive any compensation, gift, reward, or gratuity from a source except the employing municipality, for a matter connected with or related to the

officer's services as such an officer unless otherwise provided for by law.

(3) No municipal officer may accept employment or engage in business or professional activity that the officer might reasonably expect would require or induce him or her by reason of his or her official position to disclose confidential information acquired by reason of his or her official position.

(4) No municipal officer may disclose confidential information gained by reason of the officer's position, nor may the officer otherwise use such information for his or her personal gain or benefit. [1994 c 154 § 121.]

Parts and captions not law—Effective date—Severability—1994 c 154: See RCW 42.52.902, 42.52.904, and 42.52.905.

Chapter 42.24

PAYMENT OF CLAIMS FOR EXPENSES, MATERIAL, PURCHASES—ADVANCEMENTS

Sections

- 42.24.035 Payment for postage, books, and periodicals.
- 42.24.070 State agencies—Budget and accounting system.
- 42.24.080 Municipal corporations and political subdivisions—Claims against for contractual purposes—Auditing and payment—Forms—Authentication and certification.
- 42.24.090 Municipal corporations and political subdivisions—Reimbursement claims by officers and employees.
- 42.24.100 Municipal corporations and political subdivisions—Certificates need not be sworn—Penalty for false claim.
- 42.24.110 Municipal corporations and political subdivisions—Approving or paying false claim—Penalties.
- 42.24.115 Municipal corporations and political subdivisions—Charge cards for officers' and employees' travel expenses.
- 42.24.120 Advancements for travel expenses—Municipal corporation or political subdivision officers and employees.
- 42.24.130 Advancements for travel expenses—Revolving fund.
- 42.24.140 Advancements for travel expenses—Provision to assure repayment.
- 42.24.150 Advancements for travel expenses—Travel expense voucher.
- 42.24.160 Advancements for travel expenses—Purpose—Not personal loan.
- 42.24.170 Expenditures by special purpose districts to recruit job candidates—Reimbursement for travel expenses.
- 42.24.180 Taxing district—Issuance of warrants or checks before approval by legislative body—Conditions.

County auditor: Chapter 36.22 RCW.

State auditor: Chapter 43.09 RCW.

42.24.035 Payment for postage, books, and periodicals. Notwithstanding the provisions of chapter 42.24 RCW or any other existing statute, school districts and other public agencies including but not limited to state agencies and municipal corporations which are expressly or by necessary implication authorized to subscribe to magazines or other periodical publications or books or to purchase postage or publications from the United States government or any other publisher may make payment of the costs of such purchases in a manner as consistent as possible and practicable with normal and usual business methods, and in the case of subscriptions, for periods not in excess of three years. [1975 1st ex.s. c 72 § 1; 1963 c 116 § 1.]

42.24.070 State agencies—Budget and accounting system. See chapter 43.88 RCW.

42.24.080 Municipal corporations and political subdivisions—Claims against for contractual purposes—Auditing and payment—Forms—Authentication and certification. All claims presented against any county, city, district or other municipal corporation or political subdivision by persons furnishing materials, rendering services or performing labor, or for any other contractual purpose, shall be audited, before payment, by an auditing officer elected or appointed pursuant to statute or, in the absence of statute, an appropriate charter provision, ordinance or resolution of the municipal corporation or political subdivision. Such claims shall be prepared for audit and payment on a form and in the manner prescribed by the state auditor. The form shall provide for the authentication and certification by such auditing officer that the materials have been furnished, the services rendered or the labor performed as described, and that the claim is a just, due and unpaid obligation against the municipal corporation or political subdivision; and no claim shall be paid without such authentication and certification: PROVIDED, That the certificates as to claims of officers and employees of a county, city, district or other municipal corporation or political subdivision, for services rendered, shall be made by the person charged with the duty of preparing and submitting vouchers for the payment of services, and he or she shall certify that the claim is just, true and unpaid, which certificate shall be part of the voucher. [1995 c 301 § 72; 1965 c 116 § 1.]

42.24.090 Municipal corporations and political subdivisions—Reimbursement claims by officers and employees. No claim for reimbursement of any expenditures by officers or employees of any municipal corporation or political subdivision of the state for transportation, lodging, meals or any other purpose shall be allowed by any officer, employee or board charged with auditing accounts unless the same shall be presented in a detailed account: PROVIDED, That, unless otherwise authorized by law, the legislative body of any municipal corporation or political subdivision of the state may prescribe by ordinance or resolution the amounts to be paid officers or employees thereof as reimbursement for the use of their personal automobiles or other transportation equipment in connection with officially assigned duties and other travel for approved public purposes, or as reimbursement to such officers or employees in lieu of actual expenses incurred for lodging, meals or other purposes. The rates for such reimbursements may be computed on a mileage, hourly, per diem, monthly, or other basis as the respective legislative bodies shall determine to be proper in each instance: PROVIDED, That in lieu of such reimbursements, payments for the use of personal automobiles for official travel may be established if the legislative body determines that these payments would be less costly to the municipal corporation or political subdivision of the state than providing automobiles for official travel.

All claims authorized under this section shall be duly certified by the officer or employee submitting such claims on forms and in the manner prescribed by the state auditor. [1995 c 301 § 73; 1981 c 56 § 1; 1965 c 116 § 2.]

42.24.100 Municipal corporations and political subdivisions—Certificates need not be sworn—Penalty for false claim. The certificates required by RCW 42.24.080 through 42.24.110 need not be sworn, but any person certifying a claim or making a claim knowing the same to be false or untrue shall be guilty of perjury in the second degree. [1965 c 116 § 3.]

42.24.110 Municipal corporations and political subdivisions—Approving or paying false claim—Penalties. Any person who knowingly approves or pays or causes to be approved or paid a false or untrue claim shall be guilty of a gross misdemeanor and, in addition, he shall be civilly liable on his bond to the municipal corporation or political subdivision, as the case may be, for the amount so paid or for three hundred dollars whichever is the greater. [1965 c 116 § 4.]

42.24.115 Municipal corporations and political subdivisions—Charge cards for officers' and employees' travel expenses. (1) Any municipal corporation or political subdivision may provide for the issuance of charge cards to officers and employees for the purpose of covering expenses incident to authorized travel.

(2) If a charge card is issued for the purpose of covering expenses relating to authorized travel, upon billing or no later than thirty days of the billing date, the officer or employee using a charge card issued under this section shall submit a fully itemized travel expense voucher. Any charges against the charge card not properly identified on the travel expense voucher or not allowed following the audit required under RCW 42.24.080 shall be paid by the official or employee by check, United States currency, or salary deduction.

(3) If, for any reason, disallowed charges are not repaid before the charge card billing is due and payable, the municipal corporation or political subdivision shall have a prior lien against and a right to withhold any and all funds payable or to become payable to the official or employee up to an amount of the disallowed charges and interest at the same rate as charged by the company which issued the charge card. Any official or employee who has been issued a charge card by a municipal corporation or political subdivision shall not use the card if any disallowed charges are outstanding and shall surrender the card upon demand of the auditing officer. The municipal corporation or political subdivision shall have unlimited authority to revoke use of any charge card issued under this section, and, upon such revocation order being delivered to the charge card company, shall not be liable for any costs. [1995 c 30 § 3; 1984 c 203 § 5.]

Findings—1995 c 30: See note following RCW 43.09.2855.

Severability—1984 c 203: See note following RCW 35.43.140.

42.24.120 Advancements for travel expenses—Municipal corporation or political subdivision officers and employees. Whenever it becomes necessary for an elected or appointed official or employee of the municipal corporation or political subdivision to travel and incur expenses, the legislative body of such municipal corporation or political subdivision may provide, in the manner that local

legislation is officially enacted, reasonable allowances to such officers and employees in advance of expenditure. Such advance shall be made under appropriate rules and regulations to be prescribed by the state auditor. [1969 c 74 § 1.]

42.24.130 Advancements for travel expenses—Revolving fund. The legislative body of a municipal corporation or political subdivision wishing to make advance payments of travel expenses to officials and employees, as provided in RCW 42.24.120 through 42.24.160, will establish, in the manner that local legislation is officially enacted, a revolving fund to be used solely for the purpose of making advance payments of travel expenses. The revolving fund will be maintained in a bank as a checking account and advances to officials or employees will be by check. The fund will be replenished by warrant. [1969 c 74 § 2.]

42.24.140 Advancements for travel expenses—Provision to assure repayment. To protect the municipal corporation or political subdivision from any losses on account of advances made as provided in RCW 42.24.120 through 42.24.160, the municipal corporation or political subdivision shall have a prior lien against and a right to withhold any and all funds payable or to become payable by the municipal corporation or political subdivision to such officer or employee to whom such advance has been given, as provided in RCW 42.24.120 through 42.24.160, up to the amount of such advance and interest at the rate of ten percent per annum, until such time as repayment or justification has been made. No advance of any kind may be made to any officer or employee under RCW 42.24.120 through 42.24.160, at any time when he is delinquent in accounting for or repaying a prior advance under RCW 42.24.120 through 42.24.160. [1969 c 74 § 3.]

42.24.150 Advancements for travel expenses—Travel expense voucher. On or before the fifteenth day following the close of the authorized travel period for which expenses have been advanced to any officer or employee, he shall submit to the appropriate official a fully itemized travel expense voucher, for all reimbursable items legally expended, accompanied by the unexpended portion of such advance, if any.

Any advance made for this purpose, or any portion thereof, not repaid or accounted for in the time and manner specified herein, shall bear interest at the rate of ten percent per annum from the date of default until paid. [1995 c 194 § 9; 1969 c 74 § 4.]

42.24.160 Advancements for travel expenses—Purpose—Not personal loan. An advance made under RCW 42.24.120 through 42.24.160 shall be considered as having been made to such officer or employee to be expended by him as an agent of the municipal corporation or political subdivision for the municipal corporation's or political subdivision's purposes only, and specifically to defray necessary costs while performing his official duties.

No such advance shall be considered as a personal loan to such officer or employee and any expenditure thereof,

other than for official business purposes, shall be considered a misappropriation of public funds. [1969 c 74 § 5.]

42.24.170 Expenditures by special purpose districts to recruit job candidates—Reimbursement for travel expenses. Special purpose districts may expend funds to recruit job candidates and reimburse candidates for reasonable and necessary travel expenses, including transportation, subsistence, and lodging. [1981 c 190 § 1.]

42.24.180 *Taxing district—Issuance of warrants or checks before approval by legislative body—Conditions. In order to expedite the payment of claims, the legislative body of any *taxing district, as defined in RCW 43.09.260, may authorize the issuance of warrants or checks in payment of claims after the provisions of this chapter have been met and after the officer designated by statute, or, in the absence of statute, an appropriate charter provision, ordinance, or resolution of the *taxing district, has signed the checks or warrants, but before the legislative body has acted to approve the claims. The legislative body may stipulate that certain kinds or amounts of claims shall not be paid before the board has reviewed the supporting documentation and approved the issue of checks or warrants in payment of those claims. However, all of the following conditions shall be met before the payment:

(1) The auditing officer and the officer designated to sign the checks or warrants shall each be required to furnish an official bond for the faithful discharge of his or her duties in an amount determined by the legislative body but not less than fifty thousand dollars;

(2) The legislative body shall adopt contracting, hiring, purchasing, and disbursing policies that implement effective internal control;

(3) The legislative body shall provide for its review of the documentation supporting claims paid and for its approval of all checks or warrants issued in payment of claims at its next regularly scheduled public meeting or, for cities and towns, at a regularly scheduled public meeting within one month of issuance; and

(4) The legislative body shall require that if, upon review, it disapproves some claims, the auditing officer and the officer designated to sign the checks or warrants shall jointly cause the disapproved claims to be recognized as receivables of the *taxing district and to pursue collection diligently until the amounts disapproved are collected or until the legislative body is satisfied and approves the claims. [1994 c 273 § 18; 1984 c 128 § 11.]

***Reviser's note:** "Taxing district" redesignated "local government" by 1995 c 301 § 15.

Chapter 42.26

AGENCY VENDOR PAYMENT REVOLVING FUND—PETTY CASH ACCOUNTS

Sections

42.26.010	Agency vendor payment revolving fund—Created—Use.
42.26.020	Disbursements—Deposits to cover.
42.26.030	Regulations.
42.26.040	Petty cash accounts—Authorized—Advancements.
42.26.050	Request for petty cash advancement—Approval.

- 42.26.060 Restrictions on use of petty cash account—Expenditures—Reimbursement.
- 42.26.070 Custodian of petty cash account—Bond.
- 42.26.080 Violation of petty cash account requirements.
- 42.26.090 Regulations for petty cash and accounts.
- 42.26.900 Effective date—1969 ex.s. c 60.

42.26.010 Agency vendor payment revolving fund—Created—Use. An agency vendor payment revolving fund is hereby created in the state treasury. This fund is to be used for payment for services rendered or materials furnished to the state, which are properly payable from funds other than those appropriated from the state treasury: PROVIDED, That the use of this revolving fund by a state agency shall be optional: AND PROVIDED FURTHER, That payment of salaries and wages shall be subject to the provisions of chapter 42.16 RCW. [1969 ex.s. c 60 § 1.]

42.26.020 Disbursements—Deposits to cover. The amount to be disbursed from the vendor payment revolving fund on behalf of an agency electing to utilize such fund shall be deposited therein by the agency on or before the day prior to scheduled disbursement. The deposit shall be made from funds held by the agency outside the state treasury pursuant to law and which are properly chargeable for the disbursement. Disbursements from the revolving fund created by this chapter shall be by warrant in accordance with the provisions of RCW 43.88.160. [1969 ex.s. c 60 § 2.]

42.26.030 Regulations. The director of financial management shall adopt such regulations as may be necessary or desirable to implement the provisions of this chapter relating to the establishment of an agency vendor payment revolving fund. [1979 c 151 § 74; 1969 ex.s. c 60 § 3.]

42.26.040 Petty cash accounts—Authorized—Advancements. The state treasurer is authorized to advance moneys from treasury funds to state agencies for the purpose of establishing petty cash accounts. Any agency may petition the office of financial management for the establishment of a petty cash account. The maximum amount of such accounts shall be based on the special needs of the petitioning agency and shall be subject to approval by the office of financial management. The amount so advanced shall be reflected in the state treasurer’s accounts as an amount due from the agency to the fund or account from which the advance was made. [1979 c 151 § 75; 1977 c 40 § 1; 1969 ex.s. c 60 § 4.]

42.26.050 Request for petty cash advancement—Approval. The agency requesting a petty cash account or an increase in the amount of petty cash advanced under the provisions of this chapter shall submit its request to the director of financial management in the form and detail prescribed by him. The agency’s written request and the approval authorized by this chapter shall be the only documentation or certification required as a condition precedent to the issuance of such warrant. A copy of his approval shall be forwarded by the director of financial management to the state treasurer. [1979 c 151 § 76; 1969 ex.s. c 60 § 5.]

42.26.060 Restrictions on use of petty cash account—Expenditures—Reimbursement. The use of the petty cash account shall be restricted to miscellaneous petty or emergency expenditures, refunds legally payable by an agency, and for cash change to be used in the transaction of the agency’s official business. All expenditures made from petty cash shall be charged to an existing appropriation for such purpose, except expenditures chargeable against funds for which no appropriation is required by law. All expenditures or refunds made from petty cash shall be reimbursed out of and charged to the proper appropriation or fund at the close of each month and such other times as may be necessary. [1969 ex.s. c 60 § 6.]

