

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.

At the time of separation from state service due to retirement or death, an eligible employee or the employee's estate shall 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: PROVIDED, That community college districts may delay until July 1, 1981, payment due any eligible employee or employee's estate: PROVIDED FURTHER, That there shall be added to any such delayed payment interest at the rate of eight percent per year.

Moneys received under this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state.

This section shall be administered, and rules shall be promulgated to carry out its purposes, by the state personnel board and the higher education personnel board for persons subject to chapters 41.06 and 28B.16 RCW, respectively, and by their respective personnel authorities for other eligible employees: PROVIDED, That determination of classes of eligible employees shall be subject to approval by the office of financial management.

Should the legislature revoke any benefits granted under this section, no affected employee shall be entitled thereafter to receive such benefits as a matter of contractual right.

Passed the Senate March 5, 1990.

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## CHAPTER 163

[Senate Bill No. 6727]

### STATE-OWNED AQUATIC LANDS—SALES OF VALUABLE MATERIALS

AN ACT Relating to the sale of valuable material, including shellfish, from state-owned aquatic lands; amending RCW 79.90.210, 79.90.240, 79.96.080, 79.96.085, 75.28.287, and 75.10.140; adding a new section to chapter 79.01 RCW; adding a new section to chapter 79.90 RCW; adding a new section to chapter 79.96 RCW; creating a new section; and prescribing penalties.

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

Sec. 1. Section 27, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.90.210 are each amended to read as follows:

All sales of tidelands and shorelands belonging to the state, otherwise permitted by RCW 79.94.150 to be sold, shall be at public auction and all sales of valuable materials shall be at public auction or by sealed bid to the highest responsible bidder, on the terms prescribed by law and as specified in the notice provided, and no land or materials shall be sold for less than their appraised value: **PROVIDED**, That when valuable material has been appraised at an amount not exceeding ~~((twenty))~~ one hundred thousand dollars, the department of natural resources, when authorized by the board of natural resources, may arrange for the sale at public auction of said valuable material and for its removal under such terms and conditions as the department may prescribe, after the department shall have caused to be published not less than ten days prior to sale a notice of such sale in a newspaper of general circulation located nearest to the property to be sold ~~((**PROVIDED FURTHER**, That))~~. However, any sale of valuable material on aquatic lands of an appraised value of ~~((one))~~ ten thousand dollars or less may be sold directly to the applicant for cash without notice or advertising.

**NEW SECTION.** Sec. 2. A new section is added to chapter 79.90 RCW to read as follows:

(1) To determine the "highest responsible bidder" under RCW 79.90-.210, the department of natural resources shall be entitled to consider, in addition to price, the following:

(a) The financial and technical ability of the bidder to perform the contract;

(b) Whether the bid contains material defects;

(c) Whether the bidder has previously or is currently complying with terms and conditions of any other contracts with the state or relevant contracts with entities other than the state;

(d) Whether the bidder has been convicted of a crime relating to the public lands or natural resources of the state of Washington, the United States, or any other state, tribe, or country, where "conviction" shall include a guilty plea, or unvacated forfeiture of bail;

(e) Whether the bidder is owned, controlled, or managed by any person, partnership, or corporation that is not responsible under this statute; and

(f) Whether the subcontractors of the bidder, if any, are responsible under this statute.

(2) Whenever the department has reason to believe that the apparent high bidder is not a responsible bidder, the department may award the sale to the next responsible bidder or the department may reject all bids pursuant to RCW 79.90.240.

Sec. 3. Section 30, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.90.240 are each amended to read as follows:

(1) A sale of valuable materials or tidelands or shorelands otherwise permitted by RCW 79.94.150 to be sold shall be confirmed if:

(a) No affidavit showing that the interest of the state in such sale was injuriously affected by fraud or collusion, ((shall be)) is filed with the commissioner of public lands within ten days from the receipt of the report of the auctioneer conducting the sale ((of any tidelands or shorelands belonging to the state, otherwise permitted by RCW 79.94.150 to be sold, or valuable materials located within or upon any aquatic lands, and));

(b) It shall appear from such report that the sale was fairly conducted, that the purchaser was the highest responsible bidder at such sale, and that ((his bid was)) the sale price is not less than the appraised value of the property sold((-If));

(c) The commissioner ((shall be)) is satisfied that the lands(;) or material(;) sold would not, upon being readvertised and offered for sale, sell for ((at least ten percent more than the price at which it shall have been sold;)) a substantially higher price; and

(d) The payment required by law to be made at the time of making the sale(;) has been made, and that the best interests of the state may be subserved thereby(;);

(2) Upon confirming a sale, the commissioner shall enter upon his records ((α)) the confirmation of sale and thereupon issue to the purchaser a contract of sale or bill of sale as the case may be, as is provided for in this chapter.

