

Upon cessation of service for any nonfederal public employer in this state such retiree shall have benefits actuarially recomputed pursuant to the rules adopted by the department.

Passed the House April 23, 1987.

Passed the Senate April 9, 1987.

Approved by the Governor May 14, 1987, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 14, 1987.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to one subsection, Substitute House Bill No. 440, entitled:

"AN ACT Relating to retirement of elected officials of a city or town."

Section 1(3)(c) of this bill is similar and serves the same purpose as section 5 of Engrossed Substitute Senate Bill No. 5150, which is preferable and is now Chapter 192, Laws of 1987. I have therefore vetoed section 1(3)(c).

With the exception of section 1(3)(c), Substitute House Bill No. 440 is approved."

CHAPTER 380

[Substitute House Bill No. 170]

NATURAL RESOURCES—CERTAIN VIOLATIONS DECRIMINALIZED

AN ACT Relating to infractions of natural resources laws; amending RCW 43.30.310, 43.51.180, 75.10.110, 76.12.140, 76.36.035, and 77.21.010; adding a new chapter to Title 43 RCW; prescribing penalties; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature declares that decriminalizing certain offenses contained in Titles 75, 76, 77, and 79 RCW and chapters 43.30 and 43.51 RCW and any rules adopted pursuant to those titles and chapters would promote the more efficient administration of those titles and chapters. The purpose of this chapter is to provide a just, uniform, and efficient procedure for adjudicating those violations which, in any of these titles and chapters or rules adopted under these chapters or titles, are declared not to be criminal offenses. The legislature respectfully requests the supreme court to prescribe any rules of procedure necessary to implement this chapter.

NEW SECTION. Sec. 2. Unless the context clearly requires otherwise, the definition in this section applies throughout this chapter.

"Infraction" means an offense which, by the terms of Title 75, 76, 77, or 79 RCW or chapter 43.30 or 43.51 RCW and rules adopted under these titles and chapters, is declared not to be a criminal offense and is subject to the provisions of this chapter.

NEW SECTION. Sec. 3. (1) An infraction proceeding is initiated by the issuance, service, and filing of a notice of infraction.

(2) A notice of infraction may be issued by a person authorized to enforce the provisions of the title or chapter in which the infraction is established when the infraction occurs in that person's presence.

(3) A court may issue a notice of infraction if a person authorized to enforce the provisions of the title or chapter in which the infraction is established files with the court a written statement that the infraction was committed in that person's presence or that the officer has reason to believe an infraction was committed.

(4) Service of a notice of infraction issued under subsection (2) or (3) of this section shall be as provided by court rule.

(5) A notice of infraction shall be filed with a court having jurisdiction within five days of issuance, excluding Saturdays, Sundays, and holidays.

(6) Failure to sign an infraction notice shall constitute a misdemeanor under chapter 9A.20 RCW.

NEW SECTION. Sec. 4. (1) Infraction proceedings may be heard and determined by a district court.

(2) Infraction proceedings shall be brought in the district court district in which the infraction occurred. If an infraction takes place in the offshore waters, as defined in RCW 75.08.011, the infraction proceeding may be brought in any county bordering on the Pacific Ocean.

NEW SECTION. Sec. 5. (1) A notice of infraction represents a determination that an infraction has been committed. The determination shall be final unless contested as provided in this chapter.

(2) The form for the notice of infraction shall be prescribed by rule of the supreme court and shall include the following:

(a) A statement that the notice represents a determination that an infraction has been committed by the person named in the notice and that the determination shall be final unless contested as provided in this chapter;

(b) A statement that an infraction is a noncriminal offense for which imprisonment will not be imposed as a sanction;

(c) A statement of the specific infraction for which the notice was issued;

(d) A statement of the monetary penalty established for the infraction;

(e) A statement of the options provided in this chapter for responding to the notice and the procedures necessary to exercise these options;

(f) A statement that at any hearing to contest the determination, the state has the burden of proving, by a preponderance of the evidence, that the infraction was committed; and that the person may subpoena witnesses including the officer who issued the notice of infraction;

(g) A statement that at any hearing requested for the purpose of explaining mitigating circumstances surrounding the commission of the infraction the person shall be deemed to have committed the infraction and shall not subpoena witnesses;

(h) A statement that failure to respond to a notice of infraction within fifteen days is a misdemeanor and may be punished by fine or imprisonment;

(i) A statement that failure to appear at a hearing requested for the purpose of contesting the determination or for the purpose of explaining mitigating circumstances is a misdemeanor and may be punished by fine or imprisonment; and

(j) A statement, which the person shall sign, that the person promises to respond to the notice of infraction in one of the ways provided in this chapter.

NEW SECTION. Sec. 6. (1) Any person who receives a notice of infraction shall respond to such notice as provided in this section within fifteen days of the date of the notice.