42.26.070 Custodian of petty cash account—Bond. The head of the agency or an employee designated by him shall have full responsibility as custodian for the petty cash account and its proper use under this chapter and applicable regulations of the director of financial management. The custodian of the petty cash account shall be covered by a surety bond in the full amount of the account at all times and all advances to it, conditioned upon the proper accounting for and legal expenditure of all such funds, in addition to other conditions required by law. [1979 c 151 § 77; 1969 ex.s. c 60 § 7.]

42.26.080 Violation of petty cash account requirements. If a post audit by the state auditor discloses the amount of the petty cash account of any agency under this chapter to be excessive or the use of the account to be in violation of requirements governing its operation, the director of financial management may require the return of the account or of the excessive amount to the state treasury for credit to the fund from which the advance was made. [1979 c 151 § 78; 1969 ex.s. c 60 § 8.]

42.26.090 Regulations for petty cash and accounts. The director of financial management shall adopt such regulations as may be necessary or desirable to implement the provisions of this chapter. Such regulation shall include but not be limited to, (1) defining limitations on the use of petty cash, and (2) providing accounting and reporting procedures for operation of the petty cash account. [1979 c 151 § 79; 1969 ex.s. c 60 § 9.]

42.26.900 Effective date—1969 ex.s. c 60. This chapter shall take effect July 1, 1969. [1969 ex.s. c 60 § 12.]

Chapter 42.30

OPEN PUBLIC MEETINGS ACT

- Sections
- 42.30.010 Legislative declaration.
- 42.30.020 Definitions.
- 42.30.030 Meetings declared open and public.
- 42.30.040 Conditions to attendance not to be required.
- 42.30.050 Interruptions—Procedure.
- 42.30.060 Ordinances, rules, resolutions, regulations, etc., adopted at public meetings—Notice—Secret voting prohibited.
- 42.30.070 Times and places for meetings—Emergencies—Exception.

- 42.30.075 Schedule of regular meetings—Publication in state register—Notice of change—"Regular" meetings defined.
- 42.30.080 Special meetings.
- 42.30.090 Adjournments.
- 42.30.100 Continuances.
- 42.30.110 Executive sessions.
- 42.30.120 Violations—Personal liability—Penalty—Attorney fees and costs.
- 42.30.130 Violations—Mandamus or injunction.
- 42.30.140 Chapter controlling—Application.
- 42.30.200 Governing body of recognized student association at college or university—Chapter applicability to.
- 42.30.900 Short title.
- 42.30.910 Construction—1971 ex.s. c 250.
- 42.30.920 Severability—1971 ex.s. c 250.

Drug reimbursement policy recommendations: RCW 43.20A.365.

42.30.010 Legislative declaration. The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. [1971 ex.s. c 250 § 1.]

Reviser's note: Throughout this chapter, the phrases "this act" and "this 1971 amendatory act" have been changed to "this chapter." "This act" [1971 ex.s. c 250] consists of this chapter, the amendment to RCW 34.04.025, and the repeal of RCW 42.32.010 and 42.32.020.

42.30.020 Definitions. As used in this chapter unless the context indicates otherwise:

(1) "Public agency" means:

(a) Any state board, commission, committee, department, educational institution, or other state agency which is created by or pursuant to statute, other than courts and the legislature;

(b) Any county, city, school district, special purpose district, or other municipal corporation or political subdivision of the state of Washington;

(c) Any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act, including but not limited to planning commissions, library or park boards, commissions, and agencies;

(d) Any policy group whose membership includes representatives of publicly owned utilities formed by or pursuant to the laws of this state when meeting together as or on behalf of participants who have contracted for the output of generating plants being planned or built by an operating agency.

(2) "Governing body" means the multimember board, commission, committee, council, or other policy or rule-making body of a public agency, or any committee thereof when the committee acts on behalf of the governing body, conducts hearings, or takes testimony or public comment.

(3) "Action" means the transaction of the official business of a public agency by a governing body including

but not limited to receipt of public testimony, deliberations, discussions, considerations, reviews, evaluations, and final actions. "Final action" means a collective positive or negative decision, or an actual vote by a majority of the members of a governing body when sitting as a body or entity, upon a motion, proposal, resolution, order, or ordinance.

(4) "Meeting" means meetings at which action is taken. [1985 c 366 § 1; 1983 c 155 § 1; 1982 1st ex.s. c 43 § 10; 1971 ex.s. c 250 § 2.]

Severability—Savings—1982 1st ex.s. c 43: See notes following RCW 43.52.374.

42.30.030 Meetings declared open and public. All meetings of the governing body of a public agency shall be open and public and all persons shall be permitted to attend any meeting of the governing body of a public agency, except as otherwise provided in this chapter. [1971 ex.s. c 250 § 3.]

42.30.040 Conditions to attendance not to be required. A member of the public shall not be required, as a condition to attendance at a meeting of a governing body, to register his name and other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to his attendance. [1971 ex.s. c 250 § 4.]

42.30.050 Interruptions—Procedure. In the event that any meeting is interrupted by a group or groups of persons so as to render the orderly conduct of such meeting unfeasible and order cannot be restored by the removal of individuals who are interrupting the meeting, the members of the governing body conducting the meeting may order the meeting room cleared and continue in session or may adjourn the meeting and reconvene at another location selected by majority vote of the members. In such a session, final disposition may be taken only on matters appearing on the agenda. Representatives of the press or other news media, except those participating in the disturbance, shall be allowed to attend any session held pursuant to this section. Nothing in this section shall prohibit the governing body from establishing a procedure for readmitting an individual or individuals not responsible for disturbing the orderly conduct of the meeting. [1971 ex.s. c 250 § 5.]

42.30.060 Ordinances, rules, resolutions, regulations, etc., adopted at public meetings—Notice—Secret voting prohibited. (1) No governing body of a public agency shall adopt any ordinance, resolution, rule, regulation, order, or directive, except in a meeting open to the public and then only at a meeting, the date of which is fixed by law or rule, or at a meeting of which notice has been given according to the provisions of this chapter. Any action taken at meetings failing to comply with the provisions of this subsection shall be null and void.

(2) No governing body of a public agency at any meeting required to be open to the public shall vote by secret ballot. Any vote taken in violation of this subsection shall be null and void, and shall be considered an "action" under this chapter. [1989 c 42 § 1; 1971 ex.s. c 250 § 6.]

42.30.070 Times and places for meetings—Emergencies—Exception. The governing body of a public agency shall provide the time for holding regular meetings by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body. Unless otherwise provided for in the act under which the public agency was formed, meetings of the governing body need not be held within the boundaries of the territory over which the public agency exercises jurisdiction. If at any time any regular meeting falls on a holiday, such regular meeting shall be held on the next business day. If, by reason of fire, flood, earthquake, or other emergency, there is a need for expedited action by a governing body to meet the emergency, the presiding officer of the governing body may provide for a meeting site other than the regular meeting site and the notice requirements of this chapter shall be suspended during such emergency. It shall not be a violation of the requirements of this chapter for a majority of the members of a governing body to travel together or gather for purposes other than a regular meeting or a special meeting as these terms are used in this chapter: PROVIDED, That they take no action as defined in this chapter. [1983 c 155 § 2; 1973 c 66 § 1; 1971 ex.s. c 250 § 7.]

42.30.075 Schedule of regular meetings—Publication in state register—Notice of change—"Regular" meetings defined. State agencies which hold regular meetings shall file with the code reviser a schedule of the time and place of such meetings on or before January of each year for publication in the Washington state register. Notice of any change from such meeting schedule shall be published in the state register for distribution at least twenty days prior to the rescheduled meeting date.

For the purposes of this section "regular" meetings shall mean recurring meetings held in accordance with a periodic schedule declared by statute or rule. [1977 ex.s. c 240 § 12.]

Effective date—Severability—1977 ex.s. c 240: See RCW 34.08.905 and 34.08.910.

Public meeting notices in state register: RCW 34.08.020.

42.30.080 Special meetings. A special meeting may be called at any time by the presiding officer of the governing body of a public agency or by a majority of the members of the governing body by delivering personally or by mail written notice to each member of the governing body; and to each local newspaper of general circulation and to each local radio or television station which has on file with the governing body a written request to be notified of such special meeting or of all special meetings. Such notice must be delivered personally or by mail at least twenty-four hours before the time of such meeting as specified in the notice. The call and notice shall specify the time and place of the special meeting and the business to be transacted. Final disposition shall not be taken on any other matter at such meetings by the governing body. Such written notice may be dispensed with as to any member who at or prior to the time the meeting convenes files with the clerk or secretary of the governing body a written waiver of notice. Such waiver may be given by telegram. Such written notice may also be dispensed with as to any member who is actually

present at the meeting at the time it convenes. The notices provided in this section may be dispensed with in the event a special meeting is called to deal with an emergency involving injury or damage to persons or property or the likelihood of such injury or damage, when time requirements of such notice would make notice impractical and increase the likelihood of such injury or damage. [1971 ex.s. c 250 § 8.]

42.30.090 Adjournments. The governing body of a public agency may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment. Less than a quorum may so adjourn from time to time. If all members are absent from any regular or adjourned regular meeting the clerk or secretary of the governing body may declare the meeting adjourned to a stated time and place. He shall cause a written notice of the adjournment to be given in the same manner as provided in RCW 42.30.080 for special meetings, unless such notice is waived as provided for special meetings. Whenever any meeting is adjourned a copy of the order or notice of adjournment shall be conspicuously posted immediately after the time of the adjournment on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held. When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes. When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by ordinance, resolution, bylaw, or other rule. [1971 ex.s. c 250 § 9.]

42.30.100 Continuances. Any hearing being held, noticed, or ordered to be held by a governing body at any meeting may by order or notice of continuance be continued or reconvened to any subsequent meeting of the governing body in the same manner and to the same extent set forth in RCW 42.30.090 for the adjournment of meetings. [1971 ex.s. c 250 § 10.]

42.30.110 Executive sessions. (1) Nothing contained in this chapter may be construed to prevent a governing body from holding an executive session during a regular or special meeting:

- (a) To consider matters affecting national security;
- (b) To consider the selection of a site or the acquisition of real estate by lease or purchase when public knowledge regarding such consideration would cause a likelihood of increased price;
- (c) To consider the minimum price at which real estate will be offered for sale or lease when public knowledge regarding such consideration would cause a likelihood of decreased price. However, final action selling or leasing public property shall be taken in a meeting open to the public;
- (d) To review negotiations on the performance of publicly bid contracts when public knowledge regarding such consideration would cause a likelihood of increased costs;

(e) To consider, in the case of an export trading company, financial and commercial information supplied by private persons to the export trading company;

(f) To receive and evaluate complaints or charges brought against a public officer or employee. However, upon the request of such officer or employee, a public hearing or a meeting open to the public shall be conducted upon such complaint or charge;

(g) To evaluate the qualifications of an applicant for public employment or to review the performance of a public employee. However, subject to RCW 42.30.140(4), discussion by a governing body of salaries, wages, and other conditions of employment to be generally applied within the agency shall occur in a meeting open to the public, and when a governing body elects to take final action hiring, setting the salary of an individual employee or class of employees, or discharging or disciplining an employee, that action shall be taken in a meeting open to the public;

(h) To evaluate the qualifications of a candidate for appointment to elective office. However, any interview of such candidate and final action appointing a candidate to elective office shall be in a meeting open to the public;

(i) To discuss with legal counsel representing the agency matters relating to agency enforcement actions, or to discuss with legal counsel representing the agency litigation or potential litigation to which the agency, the governing body, or a member acting in an official capacity is, or is likely to become, a party, when public knowledge regarding the discussion is likely to result in an adverse legal or financial consequence to the agency;

(j) To consider, in the case of the state library commission or its advisory bodies, western library network prices, products, equipment, and services, when such discussion would be likely to adversely affect the network's ability to conduct business in a competitive economic climate. However, final action on these matters shall be taken in a meeting open to the public;

(k) To consider, in the case of the state investment board, financial and commercial information when the information relates to the investment of public trust or retirement funds and when public knowledge regarding the discussion would result in loss to such funds or in private loss to the providers of this information.

(2) Before convening in executive session, the presiding officer of a governing body shall publicly announce the purpose for excluding the public from the meeting place, and the time when the executive session will be concluded. The executive session may be extended to a stated later time by announcement of the presiding officer. [1989 c 238 § 2; 1987 c 389 § 3; 1986 c 276 § 8; 1985 c 366 § 2; 1983 c 155 § 3; 1979 c 42 § 1; 1973 c 66 § 2; 1971 ex.s. c 250 § 11.]

Severability—Effective date—1987 c 389: See notes following RCW 41.06.070.

Severability—1986 c 276: See RCW 53.31.901.

42.30.120 Violations—Personal liability—Penalty—Attorney fees and costs. (1) Each member of the governing body who attends a meeting of such governing body where action is taken in violation of any provision of this chapter applicable to him, with knowledge of the fact that the meeting is in violation thereof, shall be subject to personal

liability in the form of a civil penalty in the amount of one hundred dollars. The civil penalty shall be assessed by a judge of the superior court and an action to enforce this penalty may be brought by any person. A violation of this chapter does not constitute a crime and assessment of the civil penalty by a judge shall not give rise to any disability or legal disadvantage based on conviction of a criminal offense.

(2) Any person who prevails against a public agency in any action in the courts for a violation of this chapter shall be awarded all costs, including reasonable attorney fees, incurred in connection with such legal action. Pursuant to RCW 4.84.185, any public agency who prevails in any action in the courts for a violation of this chapter may be awarded reasonable expenses and attorney fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause. [1985 c 69 § 1; 1973 c 66 § 3; 1971 ex.s. c 250 § 12.]

42.30.130 Violations—Mandamus or injunction.

Any person may commence an action either by mandamus or injunction for the purpose of stopping violations or preventing threatened violations of this chapter by members of a governing body. [1971 ex.s. c 250 § 13.]

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

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

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

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

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

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

Drug reimbursement policy recommendations: RCW 43.20A.365.

Mediation testimony competency: RCW 5.60.070 and 5.60.072.

42.30.200 Governing body of recognized student association at college or university—Chapter applicability to. The multimember student board which is the governing

body of the recognized student association at a given campus of a public institution of higher education is hereby declared to be subject to the provisions of the open public meetings act as contained in this chapter, as now or hereafter amended. For the purposes of this section, "recognized student association" shall mean any body at any of the state's colleges and universities which selects officers through a process approved by the student body and which represents the interests of students. Any such body so selected shall be recognized by and registered with the respective boards of trustees and regents of the state's colleges and universities: PROVIDED, That there be no more than one such association representing undergraduate students, no more than one such association representing graduate students, and no more than one such association representing each group of professional students so recognized and registered at any of the state's colleges or universities. [1980 c 49 § 1.]

42.30.900 Short title. This chapter may be cited as the "Open Public Meetings Act of 1971". [1971 ex.s. c 250 § 16.]

42.30.910 Construction—1971 ex.s. c 250. The purposes of this chapter are hereby declared remedial and shall be liberally construed. [1971 ex.s. c 250 § 18.]

42.30.920 Severability—1971 ex.s. c 250. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1971 ex.s. c 250 § 19.]

Chapter 42.32 MEETINGS

Sections

42.32.030 Minutes.

Drug reimbursement policy recommendations: RCW 43.20A.365.

Open Public Meetings Act: Chapter 42.30 RCW.

42.32.030 Minutes. The minutes of all regular and special meetings except executive sessions of such boards, commissions, agencies or authorities shall be promptly recorded and such records shall be open to public inspection. [1953 c 216 § 3.]

Reviser's note: RCW 42.32.010 and 42.32.020 were repealed by 1971 ex.s. c 250 § 15; later enactment, see chapter 42.30 RCW.