Sec. 4. Section 141, chapter 21, Laws of 1982 1st ex. sess. and RCW 79.96.080 are each amended to read as follows:

(1) Geoducks shall be sold as valuable materials under the provisions of chapter 79.90 RCW. After confirmation of the sale, the department of natural resources may enter into ((leases or harvesting)) an agreement((s)) with the purchaser for the harvesting of geoducks. The department of natural resources may place terms and conditions in the ((leases or)) harvesting agreements as the department deems necessary. The department of natural resources may enforce the provisions of any ((lease or)) harvesting agreement by suspending or canceling the ((lease or)) harvesting agreement or through any other means contained in the ((lease or)) harvesting agreement. ((The department of natural resources may cancel any lease or harvesting agreement upon receiving a report from the department of fisheries of the person's second violation of the geoduck licensing or harvesting provisions under Title 75 RCW:)) Any ((lessee)) geoduck harvester may terminate a ((lease)) harvesting agreement entered into pursuant to this subsection if actions of a governmental agency, beyond the control of the ((lessee)) harvester, its agents, or its employees, prohibit harvesting, for a

period exceeding thirty days(;) during the term of the harvesting agreement, except as provided within the agreement. Upon such termination of the ((lease)) agreement by the harvester, the ((lessee)) harvester shall be reimbursed by the ((lessor)) department of natural resources for the cost paid to the department on the ((lease)) agreement, less the value of the harvest already accomplished by the ((lessee on the leasehold)) harvester under the agreement.

(2) ~~((After May 8, 1979, all leases or))~~ Harvesting agreements under this title for the purpose of harvesting geoducks ((clams)) shall require the ((lessee)) harvester and the ((lessee's)) harvester's agent or representatives to comply with all applicable commercial diving safety standards and regulations promulgated and implemented by the federal occupational safety and health administration established under the federal occupational safety and health act of 1970 as such law exists ((on July 1, 1983)) or as hereafter amended (84 Stat. 1590 et seq.; 29 U.S.C. Sec. 651 et seq.): PROVIDED, That for the purposes of this section and RCW 75.24.100 as now or hereafter amended, all persons who dive for geoducks are deemed to be employees as defined by the federal occupational safety and health act. All ((leases)) harvesting agreements shall provide that failure to comply with these standards is cause for suspension or cancellation of the ((lease)) harvesting agreement: PROVIDED FURTHER, That for the purposes of this subsection if the ((lessee is the holder of a tract license and)) harvester contracts with another person or entity for the harvesting of geoducks, the ((lease)) harvesting agreement shall not be suspended or canceled if the ((lessee)) harvester terminates its business relationship with such entity until compliance with ((the)) this subsection is secured.

Sec. 5. Section 5, chapter 141, Laws of 1979 ex. sess. as amended by section 129, chapter 46, Laws of 1983 1st ex. sess. and RCW 79.96.085 are each amended to read as follows:

The department of natural resources shall designate the areas of aquatic lands owned by the state ~~((which))~~ that are available for geoduck harvesting by licensed geoduck harvesters in accordance with ~~((RCW 79.01.124))~~ chapter 79.90 RCW.

Sec. 6. Section 4, chapter 253, Laws of 1969 ex. sess. as last amended by section 13, chapter 316, Laws of 1989 and RCW 75.28.287 are each amended to read as follows:

~~((1)) A geoduck tract license is required for the commercial harvest of geoducks from each subtidal tract for which harvest rights have been granted by the department of natural resources. Unless adjusted by the director pursuant to the director's authority granted in RCW 75.28.065, the annual license fee is one hundred thirty-five dollars for residents and two hundred seventy dollars for nonresidents.~~

~~((2))~~ Every diver engaged in the commercial harvest of geoduck or other clams shall obtain a nontransferable geoduck diver license.

Sec. 7. Section 7, chapter 141, Laws of 1979 ex. sess. as last amended by section 4, chapter 80, Laws of 1984 and RCW 75.10.140 are each amended to read as follows:

(1) In addition to the penalties prescribed in RCW 75.10.110 and 75.10.120, the director may revoke geoduck diver licenses (~~(or geoduck tract licenses)~~) held by a person if(:

~~(a))~~ (a)) within a five-year period that person is convicted or has an unvacated bail forfeiture for two or more violations of this title or rules of the director relating to geoduck licensing or harvesting(~~(; or~~

~~(b) The department of natural resources suspended or canceled the lease or harvesting agreement under RCW 79.96.080:~~

~~(2) When a geoduck tract licensee permits a person to harvest geoducks on that tract, each violation by that person of this title or rules of the director relating to geoduck licensing or harvesting resulting in: (a) Conviction or unvacated forfeiture of bail, or (b) suspension or cancellation of the lease or harvesting agreement by the department of natural resources under RCW 79.96.080, shall be imputed to the tract licensee for the purpose of computing the number of violations by the tract licensee under subsection (1) of this section)).~~

~~((3))~~ (2) Except as provided in subsection ~~((4))~~ (3) of this section, the director shall not issue a geoduck diver license (~~(or geoduck tract license)~~) to a person who has had a license revoked. This prohibition is effective for one year after the revocation.

~~((4))~~ (3) Appeals of revocations under this section may be taken under the judicial review provisions of chapter 34.05 RCW. If the license revocation is determined to be invalid, the director shall reissue the license to that person.

NEW SECTION. Sec. 8. A new section is added to chapter 79.01 RCW to read as follows:

The department of natural resources is authorized to offer and pay a reward not to exceed one thousand dollars in each case for information regarding violations of any statute or rule adopted pursuant to any statute relating to the state's public lands and natural resources including, but not limited to, Titles 75, 76, 78, and 79 RCW, and any rule adopted pursuant thereto. No reward may be paid to any federal, state, or local government or agency employees for information obtained by them in the normal course of their employment. The department of natural resources is authorized to promulgate rules in pursuit of its authority under this section to determine the appropriate account or fund from which to pay the reward. No appropriation shall be required for disbursement.

NEW SECTION. Sec. 9. A new section is added to chapter 79.96 RCW to read as follows:

(1) If a person wrongfully takes shellfish or causes shellfish to be wrongfully taken from the public lands and the wrongful taking is intentional and knowing, then the person shall be liable for damages of treble the fair market retail value of the amount of shellfish wrongfully taken. If a person wrongfully takes shellfish from the public lands under other circumstances, then the person shall be liable for damages of double the fair market value of the amount of shellfish wrongfully taken.

(2) For purposes of this section, a person "wrongfully takes" shellfish from public lands if the person takes shellfish: (a) Above the limits of any applicable laws that govern the harvest of shellfish from public lands; (b) without reporting the harvest to the department of fisheries or the department of natural resources where such reporting is required by law or contract; (c) outside the area or above the limits that an agreement or contract from the department of natural resources allows the harvest of shellfish from public lands; or (d) without a lease or purchase of the shellfish where such lease or purchase is required by law prior to harvest of the shellfish.

(3) The remedies in this section are for civil damages and shall be proved by a preponderance of the evidence. The department of natural resources may file a civil action in Thurston county superior court or the county where the shellfish were taken against any person liable under this section. Damages recovered under this section shall be applied in the same way as received under geoduck harvesting agreements authorized by RCW 79.96.080.

(4) For purposes of the remedies created by this section, the amount of shellfish wrongfully taken by a person may be established either:

(a) By surveying the aquatic lands to reasonably establish the amount of shellfish taken from the immediate area where a person is shown to have been wrongfully taking shellfish;

(b) By weighing the shellfish on board any vessel or in possession of a person shown to be wrongfully taking shellfish; or

(c) By any other evidence that reasonably establishes the amount of shellfish wrongfully taken.

The amount of shellfish established by (a) or (b) of this subsection shall be presumed to be the amount wrongfully taken unless the defendant shows by a preponderance of evidence that the shellfish were lawfully taken or that the defendant did not take the shellfish presumed to have been wrongfully taken. Whenever there is reason to believe that shellfish in the possession of any person were wrongfully taken, the department of natural resources or the department of fisheries may require the person to proceed to a designated off-load point and to weigh all shellfish in possession of the person or on board the person's vessel.

(5) This civil remedy is supplemental to the state's power to prosecute any person for theft of shellfish, for other crimes where shellfish are involved, or for violation of regulations of the department of fisheries.

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## CHAPTER 164

[Senate Bill No. 6802]

### UTILITY RATES—REDUCTION FOR LOW INCOME DISABLED CITIZENS

AN ACT Relating to reduced utility rates; and amending RCW 74.38.070.

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

Sec. 1. Section 1, chapter 116, Laws of 1979 as last amended by section 1, chapter 44, Laws of 1988 and RCW 74.38.070 are each amended to read as follows:

(1) Notwithstanding any other provision of law, any county, city, town, municipal corporation, or quasi municipal corporation providing utility services may provide such services at reduced rates for low income senior citizens or low income disabled citizens: PROVIDED, That, for the purposes of this section, "low income senior citizen" or "low income disabled citizen" shall be defined by appropriate ordinance or resolution adopted by the governing body of the county, city, town, municipal corporation, or quasi municipal corporation providing the utility services except as provided in subsection (2) of this section. Any reduction in rates granted in whatever manner to low income senior citizens or low income disabled citizens in one part of a service area shall be uniformly extended to low income senior citizens or low income disabled citizens in all other parts of the service area.

(2) For purposes of implementing this section by any public utility district, (a) "low income senior citizen" means a person who is sixty-two years of age or older and whose total income, including that of his or her spouse or cotenant, does not exceed the amount specified in RCW 84.36.381(5)(b), as now or hereafter amended and (b) "low income disabled citizen" means (i) a person qualifying for special parking privileges under RCW 46.16.381(1) (a) through (f) ((or)), (ii) a blind person as defined in RCW 74.18.020, or (iii) a disabled, handicapped, or incapacitated person as defined under any other existing state or federal program and whose income,