(2) If the person determined to have committed the infraction does not contest the determination, the person shall respond by completing the appropriate portion of the notice of infraction and submitting it, either by mail or in person, to the court specified on the notice. A check or money order in the amount of the penalty prescribed for the infraction shall be submitted with the response. When a response which does not contest the determination is received, an appropriate order shall be entered in the court's records.

(3) If the person determined to have committed the infraction wishes to contest the determination, the person shall respond by completing the portion of the notice of infraction requesting a hearing and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing, and that date shall not be sooner than seven days from the date of the notice, except by agreement.

(4) If the person determined to have committed the infraction does not contest the determination but wishes to explain mitigating circumstances surrounding the infraction, the person shall respond by completing the portion of the notice of infraction requesting a hearing for that purpose and submitting it, either by mail or in person, to the court specified on the notice. The court shall notify the person in writing of the time, place, and date of the hearing.

(5) If any person issued a notice of infraction: (a) Fails to respond to the notice of infraction as provided in subsection (2) of this section, or (b) fails to appear at a hearing requested pursuant to subsection (3) or (4) of this section, the court shall enter an appropriate order assessing the monetary penalty prescribed for the infraction and any other penalty authorized by this chapter. In addition, failure to respond to a notice of infraction, as required by this chapter, and failure to appear at a hearing requested pursuant to subsection (3) or (4) of this section are each punishable as a misdemeanor under chapter 9A.20 RCW.

NEW SECTION. Sec. 7. (1) Procedures for the conduct of all hearings provided for in this chapter may be established by rule of the supreme court.

(2) Any person subject to proceedings under this chapter may be represented by counsel.

NEW SECTION. Sec. 8. (1) A hearing held for the purpose of contesting the determination that an infraction has been committed shall be without a jury.

(2) The court may consider the notice of infraction and any other written report made under oath submitted by the officer who issued the notice or whose written statement was the basis for the issuance of the notice in lieu of the officer's personal appearance at the hearing. The person named in the notice may subpoena witnesses, including the officer, and has the right to present evidence and examine witnesses present in court. The rules of evidence shall apply to contested hearings.

(3) The burden of proof is upon the state to establish the commission of the infraction by a preponderance of the evidence.

(4) After consideration of the evidence and argument, the court shall determine whether the infraction was committed. Where it has not been established that the infraction was committed, an order dismissing the notice shall be entered in the court's records. Where it has been established that the infraction was committed, the court may assess a monetary penalty not exceeding that provided for the infraction in the applicable court rule or statute and shall enter an appropriate order.

(5) An appeal from the court's determination or order shall be to the superior court. A defendant may appeal a judgment entered after a contested hearing finding that the defendant has committed the infraction. The plaintiff may appeal a decision which in effect abates, discontinues, or determines the case other than by a judgment that the defendant has not committed an infraction. No other orders or judgments are appealable by either party. The decision of the superior court is subject only to discretionary review pursuant to the rules of appellate procedure.

NEW SECTION. Sec. 9. (1) A hearing held for the purpose of allowing a person to explain mitigating circumstances surrounding the commission of an infraction shall be an informal proceeding. The person may not subpoena witnesses. The determination that an infraction has been committed shall not be contested at a hearing held for the purpose of explaining mitigating circumstances.

(2) After the court has heard the explanation of the circumstances surrounding the commission of the infraction, it may assess a monetary penalty not exceeding that provided for the infraction in rules adopted pursuant to this chapter and shall enter an appropriate order.

(3) There may be no appeal from the court's determination or order.

NEW SECTION. Sec. 10. (1) A person found to have committed an infraction shall be assessed a monetary penalty. No penalty may exceed five hundred dollars for each offense unless specifically authorized by statute.

(2) The supreme court may prescribe by rule a schedule of monetary penalties for designated infractions. The legislature requests the supreme court to adjust this schedule every two years for inflation. The maximum penalty imposed by the schedule shall be five hundred dollars per infraction and the minimum penalty imposed by the schedule shall be ten dollars per infraction. This schedule may be periodically reviewed by the legislature and is subject to its revision.

(3) Whenever a monetary penalty is imposed by a court under this chapter, it is immediately payable. If the person is unable to pay at that time, the court may, in its discretion, grant an extension of the period in which the penalty may be paid.

NEW SECTION. Sec. 11. (1) An order entered after the receipt of a response which does not contest the determination, or after it has been established at a hearing that the infraction was committed, or after a hearing for the purpose of explaining mitigating circumstances, is civil in nature.

(2) The court may, in its discretion, waive, reduce, or suspend the monetary penalty prescribed for the infraction. At the person's request, the court may order performance of a number of hours of community service in lieu of a monetary penalty, at the rate of the then state minimum wage per hour.