Chapter 42.36 APPEARANCE OF FAIRNESS DOCTRINE— LIMITATIONS

Sections

42.36.010 Local land use decisions.

42.36.020 Members of local decision-making bodies.

42.36.030 Legislative action of local executive or legislative officials.

42.36.040 Public discussion by candidate for public office.

42.36.050 Campaign contributions.

42.36.060 Quasi-judicial proceedings—Ex parte communications prohibited, exceptions.

42.36.070 Quasi-judicial proceedings—Prior advisory proceedings.

(1998 Ed.)

42.36.080 Disqualification based on doctrine—Time limitation for raising challenge.

42.36.090 Participation of challenged member of decision-making body.

42.36.100 Judicial restriction of doctrine not prohibited—Construction of chapter.

42.36.110 Right to fair hearing not impaired.

42.36.900 Severability—1982 c 229.

42.36.010 Local land use decisions. Application of the appearance of fairness doctrine to local land use decisions shall be limited to the quasi-judicial actions of local decision-making bodies as defined in this section. Quasi-judicial actions of local decision-making bodies are those actions of the legislative body, planning commission, hearing examiner, zoning adjuster, board of adjustment, or boards which determine the legal rights, duties, or privileges of specific parties in a hearing or other contested case proceeding. Quasi-judicial actions do not include the legislative actions adopting, amending, or revising comprehensive, community, or neighborhood plans or other land use planning documents or the adoption of area-wide zoning ordinances or the adoption of a zoning amendment that is of area-wide significance. [1982 c 229 § 1.]

42.36.020 Members of local decision-making bodies. No member of a local decision-making body may be disqualified by the appearance of fairness doctrine for conducting the business of his or her office with any constituent on any matter other than a quasi-judicial action then pending before the local legislative body. [1982 c 229 § 2.]

42.36.030 Legislative action of local executive or legislative officials. No legislative action taken by a local legislative body, its members, or local executive officials shall be invalidated by an application of the appearance of fairness doctrine. [1982 c 229 § 3.]

42.36.040 Public discussion by candidate for public office. Prior to declaring as a candidate for public office or while campaigning for public office as defined by *RCW 42.17.020 (5) and (25) no public discussion or expression of an opinion by a person subsequently elected to a public office, on any pending or proposed quasi-judicial actions, shall be a violation of the appearance of fairness doctrine. [1982 c 229 § 4.]

***Reviser's note:** RCW 42.17.020 was amended by 1991 sp.s. c 18 § 1, changing subsection (25) to subsection (26). RCW 42.17.020 was subsequently amended by 1995 c 397 § 1, changing subsections (5) and (26) to subsections (8) and (35), respectively.

42.36.050 Campaign contributions. A candidate for public office who complies with all provisions of applicable public disclosure and ethics laws shall not be limited from accepting campaign contributions to finance the campaign, including outstanding debts; nor shall it be a violation of the appearance of fairness doctrine to accept such campaign contributions. [1982 c 229 § 5.]

Public disclosure of campaign finances: Chapter 42.17 RCW.

42.36.060 Quasi-judicial proceedings—Ex parte communications prohibited, exceptions. During the pendency of any quasi-judicial proceeding, no member of a decision-making body may engage in ex parte communications with opponents or proponents with respect to the proposal which is the subject of the proceeding unless that person:

(1) Places on the record the substance of any written or oral ex parte communications concerning the decision of action; and

(2) Provides that a public announcement of the content of the communication and of the parties' rights to rebut the substance of the communication shall be made at each hearing where action is considered or taken on the subject to which the communication related. This prohibition does not preclude a member of a decision-making body from seeking in a public hearing specific information or data from such parties relative to the decision if both the request and the results are a part of the record. Nor does such prohibition preclude correspondence between a citizen and his or her elected official if any such correspondence is made a part of the record when it pertains to the subject matter of a quasi-judicial proceeding. [1984 c 191 § 1; 1982 c 229 § 6.]

42.36.070 Quasi-judicial proceedings—Prior advisory proceedings. Participation by a member of a decision-making body in earlier proceedings that result in an advisory recommendation to a decision-making body shall not disqualify that person from participating in any subsequent quasi-judicial proceeding. [1982 c 229 § 7.]

42.36.080 Disqualification based on doctrine—Time limitation for raising challenge. Anyone seeking to rely on the appearance of fairness doctrine to disqualify a member of a decision-making body from participating in a decision must raise the challenge as soon as the basis for disqualification is made known to the individual. Where the basis is known or should reasonably have been known prior to the issuance of a decision and is not raised, it may not be relied on to invalidate the decision. [1982 c 229 § 8.]

42.36.090 Participation of challenged member of decision-making body. In the event of a challenge to a member or members of a decision-making body which would cause a lack of a quorum or would result in a failure to obtain a majority vote as required by law, any such challenged member(s) shall be permitted to fully participate in the proceeding and vote as though the challenge had not occurred, if the member or members publicly disclose the basis for disqualification prior to rendering a decision. Such participation shall not subject the decision to a challenge by reason of violation of the appearance of fairness doctrine. [1982 c 229 § 9.]

42.36.100 Judicial restriction of doctrine not prohibited—Construction of chapter. Nothing in this chapter prohibits the restriction or elimination of the appearance of fairness doctrine by the appellate courts. Nothing in this chapter may be construed to expand the appearance of fairness doctrine. [1982 c 229 § 10.]

42.36.110 Right to fair hearing not impaired. Nothing in this chapter prohibits challenges to local land use decisions where actual violations of an individual's right to a fair hearing can be demonstrated. [1982 c 229 § 11.]

42.36.900 Severability—1982 c 229. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 229 § 12.]

Chapter 42.40

STATE EMPLOYEE WHISTLEBLOWER PROTECTION

Sections

42.40.010	Policy.
42.40.020	Definitions.
42.40.030	Right to disclose improper governmental actions—Interference prohibited.
42.40.040	Report of improper governmental action—Investigations and reports by auditor.
42.40.050	Retaliatory action against whistleblower—Remedies.
42.40.070	Summary of chapter available to employees.
42.40.900	Severability—1982 c 208.

42.40.010 Policy. It is the policy of the legislature that employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper governmental actions, and it is the intent of the legislature to protect the rights of state employees making these disclosures. It is also the policy of the legislature that employees should be encouraged to identify rules warranting review or provide information to the rules review committee, and it is the intent of the legislature to protect the rights of these employees. [1995 c 403 § 508; 1982 c 208 § 1.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

42.40.020 Definitions. As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Auditor" means the office of the state auditor.

(2) "Employee" means any individual employed or holding office in any department or agency of state government.

(3)(a) "Improper governmental action" means any action by an employee:

(i) Which is undertaken in the performance of the employee's official duties, whether or not the action is within the scope of the employee's employment; and

(ii) Which is in violation of any state law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds.

(b) "Improper governmental action" does not include personnel actions including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay,

dismissals, suspensions, demotions, violations of the state civil service law, alleged labor agreement violations, reprimands, or any action which may be taken under chapter 41.06 RCW, or other disciplinary action except as provided in RCW 42.40.030.

(4) "Use of official authority or influence" includes taking, directing others to take, recommending, processing, or approving any personnel action such as an appointment, promotion, transfer, assignment, reassignment, reinstatement, restoration, reemployment, performance evaluation, or any adverse action under chapter 41.06 RCW, or other disciplinary action.

(5) "Whistleblower" means an employee who in good faith reports alleged improper governmental action to the auditor, initiating an investigation under RCW 42.40.040. For purposes of the provisions of this chapter and chapter 49.60 RCW relating to reprisals and retaliatory action, the term "whistleblower" also means: (a) An employee who in good faith provides information to the auditor in connection with an investigation under RCW 42.40.040 and an employee who is believed to have reported alleged improper governmental action to the auditor or to have provided information to the auditor in connection with an investigation under RCW 42.40.040 but who, in fact, has not reported such action or provided such information; or (b) an employee who in good faith identifies rules warranting review or provides information to the rules review committee, and an employee who is believed to have identified rules warranting review or provided information to the rules review committee but who, in fact, has not done so. [1995 c 403 § 509; 1992 c 118 § 1; 1989 c 284 § 1; 1982 c 208 § 2.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

42.40.030 Right to disclose improper governmental actions—Interference prohibited. (1) An employee shall not directly or indirectly use or attempt to use the employee's official authority or influence for the purpose of intimidating, threatening, coercing, commanding, influencing, or attempting to intimidate, threaten, coerce, command, or influence any individual for the purpose of interfering with the right of the individual to: (a) Disclose to the auditor (or representative thereof) information concerning improper governmental action; or (b) identify rules warranting review or provide information to the rules review committee.

(2) Nothing in this section authorizes an individual to disclose information otherwise prohibited by law. [1995 c 403 § 510; 1989 c 284 § 2; 1982 c 208 § 3.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

42.40.040 Report of improper governmental action—Investigations and reports by auditor. (1) Upon receiving specific information that an employee has engaged in improper governmental action, the auditor shall, within five working days of receipt of the information, mail written acknowledgement to the whistleblower at the address provided. For a period not to exceed thirty days, the auditor

shall conduct such preliminary investigation of the matter as the auditor deems appropriate. In conducting the investigation, the identity of the whistleblower shall be kept confidential.

(2) In addition to the authority under subsection (1) of this section, the auditor may, on its own initiative, investigate incidents of improper state governmental action.

(3)(a) If it appears to the auditor, upon completion of the preliminary investigation, that the matter is so unsubstantiated that no further investigation, prosecution, or administrative action is warranted, the auditor shall so notify the whistleblower.

(b) The notification shall be by memorandum containing a summary of the information received, a summary of the results of the preliminary investigation with regard to each allegation of improper governmental action, and any determination made by the auditor under (c) of this subsection.

(c) In any case to which this section applies, the identity of the whistleblower shall be kept confidential unless the auditor determines that the information has been provided other than in good faith.

(d) If it appears to the auditor that the matter does not meet the definition of an "improper governmental action" under RCW 42.40.020(3), or is other than a gross waste of public funds, the auditor may forward a summary of the allegations to the appropriate agency for investigation and require a response by memorandum no later than thirty days after the allegations are received from the auditor. The response shall contain a summary of the investigation with regard to each allegation and any determination of corrective action taken. The auditor will keep the identity of the whistleblower confidential. Upon receipt of the results of the investigation from the appropriate agency, the auditor will notify the whistleblower as prescribed under (a), (b), and (c) of this subsection.

(4) If it appears to the auditor after completion of the preliminary investigation that further investigation, prosecution, or administrative action is warranted, the auditor shall so notify the whistleblower and either conduct further investigations or issue a report under subsection (6) of this section. Within sixty days after the thirty-day period in subsection (1) of this section, the auditor shall complete the investigation and report its findings to the whistleblower unless written justification for the delay is furnished to the whistleblower. In all such cases, the report of the auditor's investigation and findings shall be sent to the whistleblower within one year after the information was filed under subsection (1) of this section.

(5)(a) At any stage of an investigation under this section the auditor may require by subpoena the attendance and testimony of witnesses and the production of documentary or other evidence relating to the investigation at any designated place in the state. The auditor may issue subpoenas, administer oaths, examine witnesses, and receive evidence. In the case of contumacy or failure to obey a subpoena, the superior court for the county in which the person to whom the subpoena is addressed resides or is served may issue an order requiring the person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(b) The auditor may order the taking of depositions at any stage of a proceeding or investigation under this chapter. Depositions shall be taken before an individual designated by the auditor and having the power to administer oaths. Testimony shall be reduced to writing by or under the direction of the individual taking the deposition and shall be subscribed by the deponent.

(6)(a) If the auditor determines that there is reasonable cause to believe that an employee has engaged in any improper activity, the auditor shall report the nature and details of the activity to:

(i) The employee and the head of the employing agency; and

(ii) If appropriate, the attorney general or such other authority as the auditor determines appropriate.

(b) The auditor has no enforcement power except that in any case in which the auditor submits a report of alleged improper activity to the head of an agency, the attorney general, or any other individual to which a report has been made under this section, the individual shall report to the auditor with respect to any action taken by the individual regarding the activity, the first report being transmitted no later than thirty days after the date of the auditor's report and monthly thereafter until final action is taken. If the auditor determines that appropriate action is not being taken within a reasonable time, the auditor shall report the determination to the governor and to the legislature.

(7) This section does not limit any authority conferred upon the attorney general or any other agency of government to investigate any matter. [1992 c 118 § 2; 1989 c 284 § 3; 1982 c 208 § 4.]

42.40.050 Retaliatory action against whistleblower—Remedies. Any person who is a whistleblower, as defined in RCW 42.40.020, and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action has the remedies provided under chapter 49.60 RCW. For the purpose of this section "reprisal or retaliatory action" means but is not limited to:

- (1) Denial of adequate staff to perform duties;
- (2) Frequent staff changes;
- (3) Frequent and undesirable office changes;
- (4) Refusal to assign meaningful work;
- (5) Unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations;
- (6) Demotion;
- (7) Reduction in pay;
- (8) Denial of promotion;
- (9) Suspension;
- (10) Dismissal;
- (11) Denial of employment; and
- (12) A supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower.

Nothing in this section prohibits an agency from making any decision exercising its authority to terminate, suspend, or discipline an employee who engages in workplace reprisal or retaliatory action against a whistleblower. However, the agency also shall implement any order under chapter 49.60 RCW (other than an order of suspension if the agency has terminated the retaliator). [1992 c 118 § 3; 1989 c 284 § 4; 1982 c 208 § 5.]

42.40.070 Summary of chapter available to employees. A written summary of this chapter and procedures for reporting improper governmental actions established by the auditor's office shall be made available by each department or agency of state government to each employee upon entering public employment. Employees shall be notified by each department or agency of state government each year of the procedures and protections under this chapter. [1989 c 284 § 5; 1982 c 208 § 7.]

42.40.900 Severability—1982 c 208. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 208 § 14.]

Chapter 42.41

LOCAL GOVERNMENT WHISTLEBLOWER PROTECTION

Sections

- 42.41.010 Policy.
- 42.41.020 Definitions.
- 42.41.030 Right to report improper governmental action—Policies and procedures.
- 42.41.040 Retaliatory action unlawful—Relief by whistleblower—Penalty.
- 42.41.045 Prohibition on intimidation of whistleblower—Nondisclosure of protected information.
- 42.41.050 Exemptions.
- 42.41.060 Local government administrative hearings account.
- 42.41.900 Construction.
- 42.41.901 Effective dates—1992 c 44.
- 42.41.902 Severability—1992 c 44.

42.41.010 Policy. It is the policy of the legislature that local government employees should be encouraged to disclose, to the extent not expressly prohibited by law, improper governmental actions of local government officials and employees. The purpose of this chapter is to protect local government employees who make good-faith reports to appropriate governmental bodies and to provide remedies for such individuals who are subjected to retaliation for having made such reports. [1992 c 44 § 1.]

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

(1)(a) "Improper governmental action" means any action by a local government officer or employee:

(i) That is undertaken in the performance of the officer's or employee's official duties, whether or not the action is within the scope of the employee's employment; and

(ii) That is in violation of any federal, state, or local law or rule, is an abuse of authority, is of substantial and specific danger to the public health or safety, or is a gross waste of public funds.

(b) "Improper governmental action" does not include personnel actions including but not limited to employee grievances, complaints, appointments, promotions, transfers, assignments, reassignments, reinstatements, restorations, reemployments, performance evaluations, reductions in pay, dismissals, suspensions, demotions, violations of the local

government collective bargaining and civil service laws, alleged labor agreement violations, reprimands, or any action that may be taken under chapter 41.08, 41.12, 41.14, 41.56, 41.59, or 53.18 RCW or RCW 54.04.170 and 54.04.180.

(2) "Local government" means any governmental entity other than the state, federal agencies, or an operating system established under chapter 43.52 RCW. It includes, but is not limited to cities, counties, school districts, and special purpose districts.

(3) "Retaliatory action" means: (a) Any adverse change in a local government employee's employment status, or the terms and conditions of employment including denial of adequate staff to perform duties, frequent staff changes, frequent and undesirable office changes, refusal to assign meaningful work, unwarranted and unsubstantiated letters of reprimand or unsatisfactory performance evaluations, demotion, transfer, reassignment, reduction in pay, denial of promotion, suspension, dismissal, or any other disciplinary action; or (b) hostile actions by another employee towards a local government employee that were encouraged by a supervisor or senior manager or official.

(4) "Emergency" means a circumstance that if not immediately changed may cause damage to persons or property. [1994 c 210 § 1; 1992 c 44 § 2.]

42.41.030 Right to report improper governmental action—Policies and procedures. (1) Every local government employee has the right to report to the appropriate person or persons information concerning an alleged improper governmental action.

(2) The governing body or chief administrative officer of each local government shall adopt a policy on the appropriate procedures to follow for reporting such information and shall provide information to their employees on the policy. Local governments are encouraged to consult with their employees on the policy.

(3) The policy shall describe the appropriate person or persons within the local government to whom to report information and a list of appropriate person or persons outside the local government to whom to report. The list shall include the county prosecuting attorney.

(4) Each local government shall permanently post a summary of the procedures for reporting information on an alleged improper governmental action and the procedures for protection against retaliatory actions described in RCW 42.41.040 in a place where all employees will have reasonable access to it. A copy of the summary shall be made available to any employee upon request.

(5) A local government may require as part of its policy that, except in the case of an emergency, before an employee provides information of an improper governmental action to a person or an entity who is not a public official or a person listed pursuant to subsection (3) of this section, the employee shall submit a written report to the local government. Where a local government has adopted such a policy under this section, an employee who fails to make a good faith attempt to follow the policy shall not receive the protections of this chapter.

(6) If a local government has failed to adopt a policy as required by subsection (2) of this section, an employee may report alleged improper government action directly to the

county prosecuting attorney or, if the prosecuting attorney or an employee of the prosecuting attorney participated in the alleged improper government action, to the state auditor. The cost incurred by the state auditor in such investigations shall be paid by the local government through the municipal revolving account authorized in RCW 43.09.282.

(7) The identity of a reporting employee shall be kept confidential to the extent possible under law, unless the employee authorizes the disclosure of his or her identity in writing. [1995 c 213 § 1; 1992 c 44 § 3.]

42.41.040 Retaliatory action unlawful—Relief by whistleblower—Penalty. (1) It is unlawful for any local government official or employee to take retaliatory action against a local government employee because the employee provided information in good faith in accordance with the provisions of this chapter that an improper governmental action occurred.

(2) In order to seek relief under this chapter, a local government employee shall provide a written notice of the charge of retaliatory action to the governing body of the local government that:

- (a) Specifies the alleged retaliatory action; and
- (b) Specifies the relief requested.

(3) The charge shall be delivered to the local government no later than thirty days after the occurrence of the alleged retaliatory action. The local government has thirty days to respond to the charge of retaliatory action and request for relief.

(4) Upon receipt of either the response of the local government or after the last day upon which the local government could respond, the local government employee may request a hearing to establish that a retaliatory action occurred and to obtain appropriate relief as defined in this section. The request for a hearing shall be delivered to the local government within fifteen days of delivery of the response from the local government, or within fifteen days of the last day on which the local government could respond.

(5) Within five working days of receipt of the request for hearing, the local government shall apply to the state office of administrative hearings for an adjudicative proceeding before an administrative law judge. Except as otherwise provided in this section, the proceedings shall comply with RCW 34.05.410 through 34.05.598.

(6) The employee, as the initiating party, must prove his or her claim by a preponderance of the evidence. The administrative law judge shall issue a final decision consisting of findings of fact, conclusions of law, and judgment no later than forty-five days after the date the request for hearing was delivered to the local government. The administrative law judge may grant specific extensions of time beyond this period of time for rendering a decision at the request of either party upon a showing of good cause, or upon his or her own motion.

(7) Relief that may be granted by the administrative law judge consists of reinstatement, with or without back pay, and such injunctive relief as may be found to be necessary in order to return the employee to the position he or she held before the retaliatory action and to prevent any recurrence of retaliatory action. The administrative law judge may award costs and reasonable attorneys' fees to the prevailing party.

(8) If a determination is made that retaliatory action has been taken against the employee, the administrative law judge may, in addition to any other remedy, impose a civil penalty personally upon the retaliator of up to three thousand dollars payable by each person found to have retaliated against the employee and recommend to the local government that any person found to have retaliated against the employee be suspended with or without pay or dismissed. All penalties recovered shall be paid to the local government administrative hearings account created in RCW 42.41.060.

(9) The final decision of the administrative law judge is subject to judicial review under the arbitrary and capricious standard. Relief ordered by the administrative law judge may be enforced by petition to superior court. [1992 c 44 § 4.]

42.41.045 Prohibition on intimidation of whistleblower—Nondisclosure of protected information. (1) A local government official or employee may not use his or her official authority or influence, directly or indirectly, to threaten, intimidate, or coerce an employee for the purpose of interfering with that employee's right to disclose information concerning an improper governmental action in accordance with the provisions of this chapter.

(2) Nothing in this section authorizes an individual to disclose information prohibited by law. [1994 c 210 § 2.]

42.41.050 Exemptions. Any local government that has adopted or adopts a program for reporting alleged improper governmental actions and adjudicating retaliation resulting from such reporting shall be exempt from this chapter if the program meets the intent of this chapter. [1992 c 44 § 6.]

42.41.060 Local government administrative hearings account. The local government administrative hearings account is created in the custody of the state treasurer. All receipts from penalties in RCW 42.41.040 and the surcharges under RCW 43.09.2801 shall be deposited into the account. Expenditures from the account may be used only for administrative hearings under this chapter. Only the chief administrative law judge or his or her designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [1992 c 44 § 7.]

42.41.900 Construction. This chapter shall not be construed to permit disclosures that would diminish the rights of any person to the continued protection of confidentiality of communications where statute or common law provides such protection. [1992 c 44 § 5.]

42.41.901 Effective dates—1992 c 44. Sections 1 through 10 of this act shall take effect January 1, 1993. Section 11 of this act shall take effect July 1, 1992. [1992 c 44 § 13.]

42.41.902 Severability—1992 c 44. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of

the provision to other persons or circumstances is not affected. [1992 c 44 § 14.]

Chapter 42.44 NOTARIES PUBLIC

Sections

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

(1) "Director" means the director of licensing of the state of Washington or the director's designee.

(2) "Notarial act" and "notarization" mean: (a) Taking an acknowledgment; (b) administering an oath or affirmation; (c) taking a verification upon oath or affirmation; (d) witnessing or attesting a signature; (e) certifying or attesting a copy; (f) receiving a protest of a negotiable instrument; (g) certifying that an event has occurred or an act has been performed; and (h) any other act that a notary public of this state is authorized to perform.

(3) "Notary public" and "notary" mean any person appointed to perform notarial acts in this state.

(4) "Acknowledgment" means a statement by a person that the person has executed an instrument as the person's free and voluntary act for the uses and purposes stated therein and, if the instrument is executed in a representative capacity, a statement that the person signed the document with proper authority and executed it as the act of the person or entity represented and identified therein.

(5) "Verification upon oath or affirmation" means a statement by a person who asserts it to be true and makes the assertion upon oath or affirmation administered in accordance with chapter 5.28 RCW.

(6) "In a representative capacity" means:

(a) For and on behalf of a corporation, partnership, trust, or other entity, as an authorized officer, agent, partner, trustee, or other representative;

(b) As a public officer, personal representative, guardian, or other representative, in the capacity recited in the instrument;

(c) As an attorney in fact for a principal; or

(d) In any other capacity as an authorized representative of another.

(7) "Serious crime" means any felony or any lesser crime, a necessary element of which, as determined by the statutory or common law definition of such crime, involves interference with the administration of justice, false swearing, misrepresentation, fraud, the unauthorized practice of law, deceit, bribery, extortion, misappropriation, theft, or an attempt, a conspiracy, or the solicitation of another to commit a serious crime. [1985 c 156 § 1.]

42.44.020 Qualifications—Application—Bond. (1)

The director may, upon application, appoint to be a notary public in this state, any person who:

(a) Is at least eighteen years of age;

(b) Resides in Washington state, or resides in an adjoining state and is regularly employed in Washington state or carries on business in Washington state; and

(c) Can read and write English.

(2) Each application shall be accompanied by endorsements by at least three residents of this state of the age of eighteen or more, who are not relatives of the applicant, in the following form:

I, (name of endorser), being a person eligible to vote in the state of Washington, believe the applicant for a notary public appointment, (applicant's name), who is not related to me, to be a person of integrity and good moral character and capable of performing notarial acts.

.....
(Endorser's signature and address, with date of signing)

(3) Every application for appointment as a notary public shall be accompanied by a fee established by the director by rule.

(4) Every applicant for appointment as a notary public shall submit an application in a form prescribed by the director, and shall sign the following declaration in the presence of a notary public of this state:

Declaration of Applicant

I, (name of applicant), solemnly swear or affirm under penalty of perjury that the personal information I have provided in this application is true, complete, and correct; that I carefully have read the materials provided with the application describing the duties of a notary public in and for the state of Washington; and, that I will perform, to the best of my ability, all notarial acts in accordance with the law.

.....
(Signature of applicant)

State of Washington

County of

On this day appeared before me, signed this Declaration of Application, and swore (or affirmed) that (he/she) understood its contents and that its contents are truthful.

Dated: . . .

.....
Signature of notary public

(Seal or stamp)

Residing at

(5) Every applicant shall submit to the director proof from a surety company that a ten thousand dollar surety bond, insuring the proper performance of notarial acts by the applicant, will be effective for a term commencing on the date the person is appointed, and expiring on the date the applicant's notary appointment expires. The surety for the bond shall be a company qualified to write surety bonds in this state. [1985 c 156 § 2.]

42.44.030 Appointment denied certain persons. The director may deny appointment as a notary public to any person who:

(1) Has been convicted of a serious crime;

(2) Has had a notary appointment or other professional license revoked, suspended, or restricted in this or any other state;

(3) Has engaged in official misconduct as defined in *section 17(1) of this act, whether or not criminal penalties resulted; or

(4) Has performed a notarial act or acts in a manner found by the director to constitute gross negligence, a course of negligent conduct, or reckless disregard of his or her responsibility as a notary public. [1985 c 156 § 3.]

**Reviser's note:* A literal translation of "section 17(1) of this act" would be RCW 42.44.170(1); however, RCW 42.44.160(1) was apparently intended.

42.44.040 Certificate of appointment. The director shall deliver a certificate evidencing the appointment to each person appointed as a notary public. The certificate may be signed in facsimile by the governor, the secretary of state, and the director or the director's designee. The certificate shall bear a printed seal of the state of Washington. [1985 c 156 § 4.]

42.44.050 Seal or stamp. Every person appointed as a notary public in this state shall procure a seal or stamp, on which shall be engraved or impressed the words "Notary Public" and "State of Washington," the date the appointment expires, the person's surname, and at least the initials of the person's first and middle names. The director shall prescribe by rule the size and form or forms of the seal or stamp. It is unlawful for any person intentionally to manufacture, give, sell, procure or possess a seal or stamp evidencing the current appointment of a person as a notary public until the director has delivered a certificate evidencing the appointment as provided for in RCW 42.44.040. [1985 c 156 § 5.]

42.44.060 Term. A person appointed as a notary public by the director may perform notarial acts in this state for a term of four years, unless:

(1) The notarial appointment has been revoked under RCW 42.44.130 or 42.44.140; or

(2) The notarial appointment has been resigned. [1985 c 156 § 6.]

42.44.070 Reappointment without endorsements. A person who has received an appointment as a notary public may be reappointed without the endorsements required in RCW 42.44.020(2) if the person submits a new application before the expiration date of the current appointment. [1985 c 156 § 7.]

42.44.080 Standards for notarial acts. A notary public is authorized to perform notarial acts in this state. Notarial acts shall be performed in accordance with the following, as applicable:

(1) In taking an acknowledgment, a notary public must determine and certify, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary public and making the acknowledgement is the person whose true signature is on the document.

(2) In taking an acknowledgment authorized by RCW 64.08.100 from a person physically unable to sign his or her name or make a mark, a notary public shall, in addition to other requirements for taking an acknowledgment, determine and certify from personal knowledge or satisfactory evidence that the person appearing before the notary public is physically unable to sign his or her name or make a mark and is otherwise competent. The notary public shall include in the acknowledgment a statement that the signature in the acknowledgment was obtained under the authority of RCW 64.08.100.

(3) In taking a verification upon oath or affirmation, a notary public must determine, either from personal knowledge or from satisfactory evidence, that the person appearing before the notary public and making the verification is the person whose true signature is on the statement verified.

(4) In witnessing or attesting a signature, a notary public must determine, either from personal knowledge or from satisfactory evidence, that the signature is that of the person appearing before the notary public and named in the document.

(5) In certifying or attesting a copy of a document or other item, a notary public must determine that the proffered copy is a full, true, and accurate transcription or reproduction of that which was copied.

(6) In making or noting a protest of a negotiable instrument, a notary public must determine the matters set forth in *RCW 62A.3-509.

(7) In certifying that an event has occurred or an act has been performed, a notary public must determine the occurrence or performance either from personal knowledge or from satisfactory evidence based upon the oath or affirmation of a credible witness personally known to the notary public.

(8) A notary public has satisfactory evidence that a person is the person described in a document if that person: (a) Is personally known to the notary public; (b) is identified upon the oath or affirmation of a credible witness personally known to the notary public; or (c) is identified on the basis of identification documents.

(9) The signature and seal or stamp of a notary public are prima facie evidence that the signature of the notary is genuine and that the person is a notary public.

(10) A notary public is disqualified from performing a notarial act when the notary is a signer of the document which is to be notarized. [1987 c 76 § 3; 1985 c 156 § 8.]

*Reviser's note: RCW 62A.3-509 was repealed by 1993 c 229 § 76, effective July 1, 1994.

42.44.090 Form of certificate—General—Seal or stamp as exclusive property. (1) A notarial act by a notary public must be evidenced by a certificate signed and dated by a notary public. The certificate must include the name of the jurisdiction in which the notarial act is performed and the title of the notary public or other notarial officer and shall be accompanied by an impression of the official seal or stamp. It shall not be necessary for a notary public in certifying an oath to be used in any of the courts in this state, to append an impression of the official seal or stamp. If the notarial officer is a notary public, the certificate shall also indicate the date of expiration of such notary public's appointment, but omission of that information may subsequently be corrected.

(2) A certificate of a notarial act is sufficient if it meets the requirements of subsection (1) of this section and it:

- (a) Is in the short form set forth in RCW 42.44.100;
- (b) Is in a form otherwise permitted or prescribed by the laws of this state;

(c) Is in a form prescribed by the laws or regulations applicable in the place in which the notarial act was performed; or

(d) Is in a form that sets forth the actions of the notary public and the described actions are sufficient to meet the requirements of the designated notarial act.

If any law of this state specifically requires a certificate in a form other than that set forth in RCW 42.44.100 in connection with a form of document or transaction, the certificate required by such law shall be used for such document or transaction.

(3) By executing a certificate of a notarial act, the notary public certifies that he or she has made the determinations required by RCW 42.44.080.

(4) A notary public's seal or stamp shall be the exclusive property of the notary public, shall not be used by any other person, and shall not be surrendered to an employer upon termination of employment, regardless of whether the employer paid for the seal or for the notary's bond or appointment fees. [1985 c 156 § 9.]

42.44.100 Short forms of certificate. The following short forms of notarial certificates are sufficient for the purposes indicated, if completed with the information required by this section:

- (1) For an acknowledgment in an individual capacity:

State of Washington

County of

I certify that I know or have satisfactory evidence that (name of person) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument and acknowledged it to be (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.

Dated:

(Seal or stamp) (Signature)

Title My appointment expires

(2) For an acknowledgment in a representative capacity:

State of Washington County of

I certify that I know or have satisfactory evidence that (name of person) is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the (type of authority, e.g., officer, trustee, etc.) of (name of party on behalf of whom instrument was executed) to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated:

(Seal or stamp) (Signature)

Title My appointment expires

(3) For a verification upon oath or affirmation:

State of Washington County of

Signed and sworn to (or affirmed) before me on (date) by (name of person making statement)

(Seal or stamp) (Signature)

Title My appointment expires

(4) For witnessing or attesting a signature:

State of Washington County of

Signed or attested before me on by

(Seal or stamp) (Signature)

Title My appointment expires

(5) For attestation of a copy of a document:

State of Washington County of

I certify that this is a true and correct copy of a document in the possession of . . . as of this date.

Dated:

(Seal or stamp) (Signature)

Title

My appointment expires

(6) For certifying the occurrence of an event or the performance of an act:

State of Washington County of

I certify that the event or act described in this document has occurred or been performed.

Dated:

(Seal or stamp) (Signature)

Title

My appointment expires

[1988 c 69 § 4; 1985 c 156 § 10.]

42.44.110 Illegible writing. The illegibility of any wording, writing, or marking required under this chapter does not in and of itself affect the validity of a document or transaction. [1985 c 156 § 11.]

42.44.120 Fees. (1) The director shall establish by rule the maximum fees that may be charged by notaries public for various notarial services.

(2) A notary public need not charge fees for notarial acts. [1985 c 156 § 12.]

42.44.130 Notarial acts by officials of other jurisdictions. (1) A notarial act has the same effect under the law of this state as if performed by a notary public of this state, if performed in another state, commonwealth, territory, district, or possession of the United States by any of the following persons:

- (a) A notary public of that jurisdiction;
(b) A judge, clerk, or deputy clerk of a court of that jurisdiction; or
(c) Any other person authorized by the law of that jurisdiction to perform notarial acts.

Notarial acts performed in other jurisdictions of the United States under federal authority as provided in RCW 42.44.140 have the same effect as if performed by a notarial officer of this state.

(2) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(3) The signature and title of an officer listed in subsection (1) (a) and (b) of this section conclusively establish the authority of a holder of that title to perform a notarial act. [1985 c 156 § 13.]

42.44.140 Notarial acts by federal authorities. (1)

A notarial act has the same effect under the law of this state as if performed by a notary public of this state if performed by any of the following persons under authority granted by the law of the United States:

- (a) A judge, clerk, or deputy clerk of a court;
- (b) A commissioned officer in active service with the military forces of the United States;
- (c) An officer of the foreign service or consular agent of the United States; or
- (d) Any other person authorized by federal law to perform notarial acts.

(2) The signature and title of a person performing a notarial act are prima facie evidence that the signature is genuine and that the person holds the designated title.

(3) The signature and title or rank of an officer listed in subsection (1) (a), (b), and (c) of this section conclusively establish the authority of a holder of that title to perform a notarial act. [1985 c 156 § 14.]

42.44.150 Notarial acts by foreign authorities. (1)

A notarial act has the same effect under the law of this state as if performed by a notary public of this state if performed within the jurisdiction of and under authority of a foreign nation or its constituent units or a multinational or international organization by any of the following persons:

- (a) A notary public or notary;
- (b) A judge, clerk, or deputy clerk of a court of record;

or

(c) Any other person authorized by the law of that jurisdiction to perform notarial acts.

(2) An "apostille" in the form prescribed by the Hague Convention of October 5, 1961, conclusively establishes that the signature of the notarial officer is genuine and that the officer holds the designated office.

(3) A certificate by a foreign service or consular officer of the United States stationed in the nation under the jurisdiction of which the notarial act was performed, or a certificate by a foreign service or consular officer of that nation stationed in the United States, is prima facie evidence of the authenticity or validity of the notarial act set forth in the certificate.

(4) A stamp or seal of the person performing the notarial act is prima facie evidence that the signature is genuine and that the person holds that designated title.

(5) A stamp or seal of an officer listed in subsection (1) (a) or (b) of this section is prima facie evidence that a person with that title has authority to perform notarial acts.

(6) If the title of officer and indication of authority to perform notarial acts appears either in a digest of foreign law or in a list customarily used as a source for that information, the authority of an officer with that title to perform notarial acts is conclusively established. [1985 c 156 § 15.]

42.44.160 Official misconduct—Penalty. (1) A

notary public commits official misconduct when he or she signs a certificate evidencing a notarial act, knowing that the contents of the certificate are false.

(2) A notary public who commits an act of official misconduct shall be guilty of a gross misdemeanor.

(3) Any person not appointed as a notary public who acts as or otherwise impersonates a notary public shall be guilty of a gross misdemeanor. [1985 c 156 § 16.]

42.44.170 Revocation of appointment—Resignation.

(1) The director may revoke the appointment of any notary public for any reason for which appointment may be denied under RCW 42.44.030.

(2) The director shall revoke the appointment of a notary public upon a judicial finding of incompetency of the notary public. If a notary public is found to be incompetent, his or her guardian or conservator shall within thirty days of such finding mail or deliver to the director a letter of resignation on behalf of the notary public.

(3) A notary public may voluntarily resign by mailing or delivering to the director a letter of resignation. [1985 c 156 § 17.]

42.44.180 Evidence of authenticity of notarial seal and signature. (1) The authenticity of the notarial seal and official signature of a notary public of this state may be evidenced by:

(a) A certificate of authority from the director or the secretary of state; or

(b) An apostille in the form prescribed by the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents of October 5, 1961.

(2) An apostille as specified by the Hague Convention shall be attached to any document requiring authentication that is sent to a nation that has signed and ratified the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents. [1985 c 156 § 18.]

42.44.190 Rules. On or before January 1, 1986, the director shall adopt rules to carry out this chapter. Such rules shall include but shall not be limited to rules concerning applications for appointment, application and renewal fees, fees chargeable for notarial services, the replacement of lost or stolen seals or stamps, changes of names or addresses of notaries, resignations of notaries, appeals of denials and revocations of appointments, and issuance of evidences of authenticity of notarial seals and signatures. [1985 c 156 § 20.]

42.44.200 Transfer of records. Records relating to the appointment and commissioning of notaries public that are in the custody of county clerks of this state on *the effective date of this act shall be transferred to the director of licensing on or before December 31, 1985. Such records may be archived by the director. [1985 c 156 § 22.]

**Reviser's note:* As used in this section, the phrase "the effective date of this act," is ambiguous; see RCW 42.44.903.

42.44.900 Savings—1985 c 156. Nothing in *this act may be interpreted to revoke any notary public appointment or commission existing on January 1, 1986. *This act does not terminate, or in any way modify, any liability, civil or criminal, which exists on January 1, 1986. A notarial act performed before January 1, 1986, is not affected by *this act. [1985 c 156 § 21.]

***Reviser's note:** "This act" [1985 c 156] consisted of the enactment of RCW 42.44.010 through 42.44.200 and 42.44.900 through 42.44.903, the amendment of RCW 43.07.035, and the repeal of chapter 42.28 RCW and RCW 43.06.100, 43.131.299, and 43.131.300.

42.44.901 Construction. RCW 42.44.010, 42.44.080, 42.44.090, 42.44.100, 42.44.130, 42.44.140, and 42.44.150 shall be applied and construed to effectuate their general purpose to make the law uniform with respect to the subject of this chapter among states enacting such sections of this chapter. [1985 c 156 § 23.]

42.44.902 Severability—1985 c 156. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 156 § 24.]

42.44.903 Effective date—1985 c 156. Sections 1 through 19, 21, and 23 through 26 shall take effect on January 1, 1986. [1985 c 156 § 27.]

Reviser's note: For translation of above references see Codification Tables, Volume 0.

Chapter 42.48

RELEASE OF RECORDS FOR RESEARCH

Sections

42.48.010	Definitions.
42.48.020	Access to personal records.
42.48.030	Charge for costs of assistance.
42.48.040	Disclosure by research professional.
42.48.050	Unauthorized disclosure—Penalties.
42.48.060	Exclusions from chapter.
42.48.900	Severability—1985 c 334.

42.48.010 Definitions. For the purposes of this chapter, the following definitions apply:

(1) "Individually identifiable" means that a record contains information which reveals or can likely be associated with the identity of the person or persons to whom the record pertains.

(2) "Legally authorized representative" means a person legally authorized to give consent for the disclosure of personal records on behalf of a minor or a legally incompetent adult.

(3) "Personal record" means any information obtained or maintained by a state agency which refers to a person and which is declared exempt from public disclosure, confidential, or privileged under state or federal law.

(4) "Research" means a planned and systematic sociological, psychological, epidemiological, biomedical, or other scientific investigation carried out by a state agency, by a scientific research professional associated with a bona fide scientific research organization, or by a graduate student currently enrolled in an advanced academic degree curriculum, with an objective to contribute to scientific knowledge, the solution of social and health problems, or the evaluation of public benefit and service programs. This definition excludes methods of record analysis and data collection that are subjective, do not permit replication, and are not designed to yield reliable and valid results.

(5) "Research record" means an item or grouping of information obtained for the purpose of research from or about a person or extracted for the purpose of research from a personal record.

(6) "State agency" means: (a) The department of social and health services; (b) the department of corrections; (c) an institution of higher education as defined in RCW 28B.10.016; or (d) the department of health. [1989 1st ex.s. c 9 § 207; 1985 c 334 § 1.]

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

42.48.020 Access to personal records. (1) A state agency may authorize or provide access to or provide copies of an individually identifiable personal record for research purposes if informed written consent for the disclosure has been given to the appropriate department secretary, or the president of the institution, as applicable, or his or her designee, by the person to whom the record pertains or, in the case of minors and legally incompetent adults, the person's legally authorized representative.

(2) A state agency may authorize or provide access to or provide copies of an individually identifiable personal record for research purposes without the informed consent of the person to whom the record pertains or the person's legally authorized representative, only if:

(a) The state agency adopts research review and approval rules including, but not limited to, the requirement that the appropriate department secretary, or the president of the institution, as applicable, appoint a standing human research review board competent to review research proposals as to ethical and scientific soundness; and the review board determines that the disclosure request has scientific merit and is of importance in terms of the agency's program concerns, that the research purposes cannot be reasonably accomplished without disclosure of the information in individually identifiable form and without waiver of the informed consent of the person to whom the record pertains or the person's legally authorized representative, that disclosure risks have been minimized, and that remaining risks are outweighed by anticipated health, safety, or scientific benefits; and

(b) The disclosure does not violate federal law or regulations; and

(c) The state agency negotiates with the research professional receiving the records or record information a written and legally binding confidentiality agreement prior to disclosure. The agreement shall:

(i) Establish specific safeguards to assure the continued confidentiality and security of individually identifiable records or record information;

(ii) Ensure that the research professional will report or publish research findings and conclusions in a manner that does not permit identification of the person whose record was used for the research. Final research reports or publications shall not include photographs or other visual representations contained in personal records;

(iii) Establish that the research professional will destroy the individual identifiers associated with the records or record information as soon as the purposes of the research project have been accomplished and notify the agency to this effect in writing;

(iv) Prohibit any subsequent disclosure of the records or record information in individually identifiable form except as provided in RCW 42.48.040; and

(v) Provide for the signature of the research professional, of any of the research professional's team members who require access to the information in identified form, and of the agency official authorized to approve disclosure of identifiable records or record information for research purposes. [1985 c 334 § 2.]

42.48.030 Charge for costs of assistance. In addition to the copying charges provided in RCW 42.17.300, a state agency may impose a reasonable charge for costs incurred in providing assistance in the following research activities involving personal records:

(1) Manual or computer screening of personal records for scientific sampling purposes according to specifications provided by the research professional;

(2) Manual or computer extraction of information from a universe or sample of personal records according to specifications provided by the research professional;

(3) Statistical manipulation or analysis of personal record information, whether manually or by computer, according to specifications provided by the research professional.

The charges imposed by the agency may not exceed the amount necessary to reimburse the agency for its actual costs in providing requested research assistance. [1985 c 334 § 3.]

42.48.040 Disclosure by research professional. No research professional who has established an individually identifiable research record from personal record information pursuant to RCW 42.48.020(2), or who has established a research record from data or information voluntarily provided by an agency client or employee under a written confidentiality assurance for the explicit purpose of research, may disclose such a record in individually identifiable form unless:

(1) The person to whom the research record pertains or the person's legally authorized representative has given prior informed written consent for the disclosure; or

(2) The research professional reasonably believes that disclosure will prevent or minimize injury to a person and the disclosure is limited to information necessary to protect the person who has been or may be injured, and the research professional reports the disclosure only to the person involved or the person's guardian, the person's physician, and the agency; or

(3)(a) The research record is disclosed in individually identifiable form for the purposes of auditing or evaluating a research program; and

(b) The audit or evaluation is authorized or required by federal or state law or regulation or is based upon an explicit provision in a research contract, grant, or other written research agreement; and

(c) No subsequent disclosure of the research record in individually identifiable form will be made by the auditor or evaluator except as provided in this section; or

(4) The research record is furnished in compliance with a search warrant or court order: PROVIDED, That:

(a) The court issues the search warrant or judicial subpoena concerning the research record solely for the purpose of facilitating inquiry into an alleged violation of law by the research professional using the record for a research purpose or by the agency; and

(b) Any research record obtained pursuant to (a) of this subsection and any information directly or indirectly derived from the research record shall remain confidential to the extent possible and shall not be used as evidence in an administrative, judicial, or legislative proceeding except against the research professional using the record for a research purpose or against the state agency. [1985 c 334 § 4.]

42.48.050 Unauthorized disclosure—Penalties. Unauthorized disclosure, whether wilful or negligent, by a research professional who has obtained an individually identifiable personal record or record information from a state agency pursuant to RCW 42.48.020(2) is a gross misdemeanor. In addition, violation of any provision of this chapter by the research professional or the state agency may subject the research professional or the agency to a civil penalty of not more than ten thousand dollars for each such violation. [1985 c 334 § 5.]

42.48.060 Exclusions from chapter. Nothing in this chapter is applicable to, or in any way affects, the powers and duties of the state auditor or the joint legislative audit and review committee. [1996 c 288 § 34; 1985 c 334 § 6.]

42.48.900 Severability—1985 c 334. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 334 § 8.]

Chapter 42.52

ETHICS IN PUBLIC SERVICE

Sections

42.52.010	Definitions.
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42.52.030	Financial interests in transactions.
42.52.040	Assisting in transactions.
42.52.050	Confidential information—Improperly concealed records.
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42.52.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Agency" means any state board, commission, bureau, committee, department, institution, division, or tribunal in the legislative, executive, or judicial branch of state government. "Agency" includes all elective offices, the state legislature, those institutions of higher education created and supported by the state government, and those courts that are parts of state government.

(2) "Head of agency" means the chief executive officer of an agency. In the case of an agency headed by a commission, board, committee, or other body consisting of more than one natural person, agency head means the person or board authorized to appoint agency employees and regulate their conduct.

(3) "Assist" means to act, or offer or agree to act, in such a way as to help, aid, advise, furnish information to, or otherwise provide assistance to another person, believing that the action is of help, aid, advice, or assistance to the person and with intent so to assist such person.

(4) "Beneficial interest" has the meaning ascribed to it under the Washington case law. However, an ownership interest in a mutual fund or similar investment pooling fund in which the owner has no management powers does not constitute a beneficial interest in the entities in which the fund or pool invests.

(5) "Compensation" means anything of economic value, however designated, that is paid, loaned, granted, or transferred, or to be paid, loaned, granted, or transferred for, or in consideration of, personal services to any person.

(6) "Confidential information" means (a) specific information, rather than generalized knowledge, that is not available to the general public on request or (b) information made confidential by law.

(7) "Contract" or "grant" means an agreement between two or more persons that creates an obligation to do or not

to do a particular thing. "Contract" or "grant" includes, but is not limited to, an employment contract, a lease, a license, a purchase agreement, or a sales agreement.

(8) "Ethics boards" means the commission on judicial conduct, the legislative ethics board, and the executive ethics board.

(9) "Family" has the same meaning as "immediate family" in RCW 42.17.020.

(10) "Gift" means anything of economic value for which no consideration is given. "Gift" does not include:

(a) Items from family members or friends where it is clear beyond a reasonable doubt that the gift was not made as part of any design to gain or maintain influence in the agency of which the recipient is an officer or employee;

(b) Items related to the outside business of the recipient that are customary and not related to the recipient's performance of official duties;

(c) Items exchanged among officials and employees or a social event hosted or sponsored by a state officer or state employee for coworkers;

(d) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(e) Items a state officer or state employee is authorized by law to accept;

(f) Payment of enrollment and course fees and reasonable travel expenses attributable to attending seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution. As used in this subsection, "reasonable expenses" are limited to travel, lodging, and subsistence expenses incurred the day before through the day after the event;

(g) Items returned by the recipient to the donor within thirty days of receipt or donated to a charitable organization within thirty days of receipt;

(h) Campaign contributions reported under chapter 42.17 RCW;

(i) Discounts available to an individual as a member of an employee group, occupation, or similar broad-based group; and

(j) Awards, prizes, scholarships, or other items provided in recognition of academic or scientific achievement.

(11) "Honorarium" means money or thing of value offered to a state officer or state employee for a speech, appearance, article, or similar item or activity in connection with the state officer's or state employee's official role.

(12) "Official duty" means those duties within the specific scope of employment of the state officer or state employee as defined by the officer's or employee's agency or by statute or the state Constitution.

(13) "Participate" means to participate in state action or a proceeding personally and substantially as a state officer or state employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation, or otherwise but does not include preparation, consideration, or enactment of legislation or the performance of legislative duties.

(14) "Person" means any individual, partnership, association, corporation, firm, institution, or other entity, whether or not operated for profit.

(15) "Regulatory agency" means any state board, commission, department, or officer, except those in the legislative or judicial branches, authorized by law to conduct adjudicative proceedings, issue permits or licenses, or to control or affect interests of identified persons.

(16) "Responsibility" in connection with a transaction involving the state, means the direct administrative or operating authority, whether intermediate or final, and either exercisable alone or through subordinates, effectively to approve, disapprove, or otherwise direct state action in respect of such transaction.

(17) "State action" means any action on the part of an agency, including, but not limited to:

(a) A decision, determination, finding, ruling, or order; and

(b) A grant, payment, award, license, contract, transaction, sanction, or approval, or the denial thereof, or failure to act with respect to a decision, determination, finding, ruling, or order.

(18) "State officer" means every person holding a position of public trust in or under an executive, legislative, or judicial office of the state. "State officer" includes judges of the superior court, judges of the court of appeals, justices of the supreme court, members of the legislature together with the secretary of the senate and the chief clerk of the house of representatives, holders of elective offices in the executive branch of state government, chief executive officers of state agencies, members of boards, commissions, or committees with authority over one or more state agencies or institutions, and employees of the state who are engaged in supervisory, policy-making, or policy-enforcing work. For the purposes of this chapter, "state officer" also includes any person exercising or undertaking to exercise the powers or functions of a state officer.

(19) "State employee" means an individual who is employed by an agency in any branch of state government. For purposes of this chapter, employees of the superior courts are not state officers or state employees.

(20) "Thing of economic value," in addition to its ordinary meaning, includes:

(a) A loan, property interest, interest in a contract or other chose in action, and employment or another arrangement involving a right to compensation;

(b) An option, irrespective of the conditions to the exercise of the option; and

(c) A promise or undertaking for the present or future delivery or procurement.

(21)(a) "Transaction involving the state" means a proceeding, application, submission, request for a ruling or other determination, contract, claim, case, or other similar matter that the state officer, state employee, or former state officer or state employee in question believes, or has reason to believe:

(i) Is, or will be, the subject of state action; or

(ii) Is one to which the state is or will be a party; or

(iii) Is one in which the state has a direct and substantial proprietary interest.

(b) "Transaction involving the state" does not include the following: Preparation, consideration, or enactment of

legislation, including appropriation of moneys in a budget, or the performance of legislative duties by an officer or employee; or a claim, case, lawsuit, or similar matter if the officer or employee did not participate in the underlying transaction involving the state that is the basis for the claim, case, or lawsuit. [1998 c 7 § 1; 1996 c 213 § 1; 1994 c 154 § 101.]

42.52.020 Activities incompatible with public duties.

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties. [1996 c 213 § 2; 1994 c 154 § 102.]

42.52.030 Financial interests in transactions.

(1) No state officer or state employee, except as provided in subsections (2) and (3) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

(2) No officer or employee of an institution of higher education or of the Spokane intercollegiate research and technology institute, except as provided in subsection (3) of this section, may be beneficially interested, directly or indirectly, in a contract or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract or grant, unless the institution of higher education or the Spokane intercollegiate research and technology institute has in effect a written administrative process to identify and manage, reduce, or eliminate conflicting interests with respect to such transactions as adopted pursuant to the national science investigator financial disclosure (GPM 510) 1995 and the public health service regulations, 42 C.F.R. Part 50 and 45 C.F.R. Subtitle A as each of those regulations existed on June 6, 1996, and the state employee or state officer has complied with such policy.

(3) No state officer or state employee may participate in a transaction involving the state in his or her official capacity with a person of which the officer or employee is an officer, agent, employee, or member, or in which the officer or employee owns a beneficial interest, except that an officer or employee of an institution of higher education or the Spokane intercollegiate research and technology institute may serve as an officer, agent, employee, or member, or on the board of directors, board of trustees, advisory board, or committee or review panel for any nonprofit institute, foundation, or fundraising entity; and may serve as a member of an advisory board, committee, or review panel for a governmental or other nonprofit entity. [1996 c 213 § 3; 1994 c 154 § 103.]

42.52.040 Assisting in transactions. (1) Except in the course of official duties or incident to official duties, no

state officer or state employee may assist another person, directly or indirectly, whether or not for compensation, in a transaction involving the state:

(a) In which the state officer or state employee has at any time participated; or

(b) If the transaction involving the state is or has been under the official responsibility of the state officer or state employee within a period of two years preceding such assistance.

(2) No state officer or state employee may share in compensation received by another for assistance that the officer or employee is prohibited from providing under subsection (1) or (3) of this section.

(3) A business entity of which a state officer or state employee is a partner, managing officer, or employee shall not assist another person in a transaction involving the state if the state officer or state employee is prohibited from doing so by subsection (1) of this section.

(4) This chapter does not prevent a state officer or state employee from assisting, in a transaction involving the state:

(a) The state officer's or state employee's parent, spouse, or child, or a child thereof for whom the officer or employee is serving as guardian, executor, administrator, trustee, or other personal fiduciary, if the state officer or state employee did not participate in the transaction; or

(b) Another state employee involved in disciplinary or other personnel administration proceedings. [1994 c 154 § 104.]

42.52.050 Confidential information—Improperly concealed records. (1) No state officer or state employee may accept employment or engage in any business or professional activity that the officer or employee might reasonably expect would require or induce him or her to make an unauthorized disclosure of confidential information acquired by the official or employee by reason of the official's or employee's official position.

(2) No state officer or state employee may make a disclosure of confidential information gained by reason of the officer's or employee's official position or otherwise use the information for his or her personal gain or benefit or the gain or benefit of another, unless the disclosure has been authorized by statute or by the terms of a contract involving (a) the state officer's or state employee's agency and (b) the person or persons who have authority to waive the confidentiality of the information.

(3) No state officer or state employee may disclose confidential information to any person not entitled or authorized to receive the information.

(4) No state officer or state employee may intentionally conceal a record if the officer or employee knew the record was required to be released under chapter 42.17 RCW, was under a personal obligation to release the record, and failed to do so. This subsection does not apply where the decision to withhold the record was made in good faith. [1996 c 213 § 4; 1994 c 154 § 105.]

42.52.060 Testimony of state officers and state employees. This chapter does not prevent a state officer or state employee from giving testimony under oath or from

making statements required to be made under penalty of perjury or contempt. [1994 c 154 § 106.]

42.52.070 Special privileges. Except as required to perform duties within the scope of employment, no state officer or state employee may use his or her position to secure special privileges or exemptions for himself or herself, or his or her spouse, child, parents, or other persons. [1994 c 154 § 107.]

42.52.080 Employment after public service. (1) No former state officer or state employee may, within a period of one year from the date of termination of state employment, accept employment or receive compensation from an employer if:

(a) The officer or employee, during the two years immediately preceding termination of state employment, was engaged in the negotiation or administration on behalf of the state or agency of one or more contracts with that employer and was in a position to make discretionary decisions affecting the outcome of such negotiation or the nature of such administration;

(b) Such a contract or contracts have a total value of more than ten thousand dollars; and

(c) The duties of the employment with the employer or the activities for which the compensation would be received include fulfilling or implementing, in whole or in part, the provisions of such a contract or contracts or include the supervision or control of actions taken to fulfill or implement, in whole or in part, the provisions of such a contract or contracts. This subsection shall not be construed to prohibit a state officer or state employee from accepting employment with a state employee organization.

(2) No person who has served as a state officer or state employee may, within a period of two years following the termination of state employment, have a direct or indirect beneficial interest in a contract or grant that was expressly authorized or funded by specific legislative or executive action in which the former state officer or state employee participated.

(3) No former state officer or state employee may accept an offer of employment or receive compensation from an employer if the officer or employee knows or has reason to believe that the offer of employment or compensation was intended, in whole or in part, directly or indirectly, to influence the officer or employee or as compensation or reward for the performance or nonperformance of a duty by the officer or employee during the course of state employment.

(4) No former state officer or state employee may accept an offer of employment or receive compensation from an employer if the circumstances would lead a reasonable person to believe the offer has been made, or compensation given, for the purpose of influencing the performance or nonperformance of duties by the officer or employee during the course of state employment.

(5) No former state officer or state employee may at any time subsequent to his or her state employment assist another person, whether or not for compensation, in any transaction involving the state in which the former state officer or state employee at any time participated during state employment.

This subsection shall not be construed to prohibit any employee or officer of a state employee organization from rendering assistance to state officers or state employees in the course of employee organization business.

(6) As used in this section, "employer" means a person as defined in RCW 42.52.010 or any other entity or business that the person owns or in which the person has a controlling interest. [1994 c 154 § 108.]

42.52.090 Limited assistance by former state officers and employees. This chapter shall not be construed to prevent a former state officer or state employee from rendering assistance to others if the assistance is provided without compensation in any form and is limited to one or more of the following:

- (1) Providing the names, addresses, and telephone numbers of state agencies or state employees;
- (2) Providing free transportation to another for the purpose of conducting business with a state agency;
- (3) Assisting a natural person or nonprofit corporation in obtaining or completing application forms or other forms required by a state agency for the conduct of a state business; or
- (4) Providing assistance to the poor and infirm. [1994 c 154 § 109.]

42.52.100 Conditions on appearance before state agencies or doing business with the state—Hearing—Judicial review. (1) The head of an agency, upon finding that any former state officer or state employee of such agency or any other person has violated any provision of this chapter or rules adopted under it, may, in addition to any other powers the head of such agency may have, bar or impose reasonable conditions upon:

- (a) The appearance before such agency of such former state officer or state employee or other person; and
 - (b) The conduct of, or negotiation or competition for, business with such agency by such former state officer or state employee or other person, such period of time as may reasonably be necessary or appropriate to effectuate the purposes of this chapter.
- (2) Findings of violations referred to in subsection (1)(b) of this section shall be made on record after notice and hearing, conducted in accordance with the Washington Administrative Procedure Act, chapter 34.05 RCW. Such findings and orders are subject to judicial review.
- (3) This section does not apply to the legislative or judicial branches of government. [1994 c 154 § 110; 1969 ex.s. c 234 § 27. Formerly RCW 42.18.270.]

42.52.110 Compensation for official duties or nonperformance. No state officer or state employee may, directly or indirectly, ask for or give or receive or agree to receive any compensation, gift, reward, or gratuity from a source for performing or omitting or deferring the performance of any official duty, unless otherwise authorized by law except: (1) The state of Washington; or (2) in the case of officers or employees of institutions of higher education or of the Spokane intercollegiate research and technology institute, a governmental entity, an agency or instrumentality of a governmental entity, or a nonprofit corporation orga-

nized for the benefit and support of the state employee's agency or other state agencies pursuant to an agreement with the state employee's agency. [1996 c 213 § 5; 1994 c 154 § 111.]

42.52.120 Compensation for outside activities. (1) No state officer or state employee may receive any thing of economic value under any contract or grant outside of his or her official duties. The prohibition in this subsection does not apply where the state officer or state employee has complied with RCW 42.52.030(2) or each of the following conditions are met:

- (a) The contract or grant is bona fide and actually performed;
- (b) The performance or administration of the contract or grant is not within the course of the officer's or employee's official duties, or is not under the officer's or employee's official supervision;
- (c) The performance of the contract or grant is not prohibited by RCW 42.52.040 or by applicable laws or rules governing outside employment for the officer or employee;
- (d) The contract or grant is neither performed for nor compensated by any person from whom such officer or employee would be prohibited by RCW 42.52.150(4) from receiving a gift;

(e) The contract or grant is not one expressly created or authorized by the officer or employee in his or her official capacity;

(f) The contract or grant would not require unauthorized disclosure of confidential information.

(2) In addition to satisfying the requirements of subsection (1) of this section, a state officer or state employee may have a beneficial interest in a grant or contract or a series of substantially identical contracts or grants with a state agency only if:

- (a) The contract or grant is awarded or issued as a result of an open and competitive bidding process in which more than one bid or grant application was received; or
- (b) The contract or grant is awarded or issued as a result of an open and competitive bidding or selection process in which the officer's or employee's bid or proposal was the only bid or proposal received and the officer or employee has been advised by the appropriate ethics board, before execution of the contract or grant, that the contract or grant would not be in conflict with the proper discharge of the officer's or employee's official duties; or
- (c) The process for awarding the contract or issuing the grant is not open and competitive, but the officer or employee has been advised by the appropriate ethics board that the contract or grant would not be in conflict with the proper discharge of the officer's or employee's official duties.

(3) A state officer or state employee awarded a contract or issued a grant in compliance with subsection (2) of this section shall file the contract or grant with the appropriate ethics board within thirty days after the date of execution; however, if proprietary formulae, designs, drawings, or research are included in the contract or grant, the proprietary formulae, designs, drawings, or research may be deleted from the contract or grant filed with the appropriate ethics board.

(4) This section does not prevent a state officer or state employee from receiving compensation contributed from the treasury of the United States, another state, county, or municipality if the compensation is received pursuant to arrangements entered into between such state, county, municipality, or the United States and the officer's or employee's agency. This section does not prohibit a state officer or state employee from serving or performing any duties under an employment contract with a governmental entity.

(5) As used in this section, "officer" and "employee" do not include officers and employees who, in accordance with the terms of their employment or appointment, are serving without compensation from the state of Washington or are receiving from the state only reimbursement of expenses incurred or a predetermined allowance for such expenses. [1997 c 318 § 1; 1996 c 213 § 6; 1994 c 154 § 112.]

42.52.130 Honoraria. (1) No state officer or state employee may receive honoraria unless specifically authorized by the agency where they serve as state officer or state employee.

(2) An agency may not permit honoraria under the following circumstances:

(a) The person offering the honorarium is seeking or is reasonably expected to seek contractual relations with or a grant from the employer of the state officer or state employee, and the officer or employee is in a position to participate in the terms or the award of the contract or grant;

(b) The person offering the honorarium is regulated by the employer of the state officer or state employee and the officer or employee is in a position to participate in the regulation; or

(c) The person offering the honorarium (i) is seeking or opposing or is reasonably likely to seek or oppose enactment of legislation or adoption of administrative rules or actions, or policy changes by the state officer's or state employee's agency; and (ii) the officer or employee may participate in the enactment or adoption. [1994 c 154 § 113.]

42.52.140 Gifts. No state officer or state employee may receive, accept, take, seek, or solicit, directly or indirectly, any thing of economic value as a gift, gratuity, or favor from a person if it could be reasonably expected that the gift, gratuity, or favor would influence the vote, action, or judgment of the officer or employee, or be considered as part of a reward for action or inaction. [1994 c 154 § 114.]

42.52.150 Limitations on gifts. (1) No state officer or state employee may accept gifts, other than those specified in subsections (2) and (5) of this section, with an aggregate value in excess of fifty dollars from a single source in a calendar year or a single gift from multiple sources with a value in excess of fifty dollars. For purposes of this section, "single source" means any person, as defined in RCW 42.52.010, whether acting directly or through any agent or other intermediary, and "single gift" includes any event, item, or group of items used in conjunction with each other or any trip including transportation, lodging, and attendant costs, not excluded from the definition of gift under RCW 42.52.010. The value of gifts given to an

officer's or employee's family member or guest shall be attributed to the official or employee for the purpose of determining whether the limit has been exceeded, unless an independent business, family, or social relationship exists between the donor and the family member or guest.

(2) Except as provided in subsection (4) of this section, the following items are presumed not to influence under RCW 42.52.140, and may be accepted without regard to the limit established by subsection (1) of this section:

(a) Unsolicited flowers, plants, and floral arrangements;

(b) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(c) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(d) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(e) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(f) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(g) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(h) Unsolicited gifts from dignitaries from another state or a foreign country that are intended to be personal in nature.

(3) The presumption in subsection (2) of this section is rebuttable and may be overcome based on the circumstances surrounding the giving and acceptance of the item.

(4) Notwithstanding subsections (2) and (5) of this section, a state officer or state employee of a regulatory agency or of an agency that seeks to acquire goods or services who participates in those regulatory or contractual matters may receive, accept, take, or seek, directly or indirectly, only the following items from a person regulated by the agency or from a person who seeks to provide goods or services to the agency:

(a) Unsolicited advertising or promotional items of nominal value, such as pens and note pads;

(b) Unsolicited tokens or awards of appreciation in the form of a plaque, trophy, desk item, wall memento, or similar item;

(c) Unsolicited items received by a state officer or state employee for the purpose of evaluation or review, if the officer or employee has no personal beneficial interest in the eventual use or acquisition of the item by the officer's or employee's agency;

(d) Informational material, publications, or subscriptions related to the recipient's performance of official duties;

(e) Food and beverages consumed at hosted receptions where attendance is related to the state officer's or state employee's official duties;

(f) Admission to, and the cost of food and beverages consumed at, events sponsored by or in conjunction with a civic, charitable, governmental, or community organization; and

(g) Those items excluded from the definition of gift in RCW 42.52.010 except:

(i) Payments by a governmental or nongovernmental entity of reasonable expenses incurred in connection with a speech, presentation, appearance, or trade mission made in an official capacity;

(ii) Payments for seminars and educational programs sponsored by a bona fide governmental or nonprofit professional, educational, trade, or charitable association or institution; and

(iii) Flowers, plants, and floral arrangements.

(5) A state officer or state employee may accept gifts in the form of food and beverage on infrequent occasions in the ordinary course of meals where attendance by the officer or employee is related to the performance of official duties. Gifts in the form of food and beverage that exceed fifty dollars on a single occasion shall be reported as provided in chapter 42.17 RCW. [1998 c 7 § 2; 1994 c 154 § 115.]

42.52.160 Use of persons, money, or property for private gain. (1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

(2) This section does not prohibit the use of public resources to benefit others as part of a state officer's or state employee's official duties.

(3) The appropriate ethics boards may adopt rules providing exceptions to this section for occasional use of the state officer or state employee, of de minimis cost and value, if the activity does not result in interference with the proper performance of public duties. [1996 c 213 § 7; 1994 c 154 § 116; 1987 c 426 § 3. Formerly RCW 42.18.217.]

42.52.170 Giving, paying, loaning, etc., any thing of economic value to state employee. No person shall give, pay, loan, transfer, or deliver, directly or indirectly, to any other person any thing of economic value believing or having reason to believe that there exist circumstances making the receipt thereof a violation of RCW 42.52.040, 42.52.110, 42.52.120, 42.52.140, or 42.52.150. [1994 c 154 § 117; 1987 c 426 § 5; 1969 ex.s. c 234 § 23. Formerly RCW 42.18.230.]

42.52.180 Use of public resources for political campaigns. (1) No state officer or state employee may use or authorize the use of facilities of an agency, directly or indirectly, for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Knowing acquiescence by a person with authority to direct, control, or influence the actions of the state officer or state employee using public resources in violation of this section constitutes a violation of this section. Facilities of an agency include, but are not limited to, use of stationery, postage, machines, and equipment, use of state employees of the agency during working hours, vehicles, office space, publications of the agency, and clientele lists of persons served by the agency.

(2) This section shall not apply to the following activities:

(a) Action taken at an open public meeting by members of an elected legislative body to express a collective decision, or to actually vote upon a motion, proposal, resolution, order, or ordinance, or to support or oppose a ballot proposition as long as (i) required notice of the meeting includes the title and number of the ballot proposition, and (ii) members of the legislative body or members of the public are afforded an approximately equal opportunity for the expression of an opposing view;

(b) A statement by an elected official in support of or in opposition to any ballot proposition at an open press conference or in response to a specific inquiry. For the purposes of this subsection, it is not a violation of this section for an elected official to respond to an inquiry regarding a ballot proposition, to make incidental remarks concerning a ballot proposition in an official communication, or otherwise comment on a ballot proposition without an actual, measurable expenditure of public funds. The ethics boards shall adopt by rule a definition of measurable expenditure;

(c) Activities that are part of the normal and regular conduct of the office or agency; and

(d) De minimis use of public facilities by state-wide elected officials and legislators incidental to the preparation or delivery of permissible communications, including written and verbal communications initiated by them of their views on ballot propositions that foreseeably may affect a matter that falls within their constitutional or statutory responsibilities.

(3) As to state officers and employees, this section operates to the exclusion of RCW 42.17.130. [1995 c 397 § 30; 1994 c 154 § 118.]

Effective date—Captions—Severability—1995 c 397: See RCW 42.17.960 through 42.17.962.

42.52.185 Restrictions on mailings by legislators. (1) During the twelve-month period beginning on December 1st of the year before a general election for a state legislator's election to office and continuing through November 30th immediately after the general election, the legislator may not mail, either by regular mail or electronic mail, to a constituent at public expense a letter, newsletter, brochure, or other piece of literature, except as follows:

(a) The legislator may mail two mailings of newsletters to constituents. All newsletters within each mailing of newsletters must be identical as to their content but not as to the constituent name or address. One such mailing may be mailed no later than thirty days after the start of a regular legislative session, except that a legislator appointed during a regular legislative session to fill a vacant seat may have up to thirty days from the date of appointment to send out the first mailing. The other mailing may be mailed no later than sixty days after the end of a regular legislative session.

(b) The legislator may mail an individual letter to (i) an individual constituent who has contacted the legislator regarding the subject matter of the letter during the legislator's current term of office; (ii) an individual constituent who holds a governmental office with jurisdiction over the subject matter of the letter; or (iii) an individual constituent who has received an award or honor of extraordinary distinction of a type that is sufficiently infrequent to be noteworthy to a reasonable person, including, but not limited

to: (A) An international or national award such as the Nobel prize or the Pulitzer prize; (B) a state award such as Washington scholar; (C) an Eagle Scout award; and (D) a Medal of Honor.

(2) For purposes of subsection (1) of this section, "legislator" means a legislator who is a "candidate," as defined by RCW 42.17.020, for any public office.

(3) A violation of this section constitutes use of the facilities of a public office for the purpose of assisting a campaign under RCW 42.52.180.

(4) The house of representatives and senate shall specifically limit expenditures per member for the total cost of mailings. Those costs include, but are not limited to, production costs, printing costs, and postage costs. The limits imposed under this subsection apply only to the total expenditures on mailings per member and not to any categorical cost within the total.

(5) For purposes of this section, persons residing outside the legislative district represented by the legislator are not considered to be constituents, but students, military personnel, or others temporarily employed outside of the district who normally reside in the district are considered to be constituents. [1997 c 320 § 1; 1995 c 397 § 5; 1993 c 2 § 25 (Initiative Measure No. 134, approved November 3, 1992). Formerly RCW 42.17.132.]

42.52.190 Investments. (1) Except for permissible investments as defined in this section, no state officer or state employee of any agency responsible for the investment of funds, who acts in a decision-making, advisory, or policy-influencing capacity with respect to investments, may have a direct or indirect interest in any property, security, equity, or debt instrument of a person, without prior written approval of the agency.

(2) Agencies responsible for the investment of funds shall adopt policies governing approval of investments and establishing criteria to be considered in the approval process. Criteria shall include the relationship between the proposed investment and investments held or under consideration by the state, the size and timing of the proposed investment, access by the state officer or state employee to nonpublic information relative to the proposed investment, and the availability of the investment in the public market. Agencies responsible for the investment of funds also shall adopt policies consistent with this chapter governing use by their officers and employees of financial information acquired by virtue of their state positions. A violation of such policies adopted to implement this subsection shall constitute a violation of this chapter.

(3) As used in this section, "permissible investments" means any mutual fund, deposit account, certificate of deposit, or money market fund maintained with a bank, broker, or other financial institution, a security publicly traded in an organized market if the interest in the security at acquisition is ten thousand dollars or less, or an interest in real estate, except if the real estate interest is in or with a party in whom the agency holds an investment. [1994 c 154 § 119.]

42.52.200 Agency rules. (1) Each agency may adopt rules consistent with law, for use within the agency to protect against violations of this chapter.

(2) Each agency proposing to adopt rules under this section shall forward the rules to the appropriate ethics board before they may take effect. The board may submit comments to the agency regarding the proposed rules. [1994 c 154 § 120.]

42.52.310 Legislative ethics board. (1) The legislative ethics board is created, composed of nine members, selected as follows:

(a) Two senators, one from each of the two largest caucuses, appointed by the president of the senate;

(b) Two members of the house of representatives, one from each of the two largest caucuses, appointed by the speaker of the house of representatives;

(c) Five citizen members:

(i) One citizen member chosen by the governor from a list of three individuals submitted by each of the four legislative caucuses; and

(ii) One citizen member selected by three of the four other citizen members of the legislative ethics board.

(2) Except for initial members and members completing partial terms, nonlegislative members shall serve a single five-year term.

(3) No more than three of the public members may be identified with the same political party.

(4) Terms of initial nonlegislative board members shall be staggered as follows: One member shall be appointed to a one-year term; one member shall be appointed to a two-year term; one member shall be appointed to a three-year term; one member shall be appointed to a four-year term; and one member shall be appointed for a five-year term.

(5) A vacancy on the board shall be filled in the same manner as the original appointment.

(6) Legislative members shall serve two-year terms, from January 31st of an odd-numbered year until January 31st of the next odd-numbered year.

(7) Each member shall serve for the term of his or her appointment and until his or her successor is appointed.

(8) The citizen members shall annually select a chair from among themselves. [1994 c 154 § 201.]

42.52.320 Authority of legislative ethics board. (1) The legislative ethics board shall enforce this chapter and rules adopted under it with respect to members and employees of the legislature.

(2) The legislative ethics board shall:

(a) Develop educational materials and training with regard to legislative ethics for legislators and legislative employees;

(b) Issue advisory opinions;

(c) Adopt rules or policies governing the conduct of business by the board, and adopt rules defining working hours for purposes of RCW 42.52.180 and where otherwise authorized under chapter 154, Laws of 1994;

(d) Investigate, hear, and determine complaints by any person or on its own motion;

(e) Impose sanctions including reprimands and monetary penalties;

(f) Recommend suspension or removal to the appropriate legislative entity, or recommend prosecution to the appropriate authority; and

(g) Establish criteria regarding the levels of civil penalties appropriate for different types of violations of this chapter and rules adopted under it.

(3) The board may:

(a) Issue subpoenas for the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under examination by the board or involved in any hearing;

(b) Administer oaths and affirmations;

(c) Examine witnesses; and

(d) Receive evidence.

(4) Subject to RCW 42.52.540, the board has jurisdiction over any alleged violation that occurred before January 1, 1995, and that was within the jurisdiction of any of the boards established under *chapter 44.60 RCW. The board's jurisdiction with respect to any such alleged violation shall be based on the statutes and rules in effect at [the] time of the violation. [1994 c 154 § 202.]

*Reviser's note: Chapter 44.60 RCW was repealed by 1994 c 154 § 304, effective January 1, 1995.

42.52.330 Interpretation. By constitutional design, the legislature consists of citizen-legislators who bring to bear on the legislative process their individual experience and expertise. The provisions of this chapter shall be interpreted in light of this constitutional principle. [1994 c 154 § 203.]

42.52.340 Transfer of jurisdiction. On January 1, 1995, any complaints or other matters under investigation or consideration by the boards of legislative ethics in the house of representatives and the senate operating pursuant to *chapter 44.60 RCW shall be transferred to the legislative ethics board created by RCW 42.52.310. All files, including but not limited to minutes of meetings, investigative files, records of proceedings, exhibits, and expense records, shall be transferred to the legislative ethics board created in RCW 42.52.310 pursuant to their direction and the legislative ethics board created in RCW 42.52.310 shall assume full jurisdiction over all pending complaints, investigations, and proceedings. [1994 c 154 § 204.]

*Reviser's note: Chapter 44.60 RCW was repealed by 1994 c 154 § 304, effective January 1, 1995.

42.52.350 Executive ethics board. (1) The executive ethics board is created, composed of five members, appointed by the governor as follows:

(a) One member shall be a classified service employee as defined in chapter 41.06 RCW;

(b) One member shall be a state officer or state employee in an exempt position;

(c) One member shall be a citizen selected from a list of three names submitted by the attorney general;

(d) One member shall be a citizen selected from a list of three names submitted by the state auditor; and

(e) One member shall be a citizen selected at large by the governor.

(2) Except for initial members and members completing partial terms, members shall serve a single five-year term.

(3) No more than three members may be identified with the same political party.

(4) Terms of initial board members shall be staggered as follows: One member shall be appointed to a one-year term; one member shall be appointed to a two-year term; one member shall be appointed to a three-year term; one member shall be appointed to a four-year term; and one member shall be appointed to a five-year term.

(5) A vacancy on the board shall be filled in the same manner as the original appointment.

(6) Each member shall serve for the term of his or her appointment and until his or her successor is appointed.

(7) The members shall annually select a chair from among themselves.

(8) Staff shall be provided by the office of the attorney general. [1994 c 154 § 205.]

42.52.360 Authority of executive ethics board. (1) The executive ethics board shall enforce this chapter and rules adopted under it with respect to state-wide elected officers and all other officers and employees in the executive branch, boards and commissions, and institutions of higher education.

(2) The executive ethics board shall:

(a) Develop educational materials and training;

(b) Adopt rules and policies governing the conduct of business by the board, and adopt rules defining working hours for purposes of RCW 42.52.180 and where otherwise authorized under chapter 154, Laws of 1994;

(c) Issue advisory opinions;

(d) Investigate, hear, and determine complaints by any person or on its own motion;

(e) Impose sanctions including reprimands and monetary penalties;

(f) Recommend to the appropriate authorities suspension, removal from position, prosecution, or other appropriate remedy; and

(g) Establish criteria regarding the levels of civil penalties appropriate for violations of this chapter and rules adopted under it.

(3) The board may:

(a) Issue subpoenas for the attendance and testimony of witnesses and the production of documentary evidence relating to any matter under examination by the board or involved in any hearing;

(b) Administer oaths and affirmations;

(c) Examine witnesses; and

(d) Receive evidence.

(4) The executive ethics board may review and approve agency policies as provided for in this chapter.

(5) This section does not apply to state officers and state employees of the judicial branch. [1994 c 154 § 206.]

42.52.370 Authority of commission on judicial conduct. The commission on judicial conduct shall enforce this chapter and rules adopted under it with respect to state officers and employees of the judicial branch and may do so according to procedures prescribed in Article IV, section 31 of the state Constitution. In addition to the sanctions

authorized in Article IV, section 31 of the state Constitution, the commission may impose sanctions authorized by this chapter. [1994 c 154 § 207.]

42.52.380 Political activities of board members. (1) No member of the executive ethics board may (a) hold or campaign for partisan elective office other than the position of precinct committeeperson, or any full-time nonpartisan office; (b) be an officer of any political party or political committee as defined in chapter 42.17 RCW other than the position of precinct committeeperson; (c) permit his or her name to be used, or make contributions, in support of or in opposition to any state candidate or state ballot measure; or (d) lobby or control, direct, or assist a lobbyist except that such member may appear before any committee of the legislature on matters pertaining to this chapter.

(2) No citizen member of the legislative ethics board may (a) hold or campaign for partisan elective office other than the position of precinct committeeperson, or any full-time nonpartisan office; (b) be an officer of any political party or political committee as defined in chapter 42.17 RCW, other than the position of precinct committeeperson; (c) permit his or her name to be used, or make contributions, in support of or in opposition to any legislative candidate, any legislative caucus campaign committee that supports or opposes legislative candidates, or any political action committee that supports or opposes legislative candidates; or (d) engage in lobbying in the legislative branch under circumstances not exempt, under RCW 42.17.160, from lobbyist registration and reporting.

(3) No citizen member of the legislative ethics board may hold or campaign for a seat in the state house of representatives or the state senate within two years of serving on the board if the citizen member opposes an incumbent who has been the respondent in a complaint before the board. [1997 c 11 § 1; 1994 c 154 § 208.]

42.52.390 Hearing and subpoena authority. Except as otherwise provided by law, the ethics boards may hold hearings, subpoena witnesses, compel their attendance, administer oaths, take the testimony of a person under oath, and in connection therewith, to require the production for examination of any books or papers relating to any matter under investigation or in question before the ethics board. The ethics board may make rules as to the issuance of subpoenas by individual members, as to service of complaints, decisions, orders, recommendations, and other process or papers of the ethics board. [1994 c 154 § 209.]

42.52.400 Enforcement of subpoena authority. In case of refusal to obey a subpoena issued to a person, the superior court of a county within the jurisdiction of which the investigation, proceeding, or hearing under this chapter is carried on or within the jurisdiction of which the person refusing to obey is found or resides or transacts business, upon application by the appropriate ethics board shall have jurisdiction to issue to the person an order requiring the person to appear before the ethics board or its member to produce evidence if so ordered, or to give testimony touching the matter under investigation or in question. Failure to

obey such order of the court may be punished by the court as contempt. [1994 c 154 § 210.]

42.52.410 Filing complaint. (1) A person may, personally or by his or her attorney, make, sign, and file with the appropriate ethics board a complaint on a form provided by the appropriate ethics board. The complaint shall state the name of the person alleged to have violated this chapter or rules adopted under it and the particulars thereof, and contain such other information as may be required by the appropriate ethics board.

(2) If it has reason to believe that any person has been engaged or is engaging in a violation of this chapter or rules adopted under it, an ethics board may issue a complaint. [1994 c 154 § 211.]

42.52.420 Investigation. After the filing of any complaint, except as provided in RCW 42.52.450, the staff of the appropriate ethics board shall investigate the complaint. The investigation shall be limited to the alleged facts contained in the complaint. The results of the investigation shall be reduced to writing and a determination shall be made that there is or that there is not reasonable cause to believe that a violation of this chapter or rules adopted under it has been or is being committed. A copy of the written determination shall be provided to the complainant and to the person named in such complaint. [1994 c 154 § 212.]

42.52.430 Public hearing—Findings. (1) If the ethics board determines there is reasonable cause under RCW 42.52.420 that a violation of this chapter or rules adopted under it occurred, a public hearing on the merits of the complaint shall be held.

(2) The ethics board shall designate the location of the hearing. The case in support of the complaint shall be presented at the hearing by staff of the ethics board.

(3) The respondent shall file a written answer to the complaint and appear at the hearing in person or otherwise, with or without counsel, and submit testimony and be fully heard. The respondent has the right to cross-examine witnesses.

(4) Testimony taken at the hearing shall be under oath and recorded.

(5) If, based upon a preponderance of the evidence, the ethics board finds that the respondent has violated this chapter or rules adopted under it, the board shall file an order stating findings of fact and enforcement action as authorized under this chapter.

(6) If, upon all the evidence, the ethics board finds that the respondent has not engaged in an alleged violation of this chapter or rules adopted under it, the ethics board shall state findings of fact and shall similarly issue and file an order dismissing the complaint.

(7) If the board makes a determination that there is not reasonable cause to believe that a violation has been or is being committed or has made a finding under subsection (6) of this section, the attorney general shall represent the officer or employee in any action subsequently commenced based on the alleged facts in the complaint. [1994 c 154 § 213.]

42.52.440 Review of order. Except as otherwise provided by law, reconsideration or judicial review of an ethics board's order that a violation of this chapter or rules adopted under it has occurred shall be governed by the provisions of chapter 34.05 RCW applicable to review of adjudicative proceedings. [1994 c 154 § 214.]

42.52.450 Complaint against legislator or state-wide elected official. (1) If a complaint alleges a violation of RCW 42.52.180 by a legislator or state-wide elected official other than the attorney general, the attorney general shall conduct the investigation under RCW 42.52.420 and recommend action to the appropriate ethics board.

(2) If a complaint alleges a violation of RCW 42.52.180 by the attorney general, the state auditor shall conduct the investigation under RCW 42.52.420 and recommend action to the appropriate ethics board. [1994 c 154 § 215.]

42.52.460 Citizen actions. Any person who has notified the appropriate ethics board and the attorney general in writing that there is reason to believe that RCW 42.52.180 is being or has been violated may, in the name of the state, bring a citizen action for any of the actions authorized under this chapter. A citizen action may be brought only if the appropriate ethics board or the attorney general have failed to commence an action under this chapter within forty-five days after notice from the person, the person has thereafter notified the appropriate ethics board and the attorney general that the person will commence a citizen's action within ten days upon their failure to commence an action, and the appropriate ethics board and the attorney general have in fact failed to bring an action within ten days of receipt of the second notice.

If the person who brings the citizen's action prevails, the judgment awarded shall escheat to the state, but the person shall be entitled to be reimbursed by the state of Washington for costs and attorneys' fees incurred. If a citizen's action that the court finds was brought without reasonable cause is dismissed, the court may order the person commencing the action to pay all costs of trial and reasonable attorneys' fees incurred by the defendant.

Upon commencement of a citizen action under this section, at the request of a state officer or state employee who is a defendant, the office of the attorney general shall represent the defendant if the attorney general finds that the defendant's conduct complied with this chapter and was within the scope of employment. [1994 c 154 § 216.]

42.52.470 Referral for enforcement. As appropriate, an ethics board may refer a complaint:

(1) To an agency for initial investigation and proposed resolution which shall be referred back to the appropriate ethics board for action; or

(2) To the attorney general's office or prosecutor for appropriate action. [1994 c 154 § 217.]

42.52.480 Action by boards. (1) Except as otherwise provided by law, an ethics board may order payment of the following amounts if it finds a violation of this chapter or rules adopted under it after a hearing under RCW 42.52.370 or other applicable law:

(a) Any damages sustained by the state that are caused by the conduct constituting the violation;

(b) From each such person, a civil penalty of up to five thousand dollars per violation or three times the economic value of any thing received or sought in violation of this chapter or rules adopted under it, whichever is greater; and

(c) Costs, including reasonable investigative costs, which shall be included as part of the limit under (b) of this subsection. The costs may not exceed the penalty imposed. The payment owed on the penalty shall be reduced by the amount of the costs paid.

(2) Damages under this section may be enforced in the same manner as a judgment in a civil case. [1994 c 154 § 218.]

42.52.490 Action by attorney general. (1) Upon a written determination by the attorney general that the action of an ethics board was clearly erroneous or if requested by an ethics board, the attorney general may bring a civil action in the superior court of the county in which the violation is alleged to have occurred against a state officer, state employee, former state officer, former state employee, or other person who has violated or knowingly assisted another person in violating any of the provisions of this chapter or the rules adopted under it. In such action the attorney general may recover the following amounts on behalf of the state of Washington:

(a) Any damages sustained by the state that are caused by the conduct constituting the violation;

(b) From each such person, a civil penalty of up to five thousand dollars per violation or three times the economic value of any thing received or sought in violation of this chapter or the rules adopted under it, whichever is greater; and

(c) Costs, including reasonable investigative costs, which shall be included as part of the limit under (b) of this subsection. The costs may not exceed the penalty imposed. The payment owed on the penalty shall be reduced by the amount of the costs paid.

(2) In any civil action brought by the attorney general upon the basis that the attorney general has determined that the board's action was clearly erroneous, the court shall not proceed with the action unless the attorney general has first shown, and the court has found, that the action of the board was clearly erroneous. [1994 c 154 § 219.]

42.52.500 Optional hearings by administrative law judge. If an ethics board finds that there is reasonable cause to believe that a violation has occurred, the board shall consider the possibility of the alleged violator having to pay a total amount of penalty and costs of more than five hundred dollars. Based on such consideration, the board may give the person who is the subject of the complaint the option to have an administrative law judge conduct the hearing and rule on procedural and evidentiary matters. The board may also, on its own initiative, provide for retaining an administrative law judge. An ethics board may not require total payment of more than five hundred dollars in penalty and costs in any case where an administrative law judge is not used and the board did not give such option to

the person who is the subject of the complaint. [1994 c 154 § 220.]

42.52.510 Rescission of state action. (1) The attorney general may, on request of the governor or the appropriate agency, and in addition to other available rights of rescission, bring an action in the superior court of Thurston county to cancel or rescind state action taken by a state officer or state employee, without liability to the state of Washington, contractual or otherwise, if the governor or ethics board has reason to believe that: (a) A violation of this chapter or rules adopted under it has substantially influenced the state action, and (b) the interest of the state requires the cancellation or rescission. The governor may suspend state action pending the determination of the merits of the controversy under this section. The court may permit persons affected by the governor's actions to post an adequate bond pending such resolution to ensure compliance by the defendant with the final judgment, decree, or other order of the court.

(2) This section does not limit other available remedies. [1994 c 154 § 221.]

42.52.520 Disciplinary action. (1) A violation of this chapter or rules adopted under it is grounds for disciplinary action.

(2) The procedures for any such action shall correspond to those applicable for disciplinary action for employee misconduct generally; for those state officers and state employees not specifically exempted in chapter 41.06 RCW, the rules set forth in chapter 41.06 RCW shall apply. Any action against the state officer or state employee shall be subject to judicial review to the extent provided by law for disciplinary action for misconduct of state officers and state employees of the same category and grade. [1994 c 154 § 222; 1969 ex.s. c 234 § 26. Formerly RCW 42.18.260.]

42.52.530 Additional investigative authority. In addition to other authority under this chapter, the attorney general may investigate persons not under the jurisdiction of an ethics board whom the attorney general has reason to believe were involved in transactions in violation of this chapter or rules adopted under it. [1994 c 154 § 223.]

42.52.540 Limitations period. Any action taken under this chapter must be commenced within five years from the date of the violation. However, if it is shown that the violation was not discovered because of concealment by the person charged, then the action must be commenced within two years from the date the violation was discovered or reasonably should have been discovered: (1) By any person with direct or indirect supervisory responsibilities over the person who allegedly committed the violation; or (2) if no person has direct or indirect supervisory authority over the person who committed the violation, by the appropriate ethics board. [1994 c 154 § 224.]

42.52.550 Compensation of ethics boards. The citizen members of the legislative ethics board and the members of the executive ethics board shall be compensated as provided in RCW 43.03.250 and reimbursed for travel

expenses as provided in RCW 43.03.050 and 43.03.060. Legislator members of the legislative ethics board shall be reimbursed as provided in RCW 44.04.120. [1994 c 154 § 227.]

42.52.900 Legislative declaration. Government derives its powers from the people. Ethics in government are the foundation on which the structure of government rests. State officials and employees of government hold a public trust that obligates them, in a special way, to honesty and integrity in fulfilling the responsibilities to which they are elected and appointed. Paramount in that trust is the principle that public office, whether elected or appointed, may not be used for personal gain or private advantage.

The citizens of the state expect all state officials and employees to perform their public responsibilities in accordance with the highest ethical and moral standards and to conduct the business of the state only in a manner that advances the public's interest. State officials and employees are subject to the sanctions of law and scrutiny of the media; ultimately, however, they are accountable to the people and must consider this public accountability as a particular obligation of the public service. Only when affairs of government are conducted, at all levels, with openness as provided by law and an unswerving commitment to the public good does government work as it should.

The obligations of government rest equally on the state's citizenry. The effectiveness of government depends, fundamentally, on the confidence citizens can have in the judgments and decisions of their elected representatives. Citizens, therefore, should honor and respect the principles and the spirit of representative democracy, recognizing that both elected and appointed officials, together with state employees, seek to carry out their public duties with professional skill and dedication to the public interest. Such service merits public recognition and support.

All who have the privilege of working for the people of Washington state can have but one aim: To give the highest public service to its citizens. [1994 c 154 § 1.]

42.52.901 Liberal construction. This chapter shall be construed liberally to effectuate its purposes and policy and to supplement existing laws as may relate to the same subject. [1994 c 154 § 301.]

42.52.902 Parts and captions not law—1994 c 154. Parts and captions used in this act do not constitute any part of the law. [1994 c 154 § 302.]

42.52.903 Serving on board, committee, or commission not prevented. Nothing in this chapter shall be interpreted to prevent a member of a board, committee, advisory commission, or other body required or permitted by statute to be appointed from any identifiable group or interest, from serving on such body in accordance with the intent of the legislature in establishing such body. [1969 ex.s. c 234 § 33. Formerly RCW 42.18.330.]

42.52.904 Effective date—1994 c 154. Sections 101 through 121, 203, 204, 207 through 224, and 301 through

317 of this act shall take effect January 1, 1995. [1994 c 154 § 319.]

Reviser's note: For codification of 1994 c 154, see Codification Tables, Volume 0.

42.52.905 Severability—1994 c 154. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 154 § 320.]