NEW SECTION. Sec. 12. A court of limited jurisdiction having jurisdiction over an alleged infraction may issue process anywhere within the state.

NEW SECTION. Sec. 13. (1) Failure to pay a monetary penalty assessed by a court under the provisions of this chapter is a misdemeanor under chapter 9A.20 RCW.

(2) Failure to complete community service ordered by a court under the provisions of this chapter is a misdemeanor under chapter 9A.20 RCW.

Sec. 14. Section 1, chapter 160, Laws of 1969 ex. sess. as amended by section 38, chapter 136, Laws of 1979 ex. sess. and RCW 43.30.310 are each amended to read as follows:

For the promotion of the public safety and the protection of public property, the department of natural resources may, in accordance with chapter 34.04 RCW, issue, promulgate, adopt, and enforce rules (~~and regulations~~) pertaining to use by the public of state-owned lands and property which are administered by the department.

A violation of any rule (~~or regulation~~) adopted under this section shall constitute a misdemeanor unless the department specifies by rule, when not inconsistent with applicable statutes, that violation of the rule is an infraction under chapter 43.— RCW (sections 1 through 13 of this 1987

act): PROVIDED, That violation of a rule (~~(or regulation)~~) relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of a rule (~~(or regulation)~~) equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

The commissioner of public lands and such of his employees as he may designate shall be vested with police powers when enforcing:

(1) The rules (~~(and regulations)~~) of the department adopted under this section; or

(2) The general criminal statutes or ordinances of the state or its political subdivisions where enforcement is necessary for the protection of state-owned lands and property.

Sec. 15. Section 43.51.180, chapter 8, Laws of 1965 and RCW 43.51.180 are each amended to read as follows:

Every person who:

(1) Cuts, breaks, injures, destroys, takes or removes any tree, shrub, timber, plant, or natural object in any park or parkway; or

(2) Kills, or pursues with intent to kill, any bird or animal in any park or parkway; or

(3) Takes any fish from the waters of any park or parkway, except in conformity with such general rules (~~(and regulations)~~) as the commission may prescribe; or

(4) Wilfully mutilates, injures, defaces, or destroys any guidepost, notice, tablet, fence, inclosure, or work for the protection or ornamentation of any park or parkway; or

(5) Lights any fire upon any park or parkway, except in such places as the commission has authorized, or wilfully or carelessly permits any fire which he has lighted or which is under his charge, to spread or extend to or burn any of the shrubbery, trees, timber, ornaments, or improvements upon any park or parkway, or leaves any campfire which he has lighted or which has been left in his charge, unattended by a competent person, without extinguishing it; or

(6) Places within any park or parkway or affixes to any object therein contained, without a written license from the commission, any word, character, or device designed to advertise any business, profession, article, thing, exhibition, matter, or event; or

(7) Violates any rule (~~(or regulation)~~) adopted, promulgated, or issued by the commission pursuant to the provisions of this chapter; shall be guilty of a misdemeanor unless the commission has specified by rule, when not inconsistent with applicable statutes, that violation of the rule is an infraction under chapter 43.— RCW (sections 1 through 13 of this 1987 act).

Sec. 16. Section 75.08.260, chapter 12, Laws of 1955 as last amended by section 42, chapter 46, Laws of 1983 1st ex. sess. and RCW 75.10.110 are each amended to read as follows:

(1) Unless otherwise provided for in this title, a person who violates this title or rules of the director or who aids or abets in the violation is guilty of a gross misdemeanor, and upon a conviction thereof shall be punished by imprisonment in the county jail of the county in which the offense is committed for not less than thirty days or more than one year, or by a fine of not less than twenty-five dollars or more than one thousand dollars, or by both such fine and imprisonment. Food fish or shellfish involved in the violation shall be forfeited to the state. The court may forfeit seized articles involved in the violation.

(2) The director may specify by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 43.— RCW (sections 1 through 13 of this 1987 act). A person taking or possessing salmon in violation of this title or rules of the director shall be punished by a fine in an amount not more than five thousand dollars if the salmon involved in the violation have a market value greater than two hundred fifty dollars. This fine is in addition to the punishment resulting under subsection (1) of this section.

Sec. 17. Section 3a added to chapter 154, Laws of 1923 by section 3, chapter 288, Laws of 1927 and RCW 76.12.140 are each amended to read as follows:

Any lands acquired by the state under the provisions of chapter 154, Laws of 1923, or any amendments thereto, shall be logged, protected and cared for in such manner as to insure natural reforestation of such lands, and to that end the state forest board shall have power, and it shall be its duty to make rules and regulations, and amendments thereto, governing logging operations on such areas, and to embody in any contract for the sale of timber on such areas, such conditions as it shall deem advisable, with respect to methods of logging, disposition of slashings, and debris, and protection and promotion of new forests. All such rules and regulations, or amendments thereto, shall be adopted by majority vote of the state forest board by resolution and recorded in the minutes of the board, and shall be promulgated by publication in one issue of a newspaper of general circulation published at the state capitol, and shall take effect and be in force at the time specified therein. Any violation of any such rules ~~((and regulations))~~ shall be a gross misdemeanor unless the board has specified by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 43.— RCW (sections 1 through 13 of this 1987 act).

Sec. 18. Section 8, chapter 60, Laws of 1984 and RCW 76.36.035 are each amended to read as follows:

(1) All applications for brands, catch brands, renewals, and assignments thereof shall be submitted to and approved by the department prior to use. The department may refuse to approve any brand or catch brand which is identical to or closely resembles a registered brand or catch brand,

or is in use by any other person or was not selected in good faith for the marking or branding of forest products. If approval is denied the applicant will select another brand.

The registration for all existing brands or catch brands shall expire on December 31, 1984, unless renewed prior to that date. Renewals or new approved applications shall be for five-year periods or portions thereof beginning on January 1, 1985. On or before September 30, 1984, and September 30th immediately preceding the end of each successive five-year period the department shall notify by mail all registered owners of brands or catch brands of the forthcoming expiration of their brands and the requirements for renewal.

A fee of fifteen dollars shall be charged by the department for registration of all brands, catch brands, renewals or assignments prior to January 1, 1985. Thereafter the fee shall be twenty-five dollars.

Abandoned or canceled brands shall not be reissued for a period of at least one year. The department shall determine the right to use brands or catch brands in dispute by applicants.

(2) The department may adopt and enforce rules (~~and regulations~~) implementing the provisions of this chapter. A violation of any such rule (~~or regulation~~) shall constitute a misdemeanor unless the department has specified by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 43.— RCW (sections 1 through 13 of this 1987 act).

Sec. 19. Section 77.16.240, chapter 36, Laws of 1955 as last amended by section 1, chapter 31, Laws of 1982 and RCW 77.21.010 are each amended to read as follows:

(1) A person violating RCW 77.16.040, 77.16.050, 77.16.060, 77.16.080, 77.16.210, 77.16.220, 77.16.310, 77.16.320, or 77.32.211, or committing a violation of RCW 77.16.020 or 77.16.120 involving big game or an endangered species is guilty of a gross misdemeanor and shall be punished by a fine of not less than two hundred fifty dollars and not more than one thousand dollars or by imprisonment in the county jail for not less than thirty days and not more than one year or by both the fine and imprisonment. Each subsequent violation within a five-year period of RCW 77.16.040, 77.16.050, or 77.16.060, or of RCW 77.16.020 or 77.16.120 involving big game or an endangered species, as defined by the Washington state game commission under the authority of RCW 77.04.090, shall be prosecuted and punished as a class C felony as defined in RCW 9A.20.020. In connection with each such felony prosecution, the director shall provide the court with an inventory of all articles or devices seized under this title in connection with the violation. Inventoried articles or devices shall be disposed of pursuant to RCW 77.21.040.

(2) A person violating or failing to comply with this title or a rule of the commission for which no penalty is otherwise provided is guilty of a

misdeemeanor and shall be punished for each offense by a fine of not less than twenty-five dollars or by imprisonment for not more than ninety days in the county jail or by both the fine and imprisonment. The commission may provide, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 43.— RCW (sections 1 through 13 of this 1987 act).

(3) Persons convicted of a violation shall pay the costs of prosecution and the penalty assessment in addition to the fine or imprisonment.

(4) The unlawful killing, taking, or possession of each wildlife member constitutes a separate offense.

(5) District courts have jurisdiction concurrent with the superior courts of misdemeanors and gross misdemeanors committed in violation of this title or rules of the commission and may impose the punishment provided for these offenses. Superior courts have jurisdiction over felonies committed in violation of this title.

NEW SECTION. Sec. 20. Sections 1 through 13 of this act shall constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 21. This act shall take effect January 1, 1988.

NEW SECTION. Sec. 22. 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.

Passed the House March 2, 1987.

Passed the Senate April 25, 1987.

Approved by the Governor May 14, 1987.

Filed in Office of Secretary of State May 14, 1987.

CHAPTER 381

[House Bill No. 1016]

AQUIFER PROTECTION AREAS—LOW-INCOME PERSONS MAY HAVE REDUCED FEES—LIENS FOR DELINQUENT FEES AUTHORIZED

AN ACT Relating to aquifer protection areas; and adding new sections to chapter 36.36 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 36.36 RCW to read as follows:

A county may adopt an ordinance reducing the level of fees, for the withdrawal of subterranean water or for on-site sewage disposal, that are imposed upon the residential property of a class or classes of low-income persons.

NEW SECTION. Sec. 2. A new section is added to chapter 36.36 RCW to read as follows: