

Title 1

GENERAL PROVISIONS

Chapters

- 1.08 Statute law committee (code reviser).
- 1.12 Rules of construction.
- 1.16 General definitions.
- 1.20 General provisions.

Chapter 1.08 RCW

STATUTE LAW COMMITTEE (CODE REVISER)

Sections

- 1.08.015 Codification and revision of laws—Scope of revision.
- 1.08.017 Code reviser may omit certain provisions of legislative acts from code; may omit annotations after ten years.

**1.08.015 Codification and revision of laws—Scope of revision.** Subject to such general policies as may be promulgated by the committee and to the general supervision of the committee, the reviser shall:

(1) Codify for consolidation into the Revised Code of Washington all laws of a general and permanent nature heretofore or hereafter enacted by the legislature, and assign permanent numbers as provided by law to all new titles, chapters, and sections so added to the revised code.

(2) Edit and revise such laws for such consolidation, to the extent deemed necessary or desirable by the reviser and without changing the meaning of any such law, in the following respects only:

(a) Make capitalization uniform with that followed generally in the revised code.

(b) Make chapter or section division and subdivision designations uniform with that followed in the revised code.

(c) Substitute for the term "this act," where necessary, the term "section," "part," "code," "chapter," or "title," or reference to specific section or chapter numbers, as the case may require.

(d) Substitute for reference to a section of an "act," the proper code section number reference.

(e) Substitute for "as provided in the preceding section" and other phrases of similar import, the proper code section number references.

(f) Substitute the proper calendar date for "effective date of this act," "date of passage of this act," and other phrases of similar import.

(g) Strike out figures where merely a repetition of written words, and substitute, where deemed advisable for uniformity, written words for figures.

(h) Rearrange any misplaced statutory material, incorporate any omitted statutory material as well as correct manifest errors in spelling, and manifest clerical or typographical errors, or errors by way of additions or omissions.

(i) Correct manifest errors in references, by chapter or section number, to other laws.

(j) Correct manifest errors or omissions in numbering or renumbering sections of the revised code.

(k) Rearrange the order of sections to conform to such logical arrangement of subject matter as may most generally be followed in the revised code, and alphabetize definition

sections, when to do so will not change the meaning or effect of such sections.

(l) Change the wording of section captions, if any, and provide captions to new chapters and sections.

(m) Strike provisions manifestly obsolete.

(3) Create new code titles, chapters, and sections of the Revised Code of Washington, or otherwise revise the title, chapter and sectional organization of the code, all as may be required from time to time, to effectuate the orderly and logical arrangement of the statutes. Such new titles, chapters, and sections, and organizational revisions, shall have the same force and effect as the ninety-one titles originally enacted and designated as the "Revised Code of Washington" pursuant to the code adoption acts codified in chapter 1.04 RCW. [2009 c 186 § 1; 1961 c 246 § 1; 1953 c 257 § 4; 1951 c 157 § 7.]

**1.08.017 Code reviser may omit certain provisions of legislative acts from code; may omit annotations after ten years.**

(1) The reviser may omit from the code all titles to acts, enacting and repealing clauses, preambles, declarations of emergency, severability, and validity and construction sections unless, in a particular instance, it may be necessary to retain such to preserve the full intent of the law. The omission of validity or construction sections is not intended to, nor shall it change, or be considered as changing, the effect to be given thereto in construing legislation of which such validity and construction sections were a part. Any section so omitted, other than repealing, emergency, severability, or validity provisions, shall be referred to or set forth as an annotation to the applicable sections of the act as codified.

(2) The reviser may remove annotations that have appeared in the published Revised Code of Washington for more than ten years, unless in a particular instance, it may be necessary to retain such to preserve the full intent of the law. Any annotations removed under this subsection shall be retained and available in the electronic copy of the Revised Code of Washington available on the code reviser web site.

(3) Section captions, part headings, subheadings, tables of contents, and indexes appearing in legislative bills shall not be considered any part of the law, and the reviser may omit such provisions from the Revised Code of Washington and annotations unless, in a particular instance, it may be necessary to retain such to preserve the full intent of the law. [2009 c 186 § 2; 1955 c 235 § 3; 1951 c 157 § 8.]

Chapter 1.12 RCW

RULES OF CONSTRUCTION

Sections

- 1.12.060 Certified mail—Use—Electronic return receipts authorized.
- 1.12.080 Construction of statutes—Domestic relations—Exceptions. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)

**1.12.060 Certified mail—Use—Electronic return receipts authorized.** (1) Whenever the use of "registered" mail is authorized by this code, "certified" mail, with return receipt requested, may be used.

(2) Whenever the use of "certified mail with a return receipt requested" is authorized or required by this code, elec-

tronic return receipt delivery confirmation provided by the United States postal service may be used. [2009 c 251 § 1; 1961 c 204 § 1.]

**1.12.080 Construction of statutes—Domestic relations—Exceptions.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this code, with the exception of chapter 26.04 RCW, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 3.]

#### Chapter 1.16 RCW

#### GENERAL DEFINITIONS

##### Sections

1.16.100 Domestic relations terms—Exceptions. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**1.16.100 Domestic relations terms—Exceptions.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this code, with the exception of chapter 26.04 RCW, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 4.]

#### Chapter 1.20 RCW

#### GENERAL PROVISIONS

##### Sections

1.20.038 State endemic mammal.

**1.20.038 State endemic mammal.** The Olympic marmot, *Marmota olympus*, is hereby designated as the official endemic mammal of the state of Washington. [2009 c 464 § 2.]

[2009 RCW Supp—page 2]

**Finding—Intent—2009 c 464:** "The legislature finds that the Olympic marmot, the only endemic mammal in Washington state, should be designated as the state endemic mammal. The Olympic marmot inhabits the Olympic Peninsula in the western section of the state of Washington. Olympic marmots hibernate from September to May. During the morning and afternoon on summer days they feed and spend time sunbathing on rocks. In the evening, they return to their burrow. Olympic marmots are relatively easy to see during the summer months along Hurricane Ridge in the Olympic National Park. Olympic marmots eat herbs, grasses, and flowers. They prefer plants that are soft and easy to digest. They may also eat fruits, legumes, and insects.

Olympic marmots are highly social and may live in groups of over a dozen animals. Gregarious bonds are made between individuals in a family. Olympic marmots identify each other by touching noses and smelling cheeks.

The legislature intends to promote awareness of the Olympic marmot by designating the Olympic marmot as the official endemic mammal of the state of Washington." [2009 c 464 § 1.]

## Title 2

### COURTS OF RECORD

#### Chapters

- 2.06 Court of appeals.
- 2.10 Judicial retirement system.
- 2.12 Retirement of judges—Retirement system.
- 2.14 Retirement of judges—Supplemental retirement.
- 2.24 Court commissioners and referees.
- 2.28 Powers of courts and general provisions.
- 2.36 Juries.
- 2.56 Administrator for the courts.
- 2.68 Judicial information system.
- 2.72 Office of public guardianship.

#### Chapter 2.06 RCW

#### COURT OF APPEALS

##### Sections

2.06.020 Divisions—Locations—Judges enumerated—Districts.

**2.06.020 Divisions—Locations—Judges enumerated—Districts.** The court shall have three divisions, one of which shall be headquartered in Seattle, one of which shall be headquartered in Spokane, and one of which shall be headquartered in Tacoma:

(1) The first division shall have twelve judges from three districts, as follows:

(a) District 1 shall consist of King county and shall have eight judges;

(b) District 2 shall consist of Snohomish county and shall have two judges; and

(c) District 3 shall consist of Island, San Juan, Skagit, and Whatcom counties and shall have two judges.

(2) The second division shall have eight judges from the following districts:

(a) District 1 shall consist of Pierce county and shall have three judges;

(b) District 2 shall consist of Clallam, Grays Harbor, Jefferson, Kitsap, Mason, and Thurston counties and shall have three judges;

(c) District 3 shall consist of Clark, Cowlitz, Lewis, Pacific, Skamania, and Wahkiakum counties and shall have two judges.

(3) The third division shall have five judges from the following districts:

(a) District 1 shall consist of Ferry, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens counties and shall have two judges;

(b) District 2 shall consist of Adams, Asotin, Benton, Columbia, Franklin, Garfield, Grant, Walla Walla, and Whitman counties and shall have one judge;

(c) District 3 shall consist of Chelan, Douglas, Kittitas, Klickitat, and Yakima counties and shall have two judges. [2009 c 77 § 1; 1999 c 75 § 1; 1993 c 420 § 1; 1989 c 328 § 10; 1977 ex.s. c 49 § 1; 1969 ex.s. c 221 § 2.]

**Rules of court:** Cf. *RAP 4.1(b)*.

**Judicial position contingent on funding—2009 c 77:** "The judicial position created by \*section 1, chapter 77, Laws of 2009 shall become effective only if that position is specifically funded and is referenced by division and district in an omnibus appropriations act." [2009 c 77 § 2.]

**\*Reviser's note:** The judicial position created by section 1, chapter 77, Laws of 2009 was not referenced in a 2009 omnibus appropriations act.

**Effective date—1993 c 420:** "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 15, 1993]." [1993 c 420 § 3.]

**Intent—1989 c 328:** See note following RCW 2.08.061.

*Appointments to positions created by the amendment to this section by 1977 ex.s. c 49 § 1: RCW 2.06.075.*

## Chapter 2.10 RCW

### JUDICIAL RETIREMENT SYSTEM

#### Sections

- 2.10.030 Definitions. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*)
- 2.10.900 Construction—Domestic relations terms—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*)

**2.10.030 Definitions.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*) (1) "Accumulated contributions" means the total amount deducted from the judge's monthly salary pursuant to RCW 2.10.090, together with the regular interest thereon from July 1, 1988, as determined by the director of the department of retirement systems.

(2) "Beneficiary" means any person in receipt of a retirement allowance, disability allowance or any other benefit described herein.

(3) "Final average salary" means (a) for a judge in service in the same court for a minimum of twelve consecutive months preceding the date of retirement, the salary attached to the position held by the judge immediately prior to retirement; (b) for any other judge, the average monthly salary paid over the highest twenty-four month period in the last ten years of service.

(4) "Index" means for any calendar year, that year's annual average consumer price index for urban wage earners and clerical workers, all items (1957-1959 equal one hundred) — compiled by the bureau of labor statistics, United States department of labor.

(5) "Judge" means a person elected or appointed to serve as judge of a court of record as provided in chapters 2.04, 2.06, and 2.08 RCW. "Judge" does not include a person serving as a judge pro tempore except for a judge pro tempore appointed under RCW 2.04.240(2) or 2.06.150(2).

(6) "Monthly salary" means the monthly salary of the position held by the judge.

(7) "Retirement allowance" for the purpose of applying cost of living increases or decreases includes retirement allowances, disability allowances and survivorship benefit.

(8) "Retirement board" means the "Washington judicial retirement board" established herein.

(9) "Retirement fund" means the "Washington judicial retirement fund" established herein.

(10) "Retirement system" means the "Washington judicial retirement system" provided herein.

(11) "Service" means all periods of time served as a judge, as herein defined. Any calendar month at the beginning or end of a term in which ten or more days are served shall be counted as a full month of service: PROVIDED, That no more than one month's service may be granted for any one calendar month. Only months of service will be counted in the computation of any retirement allowance or other benefit provided for in this chapter. Years of service shall be determined by dividing the total months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefit.

(12) "Surviving spouse" means the surviving widow or widower or surviving state registered domestic partner of a judge. "Surviving spouse" does not include the divorced spouse of a judge or an individual whose state registered domestic partnership with the judge has been terminated, dissolved, or invalidated. [2009 c 521 § 6; 1997 c 88 § 5; 1988 c 109 § 1; 1971 ex.s. c 267 § 3.]

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

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

**Effective date—1988 c 109:** "This act shall take effect July 1, 1988." [1988 c 109 § 27.]

**2.10.900 Construction—Domestic relations terms—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 5.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** "(1) Sections 5 through 8, 79, 87 through 103, 107, 151, 173 through 175, and 190 through 192 of this act take effect January 1, 2014.

(2) Sections 165 and 166 of this act take effect August 1, 2009." [2009 c 521 § 201.]

### Chapter 2.12 RCW

#### RETIREMENT OF JUDGES— RETIREMENT SYSTEM

##### Sections

2.12.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*)

**2.12.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 7.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

### Chapter 2.14 RCW

#### RETIREMENT OF JUDGES— SUPPLEMENTAL RETIREMENT

##### Sections

2.14.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*)

**2.14.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and

wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 8.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

### Chapter 2.24 RCW

#### COURT COMMISSIONERS AND REFEREES

##### Sections

2.24.010 Appointment of court commissioners, criminal commissioners—Qualifications—Term of office.

2.24.040 Powers—Fees.

**2.24.010 Appointment of court commissioners, criminal commissioners—Qualifications—Term of office.** (1) There may be appointed in each county or judicial district, by the judges of the superior court having jurisdiction therein, one or more court commissioners for said county or judicial district. Each such commissioner shall be a citizen of the United States and shall hold the office during the pleasure of the judges making the appointment.

(2)(a) There may be appointed in counties with a population of more than four hundred thousand, by the presiding judge of the superior court having jurisdiction therein, one or more attorneys to act as criminal commissioners to assist the superior court in disposing of adult criminal cases. Such criminal commissioners shall have power, authority, and jurisdiction, concurrent with the superior court and the judges thereof, in adult criminal cases, to preside over arraignments, preliminary appearances, initial extradition hearings, and noncompliance proceedings pursuant to RCW 9.94A.6333; accept pleas if authorized by local court rules; appoint counsel; make determinations of probable cause; set, amend, and review conditions of pretrial release; set bail; set trial and hearing dates; authorize continuances; and accept waivers of the right to speedy trial.

(b) The county legislative authority must approve the creation of criminal commissioner positions. [2009 c 140 § 1; 1990 c 191 § 1; 1979 ex.s. c 54 § 1; 1967 ex.s. c 87 § 1; 1961 c 42 § 1; 1909 c 124 § 1; RRS § 83. Prior: 1895 c 83 § 1.]

**2.24.040 Powers—Fees.** Such court commissioner shall have power, authority, and jurisdiction, concurrent with the superior court and the judge thereof, in the following particulars:

(1) To hear and determine all matters in probate, to make and issue all proper orders therein, and to issue citations in all cases where same are authorized by the probate statutes of this state.

(2) To grant and enter defaults and enter judgment thereon.

(3) To issue temporary restraining orders and temporary injunctions, and to fix and approve bonds thereon.

(4) To act as referee in all matters and actions referred to him or her by the superior court as such, with all the powers now conferred upon referees by law.

(5) To hear and determine all proceedings supplemental to execution, with all the powers conferred upon the judge of the superior court in such matters.

(6) To hear and determine all petitions for the adoption of children and for the dissolution of incorporations.

(7) To hear and determine all applications for the commitment of any person to the hospital for the insane, with all the powers of the superior court in such matters: PROVIDED, That in cases where a jury is demanded, same shall be referred to the superior court for trial.

(8) To hear and determine all complaints for the commitments of minors with all powers conferred upon the superior court in such matters.

(9) To hear and determine ex parte and uncontested civil matters of any nature.

(10) To grant adjournments, administer oaths, preserve order, compel attendance of witnesses, and to punish for contempts in the refusal to obey or the neglect of the court commissioner's lawful orders made in any matter before the court commissioner as fully as the judge of the superior court.

(11) To take acknowledgments and proofs of deeds, mortgages and all other instruments requiring acknowledgment under the laws of this state, and to take affidavits and depositions in all cases.

(12) To provide an official seal, upon which shall be engraved the words "Court Commissioner," and the name of the county for which he or she may be appointed, and to authenticate his official acts therewith in all cases where same is necessary.

(13) To charge and collect, for his or her own use, the same fees for the official performance of official acts mentioned in subsections (4) and (11) of this section as are provided by law for referees and notaries public.

(14) To hear and determine small claims appeals as provided in chapter 12.36 RCW.

(15) In adult criminal cases, to preside over arraignments, preliminary appearances, initial extradition hearings, and noncompliance proceedings pursuant to RCW 9.94A.6333 or 9.94B.040; accept pleas if authorized by local court rules; appoint counsel; make determinations of probable cause; set, amend, and review conditions of pretrial release; set bail; set trial and hearing dates; authorize continuances; and accept waivers of the right to speedy trial. [2009 c 28 § 1; 2000 c 73 § 1; 1997 c 352 § 14; 1991 c 33 § 6; 1979 ex.s. c 54 § 2; 1963 c 188 § 1; 1909 c 124 § 2; RRS § 85. Prior: 1895 c 83 § 2.]

**Effective date—2009 c 28:** "This act takes effect August 1, 2009." [2009 c 28 § 43.]

**Effective date—1991 c 33:** See note following RCW 3.66.020.

*Powers of commissioner under juvenile court act: RCW 13.04.030.*

### Chapter 2.28 RCW

#### POWERS OF COURTS AND GENERAL PROVISIONS

##### Sections

2.28.170 Drug courts.

**2.28.170 Drug courts.** (1) Counties may establish and operate drug courts.

(2) For the purposes of this section, "drug court" means a court that has special calendars or dockets designed to achieve a reduction in recidivism and substance abuse among nonviolent, substance abusing felony and nonfelony offend-

ers, whether adult or juvenile, by increasing their likelihood for successful rehabilitation through early, continuous, and intense judicially supervised treatment; mandatory periodic drug testing; and the use of appropriate sanctions and other rehabilitation services.

(3)(a) Any jurisdiction that seeks a state appropriation to fund a drug court program must first:

(i) Exhaust all federal funding that is available to support the operations of its drug court and associated services; and

(ii) Match, on a dollar-for-dollar basis, state moneys allocated for drug court programs with local cash or in-kind resources. Moneys allocated by the state must be used to supplement, not supplant, other federal, state, and local funds for drug court operations and associated services. However, from July 26, 2009, until June 30, 2013, no match is required for state moneys expended for the administrative and overhead costs associated with the operation of a drug court pursuant to RCW 70.96A.350.

(b) Any county that establishes a drug court pursuant to this section shall establish minimum requirements for the participation of offenders in the program. The drug court may adopt local requirements that are more stringent than the minimum. The minimum requirements are:

(i) The offender would benefit from substance abuse treatment;

(ii) The offender has not previously been convicted of a serious violent offense or sex offense as defined in RCW 9.94A.030; and

(iii) Without regard to whether proof of any of these elements is required to convict, the offender is not currently charged with or convicted of an offense:

(A) That is a sex offense;

(B) That is a serious violent offense;

(C) During which the defendant used a firearm; or

(D) During which the defendant caused substantial or great bodily harm or death to another person. [2009 c 445 § 2; 2006 c 339 § 106; 2005 c 504 § 504; 2002 c 290 § 13; 1999 c 197 § 9.]

**Intent—Part headings not law—2006 c 339:** See notes following RCW 70.96A.325.

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Effective date—2002 c 290 §§ 1, 4-6, 12, 13, 26, and 27:** See note following RCW 70.96A.350.

**Intent—2002 c 290:** See note following RCW 9.94A.517.

**Severability—2002 c 290:** See RCW 9.94A.924.

**Legislative recognition—1999 c 197:** "The legislature recognizes the utility of drug court programs in reducing recidivism and assisting the courts by diverting potential offenders from the normal course of criminal trial proceedings." [1999 c 197 § 7.]

**Severability—1999 c 197:** See note following RCW 9.94A.030.

### Chapter 2.36 RCW

#### JURIES

##### Sections

2.36.072 Determination of juror qualification—Written or electronic declaration.

**2.36.072 Determination of juror qualification—Written or electronic declaration.** (1) Each court shall establish a means to preliminarily determine by a written or electronic declaration signed under penalty of perjury by the person summoned, the qualifications set forth in RCW 2.36.070 of each person summoned for jury duty prior to their appearance at the court to which they are summoned to serve.

(2) An electronic signature may be used in lieu of a written signature.

(3) "Electronic signature" means an electric sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(4) Upon receipt by the summoning court of a written declaration stating that a declarant does not meet the qualifications set forth in RCW 2.36.070, that declarant shall be excused from appearing in response to the summons. If a person summoned to appear for jury duty fails to sign and return a declaration of his or her qualifications to serve as a juror prior to appearing in response to a summons and is later determined to be unqualified for one of the reasons set forth in RCW 2.36.070, that person shall not be entitled to any compensation as provided in RCW 2.36.150. Information provided to the court for preliminary determination of statutory qualification for jury duty may only be used for the term such person is summoned and may not be used for any other purpose, except that the court, or designee, may report a change of address or nondelivery of summons of persons summoned for jury duty to the county auditor. [2009 c 330 § 1; 1993 c 408 § 9.]

**Severability—Effective dates—1993 c 408:** See notes following RCW 2.36.054.

## Chapter 2.56 RCW

### ADMINISTRATOR FOR THE COURTS

#### Sections

2.56.030	Powers and duties.
2.56.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )

**2.56.030 Powers and duties.** The administrator for the courts shall, under the supervision and direction of the chief justice:

(1) Examine the administrative methods and systems employed in the offices of the judges, clerks, stenographers, and employees of the courts and make recommendations, through the chief justice, for the improvement of the same;

(2) Examine the state of the dockets of the courts and determine the need for assistance by any court;

(3) Make recommendations to the chief justice relating to the assignment of judges where courts are in need of assistance and carry out the direction of the chief justice as to the assignments of judges to counties and districts where the courts are in need of assistance;

(4) Collect and compile statistical and other data and make reports of the business transacted by the courts and transmit the same to the chief justice to the end that proper action may be taken in respect thereto;

(5) Prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system and make recommendations in respect thereto;

(6) Collect statistical and other data and make reports relating to the expenditure of public moneys, state and local, for the maintenance and operation of the judicial system and the offices connected therewith;

(7) Obtain reports from clerks of courts in accordance with law or rules adopted by the supreme court of this state on cases and other judicial business in which action has been delayed beyond periods of time specified by law or rules of court and make report thereof to supreme court of this state;

(8) Act as secretary of the judicial conference referred to in RCW 2.56.060;

(9) Submit annually, as of February 1st, to the chief justice, a report of the activities of the administrator's office for the preceding calendar year including activities related to courthouse security;

(10) Administer programs and standards for the training and education of judicial personnel;

(11) Examine the need for new superior court and district court judge positions under an objective workload analysis. The results of the objective workload analysis shall be reviewed by the board for judicial administration which shall make recommendations to the legislature. It is the intent of the legislature that an objective workload analysis become the basis for creating additional district and superior court positions, and recommendations should address that objective;

(12) Provide staff to the judicial retirement account plan under chapter 2.14 RCW;

(13) Attend to such other matters as may be assigned by the supreme court of this state;

(14) Within available funds, develop a curriculum for a general understanding of child development, placement, and treatment resources, as well as specific legal skills and knowledge of relevant statutes including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules, interviewing skills, and special needs of the abused or neglected child. This curriculum shall be completed and made available to all juvenile court judges, court personnel, and service providers and be updated yearly to reflect changes in statutes, court rules, or case law;

(15) Develop, in consultation with the entities set forth in RCW 2.56.150(3), a comprehensive statewide curriculum for persons who act as guardians ad litem under Title 13 or 26 RCW. The curriculum shall be made available July 1, 2008, and include specialty sections on child development, child sexual abuse, child physical abuse, child neglect, domestic violence, clinical and forensic investigative and interviewing techniques, family reconciliation and mediation services, and relevant statutory and legal requirements. The curriculum shall be made available to all superior court judges, court personnel, and all persons who act as guardians ad litem;

(16) Develop a curriculum for a general understanding of crimes of malicious harassment, as well as specific legal skills and knowledge of RCW 9A.36.080, relevant cases, court rules, and the special needs of malicious harassment victims. This curriculum shall be made available to all supe-

rior court and court of appeals judges and to all justices of the supreme court;

(17) Develop, in consultation with the criminal justice training commission and the commissions established under chapters 43.113, 43.115, and 43.117 RCW, a curriculum for a general understanding of ethnic and cultural diversity and its implications for working with youth of color and their families. The curriculum shall be available to all superior court judges and court commissioners assigned to juvenile court, and other court personnel. Ethnic and cultural diversity training shall be provided annually so as to incorporate cultural sensitivity and awareness into the daily operation of juvenile courts statewide;

(18) Authorize the use of closed circuit television and other electronic equipment in judicial proceedings. The administrator shall promulgate necessary standards and procedures and shall provide technical assistance to courts as required;

(19) Develop a Washington family law handbook in accordance with RCW 2.56.180;

(20) Administer state funds for improving the operation of the courts and provide support for court coordinating councils, under the direction of the board for judicial administration;

(21) Administer the family and juvenile court improvement grant program;

(22)(a) Administer and distribute amounts appropriated under RCW 43.08.250(2) for district court judges' and qualifying elected municipal court judges' salary contributions. The administrator for the courts shall develop a distribution formula for these amounts that does not differentiate between district and elected municipal court judges.

(b) A city qualifies for state contribution of elected municipal court judges' salaries under (a) of this subsection if:

(i) The judge is serving in an elected position;

(ii) The city has established by ordinance that a full-time judge is compensated at a rate equivalent to at least ninety-five percent, but not more than one hundred percent, of a district court judge salary or for a part-time judge on a pro rata basis the same equivalent; and

(iii) The city has certified to the office of the administrator for the courts that the conditions in (b)(i) and (ii) of this subsection have been met;

(23) Subject to the availability of funds specifically appropriated therefor, assist courts in the development and implementation of language assistance plans required under RCW 2.43.090. [2009 c 479 § 2. Prior: 2008 c 291 § 4; 2008 c 279 § 3; 2007 c 496 § 302; prior: 2005 c 457 § 7; 2005 c 282 § 7; 2002 c 49 § 2; 1997 c 41 § 2; 1996 c 249 § 2; 1994 c 240 § 1; 1993 c 415 § 3; 1992 c 205 § 115; 1989 c 95 § 2; prior: 1988 c 234 § 2; 1988 c 109 § 23; 1987 c 363 § 6; 1981 c 132 § 1; 1957 c 259 § 3.]

**Effective date—2009 c 479:** "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, 2009." [2009 c 479 § 76.]

**Part headings not law—2007 c 496:** See note following RCW 26.09.002.

**Intent—2005 c 457:** See note following RCW 43.08.250.

**Declaration—2002 c 49:** See note following RCW 2.56.180.

**Intent—1996 c 249:** "It is the intent of this act to make improvements to the guardian ad litem systems currently in place for the protection of minors and incapacitated persons." [1996 c 249 § 1.]

**Intent—1993 c 415:** See note following RCW 2.56.031.

**Part headings not law—Severability—1992 c 205:** See notes following RCW 13.40.010.

**Construction—Severability—1989 c 95:** See notes following RCW 9A.36.080.

**Legislative findings—1988 c 234:** "The legislature recognizes the need for appropriate training of juvenile court judges, attorneys, court personnel, and service providers in the dependency system and at-risk youth systems." [1988 c 234 § 1.]

**Effective date—1988 c 109:** See note following RCW 2.10.030.

*Ethnic and cultural diversity—Development of curriculum for understanding—Training: RCW 43.101.280.*

**2.56.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 9.]

## Chapter 2.68 RCW

### JUDICIAL INFORMATION SYSTEM

#### Sections

2.68.020 Judicial information system account.

**2.68.020 Judicial information system account.** There is created an account in the custody of the state treasurer to be known as the judicial information system account. The administrative office of the courts shall maintain and administer the account, in which shall be deposited all moneys received from in-state noncourt users and any out-of-state users of the judicial information system and moneys as specified in RCW 2.68.040 for the purposes of providing judicial information system access to noncourt users and providing an adequate level of automated services to the judiciary. The legislature shall appropriate the funds in the account for the purposes of the judicial information system. The account shall be used for the acquisition of equipment, software, supplies, services, and other costs incidental to the acquisition, development, operation, and administration of information services, telecommunications, systems, software, supplies, and equipment, including the payment of principal and interest on items paid in installments. During the 2007-2009 fiscal biennium, the legislature may transfer from the judicial information system account to the state general fund such

amounts as reflect the excess fund balance of the account. During the 2009-2011 fiscal biennium, the legislature may transfer from the judicial information system account to the state general fund such amounts as reflect the excess fund balance of the account. [2009 c 564 § 1802; 2009 c 564 § 918; 2005 c 282 § 11; 1994 c 8 § 1; 1989 c 364 § 2.]

**Reviser's note:** This section was amended by 2009 c 564 § 918 and by 2009 c 564 § 1802, 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—2009 c 564:** "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 19, 2009]." [2009 c 564 § 1812.]

## Chapter 2.72 RCW

### OFFICE OF PUBLIC GUARDIANSHIP

#### Sections

2.72.030 Public guardianship program—Contracts for public guardianship services—Adoption of eligibility criteria and minimum standards of practice—Duties of office—Report to legislature, study.

**2.72.030 Public guardianship program—Contracts for public guardianship services—Adoption of eligibility criteria and minimum standards of practice—Duties of office—Report to legislature, study.** The public guardianship administrator is authorized to establish and administer a public guardianship program as follows:

(1)(a) The office shall contract with public or private entities or individuals to provide public guardianship services to persons age eighteen or older whose income does not exceed two hundred percent of the federal poverty level determined annually by the United States department of health and human services or who are receiving long-term care services through the Washington state department of social and health services. Neither the public guardianship administrator nor the office may act as public guardian or limited guardian or act in any other representative capacity for any individual.

(b) The office is exempt from RCW 39.29.008 because the primary function of the office is to contract for public guardianship services that are provided in a manner consistent with the requirements of this chapter. The office shall otherwise comply with chapter 39.29 RCW and is subject to audit by the state auditor.

(c) Public guardianship service contracts are dependent upon legislative appropriation. This chapter does not create an entitlement.

(d) The initial implementation of public guardianship services shall be on a pilot basis in a minimum of two geographical areas that include one urban area and one rural area. There may be one or several contracts in each area.

(2) The office shall, within one year of the commencement of its operation, adopt eligibility criteria to enable it to serve individuals with the greatest need when the number of cases in which courts propose to appoint a public guardian exceeds the number of cases in which public guardianship services can be provided. In adopting such criteria, the office may consider factors including, but not limited to, the following: Whether an incapacitated individual is at significant risk

of harm from abuse, exploitation, abandonment, neglect, or self-neglect; and whether an incapacitated person is in imminent danger of loss or significant reduction in public services that are necessary for the individual to live successfully in the most integrated and least restrictive environment that is appropriate in light of the individual's needs and values.

(3) The office shall adopt minimum standards of practice for public guardians providing public guardianship services. Any public guardian providing such services must be certified by the certified professional guardian board established by the supreme court.

(4) The office shall require a public guardian to visit each incapacitated person for which public guardianship services are provided no less than monthly to be eligible for compensation.

(5) The office shall not petition for appointment of a public guardian for any individual. It may develop a proposal for the legislature to make affordable legal assistance available to petition for guardianships.

(6) The office shall not authorize payment for services for any entity that is serving more than twenty incapacitated persons per certified professional guardian.

(7) The office shall monitor and oversee the use of state funding to ensure compliance with this chapter.

(8) The office shall collect uniform and consistent basic data elements regarding service delivery. This data shall be made available to the legislature and supreme court in a format that is not identifiable by individual incapacitated person to protect confidentiality.

(9) The office shall report to the legislature on how services other than guardianship services, and in particular services that might reduce the need for guardianship services, might be provided under contract with the office by December 1, 2009. The services to be considered should include, but not be limited to, services provided under powers of attorney given by the individuals in need of the services.

(10) The office shall require public guardianship providers to seek reimbursement of fees from program clients who are receiving long-term care services through the department of social and health services to the extent, and only to the extent, that such reimbursement may be paid, consistent with an order of the superior court, from income that would otherwise be required by the department to be paid toward the cost of the client's care. Fees reimbursed shall be remitted by the provider to the office unless a different disposition is directed by the public guardianship administrator.

(11) The office shall require public guardianship providers to certify annually that for each individual served they have reviewed the need for continued public guardianship services and the appropriateness of limiting, or further limiting, the authority of the public guardian under the applicable guardianship order, and that where termination or modification of a guardianship order appears warranted, the superior court has been asked to take the corresponding action.

(12) The office shall adopt a process for receipt and consideration of and response to complaints against the office and contracted providers of public guardianship services. The process shall include investigation in cases in which investigation appears warranted in the judgment of the administrator.



(13) The office shall contract with the Washington state institute for public policy for a study. An initial report is due two years following July 22, 2007, and a second report by December 1, 2011. The study shall analyze costs and off-setting savings to the state from the delivery of public guardianship services.

(14) The office shall develop standardized forms and reporting instruments that may include, but are not limited to, intake, initial assessment, guardianship care plan, decisional accounting, staff time logs, changes in condition or abilities of an incapacitated person, and values history. The office shall collect and analyze the data gathered from these reports.

(15) The office shall identify training needs for guardians it contracts with, and shall make recommendations to the supreme court, the certified professional guardian board, and the legislature for improvements in guardianship training. The office may offer training to individuals providing services pursuant to this chapter or to individuals who, in the judgment of the administrator or the administrator's designee, are likely to provide such services in the future.

(16) The office shall establish a system for monitoring the performance of public guardians, and office staff shall make in-home visits to a randomly selected sample of public guardianship clients. The office may conduct further monitoring, including in-home visits, as the administrator deems appropriate. For monitoring purposes, office staff shall have access to any information relating to a public guardianship client that is available to the guardian.

(17) During the first five years of its operations, the office shall issue annual reports of its activities. [2009 c 117 § 1; 2007 c 364 § 4.]

### Title 3

## DISTRICT COURTS— COURTS OF LIMITED JURISDICTION

### Chapters

- 3.34** District judges.
- 3.50** Municipal courts—Alternate provision.
- 3.58** Salaries and expenses.
- 3.62** Income of court.
- 3.66** Jurisdiction and venue.

### Chapter 3.34 RCW DISTRICT JUDGES

#### Sections

- 3.34.010 District judges—Number for each county.

#### **3.34.010 District judges—Number for each county.**

The number of district judges to be elected in each county shall be: Adams, two; Asotin, one; Benton, five; Chelan, two; Clallam, two; Clark, six; Columbia, one; Cowlitz, three; Douglas, one; Ferry, one; Franklin, one; Garfield, one; Grant, two; Grays Harbor, two; Island, one; Jefferson, one; King, twenty-three in 2009, twenty-five in 2010, and twenty-six in 2011; Kitsap, four; Kittitas, two; Klickitat, two; Lewis, two; Lincoln, one; Mason, one; Okanogan, two; Pacific, two; Pend Oreille, one; Pierce, eleven; San Juan, one; Skagit, two; Ska-

mania, one; Snohomish, eight; Spokane, eight; Stevens, one; Thurston, three; Wahkiakum, one; Walla Walla, two; Whatcom, two; Whitman, one; Yakima, four. This number may be increased only as provided in RCW 3.34.020. [2009 c 86 § 1; 2009 c 26 § 1; 2008 c 63 § 1; 2005 c 91 § 1; 2003 c 97 § 1; 2002 c 138 § 1; 1998 c 64 § 1; 1995 c 168 § 1; 1994 c 111 § 1; 1991 c 354 § 1; 1989 c 227 § 6; 1987 c 202 § 111; 1975 1st ex.s. c 153 § 1; 1973 1st ex.s. c 14 § 1; 1971 ex.s. c 147 § 1; 1970 ex.s. c 23 § 1; 1969 ex.s. c 66 § 1; 1965 ex.s. c 110 § 5; 1961 c 299 § 10.]

**Reviser's note:** This section was amended by 2009 c 26 § 1 and by 2009 c 86 § 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).

**District judge position for Clark county—2005 c 91:** See note following RCW 3.34.025.

**Effective date—2003 c 97:** "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 7, 2003]." [2003 c 97 § 6.]

**Effective date—1995 c 168:** "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 168 § 2.]

**Intent—1989 c 227:** See note following RCW 3.38.070.

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

### Chapter 3.50 RCW

## MUNICIPAL COURTS—ALTERNATE PROVISION

#### Sections

- 3.50.100 Revenue—Disposition—Interest.
- 3.50.345 Sentencing—Crimes against property—Criminal history check.

**3.50.100 Revenue—Disposition—Interest.** (1) Costs in civil and criminal actions may be imposed as provided in district court. All fees, costs, fines, forfeitures and other money imposed by any municipal court for the violation of any municipal or town ordinances shall be collected by the court clerk and, together with any other noninterest revenues received by the clerk, shall be deposited with the city or town treasurer as a part of the general fund of the city or town, or deposited in such other fund of the city or town, or deposited in such other funds as may be designated by the laws of the state of Washington.

(2) Except as provided in RCW 10.99.080, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions, and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(5) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts. [2009 c 479 § 3; 2004 c 15 § 3; 1995 c 291 § 3; 1988 c 169 § 2; 1985 c 389 § 4; 1984 c 258 § 304; 1975 1st ex.s. c 241 § 3; 1961 c 299 § 59.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Intent—2004 c 15:** See note following RCW 10.99.080.

**Effective date—1985 c 389:** See note following RCW 27.24.070.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.34.130.

**3.50.345 Sentencing—Crimes against property—Criminal history check.** Before a sentence is imposed upon a defendant convicted of a crime against property, the court or the prosecuting authority shall check existing judicial information systems to determine the criminal history of the defendant. [2009 c 431 § 16.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

### Chapter 3.58 RCW SALARIES AND EXPENSES

#### Sections

3.58.060 County trial court improvement account—Contributions to account by county—Use of funds.

**3.58.060 County trial court improvement account—Contributions to account by county—Use of funds.** Any county with a district court created under this title shall create a county trial court improvement account. An amount equal to one hundred percent of the state's contribution received by the county for the payment of district court judges' salaries shall be deposited into the account. Money in the account shall be used to fund improvements to superior and district court staffing, programs, facilities, or services, as appropriated by the county legislative authority. [2009 c 479 § 4; 2005 c 457 § 4.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Intent—2005 c 457:** See note following RCW 43.08.250.

### Chapter 3.62 RCW INCOME OF COURT

#### Sections

3.62.020 Costs, fees, fines, forfeitures, and penalties except city cases—Disposition—Interest.  
3.62.040 Costs, fines, forfeitures, and penalties from city cases—Disposition—Interest.

3.62.060 Filing fees in civil cases—Fees allowed as court costs.

**3.62.020 Costs, fees, fines, forfeitures, and penalties except city cases—Disposition—Interest.** (1) Except as provided in subsection (4) of this section, all costs, fees, fines, forfeitures and penalties assessed and collected in whole or in part by district courts, except costs, fines, forfeitures and penalties assessed and collected, in whole or in part, because of the violation of city ordinances, shall be remitted by the clerk of the district court to the county treasurer at least monthly, together with a financial statement as required by the state auditor, noting the information necessary for crediting of such funds as required by law.

(2) Except as provided in RCW 10.99.080, the county treasurer shall remit thirty-two percent of the noninterest money received under subsection (1) of this section except certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

(3) The balance of the noninterest money received by the county treasurer under subsection (1) of this section shall be deposited in the county current expense fund.

(4) All money collected for county parking infractions shall be remitted by the clerk of the district court at least monthly, with the information required under subsection (1) of this section, to the county treasurer for deposit in the county current expense fund.

(5) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(6) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the county current expense fund, and twenty-five percent to the county current expense fund to fund local courts. [2009 c 479 § 5; 2004 c 15 § 4. Prior: 1995 c 301 § 31; 1995 c 291 § 5; 1988 c 169 § 3; 1985 c 389 § 5; 1984 c 258 § 306; 1971 c 73 § 8; 1969 ex.s. c 199 § 2; 1961 c 299 § 106.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Intent—2004 c 15:** See note following RCW 10.99.080.

**Effective date—1985 c 389:** See note following RCW 27.24.070.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.34.130.

**3.62.040 Costs, fines, forfeitures, and penalties from city cases—Disposition—Interest.** (1) Except as provided in subsection (4) of this section, all costs, fines, forfeitures and penalties assessed and collected, in whole or in part, by

district courts because of violations of city ordinances shall be remitted by the clerk of the district court at least monthly directly to the treasurer of the city wherein the violation occurred.

(2) Except as provided in RCW 10.99.080, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions and certain costs, to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) All money collected for city parking infractions shall be remitted by the clerk of the district court at least monthly to the city treasurer for deposit in the city's general fund.

(5) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(6) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts. [2009 c 479 § 6; 2004 c 15 § 8; 1995 c 291 § 6; 1988 c 169 § 4; 1985 c 389 § 6; 1984 c 258 § 307; 1975 1st ex.s. c 241 § 2; 1961 c 299 § 108.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Intent—2004 c 15:** See note following RCW 10.99.080.

**Effective date—1985 c 389:** See note following RCW 27.24.070.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.34.130.

**3.62.060 Filing fees in civil cases—Fees allowed as court costs.** Clerks of the district courts shall collect the following fees for their official services:

(1) In any civil action commenced before or transferred to a district court, the plaintiff shall, at the time of such commencement or transfer, pay to such court a filing fee of forty-three dollars plus any surcharge authorized by RCW 7.75.035. Any party filing a counterclaim, cross-claim, or third-party claim in such action shall pay to the court a filing fee of forty-three dollars plus any surcharge authorized by RCW 7.75.035. No party shall be compelled to pay to the court any other fees or charges up to and including the rendition of judgment in the action other than those listed.

(2) For issuing a writ of garnishment or other writ, or for filing an attorney issued writ of garnishment, a fee of twelve dollars.

(3) For filing a supplemental proceeding a fee of twenty dollars.

(4) For demanding a jury in a civil case a fee of one hundred twenty-five dollars to be paid by the person demanding a jury.

(5) For preparing a transcript of a judgment a fee of twenty dollars.

(6) For certifying any document on file or of record in the clerk's office a fee of five dollars.

(7) At the option of the district court:

(a) For preparing a certified copy of an instrument on file or of record in the clerk's office, for the first page or portion of the first page, a fee of five dollars, and for each additional page or portion of a page, a fee of one dollar;

(b) For authenticating or exemplifying an instrument, a fee of two dollars for each additional seal affixed;

(c) For preparing a copy of an instrument on file or of record in the clerk's office without a seal, a fee of fifty cents per page;

(d) When copying a document without a seal or file that is in an electronic format, a fee of twenty-five cents per page;

(e) For copies made on a compact disc, an additional fee of twenty dollars for each compact disc.

(8) For preparing the record of a case for appeal to superior court a fee of forty dollars including any costs of tape duplication as governed by the rules of appeal for courts of limited jurisdiction (RALJ).

(9) At the option of the district court, for clerk's services such as processing ex parte orders, performing historical searches, compiling statistical reports, and conducting exceptional record searches, a fee not to exceed twenty dollars per hour or portion of an hour.

(10) For duplication of part or all of the electronic recording of a proceeding ten dollars per tape or other electronic storage medium.

(11) For filing any abstract of judgment or transcript of judgment from a municipal court or municipal department of a district court organized under the laws of this state a fee of forty-three dollars.

(12) At the option of the district court, a service fee of up to three dollars for the first page and one dollar for each additional page for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

(13) Until July 1, 2011, in addition to the fees required by subsection (1) of this section, clerks of the district courts shall collect a surcharge of twenty dollars on all fees required by subsection (1) of this section, which shall be remitted to the state treasurer for deposit in the judicial stabilization trust account. This surcharge is not subject to the division and remittance requirements of RCW 3.62.020.

The fees or charges imposed under this section shall be allowed as court costs whenever a judgment for costs is awarded. [2009 c 572 § 1; 2009 c 372 § 1; 2007 c 46 § 3; 2005 c 457 § 9; 2003 c 222 § 15; 1992 c 62 § 8; 1990 c 172 § 2; 1987 c 382 § 2; 1984 c 258 § 309; 1981 c 330 § 1; 1980 c 162 § 9; 1969 c 25 § 1; 1965 c 55 § 1; 1961 c 299 § 110.]

**Reviser's note:** This section was amended by 2009 c 372 § 1 and by 2009 c 572 § 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).

**Effective date—2009 c 572:** See note following RCW 43.79.505.

**Intent—2005 c 457:** See note following RCW 43.08.250.

**Effective date—1992 c 62:** See RCW 27.24.900.

**Effective date—1990 c 172:** See note following RCW 7.75.035.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.34.130.

**Severability—1981 c 330:** "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 330 § 11.]

**Effective dates, savings—Severability—1980 c 162:** See notes following RCW 3.02.010.

### Chapter 3.66 RCW JURISDICTION AND VENUE

#### Sections

3.66.0691 Sentencing—Crimes against property—Criminal history check.

**3.66.0691 Sentencing—Crimes against property—Criminal history check.** Before a sentence is imposed upon a defendant convicted of a crime against property, the court or the prosecuting authority shall check existing judicial information systems to determine the criminal history of the defendant. [2009 c 431 § 17.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

## Title 4 CIVIL PROCEDURE

#### Chapters

**4.12 Venue—Jurisdiction.**  
**4.24 Special rights of action and special immunities.**  
**4.28 Commencement of actions.**  
**4.84 Costs.**  
**4.92 Actions and claims against state.**  
**4.96 Actions against political subdivisions, municipal and quasi-municipal corporations.**

### Chapter 4.12 RCW VENUE—JURISDICTION

#### Sections

4.12.040 Prejudice of judge, transfer to another department, visiting judge—Change of venue generally, criminal cases.  
 4.12.050 Affidavit of prejudice.

**4.12.040 Prejudice of judge, transfer to another department, visiting judge—Change of venue generally, criminal cases.** (1) No judge of a superior court of the state of Washington shall sit to hear or try any action or proceeding when it shall be established as hereinafter provided that said judge is prejudiced against any party or attorney, or the interest of any party or attorney appearing in such cause. In such case the presiding judge in judicial districts where there is more than one judge shall forthwith transfer the action to another department of the same court, or call in a judge from

some other court. In all judicial districts where there is only one judge, a certified copy of the motion and affidavit filed in the cause shall be transmitted by the clerk of the superior court to the clerk of the superior court designated by the chief justice of the supreme court. Upon receipt the clerk of said superior court shall transmit the forwarded affidavit to the presiding judge who shall direct a visiting judge to hear and try such action as soon as convenient and practical.

(2) The presiding judge in judicial districts where there is more than one judge, or the presiding judge of judicial districts where there is only one judge, may send a case for trial to another court if the convenience of witnesses or the ends of justice will not be interfered with by such a course and the action is of such a character that a change of venue may be ordered: PROVIDED, That in criminal prosecutions the case shall not be sent for trial to any court outside the county unless the accused shall waive his or her right to a trial by a jury of the county in which the offense is alleged to have been committed.

(3) This section does not apply to water right adjudications filed under chapter 90.03 or 90.44 RCW. Disqualification of judges in water right adjudications is governed by RCW 90.03.620. [2009 c 332 § 19; 1989 c 15 § 1; 1961 c 303 § 1; 1927 c 145 § 1; 1911 c 121 § 1; RRS § 209-1.]

**Application—2009 c 332:** See note following RCW 90.03.110.

*Criminal proceedings, venue and jurisdiction: Chapter 10.25 RCW.*

**4.12.050 Affidavit of prejudice.** (1) Any party to or any attorney appearing in any action or proceeding in a superior court, may establish such prejudice by motion, supported by affidavit that the judge before whom the action is pending is prejudiced against such party or attorney, so that such party or attorney cannot, or believes that he or she cannot, have a fair and impartial trial before such judge: PROVIDED, That such motion and affidavit is filed and called to the attention of the judge before he or she shall have made any ruling whatsoever in the case, either on the motion of the party making the affidavit, or on the motion of any other party to the action, of the hearing of which the party making the affidavit has been given notice, and before the judge presiding has made any order or ruling involving discretion, but the arrangement of the calendar, the setting of an action, motion or proceeding down for hearing or trial, the arraignment of the accused in a criminal action or the fixing of bail, shall not be construed as a ruling or order involving discretion within the meaning of this proviso; and in any event, in counties where there is but one resident judge, such motion and affidavit shall be filed not later than the day on which the case is called to be set for trial: AND PROVIDED FURTHER, That notwithstanding the filing of such motion and affidavit, if the parties shall, by stipulation in writing agree, such judge may hear argument and rule upon any preliminary motions, demurrers, or other matter thereafter presented: AND PROVIDED FURTHER, That no party or attorney shall be permitted to make more than one such application in any action or proceeding under this section and RCW 4.12.040.

(2) This section does not apply to water right adjudications filed under chapter 90.03 or 90.44 RCW. Disqualification of judges in water right adjudications is governed by

RCW 90.03.620. [2009 c 332 § 20; 1941 c 148 § 1; 1927 c 145 § 2; 1911 c 121 § 2; Rem. Supp. 1941 § 209-2.]

**Rules of court:** *Demurrers abolished—CR 7(c).*

**Application—2009 c 332:** See note following RCW 90.03.110.

### Chapter 4.24 RCW

## SPECIAL RIGHTS OF ACTION AND SPECIAL IMMUNITIES

### Sections

- 4.24.040 Action for negligently permitting fire to spread.
- 4.24.230 Liability for conversion of goods or merchandise from store or mercantile establishment, leaving restaurant or hotel or motel without paying—Adults, minors—Parents, guardians—Notice.
- 4.24.340 Liability of merchants and other parties for creating a property crime database—Information sharing.
- 4.24.660 Liability of school districts under contracts with youth programs.
- 4.24.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**4.24.040 Action for negligently permitting fire to spread.** If any person shall for any lawful purpose kindle a fire upon his or her own land, he or she shall do it at such time and in such manner, and shall take such care of it to prevent it from spreading and doing damage to other persons' property, as a prudent and careful person would do, and if he or she fails so to do he or she shall be liable in an action on the case to any person suffering damage thereby to the full amount of such damage. [2009 c 549 § 1001; Code 1881 § 1226; 1877 p 300 § 3; RRS § 5647.]

**Reviser's note:** The words "on the case" appear in the 1877 law and in the 1881 enrolled bill but were inadvertently omitted from the printed Code of 1881. See also *Pettigrew v. McCoy*, 138 Wash. 619.

*Arson, reckless burning, and malicious mischief: Chapter 9A.48 RCW.*

**4.24.230 Liability for conversion of goods or merchandise from store or mercantile establishment, leaving restaurant or hotel or motel without paying—Adults, minors—Parents, guardians—Notice.** (1) An adult or emancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller, and with the intention of converting such goods, wares, or merchandise to his or her own use without having paid the purchase price thereof is liable in addition to actual damages, for a penalty to the owner or seller in the amount of the retail value thereof not to exceed two thousand eight hundred fifty dollars, plus an additional penalty of not less than one hundred dollars nor more than six hundred fifty dollars, plus all reasonable attorney's fees and court costs expended by the owner or seller. A customer who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves without paying, is subject to liability under this section. A person who shall receive any food, money, credit, lodging, or accommodation at any hotel, motel, boarding house, or lodging house, and then leaves without paying the proprietor, manager, or authorized employee thereof, is subject to liability under this section.

(2) The parent or legal guardian having the custody of an unemancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller and with the intention of converting such goods, wares, or merchandise to his or her own use without having paid the purchase price thereof, is liable as a penalty to the owner or seller for the retail value of such goods, wares, or merchandise not to exceed one thousand four hundred twenty-five dollars plus an additional penalty of not less than one hundred dollars nor more than six hundred fifty dollars, plus all reasonable attorney's fees and court costs expended by the owner or seller. The parent or legal guardian having the custody of an unemancipated minor, who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves without paying, is subject to liability under this section. The parent or legal guardian having the custody of an unemancipated minor, who receives any food, money, credit, lodging, or accommodation at any hotel, motel, boarding house, or lodging house, and then leaves without paying the proprietor, manager, or authorized employee thereof, is subject to liability under this section. For the purposes of this subsection, liability shall not be imposed upon any governmental entity, private agency, or foster parent assigned responsibility for the minor child pursuant to court order or action of the department of social and health services.

(3) Judgments and claims arising under this section may be assigned.

(4) A conviction for violation of chapter 9A.56 RCW shall not be a condition precedent to maintenance of a civil action authorized by this section.

(5) An owner or seller demanding payment of a penalty under subsection (1) or (2) of this section shall give written notice to the person or persons from whom the penalty is sought. The notice shall state:

"IMPORTANT NOTICE: The payment of any penalty demanded of you does not prevent criminal prosecution under a related criminal provision."

This notice shall be boldly and conspicuously displayed, in at least the same size type as is used in the demand, and shall be sent with the demand for payment of a penalty described in subsection (1) or (2) of this section. [2009 c 431 § 3; 1994 c 9 § 1; 1987 c 353 § 1; 1981 c 126 § 1; 1977 ex.s. c 134 § 1; 1975 1st ex.s. c 59 § 1.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

*Obtaining food from restaurant without paying: RCW 19.48.110.*

*Property crime database, liability: RCW 4.24.340.*

**4.24.340 Liability of merchants and other parties for creating a property crime database—Information sharing.** Merchants and other parties who create a database of individuals who have been: Apprehended in the process of committing a property crime; assessed a civil fine or penalty for committing a property crime; or convicted of a property crime are not subject to civil fines or penalties for sharing information from the database with other merchants, law enforcement officials, or legal professionals. [2009 c 431 § 19.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

**4.24.660 Liability of school districts under contracts with youth programs.** (1) A school district shall not be liable for an injury to or the death of a person due to action or inaction of persons employed by, or under contract with, a youth program if:

(a) The action or inaction takes place on school property and during the delivery of services of the youth program;

(b) The private nonprofit group provides proof of being insured, under an accident and liability policy issued by an insurance company authorized to do business in this state, that covers any injury or damage arising from delivery of its services. Coverage for a policy meeting the requirements of this section must be at least fifty thousand dollars due to bodily injury or death of one person, or at least one hundred thousand dollars due to bodily injury or death of two or more persons in any incident. The private nonprofit shall also provide a statement of compliance with the policies for the management of concussion and head injury in youth sports as set forth in RCW 28A.600.190; and

(c) The group provides proof of such insurance before the first use of the school facilities. The immunity granted shall last only as long as the insurance remains in effect.

(2) Immunity under this section does not apply to any school district before January 1, 2000.

(3) As used in this section, "youth programs" means any program or service, offered by a private nonprofit group, that is operated primarily to provide persons under the age of eighteen with opportunities to participate in services or programs.

(4) This section does not impair or change the ability of any person to recover damages for harm done by: (a) Any contractor or employee of a school district acting in his or her capacity as a contractor or employee; or (b) the existence of unsafe facilities or structures or programs of any school district. [2009 c 475 § 1; 1999 c 316 § 3.]

**Intent—Effective date—1999 c 316:** See notes following RCW 28A.335.155.

**4.24.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 10.]

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## Chapter 4.28 RCW

### COMMENCEMENT OF ACTIONS

#### Sections

4.28.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**4.28.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 11.]

## Chapter 4.84 RCW

### COSTS

#### Sections

4.84.010 Costs allowed to prevailing party—Defined—Compensation of attorneys.

4.84.015 Costs in civil actions for the recovery of money only—When plaintiff considered the prevailing party.

**4.84.010 Costs allowed to prevailing party—Defined—Compensation of attorneys.** The measure and mode of compensation of attorneys and counselors, shall be left to the agreement, expressed or implied, of the parties, but there shall be allowed to the prevailing party upon the judgment certain sums for the prevailing party's expenses in the action, which allowances are termed costs, including, in addition to costs otherwise authorized by law, the following expenses:

- (1) Filing fees;
- (2) Fees for the service of process by a public officer, registered process server, or other means, as follows:
  - (a) When service is by a public officer, the recoverable cost is the fee authorized by law at the time of service.
  - (b) If service is by a process server registered pursuant to chapter 18.180 RCW or a person exempt from registration, the recoverable cost is the amount actually charged and incurred in effecting service;
- (3) Fees for service by publication;
- (4) Notary fees, but only to the extent the fees are for services that are expressly required by law and only to the extent they represent actual costs incurred by the prevailing party;
- (5) Reasonable expenses, exclusive of attorneys' fees, incurred in obtaining reports and records, which are admitted into evidence at trial or in mandatory arbitration in superior

or district court, including but not limited to medical records, tax records, personnel records, insurance reports, employment and wage records, police reports, school records, bank records, and legal files;

(6) Statutory attorney and witness fees; and

(7) To the extent that the court or arbitrator finds that it was necessary to achieve the successful result, the reasonable expense of the transcription of depositions used at trial or at the mandatory arbitration hearing: PROVIDED, That the expenses of depositions shall be allowed on a pro rata basis for those portions of the depositions introduced into evidence or used for purposes of impeachment. [2009 c 240 § 1; 2007 c 121 § 1; 1993 c 48 § 1; 1984 c 258 § 92; 1983 1st ex.s. c 45 § 7; Code 1881 § 505; 1877 p 108 § 509; 1869 p 123 § 459; 1854 p 201 § 367; RRS § 474.]

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

*Attorney fee in appeals from board of industrial insurance appeals:* RCW 51.52.130, 51.52.132.

*Process server fees:* RCW 18.180.035.

**4.84.015 Costs in civil actions for the recovery of money only—When plaintiff considered the prevailing party.** (1) In any civil action for the recovery of money only, the plaintiff will be considered the prevailing party for the purpose of awarding costs, including a statutory attorney fee, if: (a) The defendant makes full or partial payment of the amounts sought by the plaintiff prior to the entry of judgment; and (b) before such payment is tendered, the plaintiff has notified the defendant in writing that the full or partial payment of the amounts sued for might result in an award of costs.

(2) For the purposes of this section, "plaintiff" includes a counterclaimant, cross-claimant, and third-party plaintiff, and "defendant" includes a party defending a counterclaim, cross-claim, or third-party claim.

(3) A party may demand, offer, or accept the payment of statutory costs before the entry of judgment in an action.

(4) This section may not be construed to (a) authorize an award of costs if the action is resolved by a negotiated settlement or (b) limit or bar the operation of cost-shifting provisions of other statutes or court rules. [2009 c 240 § 2.]

### Chapter 4.92 RCW

#### ACTIONS AND CLAIMS AGAINST STATE

Sections

4.92.100	Tortious conduct of state or its agents—Claims—Presentment and filing—Contents.
4.92.110	Tortious conduct of state or its agents—Presentment and filing of claim prerequisite to suit.
4.92.130	Tortious conduct of state—Liability account—Purpose.
4.92.230	Repealed.

**4.92.100 Tortious conduct of state or its agents—Claims—Presentment and filing—Contents.** (1) All claims against the state, or against the state's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct, except for claims involving injuries from health care, shall be presented to the risk management division. Claims involving injuries from health care are governed solely by the procedures set forth in chap-

ter 7.70 RCW and are exempt from this chapter. A claim is deemed presented when the claim form is delivered in person or by regular mail, registered mail, or certified mail, with return receipt requested, to the risk management division. For claims for damages presented after July 26, 2009, all claims for damages must be presented on the standard tort claim form that is maintained by the risk management division. The standard tort claim form must be posted on the office of financial management's web site.

(a) The standard tort claim form must, at a minimum, require the following information:

(i) The claimant's name, date of birth, and contact information;

(ii) A description of the conduct and the circumstances that brought about the injury or damage;

(iii) A description of the injury or damage;

(iv) A statement of the time and place that the injury or damage occurred;

(v) A listing of the names of all persons involved and contact information, if known;

(vi) A statement of the amount of damages claimed; and

(vii) A statement of the actual residence of the claimant at the time of presenting the claim and at the time the claim arose.

(b) The standard tort claim form must be signed either:

(i) By the claimant, verifying the claim;

(ii) Pursuant to a written power of attorney, by the attorney in fact for the claimant;

(iii) By an attorney admitted to practice in Washington state on the claimant's behalf; or

(iv) By a court-approved guardian or guardian ad litem on behalf of the claimant.

(c) The amount of damages stated on the claim form is not admissible at trial.

(2) The state shall make available the standard tort claim form described in this section with instructions on how the form is to be presented and the name, address, and business hours of the risk management division. The standard tort claim form must not list the claimant's social security number and must not require information not specified under this section.

(3) With respect to the content of claims under this section and all procedural requirements in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory. [2009 c 433 § 2; 2006 c 82 § 1; 2002 c 332 § 12; 1986 c 126 § 7; 1979 c 151 § 3; 1977 ex.s. c 144 § 2; 1967 c 164 § 2; 1963 c 159 § 3.]

**Intent—Effective date—2002 c 332:** See notes following RCW 43.41.280.

**Purpose—Severability—1967 c 164:** See notes following RCW 4.96.010.

*Puget Sound ferry and toll bridge system, claims against:* RCW 47.60.250.

**4.92.110 Tortious conduct of state or its agents—Presentment and filing of claim prerequisite to suit.** No action subject to the claim filing requirements of RCW 4.92.100 shall be commenced against the state, or against any state officer, employee, or volunteer, acting in such capacity, for damages arising out of tortious conduct until sixty calendar days have elapsed after the claim is presented to the risk management division. The applicable period of limitations

within which an action must be commenced shall be tolled during the sixty calendar day period. For the purposes of the applicable period of limitations, an action commenced within five court days after the sixty calendar day period has elapsed is deemed to have been presented on the first day after the sixty calendar day period elapsed. [2009 c 433 § 3; 2006 c 82 § 2; 2002 c 332 § 13; 1989 c 419 § 14; 1986 c 126 § 8; 1979 c 151 § 4; 1977 ex.s. c 144 § 3; 1963 c 159 § 4.]

**Intent—Effective date—2002 c 332:** See notes following RCW 43.41.280.

**Intent—Effective date—1989 c 419:** See notes following RCW 4.92.006.

**4.92.130 Tortious conduct of state—Liability account—Purpose.** A liability account in the custody of the treasurer is hereby created as a nonappropriated account to be used solely and exclusively for the payment of liability settlements and judgments against the state under 42 U.S.C. Sec. 1981 et seq. or for the tortious conduct of its officers, employees, and volunteers and all related legal defense costs.

(1) The purpose of the liability account is to: (a) Expediently pay legal liabilities and defense costs of the state resulting from tortious conduct; (b) promote risk control through a cost allocation system which recognizes agency loss experience, levels of self-retention, and levels of risk exposure; and (c) establish an actuarially sound system to pay incurred losses, within defined limits.

(2) The liability account shall be used to pay claims for injury and property damages and legal defense costs exclusive of agency-retained expenses otherwise budgeted.

(3) No money shall be paid from the liability account, except for defense costs, unless all proceeds available to the claimant from any valid and collectible liability insurance shall have been exhausted and unless:

(a) The claim shall have been reduced to final judgment in a court of competent jurisdiction; or

(b) The claim has been approved for payment.

(4) The liability account shall be financed through annual premiums assessed to state agencies, based on sound actuarial principles, and shall be for liability coverage in excess of agency-budgeted self-retention levels.

(5) Annual premium levels shall be determined by the risk manager. An actuarial study shall be conducted to assist in determining the appropriate level of funding.

(6) Disbursements for claims from the liability account shall be made to the claimant, or to the clerk of the court for judgments, upon written request to the state treasurer from the risk manager.

(7) The director may direct agencies to transfer moneys from other funds and accounts to the liability account if premiums are delinquent.

(8) The liability account shall not exceed fifty percent of the actuarial value of the outstanding liability as determined annually by the risk management division. If the account exceeds the maximum amount specified in this section, premiums may be adjusted by the risk management division in order to maintain the account balance at the maximum limits. If, after adjustment of premiums, the account balance remains above the limits specified, the excess amount shall be prorated back to the appropriate funds. [2009 c 560 § 15; 2002 c 332 § 14; 1999 c 163 § 1; 1991 sp.s. c 13 § 92; 1989 c

419 § 4; 1985 c 217 § 3; 1975 1st ex.s. c 126 § 3; 1969 c 140 § 1; 1963 c 159 § 7.]

**Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560:** See notes following RCW 18.06.080.

**Intent—Effective date—2002 c 332:** See notes following RCW 43.41.280.

**Transfer of funds—Fund abolished—1999 c 163:** "Moneys in the tort claims revolving fund shall be deposited in the liability account on July 1, 1999, to be used for payment of settlements, judgments, and legal defense costs as provided in RCW 4.92.130." [1999 c 163 § 2.]

**Effective date—1999 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 takes effect July 1, 1999." [1999 c 163 § 10.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Transfer of funds—Fund abolished—1989 c 419:** "Moneys in the tort claims revolving fund shall be deposited in the liability account to be used for payment of liabilities incurred before July 1, 1989. The tort claim revolving fund is abolished." [1989 c 419 § 13.]

**Intent—Effective date—1989 c 419:** See notes following RCW 4.92.006.

**Severability—1969 c 140:** "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 140 § 5.]

*Actions against regents, trustees, etc., of institutions of higher education or educational boards, payments of obligations from liability account: RCW 28B.10.842.*

*Department of general administration to conduct actuarial studies: RCW 43.41.340.*

**4.92.230 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 4.96 RCW

### ACTIONS AGAINST POLITICAL SUBDIVISIONS, MUNICIPAL AND QUASI-MUNICIPAL CORPORATIONS

#### Sections

4.96.020 Tortious conduct of local governmental entities and their agents—Claims—Presentment and filing—Contents.

**4.96.020 Tortious conduct of local governmental entities and their agents—Claims—Presentment and filing—Contents.** (1) The provisions of this section apply to claims for damages against all local governmental entities and their officers, employees, or volunteers, acting in such capacity, except that claims involving injuries from health care are governed solely by the procedures set forth in chapter 7.70 RCW and are exempt from this chapter.

(2) The governing body of each local governmental entity shall appoint an agent to receive any claim for damages made under this chapter. The identity of the agent and the address where he or she may be reached during the normal business hours of the local governmental entity are public records and shall be recorded with the auditor of the county in which the entity is located. All claims for damages against a local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, shall be presented to the agent within the applicable period of limitations within which an action must be com-



menced. A claim is deemed presented when the claim form is delivered in person or is received by the agent by regular mail, registered mail, or certified mail, with return receipt requested, to the agent or other person designated to accept delivery at the agent's office. The failure of a local governmental entity to comply with the requirements of this section precludes that local governmental entity from raising a defense under this chapter.

(3) For claims for damages presented after July 26, 2009, all claims for damages must be presented on the standard tort claim form that is maintained by the risk management division of the office of financial management, except as allowed under (c) of this subsection. The standard tort claim form must be posted on the office of financial management's web site.

(a) The standard tort claim form must, at a minimum, require the following information:

(i) The claimant's name, date of birth, and contact information;

(ii) A description of the conduct and the circumstances that brought about the injury or damage;

(iii) A description of the injury or damage;

(iv) A statement of the time and place that the injury or damage occurred;

(v) A listing of the names of all persons involved and contact information, if known;

(vi) A statement of the amount of damages claimed; and

(vii) A statement of the actual residence of the claimant at the time of presenting the claim and at the time the claim arose.

(b) The standard tort claim form must be signed either:

(i) By the claimant, verifying the claim;

(ii) Pursuant to a written power of attorney, by the attorney in fact for the claimant;

(iii) By an attorney admitted to practice in Washington state on the claimant's behalf; or

(iv) By a court-approved guardian or guardian ad litem on behalf of the claimant.

(c) Local governmental entities shall make available the standard tort claim form described in this section with instructions on how the form is to be presented and the name, address, and business hours of the agent of the local governmental entity. If a local governmental entity chooses to also make available its own tort claim form in lieu of the standard tort claim form, the form:

(i) May require additional information beyond what is specified under this section, but the local governmental entity may not deny a claim because of the claimant's failure to provide that additional information;

(ii) Must not require the claimant's social security number; and

(iii) Must include instructions on how the form is to be presented and the name, address, and business hours of the agent of the local governmental entity appointed to receive the claim.

(d) If any claim form provided by the local governmental entity fails to require the information specified in this section, or incorrectly lists the agent with whom the claim is to be filed, the local governmental entity is deemed to have waived any defense related to the failure to provide that specific

information or to present the claim to the proper designated agent.

(e) Presenting either the standard tort claim form or the local government tort claim form satisfies the requirements of this chapter.

(f) The amount of damages stated on the claim form is not admissible at trial.

(4) No action subject to the claim filing requirements of this section shall be commenced against any local governmental entity, or against any local governmental entity's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct until sixty calendar days have elapsed after the claim has first been presented to the agent of the governing body thereof. The applicable period of limitations within which an action must be commenced shall be tolled during the sixty calendar day period. For the purposes of the applicable period of limitations, an action commenced within five court days after the sixty calendar day period has elapsed is deemed to have been presented on the first day after the sixty calendar day period elapsed.

(5) With respect to the content of claims under this section and all procedural requirements in this section, this section must be liberally construed so that substantial compliance will be deemed satisfactory. [2009 c 433 § 1; 2006 c 82 § 3; 2001 c 119 § 2; 1993 c 449 § 3; 1967 c 164 § 4.]

**Purpose—Severability—1993 c 449:** See notes following RCW 4.96.010.

## Title 5

### EVIDENCE

#### Chapters

**5.40 Proof—General provisions.**

**5.44 Proof—Public documents.**

**5.60 Witnesses—Competency.**

#### Chapter 5.40 RCW

### PROOF—GENERAL PROVISIONS

#### Sections

5.40.050 Breach of duty—Evidence of negligence—Negligence per se. (*Effective July 1, 2010.*)

**5.40.050 Breach of duty—Evidence of negligence—Negligence per se. (*Effective July 1, 2010.*)** A breach of a duty imposed by statute, ordinance, or administrative rule shall not be considered negligence per se, but may be considered by the trier of fact as evidence of negligence; however, any breach of duty as provided by statute, ordinance, or administrative rule relating to: (1) Electrical fire safety, (2) the use of smoke alarms, (3) sterilization of needles and instruments used by persons engaged in the practice of body art, body piercing, tattooing, or electrology, or other precaution against the spread of disease, as required under RCW 70.54.350, or (4) driving while under the influence of intoxicating liquor or any drug, shall be considered negligence per se. [2009 c 412 § 20; 2001 c 194 § 5; 1986 c 305 § 901.]

**Effective date—2009 c 412 §§ 1-21:** See RCW 18.300.901.

**Short title—Implementation—2009 c 412:** See RCW 18.300.900 and 18.300.902.

**Preamble—Report to legislature—Applicability—Severability—1986 c 305:** See notes following RCW 4.16.160.

### Chapter 5.44 RCW

#### PROOF—PUBLIC DOCUMENTS

##### Sections

5.44.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**5.44.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 12.]

### Chapter 5.60 RCW

#### WITNESSES—COMPETENCY

##### Sections

5.60.060 Who are disqualified—Privileged communications.

**5.60.060 Who are disqualified—Privileged communications.** (1) A spouse or domestic partner shall not be examined for or against his or her spouse or domestic partner, without the consent of the spouse or domestic partner; nor can either during marriage or during the domestic partnership or afterward, be without the consent of the other, examined as to any communication made by one to the other during the marriage or the domestic partnership. But this exception shall not apply to a civil action or proceeding by one against the other, nor to a criminal action or proceeding for a crime committed by one against the other, nor to a criminal action or proceeding against a spouse or domestic partner if the marriage or the domestic partnership occurred subsequent to the filing of formal charges against the defendant, nor to a criminal action or proceeding for a crime committed by said spouse or domestic partner against any child of whom said spouse or domestic partner is the parent or guardian, nor to a proceeding under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW: PROVIDED, That the spouse or the domestic partner of a person sought to be detained under chapter 70.96A, 70.96B, 71.05, or 71.09 RCW may not be compelled to tes-

tify and shall be so informed by the court prior to being called as a witness.

(2)(a) An attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

(b) A parent or guardian of a minor child arrested on a criminal charge may not be examined as to a communication between the child and his or her attorney if the communication was made in the presence of the parent or guardian. This privilege does not extend to communications made prior to the arrest.

(3) A member of the clergy, a Christian Science practitioner listed in the Christian Science Journal, or a priest shall not, without the consent of a person making the confession or sacred confidence, be examined as to any confession or sacred confidence made to him or her in his or her professional character, in the course of discipline enjoined by the church to which he or she belongs.

(4) Subject to the limitations under RCW 70.96A.140 or 71.05.360 (8) and (9), a physician or surgeon or osteopathic physician or surgeon or podiatric physician or surgeon shall not, without the consent of his or her patient, be examined in a civil action as to any information acquired in attending such patient, which was necessary to enable him or her to prescribe or act for the patient, except as follows:

(a) In any judicial proceedings regarding a child's injury, neglect, or sexual abuse or the cause thereof; and

(b) Ninety days after filing an action for personal injuries or wrongful death, the claimant shall be deemed to waive the physician-patient privilege. Waiver of the physician-patient privilege for any one physician or condition constitutes a waiver of the privilege as to all physicians or conditions, subject to such limitations as a court may impose pursuant to court rules.

(5) A public officer shall not be examined as a witness as to communications made to him or her in official confidence, when the public interest would suffer by the disclosure.

(6)(a) A peer support group counselor shall not, without consent of the law enforcement officer or firefighter making the communication, be compelled to testify about any communication made to the counselor by the officer or firefighter while receiving counseling. The counselor must be designated as such by the sheriff, police chief, fire chief, or chief of the Washington state patrol, prior to the incident that results in counseling. The privilege only applies when the communication was made to the counselor while acting in his or her capacity as a peer support group counselor. The privilege does not apply if the counselor was an initial responding officer or firefighter, a witness, or a party to the incident which prompted the delivery of peer support group counseling services to the law enforcement officer or firefighter.

(b) For purposes of this section, "peer support group counselor" means a:

(i) Law enforcement officer, firefighter, civilian employee of a law enforcement agency, or civilian employee of a fire department, who has received training to provide emotional and moral support and counseling to an officer or firefighter who needs those services as a result of an incident in which the officer or firefighter was involved while acting in his or her official capacity; or

(ii) Nonemployee counselor who has been designated by the sheriff, police chief, fire chief, or chief of the Washington state patrol to provide emotional and moral support and counseling to an officer or firefighter who needs those services as a result of an incident in which the officer or firefighter was involved while acting in his or her official capacity.

(7) A sexual assault advocate may not, without the consent of the victim, be examined as to any communication made between the victim and the sexual assault advocate.

(a) For purposes of this section, "sexual assault advocate" means the employee or volunteer from a rape crisis center, victim assistance unit, program, or association, that provides information, medical or legal advocacy, counseling, or support to victims of sexual assault, who is designated by the victim to accompany the victim to the hospital or other health care facility and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings.

(b) A sexual assault advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. Any sexual assault advocate participating in good faith in the disclosing of records and communications under this section shall have immunity from any liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this section, the good faith of the sexual assault advocate who disclosed the confidential communication shall be presumed.

(8) A domestic violence advocate may not, without the consent of the victim, be examined as to any communication between the victim and the domestic violence advocate.

(a) For purposes of this section, "domestic violence advocate" means an employee or supervised volunteer from a community-based domestic violence program or human services program that provides information, advocacy, counseling, crisis intervention, emergency shelter, or support to victims of domestic violence and who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, or the child protective services section of the department of social and health services as defined in RCW 26.44.020.

(b) A domestic violence advocate may disclose a confidential communication without the consent of the victim if failure to disclose is likely to result in a clear, imminent risk of serious physical injury or death of the victim or another person. This section does not relieve a domestic violence advocate from the requirement to report or cause to be reported an incident under RCW 26.44.030(1) or to disclose relevant records relating to a child as required by RCW 26.44.030(12). Any domestic violence advocate participating in good faith in the disclosing of communications under this subsection is immune from liability, civil, criminal, or otherwise, that might result from the action. In any proceeding, civil or criminal, arising out of a disclosure under this subsection, the good faith of the domestic violence advocate who disclosed the confidential communication shall be presumed.

(9) A mental health counselor, independent clinical social worker, or marriage and family therapist licensed under chapter 18.225 RCW may not disclose, or be com-

pelled to testify about, any information acquired from persons consulting the individual in a professional capacity when the information was necessary to enable the individual to render professional services to those persons except:

(a) With the written authorization of that person or, in the case of death or disability, the person's personal representative;

(b) If the person waives the privilege by bringing charges against the mental health counselor licensed under chapter 18.225 RCW;

(c) In response to a subpoena from the secretary of health. The secretary may subpoena only records related to a complaint or report under RCW 18.130.050;

(d) As required under chapter 26.44 or 74.34 RCW or RCW 71.05.360 (8) and (9); or

(e) To any individual if the mental health counselor, independent clinical social worker, or marriage and family therapist licensed under chapter 18.225 RCW reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the individual or any other individual; however, there is no obligation on the part of the provider to so disclose. [2009 c 424 § 1; 2008 c 6 § 402; 2007 c 472 § 1. Prior: 2006 c 259 § 2; 2006 c 202 § 1; 2006 c 30 § 1; 2005 c 504 § 705; 2001 c 286 § 2; 1998 c 72 § 1; 1997 c 338 § 1; 1996 c 156 § 1; 1995 c 240 § 1; 1989 c 271 § 301; prior: 1989 c 10 § 1; 1987 c 439 § 11; 1987 c 212 § 1501; 1986 c 305 § 101; 1982 c 56 § 1; 1979 ex.s. c 215 § 2; 1965 c 13 § 7; Code 1881 § 392; 1879 p 118 § 1; 1877 p 86 § 394; 1873 p 107 § 385; 1869 p 104 § 387; 1854 p 187 § 294; RRS § 1214. Cf. 1886 p 73 § 1.]

**Rules of court:** Cf. CR 43(g).

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Intent—2006 c 259:** "The legislature intends, by amending RCW 5.60.060, to recognize that advocates help domestic violence victims by giving them the support and counseling they need to recover from their abuse, and by providing resources to achieve protection from further abuse. Without assurance that communications made with a domestic violence advocate will be confidential and protected from disclosure, victims will be deterred from confiding openly or seeking information and counseling, resulting in a failure to receive vital advocacy and support needed for recovery and protection from abuse. But investigative or prosecutorial functions performed by individuals who assist victims in the criminal legal system and in other state agencies are different from the advocacy and counseling functions performed by advocates who work under the auspices or supervision of a community victim services program. The legislature recognizes the important role played by individuals who assist victims in the criminal legal system and in other state agencies, but intends that the testimonial privilege not be extended to individuals who perform an investigative or prosecutorial function." [2006 c 259 § 1.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**Recommendations—Application—Effective date—2001 c 286:** See notes following RCW 71.09.015.

**Severability—1997 c 338:** "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 338 § 74.]

**Effective dates—1997 c 338:** "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, except sections 10, 12, 18, 24 through 26, 30, 38, and 59 of this act which take effect July 1, 1998." [1997 c 338 § 75.]

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—1989 c 271:** See note following RCW 9.94A.510.

**Preamble—Report to legislature—Applicability—Severability—1986 c 305:** See notes following RCW 4.16.160.

**Severability—1982 c 56:** "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 56 § 2.]

*Nonsupport or family desertion, spouse or domestic partner as witness:* RCW 26.20.071.

*Optometrist—Client, privileged communications:* RCW 18.53.200.

*Psychologist—Client, privileged communications:* RCW 18.83.110.

*Report of abuse of children:* Chapter 26.44 RCW.

## Title 6

### ENFORCEMENT OF JUDGMENTS

#### Chapters

**6.15** Personal property exemptions.

**6.27** Garnishment.

**6.40** Uniform foreign money-judgments recognition act.

**6.40A** Uniform foreign-country money judgments recognition act.

#### Chapter 6.15 RCW

##### PERSONAL PROPERTY EXEMPTIONS

#### Sections

6.15.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**6.15.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 13.]

#### Chapter 6.27 RCW

##### GARNISHMENT

#### Sections

6.27.140 Form of returns under RCW 6.27.130. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

6.27.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**6.27.140 Form of returns under RCW 6.27.130.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (1) The notice required by RCW 6.27.130(1) to be mailed to or served on an individual judgment debtor shall be in the following form, printed or typed in type no smaller than elite type:

#### NOTICE OF GARNISHMENT AND OF YOUR RIGHTS

A Writ of Garnishment issued in a Washington court has been or will be served on the garnishee named in the attached copy of the writ. After receipt of the writ, the garnishee is required to withhold payment of any money that was due to you and to withhold any other property of yours that the garnishee held or controlled. This notice of your rights is required by law.

#### YOU HAVE THE FOLLOWING EXEMPTION RIGHTS:

**WAGES.** If the garnishee is your employer who owes wages or other personal earnings to you, your employer is required to pay amounts to you that are exempt under state and federal laws, as explained in the writ of garnishment. You should receive a copy of your employer's answer, which will show how the exempt amount was calculated. If the garnishment is for child support, the exempt amount paid to you will be forty percent of wages due you, but if you are supporting a spouse, state registered domestic partner, or dependent child, you are entitled to claim an additional ten percent as exempt.

**BANK ACCOUNTS.** If the garnishee is a bank or other institution with which you have an account in which you have deposited benefits such as Temporary Assistance for Needy Families, Supplemental Security Income (SSI), Social Security, veterans' benefits, unemployment compensation, or a United States pension, you may claim the account as fully exempt if you have deposited only such benefit funds in the account. It may be partially exempt even though you have deposited money from other sources in the same account. An exemption is also available under RCW 26.16.200, providing that funds in a community bank account that can be identified as the earnings of a stepparent are exempt from a garnishment on the child support obligation of the parent.

**OTHER EXEMPTIONS.** If the garnishee holds other property of yours, some or all of it may be exempt under RCW 6.15.010, a Washington statute that exempts up to five hundred dollars of property of your choice (including up to one hundred dollars in cash or in a bank account) and certain property such as household furnishings, tools of trade, and a

motor vehicle (all limited by differing dollar values).

HOW TO CLAIM EXEMPTIONS. Fill out the enclosed claim form and mail or deliver it as described in instructions on the claim form. If the plaintiff does not object to your claim, the funds or other property that you have claimed as exempt must be released not later than 10 days after the plaintiff receives your claim form. If the plaintiff objects, the law requires a hearing not later than 14 days after the plaintiff receives your claim form, and notice of the objection and hearing date will be mailed to you at the address that you put on the claim form.

THE LAW ALSO PROVIDES OTHER EXEMPTION RIGHTS. IF NECESSARY, AN ATTORNEY CAN ASSIST YOU TO ASSERT THESE AND OTHER RIGHTS, BUT YOU MUST ACT IMMEDIATELY TO AVOID LOSS OF RIGHTS BY DELAY.

(2) The claim form required by RCW 6.27.130(1) to be mailed to or served on an individual judgment debtor shall be in the following form, printed or typed in type no smaller than elite type:

[Caption to be filled in by judgment creditor or plaintiff before mailing.]

Name of Court
Plaintiff,
vs.
Defendant,
Garnishee Defendant
EXEMPTION CLAIM

INSTRUCTIONS:

- 1. Read this whole form after reading the enclosed notice. Then put an X in the box or boxes that describe your exemption claim or claims and write in the necessary information on the blank lines. If additional space is needed, use the bottom of the last page or attach another sheet.
2. Make two copies of the completed form. Deliver the original form by first-class mail or in person to the clerk of the court, whose address is shown at the bottom of the writ of garnishment. Deliver one of the copies by first-class mail or in person to the plaintiff or plaintiff's attorney, whose name and address are shown at the bottom of the writ. Keep the other copy. YOU SHOULD DO THIS AS QUICKLY AS POSSIBLE, BUT NO LATER THAN 28 DAYS (4 WEEKS) AFTER THE DATE ON THE WRIT.

I/We claim the following money or property as exempt:

IF BANK ACCOUNT IS GARNISHED:

- [ ] The account contains payments from:
[ ] Temporary assistance for needy families, SSI, or other public assistance. I receive \$ . . . . monthly.
[ ] Social Security. I receive \$ . . . . monthly.
[ ] Veterans' Benefits. I receive \$ . . . . monthly.
[ ] U.S. Government Pension. I receive \$ . . . . monthly.
[ ] Unemployment Compensation. I receive \$ . . . . monthly.
[ ] Child support. I receive \$ . . . . monthly.
[ ] Other. Explain . . . . .

IF EXEMPTION IN BANK ACCOUNT IS CLAIMED, ANSWER ONE OR BOTH OF THE FOLLOWING:

- [ ] No money other than from above payments are in the account.
[ ] Moneys in addition to the above payments have been deposited in the account. Explain . . . . .

IF EARNINGS ARE GARNISHED FOR CHILD SUPPORT:

- [ ] I claim maximum exemption.
[ ] I am supporting another child or other children.
[ ] I am supporting a husband, wife, or state registered domestic partner.

IF PENSION OR RETIREMENT BENEFITS ARE GARNISHED:

- [ ] Name and address of employer who is paying the benefits: . . . . .

OTHER PROPERTY:

- [ ] Describe property . . . . .
(If you claim other personal property as exempt, you must attach a list of all other personal property that you own.)

Print: Your name If married or in a state registered domestic partnership, name of husband/wife/state registered domestic partner
Your signature Signature of husband, wife, or state registered domestic partner
Address Address (if different from yours)
Telephone number Telephone number (if different from yours)

**CAUTION:** If the plaintiff objects to your claim, you will have to go to court and give proof of your claim. For example, if you claim that a bank account is exempt, you may have to show the judge your bank statements and papers that show the source of the money you deposited in the bank. Your claim may be granted more quickly if you attach copies of such proof to your claim.

**IF THE JUDGE DENIES YOUR EXEMPTION CLAIM, YOU WILL HAVE TO PAY THE PLAINTIFF'S COSTS. IF THE JUDGE DECIDES THAT YOU DID NOT MAKE THE CLAIM IN GOOD FAITH, HE OR SHE MAY DECIDE THAT YOU MUST PAY THE PLAINTIFF'S ATTORNEY FEES.** [2009 c 521 § 15; 2003 c 222 § 6; 1997 c 59 § 2; 1987 c 442 § 1014.]

**6.27.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 14.]

### Chapter 6.40 RCW

#### UNIFORM FOREIGN MONEY- JUDGMENTS RECOGNITION ACT

##### Sections

6.40.010	Repealed.
6.40.020	Repealed.
6.40.030	Repealed.
6.40.040	Repealed.
6.40.050	Repealed.
6.40.060	Repealed.
6.40.070	Repealed.
6.40.900	Repealed.
6.40.905	Repealed.
6.40.910	Repealed.
6.40.915	Repealed.

**6.40.010 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**6.40.020 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**6.40.030 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**6.40.040 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

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**6.40.050 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**6.40.060 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**6.40.070 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**6.40.900 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**6.40.905 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**6.40.910 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**6.40.915 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

### Chapter 6.40A RCW

#### UNIFORM FOREIGN-COUNTRY MONEY JUDGMENTS RECOGNITION ACT

##### Sections

6.40A.010	Definitions.
6.40A.020	Applicability.
6.40A.030	Recognition of foreign-country judgments—Grounds for non-recognition.
6.40A.040	Personal jurisdiction.
6.40A.050	Recognition—How raised.
6.40A.060	Judgments entitled to recognition—Enforceability.
6.40A.070	Stay in case of appeal.
6.40A.080	Time limitations for commencement of action.
6.40A.090	Savings clause.
6.40A.900	Uniformity of interpretation.
6.40A.901	Short title.
6.40A.902	Chapter applies to actions commenced on or after July 26, 2009.

**6.40A.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Foreign country" means a government other than:

(a) The United States;

(b) A state, district, commonwealth, territory, or insular possession of the United States; or

(c) Any other government with regard to which the decision in this state as to whether to recognize a judgment of that government's courts is initially subject to determination under the full faith and credit clause of the United States Constitution.

(2) "Foreign-country judgment" means a judgment of a court of a foreign country. [2009 c 363 § 2.]

**6.40A.020 Applicability.** (1) Except as otherwise provided in subsection (2) of this section, this chapter applies to a foreign-country judgment to the extent that the judgment:

(a) Grants or denies recovery of a sum of money; and

(b) Under the law of the foreign country where rendered, is final, conclusive, and enforceable.

(2) This chapter does not apply to a foreign-country judgment, even if the judgment grants or denies recovery of a sum of money, to the extent that the judgment is:

- (a) A judgment for taxes;
- (b) A fine or other penalty; or
- (c) A judgment for divorce, support, or maintenance, or other judgment rendered in connection with domestic relations.

(3) A party seeking recognition of a foreign-country judgment has the burden of establishing that this chapter applies to the foreign-country judgment. [2009 c 363 § 3.]

**6.40A.030 Recognition of foreign-country judgments—Grounds for nonrecognition.** (1) Except as otherwise provided in subsections (2) and (3) of this section, a court of this state shall recognize a foreign-country judgment to which this chapter applies.

(2) A court of this state may not recognize a foreign-country judgment if:

- (a) The judgment was rendered under a judicial system that does not provide impartial tribunals or procedures compatible with the requirements of due process of law;
- (b) The foreign court did not have personal jurisdiction over the defendant; or
- (c) The foreign court did not have jurisdiction over the subject matter.

(3) A court of this state need not recognize a foreign-country judgment if:

- (a) The defendant in the proceeding in the foreign court did not receive notice of the proceeding in sufficient time to enable the defendant to defend;
- (b) The judgment was obtained by fraud that deprived the losing party of an adequate opportunity to present its case;
- (c) The judgment or the cause of action on which the judgment is based is repugnant to the public policy of this state or of the United States;
- (d) The judgment conflicts with another final and conclusive judgment;
- (e) The proceeding in the foreign court was contrary to an agreement between the parties under which the dispute in question was to be determined otherwise than by proceedings in that foreign court;
- (f) In the case of jurisdiction based only on personal service, the foreign court was a seriously inconvenient forum for the trial of the action;
- (g) The judgment was rendered in circumstances that raise substantial doubt about the integrity of the rendering court with respect to the judgment; or
- (h) The specific proceeding in the foreign court leading to the judgment was not compatible with the requirements of due process of law.

(4) A party resisting recognition of a foreign-country judgment has the burden of establishing that a ground for nonrecognition stated in subsection (2) or (3) of this section exists. [2009 c 363 § 4.]

**6.40A.040 Personal jurisdiction.** (1) A foreign-country judgment may not be refused recognition for lack of personal jurisdiction if:

(a) The defendant was served with process personally in the foreign country;

(b) The defendant voluntarily appeared in the proceeding, other than for the purpose of protecting property seized or threatened with seizure in the proceeding or of contesting the jurisdiction of the court over the defendant;

(c) The defendant, before the commencement of the proceeding, had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved;

(d) The defendant was domiciled in the foreign country when the proceeding was instituted or was a corporation or other form of business organization that had its principal place of business in, or was organized under the laws of, the foreign country;

(e) The defendant had a business office in the foreign country and the proceeding in the foreign court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or

(f) The defendant operated a motor vehicle or airplane in the foreign country and the proceeding involved a cause of action arising out of that operation.

(2) The list of bases for personal jurisdiction in subsection (1) of this section is not exclusive. The courts of this state may recognize bases of personal jurisdiction other than those listed in subsection (1) of this section as sufficient to support a foreign-country judgment. [2009 c 363 § 5.]

**6.40A.050 Recognition—How raised.** (1) If recognition of a foreign-country judgment is sought as an original matter, the issue of recognition shall be raised by filing an action seeking recognition of the foreign-country judgment.

(2) If recognition of a foreign-country judgment is sought in a pending action, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense. [2009 c 363 § 6.]

**6.40A.060 Judgments entitled to recognition—Enforceability.** If the court in a proceeding under RCW 6.40A.050 finds that the foreign-country judgment is entitled to recognition under this chapter then, to the extent that the foreign-country judgment grants or denies recovery of a sum of money, the foreign-country judgment is:

(1) Conclusive between the parties to the same extent as the judgment of a sister state entitled to full faith and credit in this state would be conclusive; and

(2) Enforceable in the same manner and to the same extent as a judgment rendered in this state. [2009 c 363 § 7.]

**6.40A.070 Stay in case of appeal.** If a party establishes that an appeal from a foreign-country judgment is pending or will be taken, the court may stay any proceedings with regard to the foreign-country judgment until the appeal is concluded, the time for appeal expires, or the appellant has had sufficient time to prosecute the appeal and has failed to do so. [2009 c 363 § 8.]

**6.40A.080 Time limitations for commencement of action.** An action to recognize a foreign-country judgment must be commenced within the earlier of the time during which the foreign-country judgment is effective in the for-

eign country or fifteen years from the date that the foreign-country judgment became effective in the foreign country. [2009 c 363 § 9.]

**6.40A.090 Savings clause.** This chapter does not prevent the recognition under principles of comity or otherwise of a foreign-country judgment not within the scope of this chapter. [2009 c 363 § 12.]

**6.40A.900 Uniformity of interpretation.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2009 c 363 § 10.]

**6.40A.901 Short title.** This chapter may be known and cited as the uniform foreign-country money judgments recognition act. [2009 c 363 § 1.]

**6.40A.902 Chapter applies to actions commenced on or after July 26, 2009.** This chapter applies to all actions commenced on or after July 26, 2009, in which the issue of recognition of a foreign-country judgment is raised. [2009 c 363 § 11.]

## Title 7

### SPECIAL PROCEEDINGS AND ACTIONS

#### Chapters

- 7.08 Assignment for benefit of creditors.
- 7.21 Contempt of court.
- 7.48 Nuisances.
- 7.68 Victims of crimes—Compensation, assistance.
- 7.69 Crime victims, survivors, and witnesses.
- 7.80 Civil infractions.
- 7.84 Natural resource infractions.

#### Chapter 7.08 RCW

##### ASSIGNMENT FOR BENEFIT OF CREDITORS

###### Sections

- 7.08.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**7.08.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms

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such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 16.]

#### Chapter 7.21 RCW CONTEMPT OF COURT

###### Sections

- 7.21.040 Punitive sanctions—Fines.
- 7.21.050 Sanctions—Summary imposition—Procedure.

**7.21.040 Punitive sanctions—Fines.** (1) Except as otherwise provided in RCW 7.21.050, a punitive sanction for contempt of court may be imposed only pursuant to this section.

(2)(a) An action to impose a punitive sanction for contempt of court shall be commenced by a complaint or information filed by the prosecuting attorney or city attorney charging a person with contempt of court and reciting the punitive sanction sought to be imposed.

(b) If there is probable cause to believe that a contempt has been committed, the prosecuting attorney or city attorney may file the information or complaint on his or her own initiative or at the request of a person aggrieved by the contempt.

(c) A request that the prosecuting attorney or the city attorney commence an action under this section may be made by a judge presiding in an action or proceeding to which a contempt relates. If required for the administration of justice, the judge making the request may appoint a special counsel to prosecute an action to impose a punitive sanction for contempt of court.

A judge making a request pursuant to this subsection shall be disqualified from presiding at the trial.

(d) If the alleged contempt involves disrespect to or criticism of a judge, that judge is disqualified from presiding at the trial of the contempt unless the person charged consents to the judge presiding at the trial.

(3) The court may hold a hearing on a motion for a remedial sanction jointly with a trial on an information or complaint seeking a punitive sanction.

(4) A punitive sanction may be imposed for past conduct that was a contempt of court even though similar present conduct is a continuing contempt of court.

(5) If the defendant is found guilty of contempt of court under this section, the court may impose for each separate contempt of court a fine of not more than five thousand dollars or imprisonment for not more than one year, or both. [2009 c 37 § 1; 1989 c 373 § 4.]

**7.21.050 Sanctions—Summary imposition—Procedure.** (1) The judge presiding in an action or proceeding may summarily impose either a remedial or punitive sanction authorized by this chapter upon a person who commits a contempt of court within the courtroom if the judge certifies that he or she saw or heard the contempt. The judge shall impose the sanctions immediately after the contempt of court or at the end of the proceeding and only for the purpose of preserving order in the court and protecting the authority and dignity



of the court. The person committing the contempt of court shall be given an opportunity to speak in mitigation of the contempt unless compelling circumstances demand otherwise. The order of contempt shall recite the facts, state the sanctions imposed, and be signed by the judge and entered on the record.

(2) A court, after a finding of contempt of court in a proceeding under subsection (1) of this section may impose for each separate contempt of court a punitive sanction of a fine of not more than five hundred dollars or imprisonment for not more than thirty days, or both, or a remedial sanction set forth in RCW 7.21.030(2). A forfeiture imposed as a remedial sanction under this subsection may not exceed more than five hundred dollars for each day the contempt continues. [2009 c 37 § 2; 1989 c 373 § 5.]

### Chapter 7.48 RCW NUISANCES

#### Sections

7.48.305	Agricultural activities and forest practices—Presumed reasonable and not a nuisance—Exception—Damages.
7.48.310	Agricultural activities and forest practices—Definitions.

**7.48.305 Agricultural activities and forest practices—Presumed reasonable and not a nuisance—Exception—Damages.** (1) Notwithstanding any other provision of this chapter, agricultural activities conducted on farmland and forest practices, if consistent with good agricultural and forest practices and established prior to surrounding nonagricultural and nonforestry activities, are presumed to be reasonable and shall not be found to constitute a nuisance unless the activity or practice has a substantial adverse effect on public health and safety.

(2) Agricultural activities and forest practices undertaken in conformity with all applicable laws and rules are presumed to be good agricultural and forest practices not adversely affecting the public health and safety for purposes of this section and RCW 7.48.300. An agricultural activity that is in conformity with such laws and rules shall not be restricted as to the hours of the day or day or days of the week during which it may be conducted.

(3) The act of owning land upon which a growing crop of trees is located, even if the tree growth is being managed passively and even if the owner does not indicate the land's status as a working forest, is considered to be a forest practice occurring on the land if the crop of trees is located on land that is capable of supporting a merchantable stand of timber that is not being actively used for a use that is incompatible with timber growing. If the growing of trees has been established prior to surrounding nonforestry activities, then the act of tree growth is considered a necessary part of any other subsequent stages of forest practices necessary to bring a crop of trees from its planting to final harvest and is included in the provisions of this section.

(4) Nothing in this section shall affect or impair any right to sue for damages. [2009 c 200 § 2; 2007 c 331 § 2. Prior: 1992 c 151 § 1; 1992 c 52 § 3; 1979 c 122 § 2.]

**Intent—2009 c 200:** "Commercial forestry produces jobs and revenue while also providing clean water and air, wildlife habitat, open space, and carbon storage. Maintaining a base of forest lands that can be utilized for

commercial forestry is of utmost importance for the state.

As the population of the state increases, forest lands are converted to residential, suburban, and urban uses. The encroachment of these other uses into neighboring forest lands often makes it more difficult for forest landowners to continue practicing commercial forestry. It is the legislature's intent that a forest landowner's right to practice commercial forestry in a manner consistent with the state forest practices laws be protected and preserved." [2009 c 200 § 1.]

**Findings—Intent—2007 c 331:** "The legislature finds that agricultural activities are often subjected to nuisance lawsuits. The legislature also finds that such lawsuits hasten premature conversion of agricultural lands to other uses. The legislature further finds that agricultural activities must be able to adopt new technologies and diversify into new crops and products if the agricultural industry is to survive and agricultural lands are to be conserved. Therefore, the legislature intends to enhance the protection of agricultural activities from nuisance lawsuits, and to further the clear legislative directive of the state growth management act to maintain and enhance the agricultural industry and conserve productive agricultural lands." [2007 c 331 § 1.]

### 7.48.310 Agricultural activities and forest practices—Definitions.

For the purposes of RCW 7.48.305 only:

(1) "Agricultural activity" means a condition or activity which occurs on a farm in connection with the commercial production of farm products and includes, but is not limited to, marketed produce at roadside stands or farm markets; noise; odors; dust; fumes; operation of machinery and irrigation pumps; movement, including, but not limited to, use of current county road ditches, streams, rivers, canals, and drains, and use of water for agricultural activities; ground and aerial application of seed, fertilizers, conditioners, and plant protection products; keeping of bees for production of agricultural or apicultural products; employment and use of labor; roadway movement of equipment and livestock; protection from damage by wildlife; prevention of trespass; construction and maintenance of buildings, fences, roads, bridges, ponds, drains, waterways, and similar features and maintenance of streambanks and watercourses; and conversion from one agricultural activity to another, including a change in the type of plant-related farm product being produced. The term includes use of new practices and equipment consistent with technological development within the agricultural industry.

(2) "Farm" means the land, buildings, freshwater ponds, freshwater culturing and growing facilities, and machinery used in the commercial production of farm products.

(3) "Farmland" means land or freshwater ponds devoted primarily to the production, for commercial purposes, of livestock, freshwater aquacultural, or other farm products.

(4) "Farm product" means those plants and animals useful to humans and includes, but is not limited to, forages and sod crops, dairy and dairy products, poultry and poultry products, livestock, including breeding, grazing, and recreational equine use, fruits, vegetables, flowers, seeds, grasses, trees, freshwater fish and fish products, apiaries and apiary products, equine and other similar products, or any other product which incorporates the use of food, feed, fiber, or fur.

(5) "Forest practice" means any activity conducted on or directly pertaining to forest land, as that term is defined in RCW 76.09.020, and relating to growing, harvesting, or processing timber. The term "forest practices" includes, but is not limited to, road and trail construction, final and intermediate harvesting, precommercial thinning, reforestation, fertilization, prevention and suppression of diseases and insects, salvage of trees, brush control, and owning land where trees

may passively grow until one of the preceding activities is deemed timely by the owner. [2009 c 200 § 3; 2007 c 331 § 3; 1992 c 52 § 4; 1991 c 317 § 2; 1979 c 122 § 3.]

**Intent—2009 c 200:** See note following RCW 7.48.305.

**Findings—Intent—2007 c 331:** See note following RCW 7.48.305.

### Chapter 7.68 RCW

#### VICTIMS OF CRIMES— COMPENSATION, ASSISTANCE

##### Sections

7.68.030	Duties of department—General provisions.
7.68.035	Penalty assessments in addition to fine or bail forfeiture—Distribution—Establishment of crime victim and witness programs in county—Contribution required from cities and towns.
7.68.070	Benefits—Right to and amount—Limitations.
7.68.085	Cap on medical benefits—Alternative programs.
7.68.920	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )

#### 7.68.030 Duties of department—General provisions.

It shall be the duty of the director to establish and administer a program of benefits to innocent victims of criminal acts within the terms and limitations of this chapter. In so doing, the director shall, in accordance with chapter 34.05 RCW, adopt rules and regulations necessary to the administration of this chapter, and the provisions contained in chapter 51.04 RCW, including but not limited to RCW 51.04.020, 51.04.030, 51.04.040, 51.04.050 and 51.04.100 as now or hereafter amended, shall apply where appropriate in keeping with the intent of this chapter. The director may apply for and, subject to appropriation, expend federal funds under Public Law 98-473 and any other federal program providing financial assistance to state crime victim compensation programs. The federal funds shall be deposited in the state general fund and may be expended only for purposes authorized by applicable federal law. [2009 c 479 § 7; 1989 1st ex.s. c 5 § 2; 1985 c 443 § 12; 1973 1st ex.s. c 122 § 3.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Severability—Application—Effective dates—1989 1st ex.s. c 5:** See notes following RCW 7.68.015.

**Severability—Effective date—1985 c 443:** See notes following RCW 7.69.010.

**7.68.035 Penalty assessments in addition to fine or bail forfeiture—Distribution—Establishment of crime victim and witness programs in county—Contribution required from cities and towns.** (1)(a) When any person is found guilty in any superior court of having committed a crime, except as provided in subsection (2) of this section, there shall be imposed by the court upon such convicted person a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be five hundred dollars for each case or cause of action that includes one or more convictions of a felony or gross misdemeanor and two hundred fifty dollars for any case or cause of action that includes convictions of only one or more misdemeanors.

(b) When any juvenile is adjudicated of any offense in any juvenile offense disposition under Title 13 RCW, except

as provided in subsection (2) of this section, there shall be imposed upon the juvenile offender a penalty assessment. The assessment shall be in addition to any other penalty or fine imposed by law and shall be one hundred dollars for each case or cause of action that includes one or more adjudications for a felony or gross misdemeanor and seventy-five dollars for each case or cause of action that includes adjudications of only one or more misdemeanors.

(2) The assessment imposed by subsection (1) of this section shall not apply to motor vehicle crimes defined in Title 46 RCW except those defined in the following sections: RCW 46.61.520, 46.61.522, 46.61.024, 46.52.090, 46.70.140, 46.61.502, 46.61.504, 46.52.101, 46.20.410, 46.52.020, 46.10.130, 46.09.130, 46.61.5249, 46.61.525, 46.61.685, 46.61.530, 46.61.500, 46.61.015, 46.52.010, 46.44.180, 46.10.090(2), and 46.09.120(2).

(3) When any person accused of having committed a crime posts bail in superior court pursuant to the provisions of chapter 10.19 RCW and such bail is forfeited, there shall be deducted from the proceeds of such forfeited bail a penalty assessment, in addition to any other penalty or fine imposed by law, equal to the assessment which would be applicable under subsection (1) of this section if the person had been convicted of the crime.

(4) Such penalty assessments shall be paid by the clerk of the superior court to the county treasurer who shall monthly transmit the money as provided in RCW 10.82.070. Each county shall deposit fifty percent of the money it receives per case or cause of action under subsection (1) of this section and retains under RCW 10.82.070, not less than one and seventy-five one-hundredths percent of the remaining money it retains under RCW 10.82.070 and the money it retains under chapter 3.62 RCW, and all money it receives under subsection (7) of this section into a fund maintained exclusively for the support of comprehensive programs to encourage and facilitate testimony by the victims of crimes and witnesses to crimes. A program shall be considered "comprehensive" only after approval of the department upon application by the county prosecuting attorney. The department shall approve as comprehensive only programs which:

(a) Provide comprehensive services to victims and witnesses of all types of crime with particular emphasis on serious crimes against persons and property. It is the intent of the legislature to make funds available only to programs which do not restrict services to victims or witnesses of a particular type or types of crime and that such funds supplement, not supplant, existing local funding levels;

(b) Are administered by the county prosecuting attorney either directly through the prosecuting attorney's office or by contract between the county and agencies providing services to victims of crime;

(c) Make a reasonable effort to inform the known victim or his surviving dependents of the existence of this chapter and the procedure for making application for benefits;

(d) Assist victims in the restitution and adjudication process; and

(e) Assist victims of violent crimes in the preparation and presentation of their claims to the department of labor and industries under this chapter.

Before a program in any county west of the Cascade mountains is submitted to the department for approval, it

shall be submitted for review and comment to each city within the county with a population of more than one hundred fifty thousand. The department will consider if the county's proposed comprehensive plan meets the needs of crime victims in cases adjudicated in municipal, district or superior courts and of crime victims located within the city and county.

(5) Upon submission to the department of a letter of intent to adopt a comprehensive program, the prosecuting attorney shall retain the money deposited by the county under subsection (4) of this section until such time as the county prosecuting attorney has obtained approval of a program from the department. Approval of the comprehensive plan by the department must be obtained within one year of the date of the letter of intent to adopt a comprehensive program. The county prosecuting attorney shall not make any expenditures from the money deposited under subsection (4) of this section until approval of a comprehensive plan by the department. If a county prosecuting attorney has failed to obtain approval of a program from the department under subsection (4) of this section or failed to obtain approval of a comprehensive program within one year after submission of a letter of intent under this section, the county treasurer shall monthly transmit one hundred percent of the money deposited by the county under subsection (4) of this section to the state treasurer for deposit in the state general fund.

(6) County prosecuting attorneys are responsible to make every reasonable effort to insure that the penalty assessments of this chapter are imposed and collected.

(7) Every city and town shall transmit monthly one and seventy-five one-hundredths percent of all money, other than money received for parking infractions, retained under RCW 3.50.100 and 35.20.220 to the county treasurer for deposit as provided in subsection (4) of this section. [2009 c 479 § 8; 2000 c 71 § 3; 1999 c 86 § 1; 1997 c 66 § 9; 1996 c 122 § 2; 1991 c 293 § 1; 1989 c 252 § 29; 1987 c 281 § 1; 1985 c 443 § 13; 1984 c 258 § 311; 1983 c 239 § 1; 1982 1st ex.s. c 8 § 1; 1977 ex.s. c 302 § 10.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Effective date—2000 c 71:** See note following RCW 13.40.198.

**Findings—Intent—1996 c 122:** "The legislature finds that current funding for county victim-witness advocacy programs is inadequate. Also, the state crime victims compensation program should be enhanced to provide for increased benefits to families of victims who are killed as a result of a criminal act. It is the intent of the legislature to provide increased financial support for the county and state crime victim and witness programs by requiring offenders to pay increased penalty assessments upon conviction of a gross misdemeanor or felony crime. The increased financial support is intended to allow county victim/witness programs to more fully assist victims and witnesses through the criminal justice processes. On the state level, the increased funds will allow the remedial intent of the crime victims compensation program to be more fully served. Specifically, the increased funds from offender penalty assessments will allow more appropriate compensation for families of victims who are killed as a result of a criminal act, including reasonable burial benefits." [1996 c 122 § 1.]

**Purpose—Prospective application—Effective dates—Severability—1989 c 252:** See notes following RCW 9.94A.030.

**Effective date—1987 c 281:** See note following RCW 7.68.020.

**Severability—Effective date—1985 c 443:** See notes following RCW 7.69.010.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.34.130.

**Effective dates—1982 1st ex.s. c 8:** "Chapter 8, Laws of 1982 1st ex. sess. 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 [March 27, 1982], except sections 2, 3, and 6 of chapter 8, Laws of 1982 1st ex. sess. shall take effect on January 1, 1983." [1982 1st ex.s. c 47 § 29; 1982 1st ex.s. c 8 § 9.]

**Intent—Reports—1982 1st ex.s. c 8:** "The intent of the legislature is that the victim of crime program will be self-funded. Toward that end, the department of labor and industries shall not pay benefits beyond the resources of the account. The department of labor and industries and the administrator for the courts shall cooperatively prepare a report on the collection of penalty assessments and the level of expenditures, and recommend adjustments to the revenue collection mechanism to the legislature before January 1, 1983. It is further the intent of the legislature that the percentage of funds devoted to comprehensive programs for victim assistance, as provided in RCW 7.68.035, be re-examined to ensure that it does not unreasonably conflict with the higher priority of compensating victims. To that end, the county prosecuting attorneys shall report to the legislature no later than January 1, 1984, either individually or as a group, on their experience and costs associated with such programs, describing the nature and extent of the victim assistance provided." [1982 1st ex.s. c 8 § 10.]

**7.68.070 Benefits—Right to and amount—Limitations.** The right to benefits under this chapter and the amount thereof will be governed insofar as is applicable by the provisions contained in chapter 51.32 RCW except as provided in this section:

(1) The provisions contained in RCW 51.32.015, 51.32.030, 51.32.072, 51.32.073, 51.32.180, 51.32.190, and 51.32.200 are not applicable to this chapter.

(2) Each victim injured as a result of a criminal act, including criminal acts committed between July 1, 1981, and January 1, 1983, or the victim's family or dependents in case of death of the victim, are entitled to benefits in accordance with this chapter, subject to the limitations under RCW 7.68.015. The rights, duties, responsibilities, limitations, and procedures applicable to a worker as contained in RCW 51.32.010 are applicable to this chapter.

(3) The limitations contained in RCW 51.32.020 are applicable to claims under this chapter. In addition thereto, no person or spouse, child, or dependent of such person is entitled to benefits under this chapter when the injury for which benefits are sought, was:

(a) The result of consent, provocation, or incitement by the victim, unless an injury resulting from a criminal act caused the death of the victim;

(b) Sustained while the crime victim was engaged in the attempt to commit, or the commission of, a felony; or

(c) Sustained while the victim was confined in any county or city jail, federal jail or prison or in any other federal institution, or any state correctional institution maintained and operated by the department of social and health services or the department of corrections, prior to release from lawful custody; or confined or living in any other institution maintained and operated by the department of social and health services or the department of corrections.

(4) The benefits established upon the death of a worker and contained in RCW 51.32.050 shall be the benefits obtainable under this chapter and provisions relating to payment contained in that section shall equally apply under this chapter: PROVIDED, That benefits for burial expenses shall not exceed the amount paid by the department in case of the death of a worker as provided in chapter 51.32 RCW in any claim: PROVIDED FURTHER, That if the criminal act

results in the death of a victim who was not gainfully employed at the time of the criminal act, and who was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act;

(a) Benefits payable to an eligible surviving spouse, where there are no children of the victim at the time of the criminal act who have survived the victim or where such spouse has legal custody of all of his or her children, shall be limited to burial expenses and a lump sum payment of seven thousand five hundred dollars without reference to number of children, if any;

(b) Where any such spouse has legal custody of one or more but not all of such children, then such burial expenses shall be paid, and such spouse shall receive a lump sum payment of three thousand seven hundred fifty dollars and any such child or children not in the legal custody of such spouse shall receive a lump sum of three thousand seven hundred fifty dollars to be divided equally among such child or children;

(c) If any such spouse does not have legal custody of any of the children, the burial expenses shall be paid and the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars and any such child or children not in the legal custody of the spouse shall receive a lump sum payment of up to three thousand seven hundred fifty dollars to be divided equally among the child or children;

(d) If no such spouse survives, then such burial expenses shall be paid, and each surviving child of the victim at the time of the criminal act shall receive a lump sum payment of three thousand seven hundred fifty dollars up to a total of two such children and where there are more than two such children the sum of seven thousand five hundred dollars shall be divided equally among such children.

No other benefits may be paid or payable under these circumstances.

(5) The benefits established in RCW 51.32.060 for permanent total disability proximately caused by the criminal act shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That if a victim becomes permanently and totally disabled as a proximate result of the criminal act and was not gainfully employed at the time of the criminal act, the victim shall receive monthly during the period of the disability the following percentages, where applicable, of the average monthly wage determined as of the date of the criminal act pursuant to RCW 51.08.018:

(a) If married at the time of the criminal act, twenty-nine percent of the average monthly wage.

(b) If married with one child at the time of the criminal act, thirty-four percent of the average monthly wage.

(c) If married with two children at the time of the criminal act, thirty-eight percent of the average monthly wage.

(d) If married with three children at the time of the criminal act, forty-one percent of the average monthly wage.

(e) If married with four children at the time of the criminal act, forty-four percent of the average monthly wage.

(f) If married with five or more children at the time of the criminal act, forty-seven percent of the average monthly wage.

(g) If unmarried at the time of the criminal act, twenty-five percent of the average monthly wage.

(h) If unmarried with one child at the time of the criminal act, thirty percent of the average monthly wage.

(i) If unmarried with two children at the time of the criminal act, thirty-four percent of the average monthly wage.

(j) If unmarried with three children at the time of the criminal act, thirty-seven percent of the average monthly wage.

(k) If unmarried with four children at the time of the criminal act, forty percent of the average monthly wage.

(l) If unmarried with five or more children at the time of the criminal act, forty-three percent of the average monthly wage.

(6) The benefits established in RCW 51.32.080 for permanent partial disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section equally apply under this chapter.

(7) The benefits established in RCW 51.32.090 for temporary total disability shall be the benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That no person is eligible for temporary total disability benefits under this chapter if such person was not gainfully employed at the time of the criminal act, and was not so employed for at least three consecutive months of the twelve months immediately preceding the criminal act.

(8) The benefits established in RCW 51.32.095 for continuation of benefits during vocational rehabilitation shall be benefits obtainable under this chapter, and provisions relating to payment contained in that section apply under this chapter: PROVIDED, That benefits shall not exceed five thousand dollars for any single injury.

(9) The provisions for lump sum payment of benefits upon death or permanent total disability as contained in RCW 51.32.130 apply under this chapter.

(10) The provisions relating to payment of benefits to, for or on behalf of workers contained in RCW 51.32.040, 51.32.055, 51.32.100, 51.32.110, 51.32.120, 51.32.135, 51.32.140, 51.32.150, 51.32.160, and 51.32.210 are applicable to payment of benefits to, for or on behalf of victims under this chapter.

(11) No person or spouse, child, or dependent of such person is entitled to benefits under this chapter where the person making a claim for such benefits has refused to give reasonable cooperation to state or local law enforcement agencies in their efforts to apprehend and convict the perpetrator(s) of the criminal act which gave rise to the claim.

(12) In addition to other benefits provided under this chapter, victims of sexual assault are entitled to receive appropriate counseling. Fees for such counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Counseling services may include, if determined appropriate by the department, counseling of members of the victim's immediate family, other than the perpetrator of the assault.

(13) Except for medical benefits authorized under RCW 7.68.080, no more than thirty thousand dollars shall be granted as a result of a single injury or death, except that benefits granted as the result of total permanent disability or death shall not exceed forty thousand dollars.

(14) Notwithstanding other provisions of this chapter and Title 51 RCW, benefits payable for total temporary disability under subsection (7) of this section, shall be limited to fifteen thousand dollars.

(15) Any person who is responsible for the victim's injuries, or who would otherwise be unjustly enriched as a result of the victim's injuries, shall not be a beneficiary under this chapter.

(16) Crime victims' compensation is not available to pay for services covered under chapter 74.09 RCW or Title XIX of the federal social security act, except to the extent that the costs for such services exceed service limits established by the department of social and health services or, during the 1993-95 fiscal biennium, to the extent necessary to provide matching funds for federal medicaid reimbursement.

(17) In addition to other benefits provided under this chapter, immediate family members of a homicide victim may receive appropriate counseling to assist in dealing with the immediate, near-term consequences of the related effects of the homicide. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. Payment of counseling benefits under this section may not be provided to the perpetrator of the homicide. The benefits under this subsection may be provided only with respect to homicides committed on or after July 1, 1992.

(18) A dependent mother, father, stepmother, or stepfather, as defined in RCW 51.08.050, who is a survivor of her or his child's homicide, who has been requested by a law enforcement agency or a prosecutor to assist in the judicial proceedings related to the death of the victim, and who is not domiciled in Washington state at the time of the request, may receive a lump-sum payment upon arrival in this state. Total benefits under this subsection may not exceed seven thousand five hundred dollars. If more than one dependent parent is eligible for this benefit, the lump-sum payment of seven thousand five hundred dollars shall be divided equally among the dependent parents.

(19) A victim whose crime occurred in another state who qualifies for benefits under RCW 7.68.060(4) may receive appropriate mental health counseling to address distress arising from participation in the civil commitment proceedings. Fees for counseling shall be determined by the department in accordance with RCW 51.04.030, subject to the limitations of RCW 7.68.080. [2009 c 38 § 1; 2002 c 54 § 1; 1996 c 122 § 5; 1993 sp.s. c 24 § 912; 1992 c 203 § 1; 1990 c 3 § 502; 1989 1st ex.s. c 5 § 5; 1989 c 12 § 2; 1987 c 281 § 8; 1985 c 443 § 15; 1983 c 239 § 2; 1982 1st ex.s. c 8 § 2; 1981 1st ex.s. c 6 § 26; 1977 ex.s. c 302 § 5; 1975 1st ex.s. c 176 § 3; 1973 1st ex.s. c 122 § 7.]

**Findings—Intent—1996 c 122:** See note following RCW 7.68.035.

**Severability—Effective dates—1993 sp.s. c 24:** See notes following RCW 28A.310.020.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**Severability—Application—Effective dates—1989 1st ex.s. c 5:** See notes following RCW 7.68.015.

**Effective date—1987 c 281:** See note following RCW 7.68.020.

**Application—1985 c 443 § 15:** "The amendments to RCW 7.68.070 by this act apply only to criminal acts occurring after December 31, 1985." [1986 c 98 § 3; 1985 c 443 § 17.]

**Severability—Effective date—1985 c 443:** See notes following RCW 7.69.010.

**Effective dates—Intent—Reports—1982 1st ex.s. c 8:** See notes following RCW 7.68.035.

**Effective date—Severability—1981 1st ex.s. c 6:** See notes following RCW 74.04.005.

**7.68.085 Cap on medical benefits—Alternative programs.** The director of labor and industries shall institute a cap on medical benefits of one hundred fifty thousand dollars per injury or death. Payment for medical services in excess of the cap shall be made available to any innocent victim under the same conditions as other medical services and if the medical services are:

- (1) Necessary for a previously accepted condition;
- (2) Necessary to protect the victim's life or prevent deterioration of the victim's previously accepted condition; and
- (3) Not available from an alternative source.

For the purposes of this section, an individual will not be required to use his or her assets other than funds recovered as a result of a civil action or criminal restitution, for medical expenses or pain and suffering, in order to qualify for an alternative source of payment.

The director shall, in cooperation with the department of social and health services, establish by October 1, 1989, a process to aid crime victims in identifying and applying for appropriate alternative benefit programs, if any, administered by the department of social and health services. [2009 c 479 § 9; 1990 c 3 § 504; 1989 1st ex.s. c 5 § 3.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**Application—Transition plans—1989 1st ex.s. c 5 § 3:** "The cap on medical benefits established by section 3 of this act shall apply equally to current and future recipients of crime victims' compensation benefits. The director shall prepare individual transition plans for individuals who exceed the medical benefit cap on July 1, 1989. The transition plans must be completed within ninety days of July 1, 1989." [1989 1st ex.s. c 5 § 4.]

**Severability—Application—Effective dates—1989 1st ex.s. c 5:** See notes following RCW 7.68.015.

**7.68.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 17.]

## Chapter 7.69 RCW

## CRIME VICTIMS, SURVIVORS, AND WITNESSES

## Sections

7.69.030	Rights of victims, survivors, and witnesses.
7.69.032	Right to make statement before postsentence release of offender.

**7.69.030 Rights of victims, survivors, and witnesses.**

There shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crimes have the following rights, which apply to any criminal court and/or juvenile court proceeding:

(1) With respect to victims of violent or sex crimes, to receive, at the time of reporting the crime to law enforcement officials, a written statement of the rights of crime victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county;

(2) To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim, survivor, or witness is involved;

(3) To be notified by the party who issued the subpoena that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;

(4) To receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;

(5) To be informed of the procedure to be followed to apply for and receive any witness fees to which they are entitled;

(6) To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants;

(7) To have any stolen or other personal property expeditiously returned by law enforcement agencies or the superior court when no longer needed as evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken;

(8) To be provided with appropriate employer intercession services to ensure that employers of victims, survivors of victims, and witnesses of crime will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearance;

(9) To access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance. Victims of domestic violence, sexual assault, or stalking, as defined in RCW 49.76.020, shall be notified of their right to reasonable leave from employment under chapter 49.76 RCW;

(10) With respect to victims of violent and sex crimes, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the crime victim;

(11) With respect to victims and survivors of victims, to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified;

(12) With respect to victims and survivors of victims, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing for felony convictions upon request by a victim or survivor;

(13) To submit a victim impact statement or report to the court, with the assistance of the prosecuting attorney if requested, which shall be included in all presentence reports and permanently included in the files and records accompanying the offender committed to the custody of a state agency or institution;

(14) With respect to victims and survivors of victims, to present a statement personally or by representation, at the sentencing hearing for felony convictions; and

(15) With respect to victims and survivors of victims, to entry of an order of restitution by the court in all felony cases, even when the offender is sentenced to confinement, unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment. [2009 c 138 § 5; 2008 c 286 § 16; 2004 c 120 § 8; 1999 c 323 § 2; 1997 c 343 § 1; 1993 c 350 § 6; 1985 c 443 § 3; 1981 c 145 § 3.]

**Effective date—2008 c 286:** See RCW 49.76.900.

**Effective date—2004 c 120:** See note following RCW 13.40.010.

**Intent—1999 c 323:** See note following RCW 9.94A.885.

**Findings—Severability—1993 c 350:** See notes following RCW 26.50.035.

**Severability—Effective date—1985 c 443:** See notes following RCW 7.69.010.

*Child victims and witnesses, additional rights: Chapter 7.69A RCW.*

**7.69.032 Right to make statement before postsentence release of offender.** (1) The legislature recognizes the significant concerns that many victims, survivors of victims, and witnesses of crimes have when offenders are considered for postsentence release from confinement. Therefore, it is the intent of the legislature to ensure that victims, survivors of victims, and witnesses of crimes are afforded the opportunity to make a statement that will be considered prior to the granting of postsentence release from confinement for any offender under the jurisdiction of the indeterminate sentence review board or its successor, or by the governor regarding an application for pardon or commutation of sentence.

(2) Victims, survivors of victims, and witnesses of crimes have the following rights:

(a) With respect to victims, survivors of victims, and witnesses of crimes, to present a statement to the indeterminate

sentence review board or its successor, in person or by representation, via audio or videotape or other electronic means, or in writing, prior to the granting of parole or community custody release for any offender under the board's jurisdiction.

(b) With respect to victims and survivors of victims, to present a statement to the clemency and pardons board in person, via audio or videotape or other electronic means, or in writing, at any hearing conducted regarding an application for pardon or commutation of sentence. [2009 c 138 § 1.]

### Chapter 7.80 RCW CIVIL INFRACTIONS

#### Sections

7.80.010	Jurisdiction of courts.
7.80.090	Hearings—Rules of procedure—Counsel.

**7.80.010 Jurisdiction of courts.** (1) All violations of state law, local law, ordinance, regulation, or resolution designated as civil infractions may be heard and determined by a district court, except as otherwise provided in this section.

(2) Any municipal court has the authority to hear and determine pursuant to this chapter civil infractions that are established by municipal ordinance or by local law or resolution of a transit agency authorized to issue civil infractions, and that are committed within the jurisdiction of the municipality.

(3) Any city or town with a municipal court under chapter 3.50 RCW may contract with the county to have civil infractions that are established by city or town ordinance and that are committed within the city or town adjudicated by a district court.

(4) District court commissioners have the authority to hear and determine civil infractions pursuant to this chapter.

(5) Nothing in this chapter prevents any city, town, or county from hearing and determining civil infractions pursuant to its own system established by ordinance. [2009 c 279 § 2; 1987 c 456 § 9.]

#### 7.80.090 Hearings—Rules of procedure—Counsel.

(1) Procedures for the conduct of all hearings provided 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.

(3) The attorney representing the state, county, city, town, or transit agency authorized to issue civil infractions may appear in any proceedings under this chapter but need not appear, notwithstanding any statute or rule of court to the contrary. [2009 c 279 § 1; 1987 c 456 § 17.]

### Chapter 7.84 RCW NATURAL RESOURCE INFRACTIONS

#### Sections

7.84.030	Notice of infraction—Issuance, service, filing.
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**7.84.030 Notice of infraction—Issuance, service, filing.** (1) An infraction proceeding is initiated by the issuance and service of a printed notice of infraction and filing of a printed or electronic copy of the 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. [2009 c 174 § 1; 2004 c 43 § 2; 1987 c 380 § 3.]

**Effective date—2004 c 43:** See note following RCW 7.80.150.

## Title 9

### CRIMES AND PUNISHMENTS

#### Chapters

- 9.41 Firearms and dangerous weapons.**
- 9.46 Gambling—1973 act.**
- 9.58 Libel and slander.**
- 9.68 Obscenity and pornography.**
- 9.68A Sexual exploitation of children.**
- 9.91 Miscellaneous crimes.**
- 9.92 Punishment.**
- 9.94A Sentencing reform act of 1981.**
- 9.94B Sentencing—Crimes committed prior to July 1, 2000.**
- 9.95 Indeterminate sentences.**
- 9.96 Restoration of civil rights.**
- 9.96A Restoration of employment rights.**

#### Chapter 9.41 RCW

### FIREARMS AND DANGEROUS WEAPONS

#### Sections

9.41.010	Terms defined.
9.41.040	Unlawful possession of firearms—Ownership, possession by certain persons—Penalties.
9.41.045	Possession by offenders.
9.41.047	Restoration of possession rights.
9.41.070	Concealed pistol license—Application—Fee—Renewal.
9.41.097	Supplying information on persons purchasing pistols or applying for concealed pistol licenses.
9.41.0975	Officials and agencies—Immunity, writ of mandamus.
9.41.110	Dealer's licenses, by whom granted, conditions, fees—Employees, fingerprinting and background checks—Wholesale sales excepted—Permits prohibited.
9.41.170	Repealed.
9.41.171	Alien possession of firearms—Requirements—Penalty.
9.41.173	Alien possession of firearms—Alien firearm license—Political subdivisions may not modify requirements—Penalty for false statement.
9.41.175	Alien possession of firearms—Possession without license—Conditions.
9.41.280	Possessing dangerous weapons on school facilities—Penalty—Exceptions.

**9.41.010 Terms defined.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Antique firearm" means a firearm or replica of a firearm not designed or redesigned for using rim fire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898, including any matchlock, flintlock, percussion cap, or similar type of ignition system and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(2) "Barrel length" means the distance from the bolt face of a closed action down the length of the axis of the bore to the crown of the muzzle, or in the case of a barrel with attachments to the end of any legal device permanently attached to the end of the muzzle.

(3) "Crime of violence" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, burglary in the second degree, residential burglary, and robbery in the second degree;

(b) Any conviction for a felony offense in effect at any time prior to June 6, 1996, which is comparable to a felony classified as a crime of violence in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense comparable to a felony classified as a crime of violence under (a) or (b) of this subsection.

(4) "Dealer" means a person engaged in the business of selling firearms at wholesale or retail who has, or is required to have, a federal firearms license under 18 U.S.C. Sec. 923(a). A person who does not have, and is not required to have, a federal firearms license under 18 U.S.C. Sec. 923(a), is not a dealer if that person makes only occasional sales, exchanges, or purchases of firearms for the enhancement of a personal collection or for a hobby, or sells all or part of his or her personal collection of firearms.

(5) "Family or household member" means "family" or "household member" as used in RCW 10.99.020.

(6) "Felony" means any felony offense under the laws of this state or any federal or out-of-state offense comparable to a felony offense under the laws of this state.

(7) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder.

(8) "Law enforcement officer" includes a general authority Washington peace officer as defined in RCW 10.93.020, or a specially commissioned Washington peace officer as defined in RCW 10.93.020. "Law enforcement officer" also includes a limited authority Washington peace officer as defined in RCW 10.93.020 if such officer is duly authorized by his or her employer to carry a concealed pistol.

(9) "Lawful permanent resident" has the same meaning afforded a person "lawfully admitted for permanent residence" in 8 U.S.C. Sec. 1101(a)(20).

(10) "Loaded" means:

(a) There is a cartridge in the chamber of the firearm;

(b) Cartridges are in a clip that is locked in place in the firearm;

(c) There is a cartridge in the cylinder of the firearm, if the firearm is a revolver;

(d) There is a cartridge in the tube or magazine that is inserted in the action; or

(e) There is a ball in the barrel and the firearm is capped or primed if the firearm is a muzzle loader.

(11) "Machine gun" means any firearm known as a machine gun, mechanical rifle, submachine gun, or any other mechanism or instrument not requiring that the trigger be pressed for each shot and having a reservoir clip, disc, drum, belt, or other separable mechanical device for storing, carrying, or supplying ammunition which can be loaded into the firearm, mechanism, or instrument, and fired therefrom at the rate of five or more shots per second.

(12) "Nonimmigrant alien" means a person defined as such in 8 U.S.C. Sec. 1101(a)(15).

(13) "Pistol" means any firearm with a barrel less than sixteen inches in length, or is designed to be held and fired by the use of a single hand.

(14) "Rifle" means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed metallic cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(15) "Sell" refers to the actual approval of the delivery of a firearm in consideration of payment or promise of payment of a certain price in money.

(16) "Serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

(a) Any crime of violence;

(b) Any felony violation of the uniform controlled substances act, chapter 69.50 RCW, that is classified as a class B felony or that has a maximum term of imprisonment of at least ten years;

(c) Child molestation in the second degree;

(d) Incest when committed against a child under age fourteen;

(e) Indecent liberties;

(f) Leading organized crime;

(g) Promoting prostitution in the first degree;

(h) Rape in the third degree;

(i) Drive-by shooting;

(j) Sexual exploitation;

(k) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(l) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(m) Any other class B felony offense with a finding of sexual motivation, as "sexual motivation" is defined under RCW 9.94A.030;

(n) Any other felony with a deadly weapon verdict under \*RCW 9.94A.602; or



(o) Any felony offense in effect at any time prior to June 6, 1996, that is comparable to a serious offense, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious offense.

(17) "Short-barreled rifle" means a rifle having one or more barrels less than sixteen inches in length and any weapon made from a rifle by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

(18) "Short-barreled shotgun" means a shotgun having one or more barrels less than eighteen inches in length and any weapon made from a shotgun by any means of modification if such modified weapon has an overall length of less than twenty-six inches.

(19) "Shotgun" means a weapon with one or more barrels, designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned, made or remade, and intended to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of ball shot or a single projectile for each single pull of the trigger. [2009 c 216 § 1; 2001 c 300 § 2; 1997 c 338 § 46; 1996 c 295 § 1. Prior: 1994 sp.s. c 7 § 401; 1994 c 121 § 1; prior: 1992 c 205 § 117; 1992 c 145 § 5; 1983 c 232 § 1; 1971 ex.s. c 302 § 1; 1961 c 124 § 1; 1935 c 172 § 1; RRS § 2516-1.]

**Reviser's note:** \*(1) RCW 9.94A.602 was recodified as RCW 9.94A.825 pursuant to 2009 c 28 § 41.

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460:** "Sections 401 through 410, 413 through 416, 418 through 437, and 439 through 460 of this act shall take effect July 1, 1994." [1994 sp.s. c 7 § 916.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Part headings not law—Severability—1992 c 205:** See notes following RCW 13.40.010.

**Severability—1983 c 232:** "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 232 § 14.]

**Severability—1971 ex.s. c 302:** "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 302 § 35.]

**Severability—1961 c 124:** "If any part of this act is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this act." [1961 c 124 § 13.]

**Preemption and general repealer—1961 c 124:** "All laws or parts of laws of the state of Washington, its subdivisions and municipalities inconsistent herewith are hereby preempted and repealed." [1961 c 124 § 14.]

**Short title—1935 c 172:** "This act may be cited as the 'Uniform Firearms Act.'" [1935 c 172 § 18.]

**Severability—1935 c 172:** "If any part of this act is for any reason declared void, such invalidity shall not affect the validity of the remaining portions of this act." [1935 c 172 § 17.]

**Construction—1935 c 172:** "This act shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it." [1935 c 172 § 19.]

**9.41.040 Unlawful possession of firearms—Ownership, possession by certain persons—Penalties.** (1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a protection order or no-contact order restraining the person or excluding the person from a residence (RCW 26.50.060, 26.50.070, 26.50.130, or 10.99.040);

(ii) After having previously been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

(iii) If the person is under eighteen years of age, except as provided in RCW 9.41.042; and/or

(iv) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010.

(b) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted", whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted, or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including but not limited to sentencing or disposition, post-trial or post-factfinding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. A person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can

be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least twenty years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(a) Under RCW 9.41.047; and/or

(b)(i) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(ii) If the conviction or finding of not guilty by reason of insanity was for a nonfelony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(5) In addition to any other penalty provided for by law, if a person under the age of eighteen years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within twenty-four hours and the person's privilege to drive shall be revoked under RCW 46.20.265.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive

sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense. [2009 c 293 § 1; 2005 c 453 § 1; 2003 c 53 § 26; 1997 c 338 § 47; 1996 c 295 § 2. Prior: 1995 c 129 § 16 (Initiative Measure No. 159); 1994 sp.s. c 7 § 402; prior: 1992 c 205 § 118; 1992 c 168 § 2; 1983 c 232 § 2; 1961 c 124 § 3; 1935 c 172 § 4; RRS § 2516-4.]

**Severability—2005 c 453:** "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." [2005 c 453 § 7.]

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

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Findings and intent—Short title—Severability—Captions not law—1995 c 129:** See notes following RCW 9.94A.510.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460:** See note following RCW 9.41.010.

**Part headings not law—Severability—1992 c 205:** See notes following RCW 13.40.010.

**Severability—1992 c 168:** See note following RCW 9.41.070.

**Severability—1983 c 232:** See note following RCW 9.41.010.

**9.41.045 Possession by offenders.** As a sentence condition and requirement, offenders under the supervision of the department of corrections pursuant to chapter 9.94A RCW shall not own, use, or possess firearms or ammunition. In addition to any penalty imposed pursuant to RCW 9.41.040 when applicable, offenders found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions as provided for in RCW 9.94A.633, 9.94A.716, or 9.94A.737. Firearms or ammunition owned, used, or possessed by offenders may be confiscated by community corrections officers and turned over to the Washington state patrol for disposal as provided in RCW 9.41.098. [2009 c 28 § 2; 1991 c 221 § 1.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**9.41.047 Restoration of possession rights.** (1) At the time a person is convicted or found not guilty by reason of insanity of an offense making the person ineligible to possess a firearm, or at the time a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW for mental health treatment, the convicting or committing court shall notify the person, orally and in writing, that the person must immediately surrender any concealed pistol license and that the person may not possess a firearm unless his or her right to do so is restored by a court of record. For purposes of this section a convicting court includes a court in which a person has been found not guilty by reason of insanity.

The convicting or committing court shall forward within three judicial days after conviction or entry of the commitment order a copy of the person's driver's license or identification, or comparable information, along with the date of con-

viction or commitment, to the department of licensing. When a person is committed by court order under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, or chapter 10.77 RCW, for mental health treatment, the committing court also shall forward, within three judicial days after entry of the commitment order, a copy of the person's driver's license, or comparable information, along with the date of commitment, to the national instant criminal background check system index, denied persons file, created by the federal Brady handgun violence prevention act (P.L. 103-159).

(2) Upon receipt of the information provided for by subsection (1) of this section, the department of licensing shall determine if the convicted or committed person has a concealed pistol license. If the person does have a concealed pistol license, the department of licensing shall immediately notify the license-issuing authority which, upon receipt of such notification, shall immediately revoke the license.

(3)(a) A person who is prohibited from possessing a firearm, by reason of having been involuntarily committed for mental health treatment under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction may, upon discharge, petition the superior court to have his or her right to possess a firearm restored.

(b) The petition may be brought in the superior court that ordered the involuntary commitment or the superior court of the county in which the petitioner resides.

(c) Except as provided in (d) of this subsection, the court shall restore the petitioner's right to possess a firearm if the petitioner proves by a preponderance of the evidence that:

(i) The petitioner is no longer required to participate in court-ordered inpatient or outpatient treatment;

(ii) The petitioner has successfully managed the condition related to the commitment;

(iii) The petitioner no longer presents a substantial danger to himself or herself, or the public; and

(iv) The symptoms related to the commitment are not reasonably likely to recur.

(d) If a preponderance of the evidence in the record supports a finding that the person petitioning the court has engaged in violence and that it is more likely than not that the person will engage in violence after his or her right to possess a firearm is restored, the person shall bear the burden of proving by clear, cogent, and convincing evidence that he or she does not present a substantial danger to the safety of others.

(e) When a person's right to possess a firearm has been restored under this subsection, the court shall forward, within three judicial days after entry of the restoration order, notification that the person's right to possess a firearm has been restored to the department of licensing, the department of social and health services, and the national instant criminal background check system index, denied persons file.

(4) No person who has been found not guilty by reason of insanity may petition a court for restoration of the right to possess a firearm unless the person meets the requirements for the restoration of the right to possess a firearm under RCW 9.41.040(4). [2009 c 293 § 2; 2005 c 453 § 2; 1996 c 295 § 3. Prior: 1994 sp.s. c 7 § 404.]

**Severability—2005 c 453:** See note following RCW 9.41.040.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460:** See note following RCW 9.41.010.

**9.41.070 Concealed pistol license—Application—Fee—Renewal.** (1) The chief of police of a municipality or the sheriff of a county shall within thirty days after the filing of an application of any person, issue a license to such person to carry a pistol concealed on his or her person within this state for five years from date of issue, for the purposes of protection or while engaged in business, sport, or while traveling. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card or has not been a resident of the state for the previous consecutive ninety days, the issuing authority shall have up to sixty days after the filing of the application to issue a license. The issuing authority shall not refuse to accept completed applications for concealed pistol licenses during regular business hours.

The applicant's constitutional right to bear arms shall not be denied, unless:

(a) He or she is ineligible to possess a firearm under the provisions of RCW 9.41.040 or 9.41.045;

(b) The applicant's concealed pistol license is in a revoked status;

(c) He or she is under twenty-one years of age;

(d) He or she is subject to a court order or injunction regarding firearms pursuant to RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590;

(e) He or she is free on bond or personal recognizance pending trial, appeal, or sentencing for a felony offense;

(f) He or she has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor; or

(g) He or she has been ordered to forfeit a firearm under RCW 9.41.098(1)(e) within one year before filing an application to carry a pistol concealed on his or her person.

No person convicted of a felony may have his or her right to possess firearms restored or his or her privilege to carry a concealed pistol restored, unless the person has been granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c), or RCW 9.41.040 (3) or (4) applies.

(2) The issuing authority shall check with the national crime information center, the Washington state patrol electronic database, the department of social and health services electronic database, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 or 9.41.045 to possess a firearm and therefore ineligible for a concealed pistol license. This subsection applies whether the applicant is applying for a new concealed pistol license or to renew a concealed pistol license.

(3) Any person whose firearms rights have been restricted and who has been granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c) or who is exempt under 18 U.S.C. Sec. 921(a)(20)(A) shall have his or her right to acquire, receive, transfer, ship, transport, carry, and possess firearms in accordance with Washington state law restored except as otherwise prohibited by this chapter.

(4) The license application shall bear the full name, residential address, telephone number at the option of the appli-

cant, date and place of birth, race, gender, description, a complete set of fingerprints, and signature of the licensee, and the licensee's driver's license number or state identification card number if used for identification in applying for the license. A signed application for a concealed pistol license shall constitute a waiver of confidentiality and written request that the department of social and health services, mental health institutions, and other health care facilities release information relevant to the applicant's eligibility for a concealed pistol license to an inquiring court or law enforcement agency.

The application for an original license shall include two complete sets of fingerprints to be forwarded to the Washington state patrol.

The license and application shall contain a warning substantially as follows:

CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. A state license is not a defense to a federal prosecution.

The license shall contain a description of the major differences between state and federal law and an explanation of the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law. The application shall contain questions about the applicant's eligibility under RCW 9.41.040 to possess a pistol, the applicant's place of birth, and whether the applicant is a United States citizen. The applicant shall not be required to produce a birth certificate or other evidence of citizenship. A person who is not a citizen of the United States shall, if applicable, meet the additional requirements of RCW 9.41.173 and produce proof of compliance with RCW 9.41.173 upon application. The license may be in triplicate or in a form to be prescribed by the department of licensing.

The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent to the director of licensing and the triplicate shall be preserved for six years, by the authority issuing the license.

The department of licensing shall make available to law enforcement and corrections agencies, in an on-line format, all information received under this subsection.

(5) The nonrefundable fee, paid upon application, for the original five-year license shall be thirty-six dollars plus additional charges imposed by the federal bureau of investigation that are passed on to the applicant. No other state or local branch or unit of government may impose any additional charges on the applicant for the issuance of the license.

The fee shall be distributed as follows:

- (a) Fifteen dollars shall be paid to the state general fund;
- (b) Four dollars shall be paid to the agency taking the fingerprints of the person licensed;
- (c) Fourteen dollars shall be paid to the issuing authority for the purpose of enforcing this chapter; and
- (d) Three dollars to the firearms range account in the general fund.

(6) The nonrefundable fee for the renewal of such license shall be thirty-two dollars. No other branch or unit of government may impose any additional charges on the applicant for the renewal of the license.

The renewal fee shall be distributed as follows:

- (a) Fifteen dollars shall be paid to the state general fund;
- (b) Fourteen dollars shall be paid to the issuing authority for the purpose of enforcing this chapter; and
- (c) Three dollars to the firearms range account in the general fund.

(7) The nonrefundable fee for replacement of lost or damaged licenses is ten dollars to be paid to the issuing authority.

(8) Payment shall be by cash, check, or money order at the option of the applicant. Additional methods of payment may be allowed at the option of the issuing authority.

(9) A licensee may renew a license if the licensee applies for renewal within ninety days before or after the expiration date of the license. A license so renewed shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license must pay a late renewal penalty of ten dollars in addition to the renewal fee specified in subsection (6) of this section. The fee shall be distributed as follows:

(a) Three dollars shall be deposited in the state wildlife account and used exclusively first for the printing and distribution of a pamphlet on the legal limits of the use of firearms, firearms safety, and the preemptive nature of state law, and subsequently the support of volunteer instructors in the basic firearms safety training program conducted by the department of fish and wildlife. The pamphlet shall be given to each applicant for a license; and

(b) Seven dollars shall be paid to the issuing authority for the purpose of enforcing this chapter.

(10) Notwithstanding the requirements of subsections (1) through (9) of this section, the chief of police of the municipality or the sheriff of the county of the applicant's residence may issue a temporary emergency license for good cause pending review under subsection (1) of this section. However, a temporary emergency license issued under this subsection shall not exempt the holder of the license from any records check requirement. Temporary emergency licenses shall be easily distinguishable from regular licenses.

(11) A political subdivision of the state shall not modify the requirements of this section or chapter, nor may a political subdivision ask the applicant to voluntarily submit any information not required by this section.

(12) A person who knowingly makes a false statement regarding citizenship or identity on an application for a concealed pistol license is guilty of false swearing under RCW 9A.72.040. In addition to any other penalty provided for by law, the concealed pistol license of a person who knowingly makes a false statement shall be revoked, and the person shall be permanently ineligible for a concealed pistol license.

(13) A person may apply for a concealed pistol license:

- (a) To the municipality or to the county in which the applicant resides if the applicant resides in a municipality;
- (b) To the county in which the applicant resides if the applicant resides in an unincorporated area; or
- (c) Anywhere in the state if the applicant is a nonresident.

(14) Any person who, as a member of the armed forces, including the national guard and armed forces reserves, is unable to renew his or her license under subsections (6) and (9) of this section because of the person's assignment, reas-

signment, or deployment for out-of-state military service may renew his or her license within ninety days after the person returns to this state from out-of-state military service, if the person provides the following to the issuing authority no later than ninety days after the person's date of discharge or assignment, reassignment, or deployment back to this state: (a) A copy of the person's original order designating the specific period of assignment, reassignment, or deployment for out-of-state military service, and (b) if appropriate, a copy of the person's discharge or amended or subsequent assignment, reassignment, or deployment order back to this state. A license so renewed under this subsection (14) shall take effect on the expiration date of the prior license. A licensee renewing after the expiration date of the license under this subsection (14) shall pay only the renewal fee specified in subsection (6) of this section and shall not be required to pay a late renewal penalty in addition to the renewal fee. [2009 c 216 § 5; 2009 c 59 § 1; 2002 c 302 § 703; 1999 c 222 § 2; 1996 c 295 § 6; 1995 c 351 § 1. Prior: 1994 sp.s. c 7 § 407; 1994 c 190 § 2; 1992 c 168 § 1; 1990 c 195 § 6; prior: 1988 c 263 § 10; 1988 c 223 § 1; 1988 c 219 § 1; 1988 c 36 § 1; 1985 c 428 § 3; 1983 c 232 § 3; 1979 c 158 § 1; 1971 ex.s. c 302 § 2; 1961 c 124 § 6; 1935 c 172 § 7; RRS § 2516-7.]

**Reviser's note:** This section was amended by 2009 c 59 § 1 and by 2009 c 216 § 5, 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).

**Application—Construction—Short title—Severability—2002 c 302:** See RCW 26.26.903, 26.26.911, and 26.26.912.

**Finding—Hunter education program:** "The legislature finds that the hunter education program offers classes that all new hunters in the state are legally required to complete, but that budget reductions have limited the assistance that may be provided to the volunteers who conduct these classes. A portion of the funds for this program is provided by statute exclusively for printing and distributing the hunter safety pamphlet. While this pamphlet should remain the highest spending priority for these funds, there is a surplus in the account which could assist with other activities by the volunteers conducting the hunter education program." [1999 c 222 § 1.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460:** See note following RCW 9.41.010.

**Severability—1992 c 168:** "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 168 § 4.]

**Severability—1985 c 428:** See note following RCW 9.41.290.

**Severability—1983 c 232:** See note following RCW 9.41.010.

**Severability—1971 ex.s. c 302:** See note following RCW 9.41.010.

**9.41.097 Supplying information on persons purchasing pistols or applying for concealed pistol licenses.** (1) The department of social and health services, mental health institutions, and other health care facilities shall, upon request of a court or law enforcement agency, supply such relevant information as is necessary to determine the eligibility of a person to possess a pistol or to be issued a concealed pistol license under RCW 9.41.070 or to purchase a pistol under RCW 9.41.090.

(2) Mental health information received by: (a) The department of licensing pursuant to RCW 9.41.047 or 9.41.173; (b) an issuing authority pursuant to RCW 9.41.047 or 9.41.070; (c) a chief of police or sheriff pursuant to RCW

9.41.090 or 9.41.173; (d) a court or law enforcement agency pursuant to subsection (1) of this section, shall not be disclosed except as provided in RCW 42.56.240(4). [2009 c 216 § 6; 2005 c 274 § 202; 1994 sp.s. c 7 § 412; 1983 c 232 § 5.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Severability—1983 c 232:** See note following RCW 9.41.010.

**9.41.0975 Officials and agencies—Immunity, writ of mandamus.** (1) The state, local governmental entities, any public or private agency, and the employees of any state or local governmental entity or public or private agency, acting in good faith, are immune from liability:

(a) For failure to prevent the sale or transfer of a firearm to a person whose receipt or possession of the firearm is unlawful;

(b) For preventing the sale or transfer of a firearm to a person who may lawfully receive or possess a firearm;

(c) For issuing a concealed pistol license or alien firearm license to a person ineligible for such a license;

(d) For failing to issue a concealed pistol license or alien firearm license to a person eligible for such a license;

(e) For revoking or failing to revoke an issued concealed pistol license or alien firearm license;

(f) For errors in preparing or transmitting information as part of determining a person's eligibility to receive or possess a firearm, or eligibility for a concealed pistol license or alien firearm license;

(g) For issuing a dealer's license to a person ineligible for such a license; or

(h) For failing to issue a dealer's license to a person eligible for such a license.

(2) An application may be made to a court of competent jurisdiction for a writ of mandamus:

(a) Directing an issuing agency to issue a concealed pistol license or alien firearm license wrongfully refused;

(b) Directing a law enforcement agency to approve an application to purchase wrongfully denied;

(c) Directing that erroneous information resulting either in the wrongful refusal to issue a concealed pistol license or alien firearm license or in the wrongful denial of a purchase application be corrected; or

(d) Directing a law enforcement agency to approve a dealer's license wrongfully denied.

The application for the writ may be made in the county in which the application for a concealed pistol license or alien firearm license or to purchase a pistol was made, or in Thurston county, at the discretion of the petitioner. A court shall provide an expedited hearing for an application brought under this subsection (2) for a writ of mandamus. A person granted a writ of mandamus under this subsection (2) shall be awarded reasonable attorneys' fees and costs. [2009 c 216 § 7; 1996 c 295 § 9; 1994 sp.s. c 7 § 413.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460:** See note following RCW 9.41.010.

**9.41.110 Dealer's licenses, by whom granted, conditions, fees—Employees, fingerprinting and background checks—Wholesale sales excepted—Permits prohibited.**

(1) No dealer may sell or otherwise transfer, or expose for sale or transfer, or have in his or her possession with intent to sell, or otherwise transfer, any pistol without being licensed as provided in this section.

(2) No dealer may sell or otherwise transfer, or expose for sale or transfer, or have in his or her possession with intent to sell, or otherwise transfer, any firearm other than a pistol without being licensed as provided in this section.

(3) No dealer may sell or otherwise transfer, or expose for sale or transfer, or have in his or her possession with intent to sell, or otherwise transfer, any ammunition without being licensed as provided in this section.

(4) The duly constituted licensing authorities of any city, town, or political subdivision of this state shall grant licenses in forms prescribed by the director of licensing effective for not more than one year from the date of issue permitting the licensee to sell firearms within this state subject to the following conditions, for breach of any of which the license shall be forfeited and the licensee subject to punishment as provided in RCW 9.41.010 through 9.41.810. A licensing authority shall forward a copy of each license granted to the department of licensing. The department of licensing shall notify the department of revenue of the name and address of each dealer licensed under this section.

(5)(a) A licensing authority shall, within thirty days after the filing of an application of any person for a dealer's license, determine whether to grant the license. However, if the applicant does not have a valid permanent Washington driver's license or Washington state identification card, or has not been a resident of the state for the previous consecutive ninety days, the licensing authority shall have up to sixty days to determine whether to issue a license. No person shall qualify for a license under this section without first receiving a federal firearms license and undergoing fingerprinting and a background check. In addition, no person ineligible to possess a firearm under RCW 9.41.040 or ineligible for a concealed pistol license under RCW 9.41.070 shall qualify for a dealer's license.

(b) A dealer shall require every employee who may sell a firearm in the course of his or her employment to undergo fingerprinting and a background check. An employee must be eligible to possess a firearm, and must not have been convicted of a crime that would make the person ineligible for a concealed pistol license, before being permitted to sell a firearm. Every employee shall comply with requirements concerning purchase applications and restrictions on delivery of pistols that are applicable to dealers.

(6)(a) Except as otherwise provided in (b) of this subsection, the business shall be carried on only in the building designated in the license. For the purpose of this section, advertising firearms for sale shall not be considered the carrying on of business.

(b) A dealer may conduct business temporarily at a location other than the building designated in the license, if the temporary location is within Washington state and is the location of a gun show sponsored by a national, state, or local organization, or an affiliate of any such organization, devoted to the collection, competitive use, or other sporting use of

firearms in the community. Nothing in this subsection (6)(b) authorizes a dealer to conduct business in or from a motorized or towed vehicle.

In conducting business temporarily at a location other than the building designated in the license, the dealer shall comply with all other requirements imposed on dealers by RCW 9.41.090, 9.41.100, and 9.41.110. The license of a dealer who fails to comply with the requirements of RCW 9.41.080 and 9.41.090 and subsection (8) of this section while conducting business at a temporary location shall be revoked, and the dealer shall be permanently ineligible for a dealer's license.

(7) The license or a copy thereof, certified by the issuing authority, shall be displayed on the premises in the area where firearms are sold, or at the temporary location, where it can easily be read.

(8)(a) No pistol may be sold: (i) In violation of any provisions of RCW 9.41.010 through 9.41.810; nor (ii) may a pistol be sold under any circumstances unless the purchaser is personally known to the dealer or shall present clear evidence of his or her identity.

(b) A dealer who sells or delivers any firearm in violation of RCW 9.41.080 is guilty of a class C felony. In addition to any other penalty provided for by law, the dealer is subject to mandatory permanent revocation of his or her dealer's license and permanent ineligibility for a dealer's license.

(c) The license fee for pistols shall be one hundred twenty-five dollars. The license fee for firearms other than pistols shall be one hundred twenty-five dollars. The license fee for ammunition shall be one hundred twenty-five dollars. Any dealer who obtains any license under subsection (1), (2), or (3) of this section may also obtain the remaining licenses without payment of any fee. The fees received under this section shall be deposited in the state general fund.

(9)(a) A true record in triplicate shall be made of every pistol sold, in a book kept for the purpose, the form of which may be prescribed by the director of licensing and shall be personally signed by the purchaser and by the person effecting the sale, each in the presence of the other, and shall contain the date of sale, the caliber, make, model and manufacturer's number of the weapon, the name, address, occupation, and place of birth of the purchaser and a statement signed by the purchaser that he or she is not ineligible under RCW 9.41.040 to possess a firearm.

(b) One copy shall within six hours be sent by certified mail to the chief of police of the municipality or the sheriff of the county of which the purchaser is a resident; the duplicate the dealer shall within seven days send to the director of licensing; the triplicate the dealer shall retain for six years.

(10) Subsections (2) through (9) of this section shall not apply to sales at wholesale.

(11) The dealer's licenses authorized to be issued by this section are general licenses covering all sales by the licensee within the effective period of the licenses. The department shall provide a single application form for dealer's licenses and a single license form which shall indicate the type or types of licenses granted.

(12) Except as provided in RCW 9.41.090, every city, town, and political subdivision of this state is prohibited from requiring the purchaser to secure a permit to purchase or from

requiring the dealer to secure an individual permit for each sale. [2009 c 479 § 10; 1994 sp.s. c 7 § 416; 1979 c 158 § 2; 1969 ex.s. c 227 § 4; 1963 c 163 § 1; 1961 c 124 § 8; 1935 c 172 § 11; RRS § 2516-11.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460:** See note following RCW 9.41.010.

**9.41.170 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**9.41.171 Alien possession of firearms—Requirements—Penalty.** It is a class C felony for any person who is not a citizen of the United States to carry or possess any firearm, unless the person: (1) Is a lawful permanent resident; (2) has obtained a valid alien firearm license pursuant to RCW 9.41.173; or (3) meets the requirements of RCW 9.41.175. [2009 c 216 § 2.]

**9.41.173 Alien possession of firearms—Alien firearm license—Political subdivisions may not modify requirements—Penalty for false statement.** (1) In order to obtain an alien firearm license, a nonimmigrant alien residing in Washington must apply to the sheriff of the county in which he or she resides.

(2) The sheriff of the county shall within sixty days after the filing of an application of a nonimmigrant alien residing in the state of Washington, issue an alien firearm license to such person to carry or possess a firearm for the purposes of hunting and sport shooting. The license shall be good for two years. The issuing authority shall not refuse to accept completed applications for alien firearm licenses during regular business hours. An application for a license may not be denied, unless the applicant's alien firearm license is in a revoked status, or the applicant:

(a) Is ineligible to possess a firearm under the provisions of RCW 9.41.040 or 9.41.045;

(b) Is subject to a court order or injunction regarding firearms pursuant to RCW 9A.46.080, 10.14.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.10.040, 26.10.115, 26.26.130, 26.50.060, 26.50.070, or 26.26.590;

(c) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a felony offense; or

(d) Has an outstanding warrant for his or her arrest from any court of competent jurisdiction for a felony or misdemeanor.

No license application shall be granted to a nonimmigrant alien convicted of a felony unless the person has been granted relief from disabilities by the attorney general under 18 U.S.C. Sec. 925(c), or unless RCW 9.41.040 (3) or (4) applies.

(3) The sheriff shall check with the national crime information center, the Washington state patrol electronic database, the department of social and health services electronic database, and with other agencies or resources as appropriate, to determine whether the applicant is ineligible under RCW 9.41.040 or 9.41.045 to possess a firearm.

(4) The license application shall bear the full name, residential address, telephone number at the option of the appli-

cant, date and place of birth, race, gender, description, not more than two complete sets of fingerprints, and signature of the applicant, a copy of the applicant's passport and visa showing the applicant is in the country legally, and a valid Washington hunting license or documentation that the applicant is a member of a sport shooting club.

A signed application for an alien firearm license shall constitute a waiver of confidentiality and written request that the department of social and health services, mental health institutions, and other health care facilities release information relevant to the applicant's eligibility for an alien firearm license to an inquiring court or law enforcement agency.

The application for an original license shall include a complete set of fingerprints to be forwarded to the Washington state patrol.

The license and application shall contain a warning substantially as follows:

CAUTION: Although state and local laws do not differ, federal law and state law on the possession of firearms differ. If you are prohibited by federal law from possessing a firearm, you may be prosecuted in federal court. A state license is not a defense to a federal prosecution.

The license shall contain a description of the major differences between state and federal law and an explanation of the fact that local laws and ordinances on firearms are preempted by state law and must be consistent with state law. The application shall contain questions about the applicant's eligibility under RCW 9.41.040 to possess a firearm. The nonimmigrant alien applicant shall be required to produce a passport and visa as evidence of being in the country legally.

The license may be in triplicate or in a form to be prescribed by the department of licensing. The original thereof shall be delivered to the licensee, the duplicate shall within seven days be sent to the director of licensing and the triplicate shall be preserved for six years, by the authority issuing the license.

The department of licensing shall make available to law enforcement and corrections agencies, in an online format, all information received under this section.

(5) The sheriff has the authority to collect a nonrefundable fee, paid upon application, for the two-year license. The fee shall be fifty dollars plus additional charges imposed by the Washington state patrol and the federal bureau of investigation that are passed on to the applicant. No other state or local branch or unit of government may impose any additional charges on the applicant for the issuance of the license. The fee shall be retained by the sheriff.

(6) Payment shall be by cash, check, or money order at the option of the applicant. Additional methods of payment may be allowed at the option of the sheriff.

(7) A political subdivision of the state shall not modify the requirements of this section, nor may a political subdivision ask the applicant to voluntarily submit any information not required by this section.

(8) A person who knowingly makes a false statement regarding citizenship or identity on an application for an alien firearm license is guilty of false swearing under RCW 9A.72.040. In addition to any other penalty provided for by law, the alien firearm license of a person who knowingly

makes a false statement shall be revoked, and the person shall be permanently ineligible for an alien firearm license. [2009 c 216 § 3.]

**9.41.175 Alien possession of firearms—Possession without license—Conditions.** (1) A nonimmigrant alien, who is not a resident of Washington or a citizen of Canada, may carry or possess any firearm without having first obtained an alien firearm license if the nonimmigrant alien possesses:

(a) A valid passport and visa showing he or she is in the country legally;

(b) If required under federal law, an approved United States department of justice ATF-6 NIA application and permit for temporary importation of firearms and ammunition by nonimmigrant aliens; and

(c)(i) A valid hunting license issued by a state or territory of the United States; or

(ii) An invitation to participate in a trade show or sport shooting event being conducted in this state, another state, or another country that is contiguous with this state.

(2) A citizen of Canada may carry or possess any firearm so long as he or she possesses:

(a) Valid documentation as required for entry into the United States;

(b) If required under federal law, an approved United States department of justice ATF-6 NIA application and permit for temporary importation of firearms and ammunition by nonimmigrant aliens; and

(c)(i) A valid hunting license issued by a state or territory of the United States; or

(ii) An invitation to participate in a trade show or sport shooting event being conducted in this state, another state, or another country that is contiguous with this state.

(3) For purposes of subsections (1) and (2) of this section, the firearms may only be possessed for the purpose of using them in the hunting of game while such persons are in the act of hunting, or while on a hunting trip, or while such persons are competing in a bona fide trap or skeet shoot or any other organized contest where rifles, pistols, or shotguns are used. Nothing in this section shall be construed to allow aliens to hunt or fish in this state without first having obtained a regular hunting or fishing license. [2009 c 216 § 4.]

**9.41.280 Possessing dangerous weapons on school facilities—Penalty—Exceptions.** (1) It is unlawful for a person to carry onto, or to possess on, public or private elementary or secondary school premises, school-provided transportation, or areas of facilities while being used exclusively by public or private schools:

(a) Any firearm;

(b) Any other dangerous weapon as defined in RCW 9.41.250;

(c) Any device commonly known as "nun-chu-ka sticks", consisting of two or more lengths of wood, metal, plastic, or similar substance connected with wire, rope, or other means;

(d) Any device, commonly known as "throwing stars", which are multi-pointed, metal objects designed to embed upon impact from any aspect;

(e) Any air gun, including any air pistol or air rifle, designed to propel a BB, pellet, or other projectile by the discharge of compressed air, carbon dioxide, or other gas; or

(f)(i) Any portable device manufactured to function as a weapon and which is commonly known as a stun gun, including a projectile stun gun which projects wired probes that are attached to the device that emit an electrical charge designed to administer to a person or an animal an electric shock, charge, or impulse; or

(ii) Any device, object, or instrument which is used or intended to be used as a weapon with the intent to injure a person by an electric shock, charge, or impulse.

(2) Any such person violating subsection (1) of this section is guilty of a gross misdemeanor. If any person is convicted of a violation of subsection (1)(a) of this section, the person shall have his or her concealed pistol license, if any revoked for a period of three years. Anyone convicted under this subsection is prohibited from applying for a concealed pistol license for a period of three years. The court shall send notice of the revocation to the department of licensing, and the city, town, or county which issued the license.

Any violation of subsection (1) of this section by elementary or secondary school students constitutes grounds for expulsion from the state's public schools in accordance with RCW 28A.600.010. An appropriate school authority shall promptly notify law enforcement and the student's parent or guardian regarding any allegation or indication of such violation.

Upon the arrest of a person at least twelve years of age and not more than twenty-one years of age for violating subsection (1)(a) of this section, the person shall be detained or confined in a juvenile or adult facility for up to seventy-two hours. The person shall not be released within the seventy-two hours until after the person has been examined and evaluated by the designated mental health professional unless the court in its discretion releases the person sooner after a determination regarding probable cause or on probation bond or bail.

Within twenty-four hours of the arrest, the arresting law enforcement agency shall refer the person to the designated mental health professional for examination and evaluation under chapter 71.05 or 71.34 RCW and inform a parent or guardian of the person of the arrest, detention, and examination. The designated mental health professional shall examine and evaluate the person subject to the provisions of chapter 71.05 or 71.34 RCW. The examination shall occur at the facility in which the person is detained or confined. If the person has been released on probation, bond, or bail, the examination shall occur wherever is appropriate.

The designated mental health professional may determine whether to refer the person to the county-designated chemical dependency specialist for examination and evaluation in accordance with chapter 70.96A RCW. The county-designated chemical dependency specialist shall examine the person subject to the provisions of chapter 70.96A RCW. The examination shall occur at the facility in which the person is detained or confined. If the person has been released on probation, bond, or bail, the examination shall occur wherever is appropriate.

Upon completion of any examination by the designated mental health professional or the county-designated chemical



dependency specialist, the results of the examination shall be sent to the court, and the court shall consider those results in making any determination about the person.

The designated mental health professional and county-designated chemical dependency specialist shall, to the extent permitted by law, notify a parent or guardian of the person that an examination and evaluation has taken place and the results of the examination. Nothing in this subsection prohibits the delivery of additional, appropriate mental health examinations to the person while the person is detained or confined.

If the designated mental health professional determines it is appropriate, the designated mental health professional may refer the person to the local regional support network for follow-up services or the department of social and health services or other community providers for other services to the family and individual.

(3) Subsection (1) of this section does not apply to:

(a) Any student or employee of a private military academy when on the property of the academy;

(b) Any person engaged in military, law enforcement, or school district security activities. However, a person who is not a commissioned law enforcement officer and who provides school security services under the direction of a school administrator may not possess a device listed in subsection (1)(f) of this section unless he or she has successfully completed training in the use of such devices that is equivalent to the training received by commissioned law enforcement officers;

(c) Any person who is involved in a convention, showing, demonstration, lecture, or firearms safety course authorized by school authorities in which the firearms of collectors or instructors are handled or displayed;

(d) Any person while the person is participating in a firearms or air gun competition approved by the school or school district;

(e) Any person in possession of a pistol who has been issued a license under RCW 9.41.070, or is exempt from the licensing requirement by RCW 9.41.060, while picking up or dropping off a student;

(f) Any nonstudent at least eighteen years of age legally in possession of a firearm or dangerous weapon that is secured within an attended vehicle or concealed from view within a locked unattended vehicle while conducting legitimate business at the school;

(g) Any nonstudent at least eighteen years of age who is in lawful possession of an unloaded firearm, secured in a vehicle while conducting legitimate business at the school; or

(h) Any law enforcement officer of the federal, state, or local government agency.

(4) Subsections (1)(c) and (d) of this section do not apply to any person who possesses nun-chu-ka sticks, throwing stars, or other dangerous weapons to be used in martial arts classes authorized to be conducted on the school premises.

(5) Subsection (1)(f)(i) of this section does not apply to any person who possesses a device listed in subsection (1)(f)(i) of this section, if the device is possessed and used solely for the purpose approved by a school for use in a school authorized event, lecture, or activity conducted on the school premises.

(6) Except as provided in subsection (3)(b), (c), (f), and (h) of this section, firearms are not permitted in a public or private school building.

(7) "GUN-FREE ZONE" signs shall be posted around school facilities giving warning of the prohibition of the possession of firearms on school grounds. [2009 c 453 § 1; 1999 c 167 § 1; 1996 c 295 § 13; 1995 c 87 § 1; 1994 sp.s. c 7 § 427; 1993 c 347 § 1; 1989 c 219 § 1; 1982 1st ex.s. c 47 § 4.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460:** See note following RCW 9.41.010.

**Severability—1982 1st ex.s. c 47:** See note following RCW 9.41.190.

## Chapter 9.46 RCW GAMBLING—1973 ACT

### Sections

9.46.0209	"Bona fide charitable or nonprofit organization."
9.46.0277	"Raffle."
9.46.0305	Dice or coin contests for music, food, or beverage payment.
9.46.0331	Amusement games authorized—Minimum rules.
9.46.228	Gambling activities by persons under age eighteen prohibited—Penalties—Jurisdiction—In-house controlled purchase programs authorized.
9.46.295	Licenses, scope of authority—Exception.

**9.46.0209 "Bona fide charitable or nonprofit organization."** (1)(a) "Bona fide charitable or nonprofit organization," as used in this chapter, means:

(i) Any organization duly existing under the provisions of chapter 24.12, 24.20, or 24.28 RCW, any agricultural fair authorized under the provisions of chapters 15.76 or 36.37 RCW, or any nonprofit corporation duly existing under the provisions of chapter 24.03 RCW for charitable, benevolent, eleemosynary, educational, civic, patriotic, political, social, fraternal, athletic or agricultural purposes only, or any nonprofit organization, whether incorporated or otherwise, when found by the commission to be organized and operating for one or more of the aforesaid purposes only, all of which in the opinion of the commission have been organized and are operated primarily for purposes other than the operation of gambling activities authorized under this chapter; or

(ii) Any corporation which has been incorporated under Title 36 U.S.C. and whose principal purposes are to furnish volunteer aid to members of the armed forces of the United States and also to carry on a system of national and international relief and to apply the same in mitigating the sufferings caused by pestilence, famine, fire, floods, and other national calamities and to devise and carry on measures for preventing the same.

(b) An organization defined under (a) of this subsection must:

(i) Have been organized and continuously operating for at least twelve calendar months immediately preceding making application for any license to operate a gambling activity, or the operation of any gambling activity authorized by this chapter for which no license is required;

(ii) Have not less than fifteen bona fide active members each with the right to an equal vote in the election of the officers, or board members, if any, who determine the poli-

cies of the organization in order to receive a gambling license; and

(iii) Demonstrate to the commission that it has made significant progress toward the accomplishment of the purposes of the organization during the twelve consecutive month period preceding the date of application for a license or license renewal. The fact that contributions to an organization do not qualify for charitable contribution deduction purposes or that the organization is not otherwise exempt from payment of federal income taxes pursuant to the internal revenue code of 1954, as amended, shall constitute prima facie evidence that the organization is not a bona fide charitable or nonprofit organization for the purposes of this section.

(c) Any person, association or organization which pays its employees, including members, compensation other than is reasonable therefor under the local prevailing wage scale shall be deemed paying compensation based in part or whole upon receipts relating to gambling activities authorized under this chapter and shall not be a bona fide charitable or nonprofit organization for the purposes of this chapter.

(2) For the purposes of RCW 9.46.0315 and 9.46.110, a bona fide nonprofit organization also includes:

(a) A credit union organized and operating under state or federal law. All revenue less prizes and expenses received from raffles conducted by credit unions must be devoted to purposes authorized under this section for charitable and nonprofit organizations; and

(b) A group of executive branch state employees that:

(i) Has requested and received revocable approval from the agency's chief executive official, or such official's designee, to conduct one or more raffles in compliance with this section;

(ii) Conducts a raffle solely to raise funds for either the state combined fund drive, created under RCW 41.04.033; an entity approved to receive funds from the state combined fund drive; or a charitable or benevolent entity, including but not limited to a person or family in need, as determined by a majority vote of the approved group of employees. No person or other entity may receive compensation in any form from the group for services rendered in support of this purpose;

(iii) Promptly provides such information about the group's receipts, expenditures, and other activities as the agency's chief executive official or designee may periodically require, and otherwise complies with this section and RCW 9.46.0315; and

(iv) Limits the participation in the raffle such that raffle tickets are sold only to, and winners are determined only from, the employees of the agency.

(3) For the purposes of RCW 9.46.0277, a bona fide nonprofit organization also includes a county, city, or town, provided that all revenue less prizes and expenses from raffles conducted by the county, city, or town must be used for community activities or tourism promotion activities. [2009 c 137 § 1; 2007 c 452 § 1; 2000 c 233 § 1; 1987 c 4 § 4. Formerly RCW 9.46.020(3).]

**9.46.0277 "Raffle."** "Raffle," as used in this chapter, means a game in which tickets bearing an individual number are sold for not more than one hundred dollars each and in which a prize or prizes are awarded on the basis of a drawing

from the tickets by the person or persons conducting the game, when the game is conducted by a bona fide charitable or nonprofit organization, no person other than a bona fide member of the organization takes any part in the management or operation of the game, and no part of the proceeds thereof inure to the benefit of any person other than the organization conducting the game. [2009 c 133 § 1; 1995 2nd sp.s. c 4 § 1; 1987 c 4 § 20. Formerly RCW 9.46.020(19).]

**9.46.0305 Dice or coin contests for music, food, or beverage payment.** The legislature hereby authorizes the wagering on the outcome of the roll of dice or the flipping of or matching of coins on the premises of an establishment engaged in the business of selling food or beverages for consumption on the premises to determine which of the participants will pay for coin-operated music on the premises or certain items of food or beverages served or sold by such establishment and therein consumed. Such establishments are hereby authorized to possess dice and dice cups on their premises, but only for use in such limited wagering. Persons engaged in such limited form of wagering shall not be subject to the criminal or civil penalties otherwise provided for in this chapter. [2009 c 357 § 1; 1987 c 4 § 25. Formerly RCW 9.46.020(1), part.]

*Minors barred from gambling activities: RCW 9.46.228.*

**9.46.0331 Amusement games authorized—Minimum rules.** The legislature hereby authorizes any person to conduct or operate amusement games when licensed and operated pursuant to the provisions of this chapter and rules and regulations adopted by the commission at such locations as the commission may authorize. The rules shall provide for at least the following:

(1) Persons other than bona fide charitable or bona fide nonprofit organizations shall conduct amusement games only after obtaining a special amusement game license from the commission.

(2) Amusement games may be conducted under such a license only as a part of, and upon the site of:

(a) Any agricultural fair as authorized under chapter 15.76 or 36.37 RCW; or

(b) A civic center of a county, city, or town; or

(c) A world's fair or similar exposition that is approved by the bureau of international expositions at Paris, France; or

(d) A community-wide civic festival held not more than once annually and sponsored or approved by the city, town, or county in which it is held; or

(e) A commercial exposition organized and sponsored by an organization or association representing the retail sales and service operators conducting business in a shopping center or other commercial area developed and operated for retail sales and service, but only upon a parking lot or similar area located in said shopping center or commercial area for a period of no more than seventeen consecutive days by any licensee during any calendar year; or

(f) An amusement park. An amusement park is a group of activities, at a permanent location, to which people go to be entertained through a combination of various mechanical or aquatic rides, theatrical productions, motion picture, and/or slide show presentations with food and drink service.

The amusement park must include at least five different mechanical, or aquatic rides, three additional activities, and the gross receipts must be primarily from these amusement activities; or

(g) Within a regional shopping center. A regional shopping center is a shopping center developed and operated for retail sales and service by retail sales and service operators and consisting of more than six hundred thousand gross square feet not including parking areas. Amusement games conducted as a part of, and upon the site of, a regional shopping center shall not be subject to the prohibition on revenue sharing set forth in RCW 9.46.120(2); or

(h) A location that possesses a valid license from the Washington state liquor control board and prohibits minors on their premises; or

(i) Movie theaters, bowling alleys, miniature golf course facilities, and amusement centers. For the purposes of this section an amusement center shall be defined as a permanent location whose primary source of income is from the operation of ten or more amusement devices; or

(j) Any business whose primary activity is to provide food service for on premises consumption and who offers family entertainment which includes at least three of the following activities: Amusement devices; theatrical productions; mechanical rides; motion pictures; and slide show presentations; or

(k) Other locations as the commission may authorize.

(3) No amusement games may be conducted in any location except in conformance with local zoning, fire, health, and similar regulations. In no event may the licensee conduct any amusement games at any of the locations set out in subsection (2) of this section without first having obtained the written permission to do so from the person or organization owning the premises or an authorized agent thereof, and from the persons sponsoring the fair, exhibition, commercial exhibition, or festival, or from the city or town operating the civic center, in connection with which the games are to be operated.

(4) In no event may a licensee conduct any amusement games at the location described in subsection (2)(g) of this section, without, at the location of such games, providing adult supervision during all hours the licensee is open for business at such location, prohibiting school-age minors from entry during school hours, maintaining full-time personnel whose responsibilities include maintaining security and daily machine maintenance, and providing for hours for the close of business at such location that are no later than 10:00 p.m. on Fridays and Saturdays and on all other days that are the same as those of the regional shopping center in which the licensee is located.

(5) In no event may a licensee conduct any amusement game at a location described in subsection (2)(i) or (j) of this section, without, at the location of such games, providing adult supervision during all hours the licensee is open for business at such location, prohibiting school-age minors from playing licensed amusement games during school hours, maintaining full-time personnel whose responsibilities include maintaining security and daily machine maintenance, and prohibiting minors from playing the amusement games after 10:00 p.m. on any day. [2009 c 78 § 1; 1991 c 287 § 1; 1987 c 4 § 30. Formerly RCW 9.46.030(5).]

**9.46.228 Gambling activities by persons under age eighteen prohibited—Penalties—Jurisdiction—In-house controlled purchase programs authorized.** (1) It is unlawful for any person under the age of eighteen to play in authorized gambling activities including, but not limited to, punchboards, pull-tabs, or card games, or to participate in fund-raising events. Persons under the age of eighteen may play bingo, raffles, and amusement game activities only as provided in commission rules.

(2) A person under the age of eighteen who violates subsection (1) of this section by engaging in, or attempting to engage in, prohibited gambling activities commits a class 2 civil infraction under chapter 7.80 RCW and is subject to a fine set out in chapter 7.80 RCW, up to four hours of community restitution, and any court imposed costs.

(3) The juvenile court divisions in superior courts within the state have jurisdiction for enforcement of this section.

(4)(a) An employer may conduct an in-house controlled purchase program authorized for the purposes of employee training and employer self-compliance checks.

(b) The civil infraction provisions of this section do not apply to a person under the age of eighteen who is participating in an in-house controlled purchase program authorized by the commission under rules adopted by the commission. Violations occurring under an in-house controlled purchase program authorized by the commission may not be used for criminal or administrative prosecution.

(c) An employer who conducts an in-house controlled purchase program authorized under this section shall provide his or her employees a written description of the employer's in-house controlled purchase program. The written description must include notice of actions an employer may take as a consequence of an employee's failure to comply with company policies regarding unauthorized persons engaging in gambling activities during a controlled purchase program authorized under this section.

(5) A person under the age of eighteen who violates subsection (1) of this section shall not collect any winnings or recover any losses arising as a result of unlawfully participating in any gambling activity. Additionally, any money or anything of value which has been obtained by, or is owed to, any person under the age of eighteen as a result of such participation shall be forfeited to the department of social and health services division of alcohol and substance abuse or its successor and used for a program related to youth problem gambling awareness, prevention, and/or education. Any person claiming any money or things of value subject to forfeiture under this subsection will receive notice and an opportunity for a hearing under RCW 9.46.231. [2009 c 357 § 2.]

**9.46.295 Licenses, scope of authority—Exception.**

(1) Any license to engage in any of the gambling activities authorized by this chapter as now exists or as hereafter amended, and issued under the authority thereof shall be legal authority to engage in the gambling activities for which issued throughout the incorporated and unincorporated area of any county, except that a city located therein with respect to that city, or a county with respect to all areas within that county except for such cities, may absolutely prohibit, but may not change the scope of license, any or all of the gambling activities for which the license was issued.

(2) A city or town with a prohibition on house-banked social card game licenses that annexes an area that is within a city, town, or county that permits house-banked social card games may allow a house-banked social card game business that was licensed by the commission as of July 26, 2009, to continue operating if the city or town is authorized to impose a tax under RCW 82.14.415 and can demonstrate that the continuation of the house-banked social card game business will reduce the credit against the state sales and use tax as provided in RCW 82.14.415(7). A city or town that allows a house-banked social card game business in an annexed area to continue operating is not required to allow additional house-banked social card game businesses. [2009 c 550 § 2; 1974 ex.s. c 155 § 6; 1974 ex.s. c 135 § 6.]

**Severability—1974 ex.s. c 155:** See note following RCW 9.46.010.

### Chapter 9.58 RCW LIBEL AND SLANDER

#### Sections

9.58.010 through 9.58.090 Repealed.

**9.58.010 through 9.58.090 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

### Chapter 9.68 RCW OBSCENITY AND PORNOGRAPHY

#### Sections

9.68.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**9.68.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 19.]

### Chapter 9.68A RCW SEXUAL EXPLOITATION OF CHILDREN

#### Sections

9.68A.120 Seizure and forfeiture of property.  
9.68A.912 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is*

*approved at the November 2009 election under Referendum Measure 71.*)

**9.68A.120 Seizure and forfeiture of property.** The following are subject to seizure and forfeiture:

(1) All visual or printed matter that depicts a minor engaged in sexually explicit conduct.

(2) All raw materials, equipment, and other tangible personal property of any kind used or intended to be used to manufacture or process any visual or printed matter that depicts a minor engaged in sexually explicit conduct, and all conveyances, including aircraft, vehicles, or vessels that are used or intended for use to transport, or in any manner to facilitate the transportation of, visual or printed matter in violation of RCW 9.68A.050 or 9.68A.060, but:

(a) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

(b) No property is subject to forfeiture under this section by reason of any act or omission established by the owner of the property to have been committed or omitted without the owner's knowledge or consent;

(c) A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(d) When the owner of a conveyance has been arrested under this chapter the conveyance may not be subject to forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest.

(3) All personal property, moneys, negotiable instruments, securities, or other tangible or intangible property furnished or intended to be furnished by any person in exchange for visual or printed matter depicting a minor engaged in sexually explicit conduct, or constituting proceeds traceable to any violation of this chapter.

(4) Property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(5) In the event of seizure under subsection (4) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, of the

seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(6) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the item seized shall be deemed forfeited.

(7) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of seized items within forty-five days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the article or articles involved is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the seized items. The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession thereof of the seized items.

(8) If property is sought to be forfeited on the ground that it constitutes proceeds traceable to a violation of this chapter, the seizing law enforcement agency must prove by a preponderance of the evidence that the property constitutes proceeds traceable to a violation of this chapter.

(9) When property is forfeited under this chapter the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release the property to that agency for the exclusive use of enforcing this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public. The proceeds and all moneys forfeited under this chapter shall be used for payment of all proper expenses of the investigation leading to the seizure, including any money delivered to the subject of the investigation by the law enforcement agency, and of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, actual costs of the prosecuting or city attorney, and court costs. Fifty percent of the money remaining after payment of these expenses shall be deposited in the state general fund and fifty percent shall be deposited in the general fund of the state, county, or city of the seizing law enforcement agency; or

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law. [2009 c 479 § 12; 1999 c 143 § 8; 1984 c 262 § 11.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**9.68A.912 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 20.]

### Chapter 9.91 RCW

#### MISCELLANEOUS CRIMES

##### Sections

9.91.025 Unlawful conduct in a transit vehicle.

**9.91.025 Unlawful conduct in a transit vehicle.** (1) A person is guilty of unlawful transit conduct if, while on or in a transit vehicle or in or at a transit station, he or she knowingly:

(a) Smokes or carries a lighted or smoldering pipe, cigar, or cigarette, unless he or she is smoking in an area designated and authorized by the transit authority;

(b) Discards litter other than in designated receptacles;

(c) Dumps or discards, or both, any materials on or at a transit facility including, but not limited to, hazardous substances and automotive fluids;

(d) Plays any radio, recorder, or other sound-producing equipment, except that nothing herein prohibits the use of the equipment when connected to earphones or an ear receiver that limits the sound to an individual listener. The use of public address systems or music systems that are authorized by a transit agency is permitted. The use of communications devices by transit employees and designated contractors or public safety officers in the line of duty is permitted, as is the use of private communications devices used to summon, notify, or communicate with other individuals, such as pagers and cellular phones;

(e) Spits, expectorates, urinates, or defecates, except in appropriate plumbing fixtures in restroom facilities;

(f) Carries any flammable liquid, explosive, acid, or other article or material likely to cause harm to others, except that nothing herein prevents a person from carrying a cigarette, cigar, or pipe lighter or carrying a firearm or ammunition in a way that is not otherwise prohibited by law;

(g) Consumes an alcoholic beverage or is in possession of an open alcoholic beverage container, unless authorized by the transit authority and required permits have been obtained;

(h) Obstructs or impedes the flow of transit vehicles or passenger traffic, hinders or prevents access to transit vehi-

cles or stations, or otherwise unlawfully interferes with the provision or use of public transportation services;

(i) Unreasonably disturbs others by engaging in loud, raucous, unruly, harmful, or harassing behavior;

(j) Destroys, defaces, or otherwise damages property in a transit vehicle or at a transit facility;

(k) Throws an object in a transit vehicle, at a transit facility, or at any person at a transit facility with intent to do harm;

(l) Possesses an unissued transfer or fare media or tenders an unissued transfer or fare media as proof of fare payment;

(m) Falsely claims to be a transit operator or other transit employee or through words, actions, or the use of clothes, insignia, or equipment resembling department-issued uniforms and equipment, creates a false impression that he or she is a transit operator or other transit employee;

(n) Engages in gambling or any game of chance for the winning of money or anything of value;

(o) Skates on roller skates or in-line skates, or rides in or upon or by any means a coaster, skateboard, toy vehicle, or any similar device. However, a person may walk while wearing skates or carry a skateboard while on or in a transit vehicle or in or at a transit station if that conduct is not otherwise prohibited by law; or

(p) Engages in other conduct that is inconsistent with the intended use and purpose of the transit facility, transit station, or transit vehicle and refuses to obey the lawful commands of an agent of the transit authority or a peace officer to cease such conduct.

(2) For the purposes of this section:

(a) "Transit station" or "transit facility" means all passenger facilities, structures, stops, shelters, bus zones, properties, and rights-of-way of all kinds that are owned, leased, held, or used by a transit authority for the purpose of providing public transportation services.

(b) "Transit vehicle" means any motor vehicle, street car, train, trolley vehicle, ferry boat, or any other device, vessel, or vehicle that is owned or operated by a transit authority or an entity providing service on behalf of a transit authority that is used for the purpose of carrying passengers on a regular schedule.

(c) "Transit authority" means a city transit system under RCW 35.58.2721 or chapter 35.95A RCW, a county transportation authority under chapter 36.57 RCW, a metropolitan municipal corporation transit system under chapter 36.56 RCW, a public transportation benefit area under chapter 36.57A RCW, an unincorporated transportation benefit area under RCW 36.57.100, a regional transportation authority under chapter 81.112 RCW, or any special purpose district formed to operate a public transportation system.

(3) Any person who violates this section is guilty of a misdemeanor. [2009 c 279 § 3; 2004 c 118 § 1; 1994 c 45 § 4; 1992 c 77 § 1; 1984 c 167 § 1.]

**Findings—Declaration—Severability—1994 c 45:** See notes following RCW 7.48.140.

*Drinking in public conveyance:* RCW 66.44.250.

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## Chapter 9.92 RCW

### PUNISHMENT

#### Sections

9.92.066	Termination of suspended sentence—Restoration of civil rights—Vacation of conviction.
9.92.151	Early release for good behavior.

**9.92.066 Termination of suspended sentence—Restoration of civil rights—Vacation of conviction.** (1) Upon termination of any suspended sentence under RCW 9.92.060 or 9.95.210, such person may apply to the court for restoration of his or her civil rights not already restored by RCW 29A.08.520. Thereupon the court may in its discretion enter an order directing that such defendant shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he or she has been convicted.

(2)(a) Upon termination of a suspended sentence under RCW 9.92.060 or 9.95.210, the person may apply to the sentencing court for a vacation of the person's record of conviction under RCW 9.94A.640. The court may, in its discretion, clear the record of conviction if it finds the person has met the equivalent of the tests in RCW 9.94A.640(2) as those tests would be applied to a person convicted of a crime committed before July 1, 1984.

(b) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies. [2009 c 325 § 2; 2003 c 66 § 2; 1971 ex.s. c 188 § 3.]

**Applicability—1984 c 209:** See RCW 9.92.900.

**9.92.151 Early release for good behavior.** (1) Except as provided in subsection (2) of this section, the sentence of a prisoner confined in a county jail facility for a felony, gross misdemeanor, or misdemeanor conviction may be reduced by earned release credits in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction. The earned early release time shall be for good behavior and good performance as determined by the correctional agency having jurisdiction. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. The correctional agency shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case may the aggregate earned early release time exceed one-third of the total sentence.

(2) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section. [2009 c 28 § 3; 2004 c 176 § 5; 1990 c 3 § 201; 1989 c 248 § 1.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Severability—Effective date—2004 c 176:** See notes following RCW 9.94A.515.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**Application—1989 c 248:** "This act applies only to sentences imposed for crimes committed on or after July 1, 1989." [1989 c 248 § 5.]

## Chapter 9.94A RCW

### SENTENCING REFORM ACT OF 1981

#### Sections

9.94A.030	Definitions.
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9.94A.728	Release prior to expiration of sentence ( <i>as amended by 2009 c 441</i> ).
9.94A.728	Release prior to expiration of sentence ( <i>as amended by 2009 c 455</i> ).
9.94A.729	Earned release time—Risk assessments.
9.94A.731	Term of partial confinement, work release, home detention.
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9.94A.850	Sentencing guidelines commission—Established—Powers and duties.
9.94A.863	Monetary threshold amounts of property crimes—Review—Report.
9.94A.885	Clemency and pardons board—Petitions for review—Hearing.
9.94A.926	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )

**9.94A.030 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department.

(6) "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

(7) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(8) "Confinement" means total or partial confinement.

(9) "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(11) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calcu-

lated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(12) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(13) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(14) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); or promoting pornography (chapter 9.68 RCW).

(15) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(16) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(17) "Department" means the department of corrections.

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(19) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(20) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

(21) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(22) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(23) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (\*RCW 72.66.060), willful failure to return from work release (\*RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(24) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(25) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(26) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.



(27) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

(28) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

(29) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under \*\*RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997;

(w) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ten years or more; provided that the out-of-state felony offense must be comparable to a felony offense under Title 9 or 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

(30) "Nonviolent offense" means an offense which is not a violent offense.

(31) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer convicted of an offense included in RCW 9.94A.501(1) and ordered by a superior court to probation under the supervision of the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(32) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

(33) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Malicious Harassment (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person eighteen years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

(34) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (34)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

(35) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; or (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority.

(36) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

(37) "Public school" has the same meaning as in RCW 28A.150.010.

(38) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(39) "Risk assessment" means the application of the risk instrument recommended to the department by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

(40) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(41) "Serious violent offense" is a subcategory of violent offense and means:

- (a)(i) Murder in the first degree;
- (ii) Homicide by abuse;
- (iii) Murder in the second degree;
- (iv) Manslaughter in the first degree;

(v) Assault in the first degree;  
 (vi) Kidnapping in the first degree;  
 (vii) Rape in the first degree;  
 (viii) Assault of a child in the first degree; or  
 (ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(42) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130(12);

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080; or

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(43) "Sexual motivation" means that one of the purposes for which the defendant committed the crime was for the purpose of his or her sexual gratification.

(44) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(45) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(46) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

(47) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(48) "Transition training" means written and verbal instructions and assistance provided by the department to the offender during the two weeks prior to the offender's successful completion of the work ethic camp program. The transition training shall include instructions in the offender's requirements and obligations during the offender's period of community custody.

(49) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a direct result of the crime charged.

(50) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;  
 (v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(51) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(52) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(53) "Work release" means a program of partial confinement available to offenders who are employed or engaged as a student in a regular course of study at school. [2009 c 375 § 4; (2009 c 375 § 3 expired August 1, 2009); 2009 c 28 § 4. Prior: 2008 c 276 § 309; 2008 c 231 § 23; 2008 c 230 § 2; 2008 c 7 § 1; prior: 2006 c 139 § 5; (2006 c 139 § 4 expired July 1, 2006); 2006 c 124 § 1; 2006 c 122 § 7; (2006 c 122 § 6 expired July 1, 2006); 2006 c 73 § 5; 2005 c 436 § 1; 2003 c 53 § 55; prior: 2002 c 175 § 5; 2002 c 107 § 2; prior: 2001 2nd sp.s. c 12 § 301; 2001 c 300 § 3; 2001 c 7 § 2; prior: 2001 c 287 § 4; 2001 c 95 § 1; 2000 c 28 § 2; 1999 c 352 § 8; 1999 c 197 § 1; 1999 c 196 § 2; 1998 c 290 § 3; prior: 1997 c 365 § 1; 1997 c 340 § 4; 1997 c 339 § 1; 1997 c 338 § 2; 1997 c 144 § 1; 1997 c 70 § 1; prior: 1996 c 289 § 1; 1996 c 275 § 5; prior: 1995 c 268 § 2; 1995 c 108 § 1; 1995 c 101 § 2; 1994 c 261 § 16; prior: 1994 c 1 § 3 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 338 § 2; 1993 c 251 § 4; 1993 c 164 § 1; prior: 1992 c 145 § 6; 1992 c 75 § 1; prior: 1991 c 348 § 4; 1991 c 290 § 3; 1991 c 181 § 1; 1991 c 32 § 1; 1990 c 3 § 602; prior: 1989 c 394 § 1; 1989 c 252 § 2; prior: 1988 c 157 § 1; 1988 c 154 § 2; 1988 c 153 § 1; 1988 c 145 § 11; prior: 1987 c 458 § 1; 1987 c 456 § 1; 1987 c 187 § 3; 1986 c 257 § 17; 1985 c 346 § 5; 1984 c 209 § 3; 1983 c 164 § 9; 1983 c 163 § 1; 1982 c 192 § 1; 1981 c 137 § 3.]

**Reviser's note:** \*(1) RCW 72.66.060 and 72.65.070 were repealed by 2001 c 264 § 7. Cf. 2001 c 264 § 8.

\*\*\*(2) RCW 9A.88.100 was recodified as RCW 9A.44.100 pursuant to 1979 ex.s. c 244 § 17.

(3) 2005 c 436 § 6 (an expiration date section) was repealed by 2006 c 131 § 2.

**Expiration date—2009 c 375 §§ 1, 3, and 13:** See note following RCW 9.94A.501.

**Application—2009 c 375:** See note following RCW 9.94A.501.

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Severability—Part headings, subheadings not law—2008 c 276:** See notes following RCW 36.28A.200.

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Delayed effective date—2008 c 230 §§ 1-3:** See note following RCW 9A.44.130.

**Short title—2008 c 7:** "This act may be known and cited as the Chelsea Harrison act." [2008 c 7 § 2.]

**Effective date—2006 c 139 § 5:** "Section 5 of this act takes effect July 1, 2006." [2006 c 139 § 7.]

**Expiration date—2006 c 139 § 4:** "Section 4 of this act expires July 1, 2006." [2006 c 139 § 6.]

**Effective date—2006 c 124:** "Except for section 2 of this act, this act takes effect July 1, 2006." [2006 c 124 § 5.]

**Effective date—2006 c 122 §§ 5 and 7:** See note following RCW 9.94A.507.

**Expiration date—2006 c 122 §§ 4 and 6:** See note following RCW 9.94A.507.

**Effective date—2006 c 122 §§ 1-4 and 6:** See note following RCW 9.94A.836.

**Effective date—2006 c 73:** See note following RCW 46.61.502.

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

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Finding—2002 c 107:** "The legislature considers the majority opinions in *State v. Cruz*, 139 Wn.2d 186 (1999), and *State v. Smith*, Cause No. 70683-2 (September 6, 2001), to be wrongly decided, since neither properly interpreted legislative intent. When the legislature enacted the sentencing reform act, chapter 9.94A RCW, and each time the legislature has amended the act, the legislature intended that an offender's criminal history and offender score be determined using the statutory provisions that were in effect on the day the current offense was committed.

Although certain prior convictions previously were not counted in the offender score or included in the criminal history pursuant to former versions of RCW 9.94A.525, or RCW 9.94A.030, those prior convictions need not be "revived" because they were never vacated. As noted in the minority opinions in *Cruz* and *Smith*, such application of the law does not involve retroactive application or violate ex postfacto prohibitions. Additionally, the Washington state supreme court has repeatedly held in the past that the provisions of the sentencing reform act act upon and punish only current conduct; the sentencing reform act does not act upon or alter the punishment for prior convictions. See *In re Personal Restraint Petition of Williams*, 111 Wn.2d 353, (1988). The legislature has never intended to create in an offender a vested right with respect to whether a prior conviction is excluded when calculating an offender score or with respect to how a prior conviction is counted in the offender score for a current offense." [2002 c 107 § 1.]

**Application—2002 c 107:** "RCW 9.94A.030(13) (b) and (c) and 9.94A.525(18) apply only to current offenses committed on or after June 13, 2002. No offender who committed his or her current offense prior to June 13, 2002, may be subject to resentencing as a result of this act." [2002 c 107 § 4.]

**Application—2001 2nd sp.s. c 12 §§ 301-363:** "(1) Sections 301 through 363 of this act shall not affect the validity of any sentence imposed under any other law for any offense committed before, on, or after September 1, 2001.

(2) Sections 301 through 363 of this act shall apply to offenses committed on or after September 1, 2001." [2001 2nd sp.s. c 12 § 503.]

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**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Effective dates—2001 c 287:** See note following RCW 9A.76.115.

**Effective date—2001 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 takes effect July 1, 2001." [2001 c 95 § 3.]

**Finding—Intent—2001 c 7:** "The legislature finds that an ambiguity may exist regarding whether out-of-state convictions or convictions under prior Washington law, for sex offenses that are comparable to current Washington offenses, count when determining whether an offender is a persistent offender. This act is intended to clarify the legislature's intent that out-of-state convictions for comparable sex offenses and prior Washington convictions for comparable sex offenses shall be used to determine whether an offender meets the definition of a persistent offender." [2001 c 7 § 1.]

**Technical correction bill—2000 c 28:** See note following RCW 9.94A.015.

**Severability—1999 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." [1999 c 197 § 14.]

**Construction—Short title—1999 c 196:** See RCW 72.09.904 and 72.09.905.

**Severability—1999 c 196:** See note following RCW 9.94A.010.

**Application—Effective date—Severability—1998 c 290:** See notes following RCW 69.50.401.

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Finding—1996 c 275:** See note following RCW 9.94A.505.

**Application—1996 c 275 §§ 1-5:** See note following RCW 9.94A.505.

**Purpose—1995 c 268:** "In order to eliminate a potential ambiguity over the scope of the term "sex offense," this act clarifies that for general purposes the definition of "sex offense" does not include any misdemeanors or gross misdemeanors. For purposes of the registration of sex offenders pursuant to RCW 9A.44.130, however, the definition of "sex offense" is expanded to include those gross misdemeanors that constitute attempts, conspiracies, and solicitations to commit class C felonies." [1995 c 268 § 1.]

**Effective date—1995 c 108:** "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 19, 1995]." [1995 c 108 § 6.]

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

**Severability—Short title—Captions—1994 c 1:** See notes following RCW 9.94A.555.

**Severability—Effective date—1993 c 338:** See notes following RCW 72.09.400.

**Finding—Intent—1993 c 251:** See note following RCW 38.52.430.

**Effective date—1991 c 348:** See note following RCW 46.61.520.

**Effective date—Application—1990 c 3 §§ 601-605:** See note following RCW 9.94A.835.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**Purpose—1989 c 252:** "The purpose of this act is to create a system that: (1) Assists the courts in sentencing felony offenders regarding the offenders' legal financial obligations; (2) holds offenders accountable to victims, counties, cities, the state, municipalities, and society for the assessed costs associated with their crimes; and (3) provides remedies for an individual or other entities to recoup or at least defray a portion of the loss associated with the costs of felonious behavior." [1989 c 252 § 1.]

**Prospective application—1989 c 252:** "Except for sections 18, 22, 23, and 24 of this act, this act applies prospectively only and not retrospectively. It applies only to offenses committed on or after the effective date of this act." [1989 c 252 § 27.]

**Effective dates—1989 c 252:** "(1) Sections 1 through 17, 19 through 21, 25, 26, and 28 of this act shall take effect July 1, 1990 unless otherwise directed by law.

(2) Sections 18, 22, 23, and 24 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, 1989." [1989 c 252 § 30.]

**Severability—1989 c 252:** "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 252 § 31.]

**Application—1988 c 157:** "This act applies to crimes committed after July 1, 1988." [1988 c 157 § 7.]

**Effective date—1988 c 153:** "This act shall take effect July 1, 1988." [1988 c 153 § 16.]

**Application of increased sanctions—1988 c 153:** "Increased sanctions authorized by this act are applicable only to those persons committing offenses after July 1, 1988." [1988 c 153 § 15.]

**Effective date—Savings—Application—1988 c 145:** See notes following RCW 9A.44.010.

**Severability—1987 c 458:** See note following RCW 48.21.160.

**Severability—1986 c 257:** See note following RCW 9A.56.010.

**Effective date—1986 c 257 §§ 17-35:** "Sections 17 through 35 of this act shall take effect July 1, 1986." [1986 c 257 § 38.]

**Effective dates—1984 c 209:** See note following RCW 9.92.150.

**Effective date—1983 c 163:** See note following RCW 9.94A.505.

*State preemption of criminal street gang definitions: Chapter 9.101 RCW.*

**9.94A.190 Terms of more than one year or less than one year—Where served—Reimbursement of costs.** (1) A sentence that includes a term or terms of confinement totaling more than one year shall be served in a facility or institution operated, or utilized under contract, by the state. Except as provided in subsection (3) or (5) of this section, a sentence of not more than one year of confinement shall be served in a facility operated, licensed, or utilized under contract, by the county, or if home detention or work crew has been ordered by the court, in the residence of either the offender or a member of the offender's immediate family.

(2) If a county uses a state partial confinement facility for the partial confinement of a person sentenced to confinement for not more than one year, the county shall reimburse the state for the use of the facility as provided in this subsection. The office of financial management shall set the rate of reimbursement based upon the average per diem cost per offender in the facility. The office of financial management shall determine to what extent, if any, reimbursement shall be reduced or eliminated because of funds provided by the legislature to the department for the purpose of covering the cost of county use of state partial confinement facilities. The office of financial management shall reestablish reimbursement rates each even-numbered year.

(3) A person who is sentenced for a felony to a term of not more than one year, and who is committed or returned to incarceration in a state facility on another felony conviction, either under the indeterminate sentencing laws, chapter 9.95 RCW, or under this chapter shall serve all terms of confinement, including a sentence of not more than one year, in a facility or institution operated, or utilized under contract, by the state, consistent with the provisions of RCW 9.94A.589.

(4) Notwithstanding any other provision of this section, a sentence imposed pursuant to RCW 9.94A.660 which has a standard sentence range of over one year, regardless of length, shall be served in a facility or institution operated, or utilized under contract, by the state.

(5) Sentences imposed pursuant to RCW 9.94A.507 shall be served in a facility or institution operated, or utilized under contract, by the state. [2009 c 28 § 5; 2001 2nd sp.s. c 12 § 313; 2000 c 28 § 4; 1995 c 108 § 4; 1991 c 181 § 5; 1988 c 154 § 5; 1986 c 257 § 21; 1984 c 209 § 10; 1981 c 137 § 19.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Technical correction bill—2000 c 28:** See note following RCW 9.94A.015.

**Effective date—1995 c 108:** See note following RCW 9.94A.030.

**Severability—1986 c 257:** See note following RCW 9A.56.010.

**Effective date—1986 c 257 §§ 17-35:** See note following RCW 9.94A.030.

**Effective dates—1984 c 209:** See note following RCW 9.94A.030.

**Effective date—1981 c 137:** See RCW 9.94A.905.

**9.94A.501 Department must supervise specified offenders—Risk assessment of felony offenders.** (1) The department shall supervise every offender convicted of a misdemeanor or gross misdemeanor offense who is sentenced to probation in superior court, pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, for an offense included in (a) and (b) of this subsection. The superior court shall order probation for:

(a) Offenders convicted of fourth degree assault, violation of a domestic violence court order pursuant to RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26.138, 26.50.110, 26.52.070, or 74.34.145, and who also have a prior conviction for one or more of the following:

(i) A violent offense;

(ii) A sex offense;

(iii) A crime against a person as provided in RCW 9.94A.411;

(iv) Fourth degree assault; or

(v) Violation of a domestic violence court order; and

(b) Offenders convicted of:

(i) Sexual misconduct with a minor second degree;

(ii) Custodial sexual misconduct second degree;

(iii) Communication with a minor for immoral purposes;

and

(iv) Failure to register pursuant to RCW 9A.44.130.

(2) Misdemeanor and gross misdemeanor offenders supervised by the department pursuant to this section shall be placed on community custody.

(3) The department shall supervise every felony offender sentenced to community custody whose risk assessment, conducted pursuant to subsection (6) of this section, classifies the offender as one who is at a high risk to reoffend.

(4) Notwithstanding any other provision of this section, the department shall supervise an offender sentenced to community custody regardless of risk classification if the offender:

(a) Has a current conviction for a sex offense or a serious violent offense as defined in RCW 9.94A.030;

(b) Has been identified by the department as a dangerous mentally ill offender pursuant to RCW 72.09.370;

(c) Has an indeterminate sentence and is subject to parole pursuant to RCW 9.95.017;

(d) Was sentenced under RCW 9.94A.650, 9.94A.660, or 9.94A.670; or

(e) Is subject to supervision pursuant to RCW 9.94A.745.

(5) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody or any probationer unless the offender or probationer is one for whom supervision is required under subsection (1), (2), (3), or (4) of this section.

(6) The department shall conduct a risk assessment for every felony offender sentenced to a term of community custody who may be subject to supervision under this section. [2009 c 376 § 2; (2009 c 376 § 1 expired August 1, 2009); 2009 c 375 § 2; (2009 c 375 § 1 expired August 1, 2009); 2008 c 231 § 24; 2005 c 362 § 1; 2003 c 379 § 3.]

**Expiration date—2009 c 376 § 1:** "Section 1 of this act expires August 1, 2009." [2009 c 376 § 4.]

**Expiration date—2009 c 375 §§ 1, 3, and 13:** "Sections 1, 3, and 13 of this act expire August 1, 2009." [2009 c 375 § 19.]

**Application—2009 c 375:** "This act applies retroactively and prospectively regardless of whether the offender is currently on community custody or probation with the department, currently incarcerated with a term of community custody or probation with the department, or sentenced after July 26, 2009." [2009 c 375 § 20.]

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Effective date—2005 c 362:** "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 10, 2005]." [2005 c 362 § 5.]

**Severability—Effective dates—2003 c 379:** See notes following RCW 9.94A.728.

*Conditions of probation:* RCW 9.95.210.

*Misdemeanant probation services—County supervision:* RCW 9.95.204.

*Suspending sentences:* RCW 9.92.060.

**9.94A.505 Sentences.** (1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

(iii) RCW 9.94A.570, relating to persistent offenders;

(iv) RCW 9.94A.540, relating to mandatory minimum terms;

(v) RCW 9.94A.650, relating to the first-time offender waiver;

(vi) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(vii) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(viii) RCW 9.94A.507, relating to certain sex offenses;

(ix) RCW 9.94A.535, relating to exceptional sentences;

(x) RCW 9.94A.589, relating to consecutive and concurrent sentences;

(xi) RCW 9.94A.603, relating to felony driving while under the influence of intoxicating liquor or any drug and fel-

ony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; a term of community custody under RCW 9.94A.702 not to exceed one year; and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement and a community custody term under RCW 9.94A.701 if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

(3) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, 9.94A.760, and 43.43.7541.

(5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(7) The court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

(8) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.

(9) In any sentence of partial confinement, the court may require the offender to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention. [2009 c 389 § 1; 2009 c 28 § 6; 2008 c 231 § 25; 2006 c 73 § 6. Prior: 2002 c 290 § 17; 2002 c 289 § 6; 2002 c 175 § 6; 2001 2nd sp.s. c 12 § 312; 2001 c 10 § 2; prior: 2000 c 226 § 2; 2000 c 43 § 1; 2000 c 28 § 5; prior: 1999 c 324 § 2; 1999 c 197 § 4; 1999 c 196 § 5; 1999 c 147 § 3; 1998 c 260 § 3; prior: 1997 c 340 § 2; 1997 c 338 § 4; 1997 c 144 § 2; 1997 c 121 § 2; 1997 c 69 § 1; prior: 1996 c 275 § 2; 1996 c 215 § 5; 1996 c 199 § 1; 1996 c 93 § 1; 1995 c 108 § 3; prior: 1994 c 1 § 2 (Initiative Measure No. 593, approved November 2, 1993); 1993 c 31 § 3; prior: 1992 c 145 § 7; 1992 c 75 § 2; 1992 c 45 § 5; prior: 1991 c 221 § 2; 1991 c 181 § 3; 1991 c 104 § 3; 1990 c 3 § 705; 1989 c 252 § 4; prior: 1988 c 154 § 3; 1988 c 153 § 2; 1988 c 143 § 21; prior: 1987 c 456 § 2; 1987 c 402 § 1; prior: 1986 c 301 § 4; 1986 c 301 § 3; 1986 c 257 § 20; 1984 c 209 § 6; 1983 c 163 § 2; 1982 c 192 § 4; 1981 c 137 § 12. Formerly RCW 9.94A.120.]

**Effective date—2009 c 389 §§ 1 and 3-5:** "Sections 1 and 3 through 5 of this act take effect August 1, 2009." [2009 c 389 § 8.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Effective date—2006 c 73:** See note following RCW 46.61.502.

**Effective date—2002 c 290 §§ 7-11 and 14-23:** See note following RCW 9.94A.515.

**Intent—2002 c 290:** See note following RCW 9.94A.517.

**Severability—Effective date—2002 c 289:** See notes following RCW 43.43.753.

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Intent—2001 c 10:** "It is the intent of the legislature to incorporate into the reorganization of chapter 9.94A RCW adopted by chapter 28, Laws of 2000 amendments adopted to RCW 9.94A.120 during the 2000 legislative session that did not take cognizance of the reorganization. In addition, it is the intent of the legislature to correct any additional incorrect cross-references and to simplify the codification of provisions within chapter 9.94A RCW.

The legislature does not intend to make, and no provision of this act may be construed as making, a substantive change in the sentencing reform act." [2001 c 10 § 1.]

**Effective date—2001 c 10:** "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, 2001." [2001 c 10 § 7.]

**Finding—Intent—2000 c 226:** "The legislature finds that supervision of offenders in the community and an offender's payment of restitution enhances public safety, improves offender accountability, is an important component of providing justice to victims, and strengthens the community. The legislature intends that all terms and conditions of an offender's supervision in the community, including the length of supervision and payment of legal financial obligations, not be curtailed by an offender's absence from supervision for any reason including confinement in any correctional institution. The legislature, through this act, revises the results of *In re Sappenfield*, 980 P.2d 1271 (1999) and declares that an offender's absence from supervision or subsequent incarceration acts to toll the jurisdiction of the court or department over an offender for the purpose of enforcing legal financial obligations." [2000 c 226 § 1.]

**Severability—2000 c 226:** "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." [2000 c 226 § 6.]

**Technical correction bill—2000 c 28:** See note following RCW 9.94A.015.

**Drug offender options—Report:** "The Washington state institute for public policy, in consultation with the sentencing guidelines commission shall evaluate the impact of implementing the drug offender options provided for in RCW 9.94A.120(6). The commission shall submit a final report to the legislature by December 1, 2004. The report shall describe the changes in sentencing practices related to the use of punishment options for drug offenders and include the impact of sentencing alternatives on state prison populations, the savings in state resources, the effectiveness of drug treatment services, and the impact on recidivism rates." [1999 c 197 § 12.]

**Severability—1999 c 197:** See note following RCW 9.94A.030.

**Construction—Short title—1999 c 196:** See RCW 72.09.904 and 72.09.905.

**Severability—1999 c 196:** See note following RCW 9.94A.010.

**Intent—1998 c 260:** See note following RCW 9.94A.500.

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Finding—1996 c 275:** "The legislature finds that improving the supervision of convicted sex offenders in the community upon release from incarceration is a substantial public policy goal, in that effective supervision accomplishes many purposes including protecting the community, supporting crime victims, assisting offenders to change, and providing important information to decision makers." [1996 c 275 § 1.]

**Application—1996 c 275 §§ 1-5:** "Sections 1 through 5, chapter 275, Laws of 1996 apply to crimes committed on or after June 6, 1996." [1996 c 275 § 14.]

**Severability—1996 c 199:** "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." [1996 c 199 § 9.]

**Effective date—1995 c 108:** See note following RCW 9.94A.030.

**Severability—Short title—Captions—1994 c 1:** See notes following RCW 9.94A.555.

**Severability—Application—1992 c 45:** See notes following RCW 9.94A.840.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**Purpose—Prospective application—Effective dates—Severability—1989 c 252:** See notes following RCW 9.94A.030.

**Effective date—Application of increased sanctions—1988 c 153:** See notes following RCW 9.94A.030.

**Applicability—1988 c 143 §§ 21-24:** "Increased sanctions authorized by sections 21 through 24 of this act are applicable only to those persons committing offenses after March 21, 1988." [1988 c 143 § 25.]

**Effective date—1987 c 402:** "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 402 § 3.]

**Effective date—1986 c 301 § 4:** "Section 4 of this act shall take effect July 1, 1987." [1986 c 301 § 8.]

**Severability—1986 c 257:** See note following RCW 9A.56.010.

**Effective date—1986 c 257 §§ 17-35:** See note following RCW 9.94A.030.

**Effective dates—1984 c 209:** See note following RCW 9.94A.030.

**Effective date—1983 c 163:** "Sections 1 through 5 of this act shall take effect on July 1, 1984." [1983 c 163 § 7.]

**Effective date—1981 c 137:** See RCW 9.94A.905.

**9.94A.533 Adjustments to standard sentences. (1)** The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined

under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under \*RCW 9.94A.728(4);

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range

determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under \*RCW 9.94A.728(4);

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);



(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or \*\*9.94A.605. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under \*RCW 9.94A.728(4);

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one-year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in the sexual conduct in return for a fee, an additional one-year enhancement shall be added to the standard sentence range determined under subsection (2) of this section. For purposes of this subsection, "sexual conduct" means sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

(10)(a) For a person age eighteen or older convicted of any criminal street gang-related felony offense for which the person compensated, threatened, or solicited a minor in order to involve the minor in the commission of the felony offense, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by one hundred twenty-five percent. If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence is the presumptive sentence unless the offender is a persistent offender.

(b) This subsection does not apply to any criminal street gang-related felony offense for which involving a minor in the commission of the felony offense is an element of the offense.

(c) The increased penalty specified in (a) of this subsection is unavailable in the event that the prosecution gives notice that it will seek an exceptional sentence based on an aggravating factor under RCW 9.94A.535.

(11) An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction included a finding by special allegation of endangering one or more persons under RCW 9.94A.834.

(12) An additional twelve months shall be added to the standard sentence range for an offense that is also a violation of RCW 9.94A.831. [2009 c 141 § 2. Prior: 2008 c 276 § 301; 2008 c 219 § 3; 2007 c 368 § 9; prior: 2006 c 339 § 301; 2006 c 123 § 1; 2003 c 53 § 58; 2002 c 290 § 11.]

**Reviser's note:** \*(1) RCW 9.94A.728 was amended by 2009 c 455 § 2, changing subsection (4) to subsection (3).

\*\* (2) RCW 9.94A.605 was recodified as RCW 9.94A.827 pursuant to 2009 c 28 § 41.

**Severability—Part headings, subheadings not law—2008 c 276:** See notes following RCW 36.28A.200.

**Short title—2008 c 219:** See note following RCW 9.94A.834.

**Intent—Part headings not law—2006 c 339:** See notes following RCW 70.96A.325.

**Effective date—2006 c 123:** "This act takes effect July 1, 2006." [2006 c 123 § 4.]

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

**Effective date—2002 c 290 §§ 7-11 and 14-23:** See note following RCW 9.94A.515.

**Intent—2002 c 290:** See note following RCW 9.94A.517.

**9.94A.545 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**9.94A.602 Recodified as RCW 9.94A.825.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**9.94A.605 Recodified as RCW 9.94A.827.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**9.94A.631 Violation of condition or requirement of sentence—Security searches authorized—Arrest by community corrections officer—Confinement in county jail.**

(1) If an offender violates any condition or requirement of a sentence, a community corrections officer may arrest or cause the arrest of the offender without a warrant, pending a determination by the court or a department of corrections hearing officer. If there is reasonable cause to believe that an offender has violated a condition or requirement of the sentence, a community corrections officer may require an offender to submit to a search and seizure of the offender's person, residence, automobile, or other personal property.

(2) For the safety and security of department staff, an offender may be required to submit to pat searches, or other limited security searches, by community corrections officers, correctional officers, and other agency approved staff, without reasonable cause, when in or on department premises, grounds, or facilities, or while preparing to enter department premises, grounds, facilities, or vehicles. Pat searches of offenders shall be conducted only by staff who are the same gender as the offender, except in emergency situations.

(3) A community corrections officer may also arrest an offender for any crime committed in his or her presence. The facts and circumstances of the conduct of the offender shall be reported by the community corrections officer, with recommendations, to the court or department of corrections hearing officer.

If a community corrections officer arrests or causes the arrest of an offender under this section, the offender shall be confined and detained in the county jail of the county in which the offender was taken into custody, and the sheriff of that county shall receive and keep in the county jail, where room is available, all prisoners delivered to the jail by the community corrections officer, and such offenders shall not be released from custody on bail or personal recognizance, except upon approval of the court or authorized department staff, pursuant to a written order. [2009 c 390 § 1; 1984 c 209 § 11. Formerly RCW 9.94A.195.]

**Effective dates—1984 c 209:** See note following RCW 9.94A.030.

**9.94A.633 Violation of condition or requirement—Sanctions—Procedures.** (1)(a) An offender who violates any condition or requirement of a sentence may be sanctioned with up to sixty days' confinement for each violation.

(b) In lieu of confinement, an offender may be sanctioned with work release, home detention with electronic monitoring, work crew, community restitution, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, or any other sanctions available in the community.

(2) If an offender was under community custody pursuant to one of the following statutes, the offender may be sanctioned as follows:

(a) If the offender was transferred to community custody in lieu of earned early release in accordance with \*RCW 9.94A.728(2), the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(b) If the offender was sentenced under the drug offender sentencing alternative set out in RCW 9.94A.660, the offender may be sanctioned in accordance with that section.

(c) If the offender was sentenced under the special sexual [sex] offender sentencing alternative set out in RCW 9.94A.670, the suspended sentence may be revoked and the offender committed to serve the original sentence of confinement.

(d) If the offender was sentenced to a work ethic camp pursuant to RCW 9.94A.690, the offender may be reclassified to serve the unexpired term of his or her sentence in total confinement.

(e) If a sex offender was sentenced pursuant to RCW 9.94A.507, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(3) If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, the probationer may be sanctioned pursuant to subsection (1) of this section. The department shall have authority to issue a warrant for the arrest of an offender who violates a condition of community custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. The department shall provide a copy of the violation hearing report to the sentencing court in a timely

manner. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions. [2009 c 375 § 12; 2009 c 28 § 7; 2008 c 231 § 15.]

**\*Reviser's note:** RCW 9.94A.728 was amended by 2009 c 455 § 2, deleting subsection (2).

**Application—2009 c 375:** See note following RCW 9.94A.501.

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**9.94A.6332 Sanctions—Which entity imposes.** The procedure for imposing sanctions for violations of sentence conditions or requirements is as follows:

(1) If the offender was sentenced under the drug offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.660.

(2) If the offender was sentenced under the special sexual [sex] offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.670.

(3) If a sex offender was sentenced pursuant to RCW 9.94A.507, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(4) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. If a probationer is being supervised by the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210, upon receipt of a violation hearing report from the department, the court retains any authority that those statutes provide to respond to a probationer's violation of conditions.

(5) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to RCW 9.94A.6333. [2009 c 375 § 14; 2009 c 28 § 8; 2008 c 231 § 18.]

**Application—2009 c 375:** See note following RCW 9.94A.501.

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**9.94A.637 Discharge upon completion of sentence—Certificate of discharge—Issuance, effect of no-contact order—Obligations, counseling after discharge.** (1)(a) When an offender has completed all requirements of the sentence, including any and all legal financial obligations, and while under the custody and supervision of the department, the secretary or the secretary's designee shall notify the sentencing court, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(b)(i) When an offender has reached the end of his or her supervision with the department and has completed all the requirements of the sentence except his or her legal financial obligations, the secretary's designee shall provide the county clerk with a notice that the offender has completed all nonfinancial requirements of the sentence.

(ii) When the department has provided the county clerk with notice that an offender has completed all the requirements of the sentence and the offender subsequently satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court, including the notice from the department, which shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(c) When an offender who is subject to requirements of the sentence in addition to the payment of legal financial obligations either is not subject to supervision by the department or does not complete the requirements while under supervision of the department, it is the offender's responsibility to provide the court with verification of the completion of the sentence conditions other than the payment of legal financial obligations. When the offender satisfies all legal financial obligations under the sentence, the county clerk shall notify the sentencing court that the legal financial obligations have been satisfied. When the court has received both notification from the clerk and adequate verification from the offender that the sentence requirements have been completed, the court shall discharge the offender and provide the offender with a certificate of discharge by issuing the certificate to the offender in person or by mailing the certificate to the offender's last known address.

(2)(a) For purposes of this subsection (2), a no-contact order is not a requirement of the offender's sentence. An offender who has completed all requirements of the sentence, including any and all legal financial obligations, is eligible for a certificate of discharge even if the offender has an existing no-contact order that excludes or prohibits the offender from having contact with a specified person or business or coming within a set distance of any specified location.

(b) In the case of an eligible offender who has a no-contact order as part of the judgment and sentence, the offender may petition the court to issue a certificate of discharge and a separate no-contact order by filing a petition in the sentencing court and paying the appropriate filing fee associated with the petition for the separate no-contact order. This filing fee does not apply to an offender seeking a certificate of discharge when the offender has a no-contact order separate from the judgment and sentence.

(i)(A) The court shall issue a certificate of discharge and a separate no-contact order under this subsection (2) if the court determines that the offender has completed all requirements of the sentence, including all legal financial obligations. The court shall reissue the no-contact order separately under a new civil cause number for the remaining term and under the same conditions as contained in the judgment and sentence.

(B) The clerk of the court shall send a copy of the new no-contact order to the individuals protected by the no-contact order, along with an explanation of the reason for the change, if there is an address available in the court file. If no address is available, the clerk of the court shall forward a copy of the order to the prosecutor, who shall send a copy of the no-contact order with an explanation of the reason for the change to the last known address of the protected individuals.

(ii) Whenever an order under this subsection (2) is issued, the clerk of the court shall forward a copy of the order

to the appropriate law enforcement agency specified in the order on or before the next judicial day. The clerk shall also include a cover sheet that indicates the case number of the judgment and sentence that has been discharged. Upon receipt of the copy of the order and cover sheet, the law enforcement agency shall enter the order into any computer-based criminal intelligence information system available in this state used by law enforcement agencies to list outstanding warrants. The order shall remain in this system until it expires. The new order, and case number of the discharged judgment and sentence, shall be linked in the criminal intelligence information system for purposes of enforcing the no-contact order.

(iii) A separately issued no-contact order may be enforced under chapter 26.50 RCW.

(iv) A separate no-contact order issued under this subsection (2) is not a modification of the offender's sentence.

(3) Every signed certificate and order of discharge shall be filed with the county clerk of the sentencing county. In addition, the court shall send to the department a copy of every signed certificate and order of discharge for offender sentences under the authority of the department. The county clerk shall enter into a database maintained by the administrator for the courts the names of all felons who have been issued certificates of discharge, the date of discharge, and the date of conviction and offense.

(4) An offender who is not convicted of a violent offense or a sex offense and is sentenced to a term involving community supervision may be considered for a discharge of sentence by the sentencing court prior to the completion of community supervision, provided that the offender has completed at least one-half of the term of community supervision and has met all other sentence requirements.

(5) The discharge shall have the effect of restoring all civil rights not already restored by RCW 29A.08.520, and the certificate of discharge shall so state. Nothing in this section prohibits the use of an offender's prior record for purposes of determining sentences for later offenses as provided in this chapter. Nothing in this section affects or prevents use of the offender's prior conviction in a later criminal prosecution either as an element of an offense or for impeachment purposes. A certificate of discharge is not based on a finding of rehabilitation.

(6) Unless otherwise ordered by the sentencing court, a certificate of discharge shall not terminate the offender's obligation to comply with an order that excludes or prohibits the offender from having contact with a specified person or coming within a set distance of any specified location that was contained in the judgment and sentence. An offender who violates such an order after a certificate of discharge has been issued shall be subject to prosecution according to the chapter under which the order was originally issued.

(7) Upon release from custody, the offender may apply to the department for counseling and help in adjusting to the community. This voluntary help may be provided for up to one year following the release from custody. [2009 c 325 § 3; 2009 c 288 § 2; 2007 c 171 § 1; 2004 c 121 § 2; 2003 c 379 § 19; 2002 c 16 § 2; 2000 c 119 § 3; 1994 c 271 § 901; 1984 c 209 § 14; 1981 c 137 § 22. Formerly RCW 9.94A.220.]

**Reviser's note:** This section was amended by 2009 c 288 § 2 and by 2009 c 325 § 3, 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—2009 c 288:** "The legislature finds that restoration of the right to vote and serve on a jury, for individuals who have satisfied every other obligation of their sentence, best serves to reintegrate them into society, even if a no-contact order exists. Therefore, the legislature further finds clarification of the existing statute is desirable to provide clarity to the courts that a certificate of discharge shall be issued, while the no-contact order remains in effect, once other obligations are completed." [2009 c 288 § 1.]

**Severability—Effective dates—2003 c 379:** See notes following RCW 9.94A.728.

**Intent—Purpose—2003 c 379 §§ 13-27:** See note following RCW 9.94A.760.

**Intent—2002 c 16:** "The legislature recognizes that an individual's right to vote is a hallmark of a free and inclusive society and that it is in the best interests of society to provide reasonable opportunities and processes for an offender to regain the right to vote after completion of all of the requirements of his or her sentence. The legislature intends to clarify the method by which the court may fulfill its already existing direction to provide discharged offenders with their certificates of discharge." [2002 c 16 § 1.]

**Application—2000 c 119:** See note following RCW 26.50.021.

**Purpose—Severability—1994 c 271:** See notes following RCW 9A.28.020.

**Effective dates—1984 c 209:** See note following RCW 9.94A.030.

**Effective date—1981 c 137:** See RCW 9.94A.905.

**9.94A.660 Drug offender sentencing alternative—Prison-based or residential alternative.** (1) An offender is eligible for the special drug offender sentencing alternative if:

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and does not become subject to a deportation order during the period of the sentence;

(f) The end of the standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a special drug offender sentencing alternative may be made by the court, the offender, or the state.

(3) If the sentencing court determines that the offender is eligible for an alternative sentence under this section and that the alternative sentence is appropriate, the court shall waive

imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under RCW 9.94A.662 or a residential chemical dependency treatment-based alternative under RCW 9.94A.664. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(4) To assist the court in making its determination, the court may order the department to complete either or both a risk assessment report and a chemical dependency screening report as provided in RCW 9.94A.500.

(5)(a) If the court is considering imposing a sentence under the residential chemical dependency treatment-based alternative, the court may order an examination of the offender by the department. The examination shall, at a minimum, address the following issues:

- (i) Whether the offender suffers from drug addiction;
- (ii) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;
- (iii) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and
- (iv) Whether the offender and the community will benefit from the use of the alternative.

(b) The examination report must contain:

- (i) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and
- (ii) Recommended crime-related prohibitions and affirmative conditions.

(6) When a court imposes a sentence of community custody under this section:

(a) The court may impose conditions as provided in RCW 9.94A.703 and may impose other affirmative conditions as the court considers appropriate. In addition, an offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances.

(b) The department may impose conditions and sanctions as authorized in RCW 9.94A.704 and RCW 9.94A.737.

(7)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the conditions of the community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

(8) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the

offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.

(9) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.

(10) Costs of examinations and preparing treatment plans under a special drug offender sentencing alternative may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 70.96A.350. [2009 c 389 § 3; (2009 c 389 § 2 expired August 1, 2009); 2008 c 231 § 30; 2006 c 339 § 302; 2006 c 73 § 10; 2005 c 460 § 1. Prior: 2002 c 290 § 20; 2002 c 175 § 10; 2001 c 10 § 4; 2000 c 28 § 19.]

**Effective date—2009 c 389 §§ 1 and 3-5:** See note following RCW 9.94A.505.

**Effective date—2009 c 389 § 2:** "Section 2 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 takes effect immediately [May 7, 2009]." [2009 c 389 § 7.]

**Expiration date—2009 c 389 § 2:** "Section 2 of this act expires August 1, 2009." [2009 c 389 § 9.]

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Intent—Part headings not law—2006 c 339:** See notes following RCW 70.96A.325.

**Effective date—2006 c 73:** See note following RCW 46.61.502.

**Application—2005 c 460:** "This act applies to sentences imposed on or after October 1, 2005." [2005 c 460 § 2.]

**Effective date—2005 c 460:** "This act takes effect October 1, 2005." [2005 c 460 § 3.]

**Effective date—2002 c 290 §§ 7-11 and 14-23:** See note following RCW 9.94A.515.

**Intent—2002 c 290:** See note following RCW 9.94A.517.

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Intent—Effective date—2001 c 10:** See notes following RCW 9.94A.505.

**Technical correction bill—2000 c 28:** See note following RCW 9.94A.015.

**9.94A.662 Prison-based drug offender sentencing alternative.** (1) A sentence for a prison-based special drug offender sentencing alternative shall include:

(a) A period of total confinement in a state facility for one-half the midpoint of the standard sentence range or twelve months, whichever is greater;

(b) One-half the midpoint of the standard sentence range as a term of community custody, which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services;

(c) Crime-related prohibitions, including a condition not to use illegal controlled substances;

(d) A requirement to submit to urinalysis or other testing to monitor that status; and

(e) A term of community custody pursuant to RCW 9.94A.701 to be imposed upon the failure to complete or administrative termination from the special drug offender sentencing alternative program.

(2) During incarceration in the state facility, offenders sentenced under this section shall undergo a comprehensive

substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections.

(3) If the department finds that conditions of community custody have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence. An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court.

(4) If an offender sentenced to the prison-based alternative under this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence. [2009 c 389 § 4.]

**Effective date—2009 c 389 §§ 1 and 3-5:** See note following RCW 9.94A.505.

**9.94A.664 Residential chemical dependency treatment-based alternative.** (1) A sentence for a residential chemical dependency treatment-based alternative shall include a term of community custody equal to one-half the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under chapter 70.96A RCW for a period set by the court between three and six months.

(2)(a) The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the examination report completed pursuant to RCW 9.94A.660.

(b) If the court imposes a term of community custody, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of community custody.

(3)(a) If the court imposes a sentence under this section, the treatment provider must send the treatment plan to the court within thirty days of the offender's arrival to the residential chemical dependency treatment program.

(b) Upon receipt of the plan, the court shall schedule a progress hearing during the period of residential chemical dependency treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody.

(c) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment.

(4) At a progress hearing or treatment termination hearing, the court may:

(a) Authorize the department to terminate the offender's community custody status on the expiration date determined under subsection (1) of this section;

(b) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

(c) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under RCW 9.94A.701.

(5) If the court imposes a term of total confinement, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of total confinement and subsequent term of community custody. [2009 c 389 § 5.]

**Effective date—2009 c 389 §§ 1 and 3-5:** See note following RCW 9.94A.505.

**9.94A.670 Special sex offender sentencing alternative.** (1) Unless the context clearly requires otherwise, the definitions in this subsection apply to this section only.

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider or a certified affiliate sex offender treatment provider as defined in RCW 18.155.020.

(b) "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any body part or organ, or that causes a fracture of any body part or organ.

(c) "Victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense. If the conviction results from a guilty plea, the offender must, as part of his or her plea of guilty, voluntarily and affirmatively admit he or she committed all of the elements of the crime to which the offender is pleading guilty. This alternative is not available to offenders who plead guilty to the offense charged under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state;

(c) The offender has no prior adult convictions for a violent offense that was committed within five years of the date the current offense was committed;

(d) The offense did not result in substantial bodily harm to the victim;

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

(f) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

(b) The examiner shall assess and report regarding the offender's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

(i) Frequency and type of contact between offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions and affirmative conditions, which must include, to the extent known, an identification of specific activities or behaviors that are precursors to the offender's offense cycle, including, but not limited to, activities or behaviors such as viewing or listening to pornography or use of alcohol or controlled substances.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.507, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less

than eleven years of confinement, the court may suspend the execution of the sentence as provided in this section.

(5) As conditions of the suspended sentence, the court must impose the following:

(a) A term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within the standard range based on the presence of an aggravating circumstance listed in RCW 9.94A.535(3). In no case shall the term of confinement exceed the statutory maximum sentence for the offense. The court may order the offender to serve all or part of his or her term of confinement in partial confinement. An offender sentenced to a term of confinement under this subsection is not eligible for earned release under RCW 9.92.151 or 9.94A.728.

(b) A term of community custody equal to the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.507, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under RCW 9.94A.703.

(c) Treatment for any period up to five years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(d) Specific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified in the proposed treatment plan under subsection (3)(b)(v) of this section or identified in an annual review under subsection (8)(b) of this section.

(6) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Crime-related prohibitions;

(b) Require the offender to devote time to a specific employment or occupation;

(c) Require the offender to remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(d) Require the offender to report as directed to the court and a community corrections officer;

(e) Require the offender to pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(f) Require the offender to perform community restitution work; or

(g) Require the offender to reimburse the victim for the cost of any counseling required as a result of the offender's crime.

(7) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

(8)(a) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to

the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(b) The court shall conduct a hearing on the offender's progress in treatment at least once a year. At least fourteen days prior to the hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. At the hearing, the court may modify conditions of community custody including, but not limited to, crime-related prohibitions and affirmative conditions relating to activities and behaviors identified as part of, or relating to precursor activities and behaviors in, the offender's offense cycle or revoke the suspended sentence.

(9) At least fourteen days prior to the treatment termination hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. The court may order an evaluation regarding the advisability of termination from treatment by a sex offender treatment provider who may not be the same person who treated the offender under subsection (5) of this section or any person who employs, is employed by, or shares profits with the person who treated the offender under subsection (5) of this section unless the court has entered written findings that such evaluation is in the best interest of the victim and that a successful evaluation of the offender would otherwise be impractical. The offender shall pay the cost of the evaluation. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.

(10)(a) If a violation of conditions other than a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.633(1) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in subsections (7) and (9) of this section.

(b) If a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection (5)(d) or (8)(b) of this section occurs during community custody, the department shall refer the violation to the court and recommend revocation of the suspended sentence as provided in subsection (11) of this section.

(11) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community

custody shall be credited to the offender if the suspended sentence is revoked.

(12) If the offender violates a requirement of the sentence that is not a condition of the suspended sentence pursuant to subsection (5) or (6) of this section, the department may impose sanctions pursuant to RCW 9.94A.633(1).

(13) The offender's sex offender treatment provider may not be the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section, unless the court has entered written findings that such treatment is in the best interests of the victim and that successful treatment of the offender would otherwise be impractical. Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

(14) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment. [2009 c 28 § 9; 2008 c 231 § 31; 2006 c 133 § 1. Prior: 2004 c 176 § 4; 2004 c 38 § 9; 2002 c 175 § 11; 2001 2nd sp.s. c 12 § 316; 2000 c 28 § 20.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Severability—Effective date—2004 c 176:** See notes following RCW 9.94A.515.

**Effective date—2004 c 38:** See note following RCW 18.155.075.

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Technical correction bill—2000 c 28:** See note following RCW 9.94A.015.

**9.94A.680 Alternatives to total confinement.** Alternatives to total confinement are available for offenders with sentences of one year or less. These alternatives include the following sentence conditions that the court may order as substitutes for total confinement:

(1) One day of partial confinement may be substituted for one day of total confinement;

(2) In addition, for offenders convicted of nonviolent offenses only, eight hours of community restitution may be substituted for one day of total confinement, with a maximum conversion limit of two hundred forty hours or thirty days. Community restitution hours must be completed within the period of community supervision or a time period specified



by the court, which shall not exceed twenty-four months, pursuant to a schedule determined by the department; and

(3) For offenders convicted of nonviolent and nonsex offenses, the court may credit time served by the offender before the sentencing in an available county supervised community option and may authorize county jails to convert jail confinement to an available county supervised community option, may authorize the time spent in the community option to be reduced by earned release credit consistent with local correctional facility standards, and may require the offender to perform affirmative conduct pursuant to RCW 9.94A.607.

For sentences of nonviolent offenders for one year or less, the court shall consider and give priority to available alternatives to total confinement and shall state its reasons in writing on the judgment and sentence form if the alternatives are not used. [2009 c 227 § 1; 2002 c 175 § 12; 1999 c 197 § 6. Prior: 1988 c 157 § 4; 1988 c 155 § 3; 1984 c 209 § 21; 1983 c 115 § 9. Formerly RCW 9.94A.380.]

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Severability—1999 c 197:** See note following RCW 9.94A.030.

**Application—1988 c 157:** See note following RCW 9.94A.030.

**Effective dates—1984 c 209:** See note following RCW 9.94A.030.

**9.94A.701 Community custody—Offenders sentenced to the custody of the department.** (1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody for three years:

(a) A sex offense not sentenced under RCW 9.94A.507;

(b) A serious violent offense; or

(c) A violation of RCW 9A.44.130(11)(a) committed on or after June 7, 2006, when a court sentences the person to a term of confinement of one year or less.

(2) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for eighteen months when the court sentences the person to the custody of the department for a violent offense that is not considered a serious violent offense.

(3) A court shall, in addition to the other terms of the sentence, sentence an offender to community custody for one year when the court sentences the person to the custody of the department for:

(a) Any crime against persons under RCW 9.94A.411(2);

(b) An offense involving the unlawful possession of a firearm under RCW 9.41.040, where the offender is a criminal street gang member or associate; or

(c) A felony offense under chapter 69.50 or 69.52 RCW, committed on or after July 1, 2000.

(4) If an offender is sentenced under the drug offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.660.

(5) If an offender is sentenced under the special sexual [sex] offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.670.

(6) If an offender is sentenced to a work ethic camp, the court shall impose community custody as provided in RCW 9.94A.690.

(7) If a sex offender is sentenced as a nonpersistent offender pursuant to RCW 9.94A.507, the court shall impose community custody as provided in that section.

(8) The term of community custody specified by this section shall be reduced by the court whenever an offender's standard range term of confinement in combination with the term of community custody exceeds the statutory maximum for the crime as provided in RCW 9A.20.021. [2009 c 375 § 5; 2009 c 28 § 10; 2008 c 231 § 7.]

**Application—2009 c 375:** See note following RCW 9.94A.501.

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—2008 c 231:** "The existing sentencing reform act contains numerous provisions for supervision of different types of offenders. This duplication has caused great confusion for judges, lawyers, offenders, and the department of corrections, and often results in inaccurate sentences. The clarifications in this act are intended to support continued discussions by the sentencing guidelines commission with the courts and the criminal justice community to identify and propose policy changes that will further simplify and improve the sentencing reform act relating to the supervision of offenders. The sentencing guidelines commission shall submit policy change proposals to the legislature on or before December 1, 2008.

Sections 7 through 58 of this act are intended to simplify the supervision provisions of the sentencing reform act and increase the uniformity of its application. These sections are not intended to either increase or decrease the authority of sentencing courts or the department relating to supervision, except for those provisions instructing the court to apply the provisions of the current community custody law to offenders sentenced after July 1, 2009, but who committed their crime prior to August 1, 2009, to the extent that such application is constitutionally permissible.

This will effect a change for offenders who committed their crimes prior to the offender accountability act, chapter 196, Laws of 1999. These offenders will be ordered to a term of community custody rather than community placement or community supervision. To the extent constitutionally permissible, the terms of the offender's supervision will be as provided in current law. With the exception of this change, the legislature does not intend to make, and no provision of sections 7 through 58 of this act may be construed as making, a substantive change to the supervision provisions of the sentencing reform act." [2009 c 375 § 10; 2008 c 231 § 6.]

**Application—2008 c 231 §§ 6-58:** "(1) Sections 6 through 58 of this act apply to all sentences imposed or reimposed on or after August 1, 2009, for any crime committed on or after August 1, 2009.

(2) Sections 6 through 58 of this act also apply to all sentences imposed or reimposed on or after August 1, 2009, for crimes committed prior to August 1, 2009, to the extent that such application is constitutionally permissible.

(3) To the extent that application of sections 6 through 58 of this act is not constitutionally permissible with respect to any offender, the sentence for such offender shall be governed by the law as it existed before August 1, 2009, or on such prior date as may be constitutionally required, notwithstanding any amendment or repeal of provisions of such law.

(4) If application of sections 6 through 58 of this act is not constitutionally permissible with respect to any offender, the judgment and sentence shall specify the particular sentencing provisions that will not apply to such offender. Whenever practical, the judgment and sentence shall use the terminology set out in this act.

(5) The sentencing guidelines commission shall prepare a summary of the circumstances under which application of sections 6 through 58 of this act is not constitutionally permissible. The summary should include recommendations of conditions that could be included in judgments and sentences in order to prevent unconstitutional application of the act. This summary shall be incorporated into the *Adult Sentencing Guidelines Manual*.

(6) Sections 6 through 58 of this act shall not affect the enforcement of any sentence that was imposed prior to August 1, 2009, unless the offender is resentenced after that date." [2008 c 231 § 55.]

**Application of repealers—2008 c 231 § 57:** "The repealers in section 57 of this act shall not affect the validity of any sentence that was imposed prior to August 1, 2009, or the authority of the department of corrections to supervise any offender pursuant to such sentence." [2008 c 231 § 58.]

**Effective date—2008 c 231 §§ 6-60:** "Sections 6 through 60 of this act take effect August 1, 2009." [2008 c 231 § 61.]

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**9.94A.703 Community custody—Conditions.** When a court sentences a person to a term of community custody, the court shall impose conditions of community custody as provided in this section.

(1) **Mandatory conditions.** As part of any term of community custody, the court shall:

(a) Require the offender to inform the department of court-ordered treatment upon request by the department;

(b) Require the offender to comply with any conditions imposed by the department under RCW 9.94A.704;

(c) If the offender was sentenced under RCW 9.94A.507 for an offense listed in RCW 9.94A.507(1)(a), and the victim of the offense was under eighteen years of age at the time of the offense, prohibit the offender from residing in a community protection zone;

(d) If the offender was sentenced under RCW 9A.36.120, prohibit the offender from serving in any paid or volunteer capacity where he or she has control or supervision of minors under the age of thirteen.

(2) **Waivable conditions.** Unless waived by the court, as part of any term of community custody, the court shall order an offender to:

(a) Report to and be available for contact with the assigned community corrections officer as directed;

(b) Work at department-approved education, employment, or community restitution, or any combination thereof;

(c) Refrain from possessing or consuming controlled substances except pursuant to lawfully issued prescriptions;

(d) Pay supervision fees as determined by the department; and

(e) Obtain prior approval of the department for the offender's residence location and living arrangements.

(3) **Discretionary conditions.** As part of any term of community custody, the court may order an offender to:

(a) Remain within, or outside of, a specified geographical boundary;

(b) Refrain from direct or indirect contact with the victim of the crime or a specified class of individuals;

(c) Participate in crime-related treatment or counseling services;

(d) Participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community;

(e) Refrain from consuming alcohol; or

(f) Comply with any crime-related prohibitions.

(4) **Special conditions.**

(a) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

(b)(i) In sentencing an offender convicted of an alcohol or drug-related traffic offense, the court shall require the offender to complete a diagnostic evaluation by an alcohol or drug dependency agency approved by the department of social and health services or a qualified probation department, defined under RCW 46.61.516, that has been approved by the department of social and health services. If the offense was pursuant to chapter 46.61 RCW, the report shall be for-

warded to the department of licensing. If the offender is found to have an alcohol or drug problem that requires treatment, the offender shall complete treatment in a program approved by the department of social and health services under chapter 70.96A RCW. If the offender is found not to have an alcohol or drug problem that requires treatment, the offender shall complete a course in an information school approved by the department of social and health services under chapter 70.96A RCW. The offender shall pay all costs for any evaluation, education, or treatment required by this section, unless the offender is eligible for an existing program offered or approved by the department of social and health services.

(ii) For purposes of this section, "alcohol or drug-related traffic offense" means the following: Driving while under the influence as defined by RCW 46.61.502, actual physical control while under the influence as defined by RCW 46.61.504, vehicular homicide as defined by RCW 46.61.520(1)(a), vehicular assault as defined by RCW 46.61.522(1)(b), homicide by watercraft as defined by RCW 79A.60.050, or assault by watercraft as defined by RCW 79A.60.060.

(iii) This subsection (4)(b) does not require the department of social and health services to add new treatment or assessment facilities nor affect its use of existing programs and facilities authorized by law. [2009 c 214 § 3; 2009 c 28 § 11; 2008 c 231 § 9.]

**Reviser's note:** This section was amended by 2009 c 28 § 11 and by 2009 c 214 § 3, 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).

**Short title—2009 c 214:** "This act shall be known as the Eryk Woodruff public safety act of 2009." [2009 c 214 § 1.]

**Effective date—2009 c 214:** "This act takes effect August 1, 2009." [2009 c 214 § 4.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**9.94A.704 Community custody—Supervision by the department—Conditions.** (1) Every person who is sentenced to a period of community custody shall report to and be placed under the supervision of the department, subject to RCW 9.94A.501.

(2)(a) The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of community custody based upon the risk to community safety.

(b) Within the funds available for community custody, the department shall determine conditions on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (2)(b).

(3) If the offender is supervised by the department, the department shall at a minimum instruct the offender to:

(a) Report as directed to a community corrections officer;

(b) Remain within prescribed geographical boundaries;

(c) Notify the community corrections officer of any change in the offender's address or employment;

(d) Pay the supervision fee assessment; and

(e) Disclose the fact of supervision to any mental health or chemical dependency treatment provider, as required by RCW 9.94A.722.

(4) The department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(5) If the offender was sentenced pursuant to a conviction for a sex offense, the department may impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology.

(6) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court-imposed conditions.

(7)(a) The department shall notify the offender in writing of any additional conditions or modifications.

(b) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing officer finds that it is not reasonably related to the crime of conviction, the offender's risk of reoffending, or the safety of the community.

(8) The department may require offenders to pay for special services rendered including electronic monitoring, day reporting, and telephone reporting, dependent on the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(9)(a) When a sex offender has been sentenced pursuant to RCW 9.94A.507, the department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions based upon the offender's risk to community safety and may recommend affirmative conduct or electronic monitoring consistent with subsections (4) through (6) of this section.

(b) The board may impose conditions in addition to court-ordered conditions. The board must consider and may impose department-recommended conditions.

(c) By the close of the next business day, after receiving notice of a condition imposed by the board or the department, an offender may request an administrative hearing under rules adopted by the board. The condition shall remain in effect unless the hearing examiner finds that it is not reasonably related to any of the following:

(i) The crime of conviction;

(ii) The offender's risk of reoffending;

(iii) The safety of the community.

(d) If the department finds that an emergency exists requiring the immediate imposition of additional conditions in order to prevent the offender from committing a crime, the department may impose such conditions. The department may not impose conditions that are contrary to those set by

the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board.

(10) In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function. [2009 c 375 § 6; 2009 c 28 § 12; 2008 c 231 § 10.]

**Application—2009 c 375:** See note following RCW 9.94A.501.

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Application—Application of repealer—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**9.94A.707 Community custody—Commencement—Conditions.** (1) Community custody shall begin: (a) Upon completion of the term of confinement; or (b) at the time of sentencing if no term of confinement is ordered.

(2) When an offender is sentenced to community custody, the offender is subject to the conditions of community custody as of the date of sentencing, unless otherwise ordered by the court. [2009 c 375 § 7; 2008 c 231 § 12.]

**Application—2009 c 375:** See note following RCW 9.94A.501.

**Intent—Application—Application of repealer—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**9.94A.715 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**9.94A.728 Release prior to expiration of sentence (as amended by 2009 c 399).** No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. The department may approve a jail certification from a correctional agency that calculates earned release time based on the actual amount of confinement time served by the offender before sentencing when an erroneous calculation of confinement time served by the offender before sentencing appears on the judgment and sentence. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(b)(i) In the case of an offender who qualifies under (b)(ii) of this subsection, the aggregate earned release time may not exceed fifty percent of the sentence.

(ii) An offender is qualified to earn up to fifty percent of aggregate earned release time under this subsection (1)(b) if he or she:

(A) Is classified in one of the two lowest risk categories under (b)(iii) of this subsection;

(B) Is not confined pursuant to a sentence for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor); (C)

Has no prior conviction for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(D) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and

(E) Has not committed a new felony after July 22, 2007, while under community custody.

(iii) For purposes of determining an offender's eligibility under this subsection (1)(b), the department shall perform a risk assessment of every offender committed to a correctional facility operated by the department who has no current or prior conviction for a sex offense, a violent offense, a crime against persons as defined in RCW 9.94A.411, a felony that is domestic violence as defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary), a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine, or a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor). The department must classify each assessed offender in one of four risk categories between highest and lowest risk.

(iv) The department shall recalculate the earned release time and reschedule the expected release dates for each qualified offender under this subsection (1)(b).

(v) This subsection (1)(b) applies retroactively to eligible offenders serving terms of total confinement in a state correctional facility as of July 1, 2003.

(vi) This subsection (1)(b) does not apply to offenders convicted after July 1, 2010.

(c) In no other case shall the aggregate earned release time exceed one-third of the total sentence;

(2)(a) A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50 or 69.52 RCW, may become eligible, in accordance with a program developed by the department, for transfer to community custody in lieu of earned release time pursuant to subsection (1) of this section;

(b) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community custody terms eligible for release to community custody in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(c) The department may deny transfer to community custody in lieu of earned release time pursuant to subsection (1) of this section if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this

section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody;

(d) If the department denies transfer to community custody in lieu of earned early release pursuant to (c) of this subsection, the department may transfer an offender to partial confinement in lieu of earned early release up to three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in this section;

(e) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4)(a) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious enough to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; and

(iii) Granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time;

(5) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(6) No more than the final six months of the offender's term of confinement may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to subsection (2)(d) of this section;

(7) The governor may pardon any offender;

(8) The department may release an offender from confinement any time within ten days before a release date calculated under this section;

(9) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870; and

(10) Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540, however persistent offenders are not eligible for extraordinary medical placement. [2009 c 399 § 1; 2008 c 231 § 34; 2007 c 483 § 304; 2004 c 176 § 6; 2003 c 379 § 1. Prior: 2002 c 290 § 21; 2002 c 50 § 2; 2000 c 28 § 28; prior: 1999 c 324 § 1; 1999 c 37 § 1; 1996 c 199 § 2; 1995 c 129 § 7 (Initiative Measure No. 159); 1992 c 145 § 8; 1990 c 3 § 202; 1989 c 248 § 2; prior: 1988 c 153 § 3; 1988 c 3 § 1; 1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15. Formerly RCW 9.94A.150.]

**Effective date—2009 c 399:** "This act takes effect August 1, 2009." [2009 c 399 § 2.]

**9.94A.728 Release prior to expiration of sentence (as amended by 2009 c 441).** No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of

the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(b)(i) In the case of an offender who qualifies under (b)(ii) of this subsection, the aggregate earned release time may not exceed fifty percent of the sentence.

(ii) An offender is qualified to earn up to fifty percent of aggregate earned release time under this subsection (1)(b) if he or she:

(A) Is classified in one of the two lowest risk categories under (b)(iii) of this subsection;

(B) Is not confined pursuant to a sentence for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor); (C) Has no prior conviction for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(D) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and

(E) Has not committed a new felony after July 22, 2007, while under community custody.

(iii) For purposes of determining an offender's eligibility under this subsection (1)(b), the department shall perform a risk assessment of every offender committed to a correctional facility operated by the department who has no current or prior conviction for a sex offense, a violent offense, a crime against persons as defined in RCW 9.94A.411, a felony that is domestic violence as defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary), a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine, or a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor). The department must classify each assessed offender in one of four risk categories between highest and lowest risk.

(iv) The department shall recalculate the earned release time and reschedule the expected release dates for each qualified offender under this subsection (1)(b).

(v) This subsection (1)(b) applies retroactively to eligible offenders serving terms of total confinement in a state correctional facility as of July 1, 2003.

(vi) This subsection (1)(b) does not apply to offenders convicted after July 1, 2010.

(c) In no other case shall the aggregate earned release time exceed one-third of the total sentence;

(2)(a) A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter

69.50 or 69.52 RCW, may become eligible, in accordance with a program developed by the department, for transfer to community custody in lieu of earned release time pursuant to subsection (1) of this section;

(b) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community custody terms eligible for release to community custody in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(c) The department may deny transfer to community custody in lieu of earned release time pursuant to subsection (1) of this section if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody;

(d) If the department denies transfer to community custody in lieu of earned early release pursuant to (c) of this subsection, the department may transfer an offender to partial confinement in lieu of earned early release up to three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in this section;

(e) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4)(a) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious (enough) and is expected to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is currently physically incapacitated due to age or the medical condition or is expected to be so at the time of release; and

(iii) It is expected that granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care, in which case, an alternative type of monitoring shall be utilized. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time;

(5) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(6) No more than the final six months of the offender's term of confinement may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to subsection (2)(d) of this section;

(7) The governor may pardon any offender;

(8) The department may release an offender from confinement any time within ten days before a release date calculated under this section;

(9) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870; and

(10) Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540, however persistent offenders are not eligible for extraordinary medical placement. [2009 c 441 § 1; 2008 c 231 § 34; 2007 c 483 § 304; 2004 c 176 § 6; 2003 c 379 § 1. Prior: 2002 c 290 § 21; 2002 c 50 § 2; 2000 c 28 § 28; prior: 1999 c 324 § 1; 1999 c 37 § 1; 1996 c 199 § 2; 1995 c 129 § 7 (Initiative Measure No. 159); 1992 c 145 § 8; 1990 c 3 § 202; 1989 c 248

§ 2; prior: 1988 c 153 § 3; 1988 c 3 § 1; 1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15. Formerly RCW 9.94A.150.]

**Effective date—2009 c 441:** "This act takes effect August 1, 2009." [2009 c 441 § 2.]

**9.94A.728 Release prior to expiration of sentence (as amended by 2009 c 455).** No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) ((Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(b)(i) In the case of an offender who qualifies under (b)(ii) of this subsection, the aggregate earned release time may not exceed fifty percent of the sentence.

(ii) An offender is qualified to earn up to fifty percent of aggregate earned release time under this subsection (1)(b) if he or she:

(A) Is classified in one of the two lowest risk categories under (b)(iii) of this subsection;

(B) Is not confined pursuant to a sentence for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor); (C)

Has no prior conviction for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(D) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and

(E) Has not committed a new felony after July 22, 2007, while under community custody.

(iii) For purposes of determining an offender's eligibility under this subsection (1)(b), the department shall perform a risk assessment of every offender committed to a correctional facility operated by the department who has no current or prior conviction for a sex offense, a violent offense, a crime against persons as defined in RCW 9.94A.411, a felony that is domestic vio-

lence as defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary), a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine, or a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor). The department must classify each assessed offender in one of four risk categories between highest and lowest risk.

(iv) The department shall recalculate the earned release time and reschedule the expected release dates for each qualified offender under this subsection (1)(b):

(v) This subsection (1)(b) applies retroactively to eligible offenders serving terms of total confinement in a state correctional facility as of July 1, 2003.

(vi) This subsection (1)(b) does not apply to offenders convicted after July 1, 2010.

(c) In no other case shall the aggregate earned release time exceed one-third of the total sentence;

(2)(a) A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50 or 69.52 RCW, may become eligible, in accordance with a program developed by the department, for transfer to community custody in lieu of earned release time pursuant to subsection (1) of this section;

(b) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community custody terms eligible for release to community custody in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(c) The department may deny transfer to community custody in lieu of earned release time pursuant to subsection (1) of this section if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody;

(d) If the department denies transfer to community custody in lieu of earned early release pursuant to (c) of this subsection, the department may transfer an offender to partial confinement in lieu of earned early release up to three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in this section;

(e) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section;

(3)) An offender may earn early release time as authorized by RCW 9.94A.729;

(2) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

((4)) (3)(a) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious enough to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; and

(iii) Granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time.

(e) Persistent offenders are not eligible for extraordinary medical placement;

((5)) (4) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

~~((6))~~ (5) No more than the final six months of the offender's term of confinement may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to ~~((subsection (2)))~~ RCW 9.94A.729(5)(d);

~~((7))~~ (6) The governor may pardon any offender;

~~((8))~~ (7) The department may release an offender from confinement any time within ten days before a release date calculated under this section;

~~((9))~~ (8) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870; and

~~((4))~~ (9) Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540 ~~(, however persistent offenders are not eligible for extraordinary medical placement)~~. [2009 c 455 § 2; (2009 c 455 § 1 expired August 1, 2009); 2008 c 231 § 34; 2007 c 483 § 304; 2004 c 176 § 6; 2003 c 379 § 1. Prior: 2002 c 290 § 21; 2002 c 50 § 2; 2000 c 28 § 28; prior: 1999 c 324 § 1; 1999 c 37 § 1; 1996 c 199 § 2; 1995 c 129 § 7 (Initiative Measure No. 159); 1992 c 145 § 8; 1990 c 3 § 202; 1989 c 248 § 2; prior: 1988 c 153 § 3; 1988 c 3 § 1; 1984 c 209 § 8; 1982 c 192 § 6; 1981 c 137 § 15. Formerly RCW 9.94A.150.]

**Reviser's note:** RCW 9.94A.728 was amended three times during the 2009 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—2009 c 455 § 2:** "Section 2 of this act takes effect August 1, 2009." [2009 c 455 § 5.]

**Expiration date—2009 c 455 § 1:** "Section 1 of this act expires August 1, 2009." [2009 c 455 § 6.]

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Findings—Part headings not law—Severability—2007 c 483:** See RCW 72.78.005, 72.78.900, and 72.78.901.

**Severability—Effective date—2004 c 176:** See notes following RCW 9.94A.515.

**Severability—2003 c 379:** "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." [2003 c 379 § 28.]

**Effective dates—2003 c 379:** "(1) Sections 1 through 12, 20, and 28 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 July 1, 2003.

(2) Sections 13 through 19 and 21 through 27 of this act take effect October 1, 2003." [2003 c 379 § 29.]

**Effective date—2002 c 290 §§ 7-11 and 14-23:** See note following RCW 9.94A.515.

**Intent—2002 c 290:** See note following RCW 9.94A.517.

**Intent—2002 c 50:** "The legislature has determined in RCW 9.94A.728(2) that the department of corrections may transfer offenders to community custody status in lieu of earned release time in accordance with a program developed by the department of corrections. It is the legislature's intent, in response to: *In re: Capello 106 Wn.App. 576 (2001)*, to clarify the law to reflect that the secretary of the department has, and has had since enactment of the community placement act of 1988, the authority to require all offenders, eligible for release to community custody status in lieu of earned release, to provide a release plan that includes an approved residence and living arrangement prior to any transfer to the community." [2002 c 50 § 1.]

**Application—2002 c 50:** "This act applies to all offenders with community placement or community custody terms currently incarcerated either before, on, or after March 14, 2002." [2002 c 50 § 3.]

**Severability—2002 c 50:** "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." [2002 c 50 § 4.]

**Effective date—2002 c 50:** "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 14, 2002]." [2002 c 50 § 5.]

**Technical correction bill—2000 c 28:** See note following RCW 9.94A.015.

**Severability—1996 c 199:** See note following RCW 9.94A.505.

**Findings and intent—Short title—Severability—Captions not law—1995 c 129:** See notes following RCW 9.94A.510.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**Application—1989 c 248:** See note following RCW 9.92.151.

**Effective date—Application of increased sanctions—1988 c 153:** See notes following RCW 9.94A.030.

**Effective dates—1984 c 209:** See note following RCW 9.94A.030.

**Effective date—1981 c 137:** See RCW 9.94A.905.

### 9.94A.729 Earned release time—Risk assessments.

(1) The term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and adopted by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time.

(2) An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(3) An offender may earn early release time as follows:

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence.

(b) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(c) An offender is qualified to earn up to fifty percent of aggregate earned release time if he or she:

(i) Is not classified as an offender who is at a high risk to reoffend as provided in subsection (4) of this section;

(ii) Is not confined pursuant to a sentence for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(iii) Has no prior conviction for the offenses listed in (c)(ii) of this subsection;

(iv) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and

(v) Has not committed a new felony after July 22, 2007, while under community custody.

(d) In no other case shall the aggregate earned release time exceed one-third of the total sentence.

(4) The department shall perform a risk assessment of each offender who may qualify for earned early release under subsection (3)(c) of this section utilizing the risk assessment tool recommended by the Washington state institute for public policy. Subsection (3)(c) of this section does not apply to offenders convicted after July 1, 2010.

(5)(a) A person who is eligible for earned early release as provided in this section and who is convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense under chapter 69.50 or 69.52 RCW, shall be transferred to community custody in lieu of earned release time;

(b) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with community custody terms eligible for release to community custody in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

(c) The department may deny transfer to community custody in lieu of earned release time if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody;

(d) If the department is unable to approve the offender's release plan, the department may do one or more of the following:

(i) Transfer an offender to partial confinement in lieu of earned early release for a period not to exceed three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in RCW 9.94A.728(5);

(ii) Provide rental vouchers to the offender for a period not to exceed three months if rental assistance will result in an approved release plan. The voucher must be provided in

conjunction with additional transition support programming or services that enable an offender to participate in services including, but not limited to, substance abuse treatment, mental health treatment, sex offender treatment, educational programming, or employment programming;

(e) For each offender who is the recipient of a rental voucher, the department shall include, concurrent with the data that the department otherwise obtains and records, the housing status of the offender for the duration of the offender's supervision.

(6) An offender serving a term of confinement imposed under RCW 9.94A.670(5)(a) is not eligible for earned release credits under this section. [2009 c 455 § 3.]

**Effective date—2009 c 455 § 3:** "Section 3 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 takes effect immediately [May 11, 2009]." [2009 c 455 § 7.]

**9.94A.731 Term of partial confinement, work release, home detention.**

(1) An offender sentenced to a term of partial confinement shall be confined in the facility for at least eight hours per day or, if serving a work crew sentence shall comply with the conditions of that sentence as set forth in RCW 9.94A.030 and 9.94A.725. The offender shall be required as a condition of partial confinement to report to the facility at designated times. During the period of partial confinement, an offender may be required to comply with crime-related prohibitions and affirmative conditions imposed by the court or the department pursuant to this chapter.

(2) An offender in a county jail ordered to serve all or part of a term of less than one year in work release, work crew, or a program of home detention who violates the rules of the work release facility, work crew, or program of home detention or fails to remain employed or enrolled in school may be transferred to the appropriate county detention facility without further court order but shall, upon request, be notified of the right to request an administrative hearing on the issue of whether or not the offender failed to comply with the order and relevant conditions. Pending such hearing, or in the absence of a request for the hearing, the offender shall serve the remainder of the term of confinement as total confinement. This subsection shall not affect transfer or placement of offenders committed to the department.

(3) Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility. [2009 c 28 § 13; 2003 c 254 § 2; 2000 c 28 § 29; 1999 c 143 § 15; 1991 c 181 § 4; 1988 c 154 § 4; 1987 c 456 § 3; 1981 c 137 § 18. Formerly RCW 9.94A.180.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Technical correction bill—2000 c 28:** See note following RCW 9.94A.015.

**Effective date—1981 c 137:** See RCW 9.94A.905.

**9.94A.771 Recodified as RCW 9.94B.100.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**9.94A.825 Deadly weapon special verdict—Definition.** In a criminal case wherein there has been a special alle-



gation and evidence establishing that the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, the court shall make a finding of fact of whether or not the accused or an accomplice was armed with a deadly weapon at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it find[s] the defendant guilty, also find a special verdict as to whether or not the defendant or an accomplice was armed with a deadly weapon at the time of the commission of the crime.

For purposes of this section, a deadly weapon is an implement or instrument which has the capacity to inflict death and from the manner in which it is used, is likely to produce or may easily and readily produce death. The following instruments are included in the term deadly weapon: Black-jack, sling shot, billy, sand club, sandbag, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than three inches, any razor with an unguarded blade, any metal pipe or bar used or intended to be used as a club, any explosive, and any weapon containing poisonous or injurious gas. [1983 c 163 § 3. Formerly RCW 9.94A.602, 9.94A.125.]

**Effective date—1983 c 163:** See note following RCW 9.94A.505.

**9.94A.827 Methamphetamine—Manufacturing with child on premises—Special allegation.** In a criminal case where:

(1) The defendant has been convicted of (a) manufacture of a controlled substance under RCW 69.50.401 relating to manufacture of methamphetamine; or (b) possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, as defined in RCW 69.50.440; and

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant committed the crime when a person under the age of eighteen was present in or upon the premises of manufacture; the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation. [2003 c 53 § 60; 2002 c 134 § 3; 2000 c 132 § 1. Formerly RCW 9.94A.605, 9.94A.128.]

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

**Effective date—2002 c 134:** See note following RCW 69.50.440.

**9.94A.829 Special allegation—Offense committed by criminal street gang member or associate—Procedures.** In a criminal case in which the defendant has been convicted of unlawful possession of a firearm under RCW 9.41.040, and there has been a special allegation pleaded and proven by a preponderance of the evidence that the accused is a criminal street gang member or associate as defined in RCW 9.94A.030, the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the accused was a criminal street gang member or associate during the commission of the crime. [2009 c 28 § 16.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**9.94A.831 Special allegation—Assault of law enforcement personnel with a firearm—Procedures.** In a criminal case where:

(1) The defendant has been convicted of assaulting a law enforcement officer or other employee of a law enforcement agency who was performing his or her official duties at the time of the assault as provided under RCW 9A.36.031; and

(2) There has been a special allegation pleaded and proven beyond a reasonable doubt that the defendant intentionally committed the assault with what appears to be a firearm;

the court shall make a finding of fact of the special allegation, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to the special allegation. [2009 c 141 § 1.]

**9.94A.835 Special allegation—Sexual motivation—Procedures.** (1) The prosecuting attorney shall file a special allegation of sexual motivation in every criminal case, felony, gross misdemeanor, or misdemeanor, other than sex offenses as defined in RCW 9.94A.030 when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

(2) In a criminal case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the accused committed the crime with a sexual motivation. The court shall make a finding of fact of whether or not a sexual motivation was present at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not the defendant committed the crime with a sexual motivation. This finding shall not be applied to sex offenses as defined in RCW 9.94A.030.

(3) The prosecuting attorney shall not withdraw the special allegation of sexual motivation without approval of the court through an order of dismissal of the special allegation. The court shall not dismiss this special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful. [2009 c 28 § 15; 2006 c 123 § 2; 1999 c 143 § 11; 1990 c 3 § 601. Formerly RCW 9.94A.127.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Effective date—2006 c 123:** See note following RCW 9.94A.533.

**Effective date—Application—1990 c 3 §§ 601-605:** "(1) Sections 601 through 605 of this act, for purposes of sentencing adult or juvenile offenders, shall take effect July 1, 1990, and shall apply to crimes or offenses committed on or after July 1, 1990.

(2) For purposes of defining a "sexually violent offense" pursuant to section 1002(4) of this act, sections 601 through 605 of this act shall take effect July 1, 1990, and shall apply to crimes committed on, before, or after July 1, 1990." [1990 c 3 § 606.]

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**9.94A.850 Sentencing guidelines commission—Established—Powers and duties.** (1) A sentencing guidelines commission is established as an agency of state government.

(2) The legislature finds that the commission, having accomplished its original statutory directive to implement this chapter, and having expertise in sentencing practice and policies, shall:

(a) Evaluate state sentencing policy, to include whether the sentencing ranges and standards are consistent with and further:

(i) The purposes of this chapter as defined in RCW 9.94A.010; and

(ii) The intent of the legislature to emphasize confinement for the violent offender and alternatives to confinement for the nonviolent offender.

The commission shall provide the governor and the legislature with its evaluation and recommendations under this subsection not later than December 1, 1996, and every two years thereafter;

(b) Recommend to the legislature revisions or modifications to the standard sentence ranges, state sentencing policy, prosecuting standards, and other standards. If implementation of the revisions or modifications would result in exceeding the capacity of correctional facilities, then the commission shall accompany its recommendation with an additional list of standard sentence ranges which are consistent with correction capacity;

(c) Study the existing criminal code and from time to time make recommendations to the legislature for modification;

(d)(i) Serve as a clearinghouse and information center for the collection, preparation, analysis, and dissemination of information on state and local adult and juvenile sentencing practices; (ii) develop and maintain a computerized adult and juvenile sentencing information system by individual superior court judge consisting of offender, offense, history, and sentence information entered from judgment and sentence forms for all adult felons; and (iii) conduct ongoing research regarding adult and juvenile sentencing guidelines, use of total confinement and alternatives to total confinement, plea bargaining, and other matters relating to the improvement of the adult criminal justice system and the juvenile justice system;

(e) Assume the powers and duties of the juvenile disposition standards commission after June 30, 1996;

(f) Evaluate the effectiveness of existing disposition standards and related statutes in implementing policies set forth in RCW 13.40.010 generally, specifically review the guidelines relating to the confinement of minor and first-time offenders as well as the use of diversion, and review the application of current and proposed juvenile sentencing standards and guidelines for potential adverse impacts on the sentencing outcomes of racial and ethnic minority youth;

(g) Solicit the comments and suggestions of the juvenile justice community concerning disposition standards, and make recommendations to the legislature regarding revisions or modifications of the standards. The evaluations shall be submitted to the legislature on December 1 of each odd-numbered year. The department of social and health services shall provide the commission with available data concerning the implementation of the disposition standards and related statutes and their effect on the performance of the department's responsibilities relating to juvenile offenders, and with recommendations for modification of the disposition

standards. The administrative office of the courts shall provide the commission with available data on diversion, including the use of youth court programs, and dispositions of juvenile offenders under chapter 13.40 RCW; and

(h) Not later than December 1, 1997, and at least every two years thereafter, based on available information, report to the governor and the legislature on:

(i) Racial disproportionality in juvenile and adult sentencing, and, if available, the impact that diversions, such as youth courts, have on racial disproportionality in juvenile prosecution, adjudication, and sentencing;

(ii) The capacity of state and local juvenile and adult facilities and resources; and

(iii) Recidivism information on adult and juvenile offenders.

(3) Each of the commission's recommended standard sentence ranges shall include one or more of the following: Total confinement, partial confinement, community supervision, community restitution, and a fine.

(4) The standard sentence ranges of total and partial confinement under this chapter, except as provided in RCW 9.94A.517, are subject to the following limitations:

(a) If the maximum term in the range is one year or less, the minimum term in the range shall be no less than one-third of the maximum term in the range, except that if the maximum term in the range is ninety days or less, the minimum term may be less than one-third of the maximum;

(b) If the maximum term in the range is greater than one year, the minimum term in the range shall be no less than seventy-five percent of the maximum term in the range, except that for murder in the second degree in seriousness level XIV under RCW 9.94A.510, the minimum term in the range shall be no less than fifty percent of the maximum term in the range; and

(c) The maximum term of confinement in a range may not exceed the statutory maximum for the crime as provided in RCW 9A.20.021.

(5) The commission shall exercise its duties under this section in conformity with chapter 34.05 RCW. [2009 c 375 § 8; 2009 c 28 § 17; 2005 c 282 § 19. Prior: 2002 c 290 § 22; 2002 c 237 § 16; 2002 c 175 § 16; 2000 c 28 § 41; prior: 1999 c 352 § 1; 1999 c 196 § 3; prior: 1997 c 365 § 2; 1997 c 338 § 3; 1996 c 232 § 1; 1995 c 269 § 303; 1994 c 87 § 1; 1986 c 257 § 18; 1982 c 192 § 2; 1981 c 137 § 4. Formerly RCW 9.94A.040.]

**Application—2009 c 375:** See note following RCW 9.94A.501.

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Effective date—2002 c 290 §§ 7-11 and 14-23:** See note following RCW 9.94A.515.

**Intent—2002 c 290:** See note following RCW 9.94A.517.

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Technical correction bill—2000 c 28:** See note following RCW 9.94A.015.

**Construction—Short title—1999 c 196:** See RCW 72.09.904 and 72.09.905.

**Severability—1999 c 196:** See note following RCW 9.94A.010.

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Effective dates—1996 c 232:** "(1) Sections 1 through 8 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 [March 28, 1996].

(2) Section 9 of this act takes effect July 1, 1996." [1996 c 232 § 12.]

**Effective date—1995 c 269:** "Sections 101, 201, 302, 303, 401, 402, 501 through 505, 601, 701, 801, 901, 1001, 1101, 1201 through 1203, 1301, 1302, 1401 through 1407, 1501, 1601, 1701, 1801, 1901, 1902, 2001, 2101, 2102, 2201 through 2204, 2301, 2302, 2401, 2501, 2601 through 2608, 2701, 2801 through 2804, 2901 through 2909, 3001, 3101, 3201, 3301, 3401, and 3501 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 269 § 3604.]

**Part headings not law—Severability—1995 c 269:** See notes following RCW 13.40.005.

**Severability—1986 c 257:** See note following RCW 9A.56.010.

**Effective date—1986 c 257 §§ 17-35:** See note following RCW 9.94A.030.

**9.94A.863 Monetary threshold amounts of property crimes—Review—Report.** The sentencing guidelines commission shall review the monetary threshold amounts differentiating the various degrees of property crimes in Washington state to determine whether such amounts should be modified. The sentencing guidelines commission shall report to the legislature with its recommendations by November 1, 2014, and every five years thereafter. [2009 c 431 § 2.]

**Applicability—2009 c 431:** "This act applies to crimes committed on or after September 1, 2009." [2009 c 431 § 20.]

**9.94A.885 Clemency and pardons board—Petitions for review—Hearing.** (1) The clemency and pardons board shall receive petitions from individuals, organizations, and the department for review and commutation of sentences and pardoning of offenders in extraordinary cases, and shall make recommendations thereon to the governor.

(2) The board shall receive petitions from individuals or organizations for the restoration of civil rights lost by operation of state law as a result of convictions for federal offenses or out-of-state felonies. The board may issue certificates of restoration limited to engaging in political office. Any certifications granted by the board must be filed with the secretary of state to be effective. In all other cases, the board shall make recommendations to the governor.

(3) The board shall not recommend that the governor grant clemency under subsection (1) of this section until a public hearing has been held on the petition. The prosecuting attorney of the county where the conviction was obtained shall be notified at least thirty days prior to the scheduled hearing that a petition has been filed and the date and place at which the hearing on the petition will be held. The board may waive the thirty-day notice requirement in cases where it determines that waiver is necessary to permit timely action on the petition. A copy of the petition shall be sent to the prosecuting attorney. The prosecuting attorney shall make reasonable efforts to notify victims, survivors of victims, witnesses, and the law enforcement agency or agencies that conducted the investigation, of the date and place of the hearing. Information regarding victims, survivors of victims, or witnesses receiving this notice are confidential and shall not be available to the offender. The board shall consider statements presented as set forth in RCW 7.69.032. This subsection is intended solely for the guidance of the board. Nothing

in this section is intended or may be relied upon to create a right or benefit, substantive or procedural, enforceable at law by any person. [2009 c 325 § 6; 2009 c 138 § 4; 1999 c 323 § 3; 1989 c 214 § 2; 1981 c 137 § 26. Formerly RCW 9.94A.260.]

**Reviser's note:** This section was amended by 2009 c 138 § 4 and by 2009 c 325 § 6, 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—1999 c 323:** "The pardoning power is vested in the governor under such regulations and restrictions as may be prescribed by law. To assist the governor in gathering the facts necessary to the wise exercise of this power, the legislature created the clemency and pardons board.

In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of crime, an intelligent recommendation on an application for clemency is dependent upon input from the victims and survivors of victims of crimes. It is the intent of the legislature to ensure that all victims and survivors of victims of crimes are afforded a meaningful role in the clemency process.

The impact of the crime on the community must also be assessed when passing upon an application for clemency. The prosecuting attorney who obtained the conviction and the law enforcement agency that conducted the investigation are uniquely situated to provide an accurate account of the offense and the impact felt by the community as a result of the offense. It is the intent of the legislature to ensure that the prosecuting attorney who obtained the conviction and the law enforcement agency that conducted the investigation are afforded a meaningful role in the clemency process." [1999 c 323 § 1.]

**Effective date—1981 c 137:** See RCW 9.94A.905.

**9.94A.926 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 21.]

## Chapter 9.94B RCW

### SENTENCING—CRIMES COMMITTED PRIOR TO JULY 1, 2000

#### Sections

9.94B.030	Postrelease supervision—Violations—Expenses.
9.94B.060	Community placement for specified offenders.
9.94B.070	Community custody for sex offenders.
9.94B.100	Legal financial obligations—Wage assignments—Sentences imposed before July 1, 1989.

**9.94B.030 Postrelease supervision—Violations—Expenses.** If the offender violates any condition of postrelease supervision, a hearing may be conducted in the same manner as provided in RCW 9.94B.040. Jurisdiction shall be with the court of the county in which the offender was sen-

tenced. However, the court may order a change of venue to the offender's county of residence or where the violation occurred, for the purpose of holding a violation hearing.

After the hearing, the court may order the offender to be confined for up to sixty days per violation in the county jail. Reimbursement to a city or county for the care of offenders who are detained solely for violating a condition of postrelease supervision shall be under RCW 70.48.440. A county shall be reimbursed for indigent defense costs for offenders who are detained solely for violating a condition of postrelease supervision in accordance with regulations to be promulgated by the office of financial management. An offender may be held in jail at state expense pending the hearing, and any time served while awaiting the hearing shall be credited against confinement imposed for a violation. The court shall retain jurisdiction for the purpose of holding the violation hearing and imposing a sanction. [2009 c 28 § 18; 1988 c 153 § 8. Formerly RCW 9.94A.628, 9.94A.175.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Effective date—Application of increased sanctions—1988 c 153:** See notes following RCW 9.94A.030.

**9.94B.060 Community placement for specified offenders.** Except for persons sentenced under RCW 9.94B.050(2) or 9.94B.070, when a court sentences a person to a term of total confinement to the custody of the department for a violent offense, any crime against persons under RCW 9.94A.411(2), or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under RCW 9.94A.660, committed on or after July 25, 1999, but before July 1, 2000, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release in accordance with \*RCW 9.94A.728 (1) and (2). When the court sentences the offender under this section to the statutory maximum period of confinement, then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with \*RCW 9.94A.728 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Except as provided in RCW 9.94A.501, the department shall supervise any sentence of community placement or community custody imposed under this section. [2009 c 28 § 19; 2003 c 379 § 5; 2000 c 28 § 23. Formerly RCW 9.94A.705.]

**\*Reviser's note:** RCW 9.94A.728 was amended by 2009 c 455 § 2, deleting subsections (1) and (2).

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Severability—Effective dates—2003 c 379:** See notes following RCW 9.94A.728.

**Technical correction bill—2000 c 28:** See note following RCW 9.94A.015.

**9.94B.070 Community custody for sex offenders.** (1) When a court sentences a person to the custody of the department for an offense categorized as a sex offense, including those sex offenses also included in other offense categories, committed on or after June 6, 1996, and before July 1, 2000, the court shall, in addition to other terms of the sentence, sen-

tence the offender to community custody for three years or up to the period of earned release awarded pursuant to RCW 9.94A.728, whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned release.

(2) Unless a condition is waived by the court, the terms of community custody imposed under this section shall be the same as those provided for in RCW 9.94B.050(4) and may include those provided for in RCW 9.94B.050(5). As part of any sentence that includes a term of community custody imposed under this section, the court shall also require the offender to comply with any conditions imposed by the department under RCW 9.94A.704.

(3) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040. [2009 c 28 § 20; 2000 c 28 § 24. Formerly RCW 9.94A.710.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Technical correction bill—2000 c 28:** See note following RCW 9.94A.015.

**9.94B.100 Legal financial obligations—Wage assignments—Sentences imposed before July 1, 1989.** For those individuals who, as a condition and term of their sentence imposed on or before July 1, 1989, have had financial obligations imposed, and who are not in compliance with the court order requiring payment of that legal financial obligation, no action shall be brought before the court from July 1, 1989, through and including December 31, 1989, to impose a penalty for their failure to pay. All individuals who, after December 31, 1989, have not taken the opportunity to bring their legal financial obligation current, shall be proceeded against pursuant to RCW 9.94B.040. [2009 c 28 § 14; 1989 c 252 § 18. Formerly RCW 9.94A.771, 9.94A.201.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Purpose—Prospective application—Effective dates—Severability—1989 c 252:** See notes following RCW 9.94A.030.

## Chapter 9.95 RCW

### INDETERMINATE SENTENCES

#### Sections

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**9.95.011 Minimum terms.** (1) When the court commits a convicted person to the department of corrections on or after July 1, 1986, for an offense committed before July 1, 1984, the court shall, at the time of sentencing or revocation of probation, fix the minimum term. The term so fixed shall not exceed the maximum sentence provided by law for the offense of which the person is convicted.

The court shall attempt to set the minimum term reasonably consistent with the purposes, standards, and sentencing ranges adopted under RCW 9.94A.850, but the court is subject to the same limitations as those placed on the board under RCW 9.92.090, 9.95.040 (1) through (4), 9.95.115, 9A.32.040, 9A.44.045, and chapter 69.50 RCW. The court's minimum term decision is subject to review to the same extent as a minimum term decision by the parole board before July 1, 1986.

Thereafter, the expiration of the minimum term set by the court minus any time credits earned under RCW 9.95.070 and 9.95.110 constitutes the parole eligibility review date, at which time the board may consider the convicted person for parole under RCW 9.95.100 and 9.95.110 and chapter 72.04A RCW. Nothing in this section affects the board's authority to reduce or increase the minimum term, once set by the court, under RCW 9.95.040, 9.95.052, 9.95.055, 9.95.070, 9.95.080, 9.95.100, 9.95.115, 9.95.125, or 9.95.047.

(2)(a) Except as provided in (b) of this subsection, not less than ninety days prior to the expiration of the minimum term of a person sentenced under RCW 9.94A.507, for a sex offense committed on or after September 1, 2001, less any time credits permitted by statute, the board shall review the person for conditional release to community custody as provided in RCW 9.95.420. If the board does not release the person, it shall set a new minimum term not to exceed an additional five years. The board shall review the person again not less than ninety days prior to the expiration of the new minimum term.

(b) If at the time a person sentenced under RCW 9.94A.507 for a sex offense committed on or after September 1, 2001, arrives at a department of corrections facility, the offender's minimum term has expired or will expire within one hundred twenty days of the offender's arrival, then no later than one hundred twenty days after the offender's arrival at a department of corrections facility, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall review the person for conditional release to community custody as provided in RCW 9.95.420. If the board does not release the person, it shall set a new minimum term not to exceed an additional five years. The board shall review the

person again not less than ninety days prior to the expiration of the new minimum term.

(c) In setting a new minimum term, the board may consider the length of time necessary for the offender to complete treatment and programming as well as other factors that relate to the offender's release under RCW 9.95.420. The board's rules shall permit an offender to petition for an earlier review if circumstances change or the board receives new information that would warrant an earlier review. [2009 c 28 § 21; 2007 c 363 § 1; 2002 c 174 § 2; 2001 2nd sp.s. c 12 § 320; 1993 c 144 § 3; 1986 c 224 § 7.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Effective date—2002 c 174:** See note following RCW 9.95.420.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Effective date—1993 c 144:** See note following RCW 9.95.045.

**Effective date—Severability—1986 c 224:** See notes following RCW 9.95.001.

**9.95.017 Criteria for confinement and parole.** (1) The board shall cause to be prepared criteria for duration of confinement, release on parole, and length of parole for persons committed to prison for crimes committed before July 1, 1984.

The proposed criteria should take into consideration RCW 9.95.009(2). Before submission to the governor, the board shall solicit comments and review on their proposed criteria for parole release.

(2) Persons committed to the department of corrections and who are under the authority of the board for crimes committed on or after September 1, 2001, are subject to the provisions for duration of confinement, release to community custody, and length of community custody established in RCW 9.94A.507, 9.94A.704, 72.09.335, and 9.95.420 through 9.95.440. [2009 c 28 § 22; 2008 c 231 § 40; 2003 c 218 § 2; 2001 2nd sp.s. c 12 § 321; 1986 c 224 § 11.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Application—Application of repealer—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Effective date—Severability—1986 c 224:** See notes following RCW 9.95.001.

**9.95.055 Reduction of sentences during war emergency.** The indeterminate sentence review board is hereby granted authority, in the event of a declaration by the governor that a war emergency exists, including a general mobilization, and for the duration thereof only, to reduce downward the minimum term, as set by the board, of any inmate under the jurisdiction of the board confined in a state correctional facility, who will be accepted by and inducted into the armed services: PROVIDED, That a reduction downward shall not be made under this section for those inmates who: (1) Are confined for (a) treason; (b) murder in the first degree; or (c) rape of a child in the first degree where the victim is under ten

years of age or an equivalent offense under prior law; (2) are being considered for civil commitment as a sexually violent predator under chapter 71.09 RCW; or (3) were sentenced under RCW 9.94A.507 for a crime committed on or after September 1, 2001. [2009 c 28 § 23; 2003 c 218 § 3; 2001 2nd sp.s. c 12 § 325; 1992 c 7 § 25; 1951 c 239 § 1.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**9.95.070 Reductions for good behavior.** (1) Every prisoner, convicted of a crime committed before July 1, 1984, who has a favorable record of conduct at a state correctional institution, and who performs in a faithful, diligent, industrious, orderly and peaceable manner the work, duties, and tasks assigned to him or her to the satisfaction of the superintendent of the institution, and in whose behalf the superintendent of the institution files a report certifying that his or her conduct and work have been meritorious and recommending allowance of time credits to him or her, shall upon, but not until, the adoption of such recommendation by the indeterminate sentence review board, be allowed time credit reductions from the term of imprisonment fixed by the board.

(2) Offenders sentenced under RCW 9.94A.507 for a crime committed on or after September 1, 2001, are subject to the earned release provisions for sex offenders established in RCW 9.94A.728. [2009 c 28 § 24; 2003 c 218 § 4; 2001 2nd sp.s. c 12 § 327; 1999 c 143 § 19; 1955 c 133 § 8. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. 1947 § 10249-2, part.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**9.95.090 Labor required.** (1) The board shall require of every able bodied offender confined in a state correctional institution for a crime committed before July 1, 1984, as many hours of faithful labor in each and every day during his or her term of imprisonment as shall be prescribed by the rules and regulations of the institution in which he or she is confined.

(2) Offenders sentenced under RCW 9.94A.507 for crimes committed on or after July 1, 2001, shall perform work or other programming as required by the department of corrections during their term of confinement. [2009 c 28 § 25; 2001 2nd sp.s. c 12 § 329; 1999 c 143 § 20; 1955 c 133 § 10. Prior: 1947 c 92 § 1, part; 1935 c 114 § 2, part; Rem. Supp. § 10249-2, part.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

*Labor by prisoners: Chapter 72.64 RCW.*

**9.95.110 Parole.** (1) The board may permit an offender convicted of a crime committed before July 1, 1984, to leave

the buildings and enclosures of a state correctional institution on parole, after such convicted person has served the period of confinement fixed for him or her by the board, less time credits for good behavior and diligence in work: PROVIDED, That in no case shall an inmate be credited with more than one-third of his or her sentence as fixed by the board.

The board may establish rules and regulations under which an offender may be allowed to leave the confines of a state correctional institution on parole, and may return such person to the confines of the institution from which he or she was paroled, at its discretion.

(2) The board may permit an offender convicted of a crime committed on or after September 1, 2001, and sentenced under RCW 9.94A.507, to leave a state correctional institution on community custody according to the provisions of RCW 9.94A.507, 9.94A.704, 72.09.335, and 9.95.420 through 9.95.440. The person may be returned to the institution following a violation of his or her conditions of release to community custody pursuant to the hearing provisions of RCW 9.95.435. [2009 c 28 § 26; 2008 c 231 § 42; 2003 c 218 § 7; 2001 2nd sp.s. c 12 § 331; 1999 c 143 § 21; 1955 c 133 § 12. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**9.95.121 On-site revocation hearing—Procedure when waived.** (1) For offenders convicted of crimes committed before July 1, 1984, within fifteen days from the date of notice to the department of corrections of the arrest and detention of the alleged parole violator, he or she shall be personally served by a state community corrections officer with a copy of the factual allegations of the violation of the conditions of parole, and, at the same time shall be advised of his or her right to an on-site parole revocation hearing and of his or her rights and privileges as provided in RCW 9.95.120 through 9.95.126. The alleged parole violator, after service of the allegations of violations of the conditions of parole and the advice of rights may waive the on-site parole revocation hearing as provided in RCW 9.95.120, and admit one or more of the alleged violations of the conditions of parole. If the board accepts the waiver it shall either, (a) reinstate the parolee on parole under the same or modified conditions, or (b) revoke the parole of the parolee and enter an order of parole revocation and return to state custody. A determination of a new minimum sentence shall be made within thirty days of return to state custody which shall not exceed the maximum sentence as provided by law for the crime of which the parolee was originally convicted or the maximum fixed by the court.

If the waiver made by the parolee is rejected by the board it shall hold an on-site parole revocation hearing under the provisions of RCW 9.95.120 through 9.95.126.

(2) Offenders sentenced under RCW 9.94A.507 are subject to the violation hearing process established in RCW 9.95.435. [2009 c 28 § 27; 2001 2nd sp.s. c 12 § 334; 1981 c 136 § 38; 1979 c 141 § 3; 1969 c 98 § 3.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Effective date—1981 c 136:** See RCW 72.09.900.

**Severability—Effective date—1969 c 98:** See notes following RCW 9.95.120.

**9.95.122 On-site revocation hearing—Representation for alleged violators—Compensation.** (1) At any on-site parole revocation hearing for a person convicted of a crime committed before July 1, 1984, the alleged parole violator shall be entitled to be represented by an attorney of his or her own choosing and at his or her own expense, except, upon the presentation of satisfactory evidence of indigency and the request for the appointment of an attorney by the alleged parole violator, the board may cause the appointment of an attorney to represent the alleged parole violator to be paid for at state expense, and, in addition, the board may assume all or such other expenses in the presentation of evidence on behalf of the alleged parole violator as it may have authorized: PROVIDED, That funds are available for the payment of attorneys' fees and expenses. Attorneys for the representation of alleged parole violators in on-site hearings shall be appointed by the superior courts for the counties wherein the on-site parole revocation hearing is to be held and such attorneys shall be compensated in such manner and in such amount as shall be fixed in a schedule of fees adopted by rule of the board.

(2) The rights of offenders sentenced under RCW 9.94A.507 are defined in RCW 9.95.435. [2009 c 28 § 28; 2001 2nd sp.s. c 12 § 335; 1999 c 143 § 23; 1969 c 98 § 4.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Severability—Effective date—1969 c 98:** See notes following RCW 9.95.120.

**9.95.140 Record of parolees—Privacy—Release of sex offender information—Immunity from liability—Cooperation by officials and employees.** (1) The board shall cause a complete record to be kept of every prisoner under the jurisdiction of the board released on parole or community custody. Such records shall be organized in accordance with the most modern methods of filing and indexing so that there will be always immediately available complete information about each such prisoner. Subject to information sharing provisions related to mentally ill offenders, the end of sentence review committee, and the department of corrections, the board may make rules as to the privacy of such records and their use by others than the board and its staff. Sex offenders convicted of crimes committed before July 1, 1984, who are under the board's jurisdiction shall be subject to the determinations of the end of sentence review commit-

tee regarding risk level and subject to sex offender registration and community notification. The board shall be immune from liability for the release of information concerning sex offenders as provided in RCW 4.24.550.

The superintendents of state correctional facilities and all officers and employees thereof and all other public officials shall at all times cooperate with the board and furnish to the board, its officers, and employees such information as may be necessary to enable it to perform its functions, and such superintendents and other employees shall at all times give the members of the board, its officers, and employees free access to all prisoners confined in the state correctional facilities.

(2) Offenders sentenced under RCW 9.94A.507 shall be subject to the determinations of the end of sentence review committee regarding risk level and subject to sex offender registration and community notification.

(3) The end of sentence review committee shall make law enforcement notifications for offenders under board jurisdiction on the same basis that it notifies law enforcement regarding offenders sentenced under chapter 9.94A RCW for crimes committed after July 1, 1984. [2009 c 28 § 29; 2001 2nd sp.s. c 12 § 341; 1992 c 7 § 27; 1990 c 3 § 126; 1955 c 133 § 15. Prior: 1939 c 142 § 1, part; 1935 c 114 § 4, part; RRS § 10249-4, part.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

*Washington state patrol identification and criminal history section: RCW 43.43.700 through 43.43.765.*

**9.95.206 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**9.95.212 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**9.95.220 Violation of probation—Rearrest—Imprisonment.** (1) Except as provided in subsection (2) of this section, whenever the state parole officer or other officer under whose supervision the probationer has been placed shall have reason to believe such probationer is violating the terms of his or her probation, or engaging in criminal practices, or is abandoned to improper associates, or living a vicious life, he or she shall cause the probationer to be brought before the court wherein the probation was granted. For this purpose any peace officer or state parole officer may rearrest any such person without warrant or other process. The court may thereupon in its discretion without notice revoke and terminate such probation. In the event the judgment has been pronounced by the court and the execution thereof suspended, the court may revoke such suspension, whereupon the judgment shall be in full force and effect, and the defendant shall be delivered to the sheriff to be transported to the penitentiary or reformatory as the case may be. If the judgment has not been pronounced, the court shall pronounce judgment after such revocation of probation and the defendant shall be deliv-

ered to the sheriff to be transported to the penitentiary or reformatory, in accordance with the sentence imposed.

(2) If a probationer is being supervised by the department of corrections pursuant to RCW 9.95.204, the department shall have authority to issue a warrant for the arrest of an offender who violates a condition of community custody, as provided in RCW 9.94A.716. Any sanctions shall be imposed by the department pursuant to RCW 9.94A.737. The department shall provide a copy of the violation hearing report to the sentencing court in a timely manner. Nothing in this subsection is intended to limit the power of the sentencing court to respond to a probationer's violation of conditions. [2009 c 375 § 11; 1957 c 227 § 5. Prior: 1939 c 125 § 1, part; RRS § 10249-5c.]

**Application—2009 c 375:** See note following RCW 9.94A.501.

**Severability—1939 c 125:** See note following RCW 9.95.200.

**9.95.420 Sex offenders—End of sentence review—Victim input.** (1)(a) Except as provided in (c) of this subsection, before the expiration of the minimum term, as part of the end of sentence review process under RCW 72.09.340, 72.09.345, and where appropriate, 72.09.370, the department shall conduct, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(b) The board may contract for an additional, independent examination, subject to the standards in this section.

(c) If at the time the sentence is imposed by the superior court the offender's minimum term has expired or will expire within one hundred twenty days of the sentencing hearing, the department shall conduct, within ninety days of the offender's arrival at a department of corrections facility, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(2) The board shall impose the conditions and instructions provided for in RCW 9.94A.704. The board shall consider the department's recommendations and may impose conditions in addition to those recommended by the department. The board may impose or modify conditions of community custody following notice to the offender.

(3)(a) Except as provided in (b) of this subsection, no later than ninety days before expiration of the minimum term, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not

that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(b) If at the time the offender's minimum term has expired or will expire within one hundred twenty days of the offender's arrival at a department of correction's facility, then no later than one hundred twenty days after the offender's arrival at a department of corrections facility, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(4) In a hearing conducted under subsection (3) of this section, the board shall provide opportunities for the victims of any crimes for which the offender has been convicted to present statements as set forth in RCW 7.69.032. The procedures for victim input shall be developed by rule. To facilitate victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record are forwarded as part of the judgment and sentence. [2009 c 138 § 3; (2009 c 138 § 2 expired August 1, 2009); 2008 c 231 § 44; 2007 c 363 § 2; 2006 c 313 § 2; 2002 c 174 § 1; 2001 2nd sp.s. c 12 § 306.]

**Effective date—2009 c 138 § 3:** "Section 3 of this act takes effect August 1, 2009." [2009 c 138 § 7.]

**Expiration date—2009 c 138 § 2:** "Section 2 of this act expires August 1, 2009." [2009 c 138 § 6.]

**Intent—Application—Application of repealers—Effective date—2008 c 231:** See notes following RCW 9.94A.701.

**Severability—2008 c 231:** See note following RCW 9.94A.500.

**Effective date—2002 c 174:** "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 27, 2002]." [2002 c 174 § 3.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**9.95.425 Sex offenders—Postrelease violations.** (1) Whenever the board or a community corrections officer of this state has reason to believe an offender released under RCW 9.95.420 has violated a condition of community custody or the laws of this state, any community corrections officer may arrest or cause the arrest and detention of the offender pending a determination by the board whether sanctions should be imposed or the offender's community custody should be revoked. The community corrections officer shall report all facts and circumstances surrounding the alleged violation to the board, with recommendations.



(2) If the board or the department causes the arrest or detention of an offender for a violation that does not amount to a new crime and the offender is arrested or detained by local law enforcement or in a local jail, the board or department, whichever caused the arrest or detention, shall be financially responsible for local costs. Jail bed costs shall be allocated at the rate established under RCW 9.94A.740. [2009 c 28 § 30; 2001 2nd sp.s. c 12 § 307.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**9.95.900 Application of certain laws to felonies committed before, on, or after certain dates.** (1) Except as provided in subsection (2) of this section, the following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW 9.95.010, 9.95.011, 9.95.013, 9.95.015, 9.95.017, 9.95.040, 9.95.045, 9.95.047, 9.95.052, 9.95.080, 9.95.100, 9.95.115, 9.95.116, 9.95.120, 9.95.124, 9.95.125, 9.95.130, 9.95.190, 9.95.200, 9.95.204, \*9.95.206, 9.95.210, \*9.95.212, 9.95.214, 9.95.220, 9.95.230, 9.95.240, 9.95.250, 9.95.260, 9.95.265, 9.95.280, 9.95.290, 9.95.310, 9.95.320, 9.95.330, 9.95.340, 9.95.350, 9.95.360, 9.95.370, 72.04A.070, and 72.04A.080.

(2) The following sections apply to any felony offense committed before July 1, 1984, and to any offense sentenced under RCW 9.94A.507 and committed on or after July 1, 2001: RCW 9.95.003, 9.95.005, 9.95.007, 9.95.020, 9.95.030, 9.95.031, 9.95.032, 9.95.055, 9.95.060, 9.95.062, 9.95.063, 9.95.064, 9.95.070, 9.95.090, 9.95.110, 9.95.121, 9.95.122, 9.95.123, 9.95.126, 9.95.140, 9.95.150, 9.95.160, 9.95.170, 9.95.300, and 9.96.050. [2009 c 28 § 31; 2001 2nd sp.s. c 12 § 353; 1981 c 137 § 32.]

\***Reviser's note:** RCW 9.95.206 and 9.95.212 were repealed by 2009 c 375 § 16.

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Severability—1981 c 137:** See RCW 9.94A.910.

## Chapter 9.96 RCW

### RESTORATION OF CIVIL RIGHTS

#### Sections

9.96.050 Final discharge of parolee—Restoration of civil rights—Governor's pardoning power not affected.

**9.96.050 Final discharge of parolee—Restoration of civil rights—Governor's pardoning power not affected.** (1)(a) When an offender on parole has performed all obligations of his or her release, including any and all legal financial obligations, for such time as shall satisfy the indeterminate sentence review board that his or her final release is not incompatible with the best interests of society and the welfare of the paroled individual, the board may make a final order of discharge and issue a certificate of discharge to the offender.

(b) The board retains the jurisdiction to issue a certificate of discharge after the expiration of the offender's or parolee's maximum statutory sentence. If not earlier granted and any and all legal financial obligations have been paid, the board shall issue a final order of discharge three years from the date of parole unless the parolee is on suspended or revoked status at the expiration of the three years.

(c) The discharge, regardless of when issued, shall have the effect of restoring all civil rights not already restored by RCW 29A.08.520, and the certification of discharge shall so state.

(d) This restoration of civil rights shall not restore the right to receive, possess, own, or transport firearms.

(e) The board shall issue a certificate of discharge to the offender in person or by mail to the offender's last known address.

(2) The board shall send to the department of corrections a copy of every signed certificate of discharge for offender sentences under the authority of the department of corrections.

(3) The discharge provided for in this section shall be considered as a part of the sentence of the convicted person and shall not in any manner be construed as affecting the powers of the governor to pardon any such person. [2009 c 325 § 4. Prior: 2007 c 363 § 4; 2007 c 171 § 2; 2002 c 16 § 3; 1993 c 140 § 4; 1980 c 75 § 1; 1961 c 187 § 1.]

**Intent—2002 c 16:** See note following RCW 9.94A.637.

## Chapter 9.96A RCW

### RESTORATION OF EMPLOYMENT RIGHTS

#### Sections

9.96A.020 Employment, occupational licensing by public entity—Prior felony conviction no disqualification—Exceptions.

**9.96A.020 Employment, occupational licensing by public entity—Prior felony conviction no disqualification—Exceptions.** (1) Subject to the exceptions in subsections (3) through (5) of this section, and unless there is another provision of law to the contrary, a person is not disqualified from employment by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, nor is a person disqualified to practice, pursue or engage in any occupation, trade, vocation, or business for which a license, permit, certificate or registration is required to be issued by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations solely because of a prior conviction of a felony. However, this section does not preclude the fact of any prior conviction of a crime from being considered.

(2) A person may be denied employment by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, or business by reason of the prior conviction of a felony if the felony for which he or she was convicted directly relates to the position of employment sought or to the specific occupation, trade, vocation, or business for which the license, per-

mit, certificate or registration is sought, and the time elapsed since the conviction is less than ten years. However, for positions in the county treasurer's office, a person may be disqualified from employment because of a prior guilty plea or conviction of a felony involving embezzlement or theft, even if the time elapsed since the guilty plea or conviction is ten years or more.

(3) A person is disqualified for any certificate required or authorized under chapters 28A.405 or 28A.410 RCW, because of a prior guilty plea or the conviction of a felony crime specified under RCW 28A.400.322, even if the time elapsed since the guilty plea or conviction is ten years or more.

(4) A person is disqualified from employment by school districts, educational service districts, and their contractors hiring employees who will have regularly scheduled unsupervised access to children, because of a prior guilty plea or conviction of a felony crime specified under RCW 28A.400.322, even if the time elapsed since the guilty plea or conviction is ten years or more.

(5) The provisions of this chapter do not apply to issuance of licenses or credentials for professions regulated under chapter 18.130 RCW.

(6) Subsections (3) and (4) of this section as they pertain to felony crimes specified under RCW 28A.400.322(1) apply to a person applying for a certificate or for employment on or after July 25, 1993, and before July 26, 2009. Subsections (3) and (4) of this section as they pertain to all felony crimes specified under RCW 28A.400.322(2) apply to a person applying for a certificate or for employment on or after July 26, 2009. Subsection (5) of this section only applies to a person applying for a license or credential on or after June 12, 2008. [2009 c 396 § 7; 2008 c 134 § 26; 1999 c 16 § 1; 1993 c 71 § 1; 1973 c 135 § 2.]

**Finding—Intent—Severability—2008 c 134:** See notes following RCW 18.130.020.

**Intent—1993 c 71:** "The legislature reaffirms its singular intent that this act shall not affect the duties imposed or powers conferred on the office of the superintendent of public instruction by RCW 28A.410.090." [1993 c 71 § 2.]

## Title 9A

### WASHINGTON CRIMINAL CODE

#### Chapters

- 9A.04 Preliminary article.**
- 9A.08 Principles of liability.**
- 9A.16 Defenses.**
- 9A.36 Assault—Physical harm.**
- 9A.40 Kidnapping, unlawful imprisonment, and custodial interference.**
- 9A.44 Sex offenses.**
- 9A.48 Arson, reckless burning, and malicious mischief.**
- 9A.56 Theft and robbery.**
- 9A.76 Obstructing governmental operation.**
- 9A.82 Criminal profiteering act.**
- 9A.88 Indecent exposure—Prostitution.**

## Chapter 9A.04 RCW PRELIMINARY ARTICLE

#### Sections

9A.04.080 Limitation of actions.

**9A.04.080 Limitation of actions.** (1) Prosecutions for criminal offenses shall not be commenced after the periods prescribed in this section.

(a) The following offenses may be prosecuted at any time after their commission:

- (i) Murder;
- (ii) Homicide by abuse;
- (iii) Arson if a death results;
- (iv) Vehicular homicide;
- (v) Vehicular assault if a death results;
- (vi) Hit-and-run injury-accident if a death results (RCW 46.52.020(4)).

(b) The following offenses shall not be prosecuted more than ten years after their commission:

(i) Any felony committed by a public officer if the commission is in connection with the duties of his or her office or constitutes a breach of his or her public duty or a violation of the oath of office;

(ii) Arson if no death results; or

(iii)(A) Violations of RCW 9A.44.040 or 9A.44.050 if the rape is reported to a law enforcement agency within one year of its commission; except that if the victim is under fourteen years of age when the rape is committed and the rape is reported to a law enforcement agency within one year of its commission, the violation may be prosecuted up to the victim's twenty-eighth birthday.

(B) If a violation of RCW 9A.44.040 or 9A.44.050 is not reported within one year, the rape may not be prosecuted: (I) More than three years after its commission if the violation was committed against a victim fourteen years of age or older; or (II) more than three years after the victim's eighteenth birthday or more than seven years after the rape's commission, whichever is later, if the violation was committed against a victim under fourteen years of age.

(c) Violations of the following statutes may be prosecuted up to the victim's twenty-eighth birthday: RCW 9A.44.073, 9A.44.076, 9A.44.083, 9A.44.086, \*9A.44.070, 9A.44.080, 9A.44.100(1)(b), 9A.44.079, 9A.44.089, or 9A.64.020.

(d) The following offenses shall not be prosecuted more than six years after their commission or their discovery, whichever occurs later:

(i) Violations of RCW 9A.82.060 or 9A.82.080;

(ii) Any felony violation of chapter 9A.83 RCW;

(iii) Any felony violation of chapter 9.35 RCW; or

(iv) Theft in the first or second degree under chapter 9A.56 RCW when accomplished by color or aid of deception.

(e) The following offenses shall not be prosecuted more than five years after their commission: Any class C felony under chapter 74.09, 82.36, or 82.38 RCW.

(f) Bigamy shall not be prosecuted more than three years after the time specified in RCW 9A.64.010.

(g) A violation of RCW 9A.56.030 must not be prosecuted more than three years after the discovery of the offense

when the victim is a tax exempt corporation under 26 U.S.C. Sec. 501(c)(3).

(h) No other felony may be prosecuted more than three years after its commission; except that in a prosecution under RCW 9A.44.115, if the person who was viewed, photographed, or filmed did not realize at the time that he or she was being viewed, photographed, or filmed, the prosecution must be commenced within two years of the time the person who was viewed or in the photograph or film first learns that he or she was viewed, photographed, or filmed.

(i) No gross misdemeanor may be prosecuted more than two years after its commission.

(j) No misdemeanor may be prosecuted more than one year after its commission.

(2) The periods of limitation prescribed in subsection (1) of this section do not run during any time when the person charged is not usually and publicly resident within this state.

(3) In any prosecution for a sex offense as defined in RCW 9.94A.030, the periods of limitation prescribed in subsection (1) of this section run from the date of commission or one year from the date on which the identity of the suspect is conclusively established by deoxyribonucleic acid testing, whichever is later.

(4) If, before the end of a period of limitation prescribed in subsection (1) of this section, an indictment has been found or a complaint or an information has been filed, and the indictment, complaint, or information is set aside, then the period of limitation is extended by a period equal to the length of time from the finding or filing to the setting aside. [2009 c 61 § 1; 2009 c 53 § 1; 2006 c 132 § 1; 1998 c 221 § 2. Prior: 1997 c 174 § 1; 1997 c 97 § 1; prior: 1995 c 287 § 5; 1995 c 17 § 1; 1993 c 214 § 1; 1989 c 317 § 3; 1988 c 145 § 14; prior: 1986 c 257 § 13; 1986 c 85 § 1; prior: 1985 c 455 § 19; 1985 c 186 § 1; 1984 c 270 § 18; 1982 c 129 § 1; 1981 c 203 § 1; 1975 1st ex.s. c 260 § 9A.04.080.]

**Reviser's note:** \*(1) RCW 9A.44.070 and 9A.44.080 were repealed by 1988 c 145 § 24.

(2) This section was amended by 2009 c 53 § 1 and by 2009 c 61 § 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).

**Intent—1989 c 317:** See note following RCW 4.16.340.

**Effective date—Savings—Application—1988 c 145:** See notes following RCW 9A.44.010.

**Severability—1986 c 257:** See note following RCW 9A.56.010.

**Effective date—Severability—1985 c 455:** See RCW 9A.82.902 and 9A.82.904.

**Severability—Effective date—1984 c 270:** See RCW 9A.82.900 and 9A.82.901.

**Severability—1982 c 129:** "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 129 § 11.]

## Chapter 9A.08 RCW PRINCIPLES OF LIABILITY

### Sections

9A.08.010 General requirements of culpability.

**9A.08.010 General requirements of culpability.** (1) Kinds of Culpability Defined.

(a) **INTENT.** A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime.

(b) **KNOWLEDGE.** A person knows or acts knowingly or with knowledge when:

(i) he or she is aware of a fact, facts, or circumstances or result described by a statute defining an offense; or

(ii) he or she has information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.

(c) **RECKLESSNESS.** A person is reckless or acts recklessly when he or she knows of and disregards a substantial risk that a wrongful act may occur and his or her disregard of such substantial risk is a gross deviation from conduct that a reasonable person would exercise in the same situation.

(d) **CRIMINAL NEGLIGENCE.** A person is criminally negligent or acts with criminal negligence when he or she fails to be aware of a substantial risk that a wrongful act may occur and his or her failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.

(2) **Substitutes for Criminal Negligence, Recklessness, and Knowledge.** When a statute provides that criminal negligence suffices to establish an element of an offense, such element also is established if a person acts intentionally, knowingly, or recklessly. When recklessness suffices to establish an element, such element also is established if a person acts intentionally or knowingly. When acting knowingly suffices to establish an element, such element also is established if a person acts intentionally.

(3) **Culpability as Determinant of Grade of Offense.** When the grade or degree of an offense depends on whether the offense is committed intentionally, knowingly, recklessly, or with criminal negligence, its grade or degree shall be the lowest for which the determinative kind of culpability is established with respect to any material element of the offense.

(4) **Requirement of Wilfulness Satisfied by Acting Knowingly.** A requirement that an offense be committed wilfully is satisfied if a person acts knowingly with respect to the material elements of the offense, unless a purpose to impose further requirements plainly appears. [2009 c 549 § 1002; 1975 1st ex.s. c 260 § 9A.08.010.]

## Chapter 9A.16 RCW DEFENSES

### Sections

9A.16.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**9A.16.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partner-

ships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 22.]

### Chapter 9A.36 RCW

#### ASSAULT—PHYSICAL HARM

##### Sections

9A.36.080 Malicious harassment—Definition and criminal penalty.

**9A.36.080 Malicious harassment—Definition and criminal penalty.** (1) A person is guilty of malicious harassment if he or she maliciously and intentionally commits one of the following acts because of his or her perception of the victim's race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap:

(a) Causes physical injury to the victim or another person;

(b) Causes physical damage to or destruction of the property of the victim or another person; or

(c) Threatens a specific person or group of persons and places that person, or members of the specific group of persons, in reasonable fear of harm to person or property. The fear must be a fear that a reasonable person would have under all the circumstances. For purposes of this section, a "reasonable person" is a reasonable person who is a member of the victim's race, color, religion, ancestry, national origin, gender, or sexual orientation, or who has the same mental, physical, or sensory handicap as the victim. Words alone do not constitute malicious harassment unless the context or circumstances surrounding the words indicate the words are a threat. Threatening words do not constitute malicious harassment if it is apparent to the victim that the person does not have the ability to carry out the threat.

(2) In any prosecution for malicious harassment, unless evidence exists which explains to the trier of fact's satisfaction that the person did not intend to threaten the victim or victims, the trier of fact may infer that the person intended to threaten a specific victim or group of victims because of the person's perception of the victim's or victims' race, color, religion, ancestry, national origin, gender, sexual orientation, or mental, physical, or sensory handicap if the person commits one of the following acts:

(a) Burns a cross on property of a victim who is or whom the actor perceives to be of African American heritage; or

(b) Defaces property of a victim who is or whom the actor perceives to be of Jewish heritage by defacing the property with a swastika.

This subsection only applies to the creation of a reasonable inference for evidentiary purposes. This subsection does not restrict the state's ability to prosecute a person under sub-

section (1) of this section when the facts of a particular case do not fall within (a) or (b) of this subsection.

(3) It is not a defense that the accused was mistaken that the victim was a member of a certain race, color, religion, ancestry, national origin, gender, or sexual orientation, or had a mental, physical, or sensory handicap.

(4) Evidence of expressions or associations of the accused may not be introduced as substantive evidence at trial unless the evidence specifically relates to the crime charged. Nothing in this chapter shall affect the rules of evidence governing impeachment of a witness.

(5) Every person who commits another crime during the commission of a crime under this section may be punished and prosecuted for the other crime separately.

(6) "Sexual orientation" for the purposes of this section has the same meaning as in RCW 49.60.040.

(7) Malicious harassment is a class C felony.

(8) The penalties provided in this section for malicious harassment do not preclude the victims from seeking any other remedies otherwise available under law.

(9) Nothing in this section confers or expands any civil rights or protections to any group or class identified under this section, beyond those rights or protections that exist under the federal or state Constitution or the civil laws of the state of Washington. [2009 c 180 § 1; 1993 c 127 § 2; 1989 c 95 § 1; 1984 c 268 § 1; 1981 c 267 § 1.]

**Severability—1993 c 127:** See note following RCW 9A.36.078.

**Construction—1989 c 95:** "The provisions of this act shall be liberally construed in order to effectuate its purpose." [1989 c 95 § 3.]

**Severability—1989 c 95:** "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 95 § 4.]

*Harassment: Chapters 9A.46 and 10.14 RCW.*

### Chapter 9A.40 RCW

#### KIDNAPPING, UNLAWFUL IMPRISONMENT, AND CUSTODIAL INTERFERENCE

##### Sections

9A.40.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**9A.40.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and

applicable to individuals in state registered domestic partnerships. [2009 c 521 § 23.]

## Chapter 9A.44 RCW SEX OFFENSES

### Sections

9A.44.093	Sexual misconduct with a minor in the first degree.
9A.44.096	Sexual misconduct with a minor in the second degree.
9A.44.145	Notification to offenders of changed requirements and ability to petition for relief from registration.
9A.44.904	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )

**9A.44.093 Sexual misconduct with a minor in the first degree.** (1) A person is guilty of sexual misconduct with a minor in the first degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual intercourse with the victim; (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with an enrolled student of the school who is at least sixteen years old and not more than twenty-one years old and not married to the employee, if the employee is at least sixty months older than the student; or (c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual intercourse with his or her foster child who is at least sixteen.

(2) Sexual misconduct with a minor in the first degree is a class C felony.

(3) For the purposes of this section:

(a) "Enrolled student" means any student enrolled at or attending a program hosted or sponsored by a common school as defined in RCW 28A.150.020, or a student enrolled at or attending a program hosted or sponsored by a private school under chapter 28A.195 RCW, or any person who receives home-based instruction under chapter 28A.200 RCW.

(b) "School employee" means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school. [2009 c 324 § 1; 2005 c 262 § 2; 2001 2nd sp.s. c 12 § 357; 1994 c 271 § 306; 1988 c 145 § 8.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Intent—1994 c 271:** See note following RCW 9A.44.010.

**Purpose—Severability—1994 c 271:** See notes following RCW 9A.28.020.

**Effective date—Savings—Application—1988 c 145:** See notes following RCW 9A.44.010.

**9A.44.096 Sexual misconduct with a minor in the second degree.** (1) A person is guilty of sexual misconduct with a minor in the second degree when: (a) The person has, or knowingly causes another person under the age of eighteen to have, sexual contact with another person who is at least sixteen years old but less than eighteen years old and not married to the perpetrator, if the perpetrator is at least sixty months older than the victim, is in a significant relationship to the victim, and abuses a supervisory position within that relationship in order to engage in or cause another person under the age of eighteen to engage in sexual contact with the victim; (b) the person is a school employee who has, or knowingly causes another person under the age of eighteen to have, sexual contact with an enrolled student of the school who is at least sixteen years old and not more than twenty-one years old and not married to the employee, if the employee is at least sixty months older than the student; or (c) the person is a foster parent who has, or knowingly causes another person under the age of eighteen to have, sexual contact with his or her foster child who is at least sixteen.

(2) Sexual misconduct with a minor in the second degree is a gross misdemeanor.

(3) For the purposes of this section:

(a) "Enrolled student" means any student enrolled at or attending a program hosted or sponsored by a common school as defined in RCW 28A.150.020, or a student enrolled at or attending a program hosted or sponsored by a private school under chapter 28A.195 RCW, or any person who receives home-based instruction under chapter 28A.200 RCW.

(b) "School employee" means an employee of a common school defined in RCW 28A.150.020, or a grade kindergarten through twelve employee of a private school under chapter 28A.195 RCW, who is not enrolled as a student of the common school or private school. [2009 c 324 § 2; 2005 c 262 § 3; 2001 2nd sp.s. c 12 § 358; 1994 c 271 § 307; 1988 c 145 § 9.]

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Intent—1994 c 271:** See note following RCW 9A.44.010.

**Purpose—Severability—1994 c 271:** See notes following RCW 9A.28.020.

**Effective date—Savings—Application—1988 c 145:** See notes following RCW 9A.44.010.

**9A.44.145 Notification to offenders of changed requirements and ability to petition for relief from registration.** (1) The state patrol shall notify:

(a) Registered sex and kidnapping offenders of any change to the registration requirements; and

(b) No less than annually, an offender having a duty to register under RCW 9A.44.130 for a sex offense or kidnapping offense committed when the offender was a juvenile of their ability to petition for relief from registration as provided in RCW 9A.44.140.

(2) For economic efficiency, the state patrol may combine the notices in this section into one notice. [2009 c 210 § 1; 1998 c 139 § 2.]

**9A.44.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 24.]

### Chapter 9A.48 RCW

## ARSON, RECKLESS BURNING, AND MALICIOUS MISCHIEF

#### Sections

- 9A.48.070 Malicious mischief in the first degree.  
 9A.48.080 Malicious mischief in the second degree.  
 9A.48.090 Malicious mischief in the third degree.

**9A.48.070 Malicious mischief in the first degree.** (1) A person is guilty of malicious mischief in the first degree if he or she knowingly and maliciously:

- (a) Causes physical damage to the property of another in an amount exceeding five thousand dollars;  
 (b) Causes an interruption or impairment of service rendered to the public by physically damaging or tampering with an emergency vehicle or property of the state, a political subdivision thereof, or a public utility or mode of public transportation, power, or communication; or  
 (c) Causes an impairment of the safety, efficiency, or operation of an aircraft by physically damaging or tampering with the aircraft or aircraft equipment, fuel, lubricant, or parts.

(2) Malicious mischief in the first degree is a class B felony. [2009 c 431 § 4; 1983 1st ex.s. c 4 § 1; 1975 1st ex.s. c 260 § 9A.48.070.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

**Severability—1983 1st ex.s. c 4:** "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 1st ex.s. c 4 § 6.]

*Property crime database, liability:* RCW 4.24.340.

**9A.48.080 Malicious mischief in the second degree.** (1) A person is guilty of malicious mischief in the second degree if he or she knowingly and maliciously:

- (a) Causes physical damage to the property of another in an amount exceeding seven hundred fifty dollars; or  
 (b) Creates a substantial risk of interruption or impairment of service rendered to the public, by physically damaging or tampering with an emergency vehicle or property of

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the state, a political subdivision thereof, or a public utility or mode of public transportation, power, or communication.

(2) Malicious mischief in the second degree is a class C felony. [2009 c 431 § 5; 1994 c 261 § 17; 1979 c 145 § 2; 1975 1st ex.s. c 260 § 9A.48.080.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

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

*Action by owner of stolen livestock:* RCW 4.24.320.

*Property crime database, liability:* RCW 4.24.340.

**9A.48.090 Malicious mischief in the third degree.** (1) A person is guilty of malicious mischief in the third degree if he or she:

(a) Knowingly and maliciously causes physical damage to the property of another, under circumstances not amounting to malicious mischief in the first or second degree; or

(b) Writes, paints, or draws any inscription, figure, or mark of any type on any public or private building or other structure or any real or personal property owned by any other person unless the person has obtained the express permission of the owner or operator of the property, under circumstances not amounting to malicious mischief in the first or second degree.

(2) Malicious mischief in the third degree is a gross misdemeanor. [2009 c 431 § 6; 2003 c 53 § 71; 1996 c 35 § 1; 1975 1st ex.s. c 260 § 9A.48.090.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

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

*Property crime database, liability:* RCW 4.24.340.

### Chapter 9A.56 RCW

## THEFT AND ROBBERY

#### Sections

- 9A.56.030 Theft in the first degree—Other than firearm or motor vehicle.  
 9A.56.040 Theft in the second degree—Other than firearm or motor vehicle.  
 9A.56.050 Theft in the third degree.  
 9A.56.060 Unlawful issuance of checks or drafts.  
 9A.56.096 Theft of rental, leased, lease-purchased, or loaned property.  
 9A.56.150 Possessing stolen property in the first degree—Other than firearm or motor vehicle.  
 9A.56.160 Possessing stolen property in the second degree—Other than firearm or motor vehicle.  
 9A.56.170 Possessing stolen property in the third degree.  
 9A.56.350 Organized retail theft.

**9A.56.030 Theft in the first degree—Other than firearm or motor vehicle.** (1) A person is guilty of theft in the first degree if he or she commits theft of:

(a) Property or services which exceed(s) five thousand dollars in value other than a firearm as defined in RCW 9.41.010;

(b) Property of any value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle, taken from the person of another; or

(c) A search and rescue dog, as defined in RCW 9.91.175, while the search and rescue dog is on duty.

(2) Theft in the first degree is a class B felony. [2009 c 431 § 7; 2007 c 199 § 3; 2005 c 212 § 2; 1995 c 129 § 11 (Initiative Measure No. 159); 1975 1st ex.s. c 260 § 9A.56.030.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

**Findings—Intent—Short title—2007 c 199:** See notes following RCW 9A.56.065.

**Findings and intent—Short title—Severability—Captions not law—1995 c 129:** See notes following RCW 9.94A.510.

*Civil action for shoplifting by adults, minors: RCW 4.24.230.*

*Property crime database, liability: RCW 4.24.340.*

**9A.56.040 Theft in the second degree—Other than firearm or motor vehicle.** (1) A person is guilty of theft in the second degree if he or she commits theft of:

(a) Property or services which exceed(s) seven hundred fifty dollars in value but does not exceed five thousand dollars in value, other than a firearm as defined in RCW 9.41.010 or a motor vehicle; or

(b) A public record, writing, or instrument kept, filed, or deposited according to law with or in the keeping of any public office or public servant; or

(c) An access device.

(2) Theft in the second degree is a class C felony. [2009 c 431 § 8; 2007 c 199 § 4; 1995 c 129 § 12 (Initiative Measure No. 159); 1994 sp.s. c 7 § 433; 1987 c 140 § 2; 1982 1st ex.s. c 47 § 15; 1975 1st ex.s. c 260 § 9A.56.040.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

**Findings—Intent—Short title—2007 c 199:** See notes following RCW 9A.56.065.

**Findings and intent—Short title—Severability—Captions not law—1995 c 129:** See notes following RCW 9.94A.510.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460:** See note following RCW 9.41.010.

**Severability—1982 1st ex.s. c 47:** See note following RCW 9.41.190.

*Civil action for shoplifting by adults, minors: RCW 4.24.230.*

*Property crime database, liability: RCW 4.24.340.*

**9A.56.050 Theft in the third degree.** (1) A person is guilty of theft in the third degree if he or she commits theft of property or services which (a) does not exceed seven hundred fifty dollars in value, or (b) includes ten or more merchandise pallets, or ten or more beverage crates, or a combination of ten or more merchandise pallets and beverage crates.

(2) Theft in the third degree is a gross misdemeanor. [2009 c 431 § 9; 1998 c 236 § 4; 1975 1st ex.s. c 260 § 9A.56.050.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

*Civil action for shoplifting by adults, minors: RCW 4.24.230.*

*Property crime database, liability: RCW 4.24.340.*

**9A.56.060 Unlawful issuance of checks or drafts.** (1) Any person who shall with intent to defraud, make, or draw, or utter, or deliver to another person any check, or draft, on a bank or other depository for the payment of money, knowing at the time of such drawing, or delivery, that he or she has not sufficient funds in, or credit with the bank or other depository, to meet the check or draft, in full upon its presentation, is guilty of unlawful issuance of bank check. The word "credit" as used herein shall be construed to mean an arrangement or understanding with the bank or other depository for the payment of such check or draft, and the uttering or delivery of such a check or draft to another person without such

fund or credit to meet the same shall be prima facie evidence of an intent to defraud.

(2) Any person who shall with intent to defraud, make, or draw, or utter, or deliver to another person any check, or draft on a bank or other depository for the payment of money and who issues a stop-payment order directing the bank or depository on which the check is drawn not to honor the check, and who fails to make payment of money in the amount of the check or draft or otherwise arrange a settlement agreed upon by the holder of the check within twenty days of issuing the check or draft is guilty of unlawful issuance of a bank check.

(3) When any series of transactions which constitute unlawful issuance of a bank check would, when considered separately, constitute unlawful issuance of a bank check in an amount of seven hundred fifty dollars or less because of value, and the series of transactions are a part of a common scheme or plan, the transactions may be aggregated in one count and the sum of the value of all of the transactions shall be the value considered in determining whether the unlawful issuance of a bank check is to be punished as a class C felony or a gross misdemeanor.

(4) Unlawful issuance of a bank check in an amount greater than seven hundred fifty dollars is a class C felony.

(5) Unlawful issuance of a bank check in an amount of seven hundred fifty dollars or less is a gross misdemeanor and shall be punished as follows:

(a) The court shall order the defendant to make full restitution;

(b) The defendant need not be imprisoned, but the court shall impose a fine of up to one thousand one hundred twenty-five dollars. Of the fine imposed, at least three hundred seventy-five dollars or an amount equal to one hundred fifty percent of the amount of the bank check, whichever is greater, shall not be suspended or deferred. Upon conviction for a second offense within any twelve-month period, the court may not suspend or defer any portion of the fine. [2009 c 431 § 10; 1982 c 138 § 1; 1979 ex.s. c 244 § 14; 1975 1st ex.s. c 260 § 9A.56.060.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

**Effective date—1979 ex.s. c 244:** See RCW 9A.44.902.

*Maintenance by state treasurer of accounts in amount less than all warrants outstanding not a violation of RCW 9A.56.060(1): RCW 43.08.135.*

*Property crime database, liability: RCW 4.24.340.*

**9A.56.096 Theft of rental, leased, lease-purchased, or loaned property.** (1) A person who, with intent to deprive the owner or owner's agent, wrongfully obtains, or exerts unauthorized control over, or by color or aid of deception gains control of personal property that is rented, leased, or loaned by written agreement to the person, is guilty of theft of rental, leased, lease-purchased, or loaned property.

(2) The finder of fact may presume intent to deprive if the finder of fact finds either of the following:

(a) That the person who rented or leased the property failed to return or make arrangements acceptable to the owner of the property or the owner's agent to return the property to the owner or the owner's agent within seventy-two hours after receipt of proper notice following the due date of the rental, lease, lease-purchase, or loan agreement; or

(b) That the renter, lessee, or borrower presented identification to the owner or the owner's agent that was materially false, fictitious, or not current with respect to name, address, place of employment, or other appropriate items.

(3) As used in subsection (2) of this section, "proper notice" consists of a written demand by the owner or the owner's agent made after the due date of the rental, lease, lease-purchase, or loan period, mailed by certified or registered mail to the renter, lessee, or borrower at: (a) The address the renter, lessee, or borrower gave when the contract was made; or (b) the renter, lessee, or borrower's last known address if later furnished in writing by the renter, lessee, borrower, or the agent of the renter, lessee, or borrower.

(4) The replacement value of the property obtained must be utilized in determining the amount involved in the theft of rental, leased, lease-purchased, or loaned property.

(5)(a) Theft of rental, leased, lease-purchased, or loaned property is a class B felony if the rental, leased, lease-purchased, or loaned property is valued at five thousand dollars or more.

(b) Theft of rental, leased, lease-purchased, or loaned property is a class C felony if the rental, leased, lease-purchased, or loaned property is valued at seven hundred fifty dollars or more but less than five thousand dollars.

(c) Theft of rental, leased, lease-purchased, or loaned property is a gross misdemeanor if the rental, leased, lease-purchased, or loaned property is valued at less than seven hundred fifty dollars.

(6) This section applies to rental agreements that provide that the renter may return the property any time within the rental period and pay only for the time the renter actually retained the property, in addition to any minimum rental fee, to lease agreements, to lease-purchase agreements as defined under RCW 63.19.010, and to vehicles loaned to prospective purchasers borrowing a vehicle by written agreement from a motor vehicle dealer licensed under chapter 46.70 RCW. This section does not apply to rental or leasing of real property under the residential landlord-tenant act, chapter 59.18 RCW. [2009 c 431 § 11; 2007 c 199 § 17; 2003 c 53 § 77; 1997 c 346 § 1.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

**Findings—Intent—Short title—2007 c 199:** See notes following RCW 9A.56.065.

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

*Property crime database, liability: RCW 4.24.340.*

**9A.56.150 Possessing stolen property in the first degree—Other than firearm or motor vehicle.** (1) A person is guilty of possessing stolen property in the first degree if he or she possesses stolen property, other than a firearm as defined in RCW 9.41.010 or a motor vehicle, which exceeds five thousand dollars in value.

(2) Possessing stolen property in the first degree is a class B felony. [2009 c 431 § 12; 2007 c 199 § 6; 1995 c 129 § 14 (Initiative Measure No. 159); 1975 1st ex.s. c 260 § 9A.56.150.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

**Findings—Intent—Short title—2007 c 199:** See notes following RCW 9A.56.065.

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**Findings and intent—Short title—Severability—Captions not law—1995 c 129:** See notes following RCW 9.94A.510.

*Property crime database, liability: RCW 4.24.340.*

**9A.56.160 Possessing stolen property in the second degree—Other than firearm or motor vehicle.** (1) A person is guilty of possessing stolen property in the second degree if:

(a) He or she possesses stolen property, other than a firearm as defined in RCW 9.41.010 or a motor vehicle, which exceeds seven hundred fifty dollars in value but does not exceed five thousand dollars in value; or

(b) He or she possesses a stolen public record, writing or instrument kept, filed, or deposited according to law; or

(c) He or she possesses a stolen access device.

(2) Possessing stolen property in the second degree is a class C felony. [2009 c 431 § 13; 2007 c 199 § 7; 1995 c 129 § 15 (Initiative Measure No. 159); 1994 sp.s. c 7 § 434; 1987 c 140 § 4; 1975 1st ex.s. c 260 § 9A.56.160.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

**Findings—Intent—Short title—2007 c 199:** See notes following RCW 9A.56.065.

**Findings and intent—Short title—Severability—Captions not law—1995 c 129:** See notes following RCW 9.94A.510.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460:** See note following RCW 9.41.010.

*Property crime database, liability: RCW 4.24.340.*

**9A.56.170 Possessing stolen property in the third degree.** (1) A person is guilty of possessing stolen property in the third degree if he or she possesses (a) stolen property which does not exceed seven hundred fifty dollars in value, or (b) ten or more stolen merchandise pallets, or ten or more stolen beverage crates, or a combination of ten or more stolen merchandise pallets and beverage crates.

(2) Possessing stolen property in the third degree is a gross misdemeanor. [2009 c 431 § 14; 1998 c 236 § 2; 1975 1st ex.s. c 260 § 9A.56.170.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

*Property crime database, liability: RCW 4.24.340.*

**9A.56.350 Organized retail theft.** (1) A person is guilty of organized retail theft if he or she:

(a) Commits theft of property with a value of at least seven hundred fifty dollars from a mercantile establishment with an accomplice;

(b) Possesses stolen property, as defined in RCW 9A.56.140, with a value of at least seven hundred fifty dollars from a mercantile establishment with an accomplice; or

(c) Commits theft of property with a cumulative value of at least seven hundred fifty dollars from one or more mercantile establishments within a period of up to one hundred eighty days.

(2) A person is guilty of organized retail theft in the first degree if the property stolen or possessed has a value of five thousand dollars or more. Organized retail theft in the first degree is a class B felony.

(3) A person is guilty of organized retail theft in the second degree if the property stolen or possessed has a value of



at least seven hundred fifty dollars, but less than five thousand dollars. Organized retail theft in the second degree is a class C felony.

(4) For purposes of this section, a series of thefts committed by the same person from one or more mercantile establishments over a period of one hundred eighty days may be aggregated in one count and the sum of the value of all the property shall be the value considered in determining the degree of the organized retail theft involved. Theft committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which any one of the thefts occurred.

(5) The mercantile establishment or establishments whose property is alleged to have been stolen may request that the charge be aggregated with other thefts of property about which the mercantile establishment or establishments is aware. In the event a request to aggregate the prosecution is declined, the mercantile establishment or establishments shall be promptly advised by the prosecuting jurisdiction making the decision to decline aggregating the prosecution of the decision and the reasons for such decision. [2009 c 431 § 15; 2006 c 277 § 2.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

*Property crime database, liability: RCW 4.24.340.*

## Chapter 9A.76 RCW

### OBSTRUCTING GOVERNMENTAL OPERATION

#### Sections

9A.76.010	Definitions.
9A.76.115	Sexually violent predator escape.
9A.76.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )

**9A.76.010 Definitions.** The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Contraband" means any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, rule, regulation, or order of a court;

(2) "Custody" means restraint pursuant to a lawful arrest or an order of a court, or any period of service on a work crew: PROVIDED, That custody pursuant to chapter 13.34 RCW and RCW \*74.13.020 and 74.13.031 and chapter 13.32A RCW shall not be deemed custody for purposes of this chapter;

(3) "Detention facility" means any place used for the confinement of a person (a) arrested for, charged with or convicted of an offense, or (b) charged with being or adjudicated to be a juvenile offender as defined in RCW 13.40.020 as now existing or hereafter amended, or (c) held for extradition or as a material witness, or (d) otherwise confined pursuant to an order of a court, except an order under chapter 13.34 RCW or chapter 13.32A RCW, or (e) in any work release, furlough, or other such facility or program;

(4) "Uncontrollable circumstances" means an act of nature such as a flood, earthquake, or fire, or a medical condition that requires immediate hospitalization or treatment, or

an act of a human being such as an automobile accident or threats of death, forcible sexual attack, or substantial bodily injury in the immediate future for which there is no time for a complaint to the authorities and no time or opportunity to resort to the courts. [2009 c 549 § 1003; 2001 c 264 § 4; 1991 c 181 § 6; 1979 c 155 § 35; 1977 ex.s. c 291 § 53; 1975 1st ex.s. c 260 § 9A.76.010.]

**Reviser's note:** \*(1) RCW 74.13.020 no longer refers to "custody."

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Effective date—2001 c 264:** See note following RCW 9A.76.110.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**9A.76.115 Sexually violent predator escape.** (1) A person is guilty of sexually violent predator escape if:

(a) Having been found to be a sexually violent predator and confined to the special commitment center or another secure facility under court order, the person escapes from the secure facility;

(b) Having been found to be a sexually violent predator and being under an order of conditional release, the person leaves or remains absent from the state of Washington without prior court authorization; or

(c) Having been found to be a sexually violent predator and being under an order of conditional release, the person: (i) Without authorization, leaves or remains absent from his or her residence, place of employment, educational institution, or authorized outing; (ii) tampers with his or her electronic monitoring device or removes it without authorization; or (iii) escapes from his or her escort.

(2) Sexually violent predator escape is a class A felony with a minimum sentence of sixty months, and shall be sentenced under RCW 9.94A.507. [2009 c 28 § 32; 2001 2nd sp.s. c 12 § 360; 2001 c 287 § 1.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Intent—Severability—Effective dates—2001 2nd sp.s. c 12:** See notes following RCW 71.09.250.

**Application—2001 2nd sp.s. c 12 §§ 301-363:** See note following RCW 9.94A.030.

**Effective date—2001 c 287:** "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 14, 2001] except for section 4 of this act, which takes effect July 1, 2001." [2001 c 287 § 5.]

**9A.76.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-spe-

cific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 25.]

### Chapter 9A.82 RCW

#### CRIMINAL PROFITEERING ACT

##### Sections

9A.82.110 County antiprofitteering revolving funds.

#### 9A.82.110 County antiprofitteering revolving funds.

(1) In an action brought by the attorney general on behalf of the state under RCW 9A.82.100(1)(b)(i) in which the state prevails, any payments ordered in excess of the actual damages sustained shall be deposited in the state general fund.

(2)(a) The county legislative authority may establish an antiprofitteering revolving fund to be administered by the county prosecuting attorney under the conditions and for the purposes provided by this subsection. Disbursements from the fund shall be on authorization of the county prosecuting attorney. No appropriation is required for disbursements.

(b) Any prosecution and investigation costs, including attorney's fees, recovered for the state by the county prosecuting attorney as a result of enforcement of civil and criminal statutes pertaining to any offense included in the definition of criminal profiteering, whether by final judgment, settlement, or otherwise, shall be deposited, as directed by a court of competent jurisdiction, in the fund established by this subsection. In an action brought by a prosecuting attorney on behalf of the county under RCW 9A.82.100(1)(b)(i) in which the county prevails, any payments ordered in excess of the actual damages sustained shall be deposited in the state general fund.

(c) The county legislative authority may prescribe a maximum level of moneys in the antiprofitteering revolving fund. Moneys exceeding the prescribed maximum shall be transferred to the county current expense fund.

(d) The moneys in the fund shall be used by the county prosecuting attorney for the investigation and prosecution of any offense, within the jurisdiction of the county prosecuting attorney, included in the definition of criminal profiteering, including civil enforcement.

(e) If a county has not established an antiprofitteering revolving fund, any payments or forfeitures ordered to the county under this chapter shall be deposited to the county current expense fund. [2009 c 479 § 11; 2001 c 222 § 15. Prior: 1985 c 455 § 12; 1984 c 270 § 11.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Purpose—Effective date—2001 c 222:** See notes following RCW 9A.82.001.

### Chapter 9A.88 RCW

#### INDECENT EXPOSURE—PROSTITUTION

##### Sections

9A.88.140 Vehicle impoundment—Fees and fine.

#### 9A.88.140 Vehicle impoundment—Fees and fine.

(1)(a) Upon an arrest for a suspected violation of patronizing

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a prostitute, promoting prostitution in the first degree, promoting prostitution in the second degree, promoting travel for prostitution, commercial sexual abuse of a minor, promoting commercial sexual abuse of a minor, or promoting travel for commercial sexual abuse of a minor, the arresting law enforcement officer may impound the person's vehicle if (i) the motor vehicle was used in the commission of the crime; (ii) the person arrested is the owner of the vehicle or the vehicle is a rental car as defined in RCW 46.04.465; and (iii) either (A) the person arrested has previously been convicted of one of the offenses listed in this subsection or (B) the offense was committed within an area designated under (b) of this subsection.

(b) A local governing authority may designate areas within which vehicles are subject to impoundment under this section regardless of whether the person arrested has previously been convicted of any of the offenses listed in (a) of this subsection.

(i) The designation must be based on evidence indicating that the area has a disproportionately higher number of arrests for the offenses listed in (a) of this subsection as compared to other areas within the same jurisdiction.

(ii) The local governing authority shall post signs at the boundaries of the designated area to indicate that the area has been designated under this subsection.

(2) Impoundments performed under this section shall be in accordance with chapter 46.55 RCW and the impoundment order must clearly state "prostitution hold."

(3)(a) Prior to redeeming the impounded vehicle, and in addition to all applicable impoundment, towing, and storage fees paid to the towing company under chapter 46.55 RCW, the owner of the impounded vehicle must pay a fine of five hundred dollars to the impounding agency. The fine shall be deposited in the prostitution prevention and intervention account established under RCW 43.63A.740.

(b) Upon receipt of the fine paid under (a) of this subsection, the impounding agency shall issue a written receipt to the owner of the impounded vehicle.

(4)(a) In order to redeem a vehicle impounded under this section, the owner must provide the towing company with the written receipt issued under subsection (3)(b) of this section.

(b) The written receipt issued under subsection (3)(b) of this section authorizes the towing company to release the impounded vehicle upon payment of all impoundment, towing, and storage fees.

(c) A towing company that relies on a forged receipt to release a vehicle impounded under this section is not liable to the impounding authority for any unpaid fine under subsection (3)(a) of this section.

(5)(a) In any proceeding under chapter 46.55 RCW to contest the validity of an impoundment under this section where the claimant substantially prevails, the claimant is entitled to a full refund of the impoundment, towing, and storage fees paid under chapter 46.55 RCW and the five hundred dollar fine paid under subsection (3) of this section.

(b) If the person is found not guilty at trial for a crime listed under subsection (1) of this section, the person is entitled to a full refund of the impoundment, towing, and storage fees paid under chapter 46.55 RCW and the five hundred dollar fine paid under subsection (3) of this section.

(c) All refunds made under this section shall be paid by the impounding agency.

(d) Prior to receiving any refund under this section, the claimant must provide proof of payment. [2009 c 387 § 1; 2007 c 368 § 8; 1999 c 327 § 3.]

**Findings—Intent—1999 c 327:** See note following RCW 9A.88.130.

## Title 10

### CRIMINAL PROCEDURE

#### Chapters

- 10.05** Deferred prosecution—Courts of limited jurisdiction.
- 10.29** Statewide special inquiry judge act.
- 10.37** Accusations and their requisites.
- 10.64** Judgments and sentences.
- 10.77** Criminally insane—Procedures.
- 10.82** Collection and disposition of fines and costs.
- 10.95** Capital punishment—Aggravated first degree murder.
- 10.99** Domestic violence—Official response.
- 10.101** Indigent defense services.
- 10.105** Property involved in a felony.

#### Chapter 10.05 RCW

##### DEFERRED PROSECUTION— COURTS OF LIMITED JURISDICTION

#### Sections

10.05.060 Procedure upon approval of plan.

**10.05.060 Procedure upon approval of plan.** If the report recommends treatment, the court shall examine the treatment plan. If it approves the plan and the petitioner agrees to comply with its terms and conditions and agrees to pay the cost thereof, if able to do so, or arrange for the treatment, an entry shall be made upon the person's court docket showing that the person has been accepted for deferred prosecution. A copy of the treatment plan shall be filed with the court. If the charge be one that an abstract of the docket showing the charge, the date of the violation for which the charge was made, and the date of petitioner's acceptance is required to be sent to the department of licensing, an abstract shall be sent, and the department of licensing shall make an entry of the charge and of the petitioner's acceptance for deferred prosecution on the department's driving record of the petitioner. The entry is not a conviction for purposes of Title 46 RCW. Upon receipt of the abstract of the docket, the department shall issue the petitioner a probationary license in accordance with RCW 46.20.355, and the petitioner's driver's license shall be on probationary status for five years from the date of the violation that gave rise to the charge. The department shall maintain the record for ten years from date of entry of the order granting deferred prosecution. [2009 c 135 § 1; 1994 c 275 § 17; 1990 c 250 § 13; 1985 c 352 § 9; 1979 c 158 § 4; 1975 1st ex.s. c 244 § 6.]

**Short title—Effective date—1994 c 275:** See notes following RCW 46.04.015.

**Effective dates—1990 c 250 §§ 1-13:** See note following RCW 46.16.301.

**Severability—1990 c 250:** See note following RCW 46.16.301.

**Legislative finding—Severability—1985 c 352:** See notes following RCW 10.05.010.

#### Chapter 10.29 RCW

##### STATEWIDE SPECIAL INQUIRY JUDGE ACT

#### Sections

10.29.030 Repealed.  
10.29.040 Repealed.  
10.29.080 Repealed.  
10.29.090 Repealed.

**10.29.030 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**10.29.040 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**10.29.080 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**10.29.090 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

#### Chapter 10.37 RCW

##### ACCUSATIONS AND THEIR REQUISITES

#### Sections

10.37.120 Repealed.

**10.37.120 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

#### Chapter 10.64 RCW

##### JUDGMENTS AND SENTENCES

#### Sections

10.64.021 Repealed.  
10.64.140 Loss of voting rights—Acknowledgment.

**10.64.021 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**10.64.140 Loss of voting rights—Acknowledgment.** (1) When a person is convicted of a felony, the court shall require the defendant to sign a statement acknowledging that:

(a) The defendant's right to vote has been lost due to the felony conviction;

(b) If the defendant is registered to vote, the voter registration will be canceled;

(c) The right to vote is provisionally restored as long as the defendant is not under the authority of the department of corrections;

(d) The defendant must reregister before voting;

(e) The provisional right to vote may be revoked if the defendant fails to comply with all the terms of his or her legal financial obligations or an agreement for the payment of legal financial obligations;

(f) The right to vote may be permanently restored by one of the following for each felony conviction:

- (i) A certificate of discharge issued by the sentencing court, as provided in RCW 9.94A.637;
- (ii) A court order issued by the sentencing court restoring the right, as provided in RCW 9.92.066;
- (iii) A final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or
- (iv) A certificate of restoration issued by the governor, as provided in RCW 9.96.020; and
- (g) Voting before the right is restored is a class C felony under RCW 29A.84.660.

(2) For the purposes of this section, a person is under the authority of the department of corrections if the person is:

- (a) Serving a sentence of confinement in the custody of the department of corrections; or
- (b) Subject to community custody as defined in RCW 9.94A.030. [2009 c 325 § 5; 2005 c 246 § 1.]

**Effective date—2005 c 246:** "This act takes effect January 1, 2006." [2005 c 246 § 26.]

### Chapter 10.77 RCW

#### CRIMINALLY INSANE—PROCEDURES

##### Sections

- 10.77.205 Sexual or violent offenders—Notice of release, escape, etc.—Definitions. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)
- 10.77.950 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**10.77.205 Sexual or violent offenders—Notice of release, escape, etc.—Definitions.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (1)(a) At the earliest possible date, and in no event later than thirty days before conditional release, release, authorized furlough pursuant to RCW 10.77.163, or transfer to a less-restrictive facility than a state mental hospital, the superintendent shall send written notice of the conditional release, release, authorized furlough, or transfer of a person who has been found not guilty of a sex, violent, or felony harassment offense by reason of insanity and who is now in the custody of the department pursuant to this chapter, to the following:

- (i) The chief of police of the city, if any, in which the person will reside; and
  - (ii) The sheriff of the county in which the person will reside.
- (b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under this chapter:

- (i) The victim of the crime for which the person was committed or the victim's next of kin if the crime was a homicide;
- (ii) Any witnesses who testified against the person in any court proceedings; and
- (iii) Any person specified in writing by the prosecuting attorney.

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Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(c) In addition to the notice requirements of (a) and (b) of this subsection, the superintendent shall comply with RCW 10.77.163.

(d) The thirty-day notice requirement contained in (a) and (b) of this subsection shall not apply to emergency medical furloughs.

(e) The existence of the notice requirements in (a) and (b) of this subsection shall not require any extension of the release date in the event the release plan changes after notification.

(2) If a person who has been found not guilty of a sex, violent, or felony harassment offense by reason of insanity and who is committed under this chapter escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim, if any, of the crime for which the person was committed or the victim's next of kin if the crime was a homicide. The superintendent shall also notify appropriate persons pursuant to RCW 10.77.165. If the person is recaptured, the secretary shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The department shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

- (a) "Violent offense" means a violent offense under RCW 9.94A.030;
- (b) "Sex offense" means a sex offense under RCW 9.94A.030;
- (c) "Next of kin" means a person's spouse, state registered domestic partner, parents, siblings, and children;
- (d) "Authorized furlough" means a furlough granted after compliance with RCW 10.77.163;
- (e) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony. [2009 c 521 § 27; 2000 c 94 § 17; 1994 c 129 § 5; 1992 c 186 § 8; 1990 c 3 § 104.]

**Findings—Intent—1994 c 129:** See note following RCW 4.24.550.

**Severability—1992 c 186:** See note following RCW 9A.46.110.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**10.77.950 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this

chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 26.]

### Chapter 10.82 RCW

## COLLECTION AND DISPOSITION OF FINES AND COSTS

#### Sections

10.82.070	Disposition of monetary payments.
10.82.090	Interest on judgments—Disposition of nonrestitution interest.

**10.82.070 Disposition of monetary payments.** (1) All sums of money derived from costs, fines, penalties, and forfeitures imposed or collected, in whole or in part, by a superior court for violation of orders of injunction, mandamus and other like writs, for contempt of court, or for breach of the penal laws shall be paid in cash by the person collecting the same, within twenty days after the collection, to the county treasurer of the county in which the same have accrued.

(2) Except as provided in RCW 10.99.080, the county treasurer shall remit monthly thirty-two percent of the money received under this section except for certain costs to the state treasurer for deposit in the state general fund and shall deposit the remainder as provided by law. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state or county in the prosecution of the case, including the fees of defense counsel. Costs or assessments awarded to dedicated accounts, state or local, are not subject to this state allocation or to RCW 7.68.035.

(3) All fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. All fees, fines, forfeitures, and penalties collected or assessed by a superior court in cases on appeal from a lower court shall be remitted to the municipal or district court from which the cases were appealed. [2009 c 479 § 13; 2004 c 15 § 6; 1995 c 292 § 3; 1988 c 169 § 5; 1987 c 202 § 169; 1985 c 389 § 7; 1984 c 258 § 313; 1969 ex.s. c 199 § 11; 1967 c 122 § 1; 1965 c 158 § 16; 1919 c 30 § 1; 1909 p 323 § 9; 1897 c 118 § 113; 1895 c 68 § 1; 1890 p 383 § 89; 1886 p 20 § 58; Code 1881 § 3211; 1873 p 421 § 3; RRS § 4940. Formerly codified as RCW 9.01.140.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Intent—2004 c 15:** See note following RCW 10.99.080.

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

**Effective date—1985 c 389:** See note following RCW 27.24.070.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.34.130.

**10.82.090 Interest on judgments—Disposition of nonrestitution interest.** (1) Except as provided in subsection (2) of this section, financial obligations imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. All nonrestitution interest retained by the court shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the county current expense fund, and twenty-five percent to the county current expense fund to fund local courts.

(2) The court may, on motion by the offender, following the offender's release from total confinement, reduce or waive the interest on legal financial obligations levied as a result of a criminal conviction. The court may reduce or waive the interest only as an incentive for the offender to meet his or her legal financial obligations. The court may not waive the interest on the restitution portion of the legal financial obligation and may only reduce the interest on the restitution portion of the legal financial obligation if the principal of the restitution has been paid in full. The offender must show that he or she has personally made a good faith effort to pay, that the interest accrual is causing a significant hardship, and that he or she will be unable to pay the principal and interest in full and that reduction or waiver of the interest will likely enable the offender to pay the full principal and any remaining interest thereon. For purposes of this section, "good faith effort" means that the offender has either (a) paid the principal amount in full; or (b) made twenty-four consecutive monthly payments, excluding any payments mandatorily deducted by the department of corrections, on his or her legal financial obligations under his or her payment agreement with the court. The court may grant the motion, establish a payment schedule, and retain jurisdiction over the offender for purposes of reviewing and revising the reduction or waiver of interest. This section applies to persons convicted as adults or in juvenile court. [2009 c 479 § 14; 2004 c 121 § 1; 1995 c 291 § 7; 1989 c 276 § 3.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Severability—1989 c 276:** See note following RCW 9.95.062.

### Chapter 10.95 RCW

## CAPITAL PUNISHMENT—AGGRAVATED FIRST DEGREE MURDER

#### Sections

10.95.901	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )
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**10.95.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 28.]

### Chapter 10.99 RCW

#### DOMESTIC VIOLENCE—OFFICIAL RESPONSE

##### Sections

10.99.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**10.99.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 29.]

### Chapter 10.101 RCW

#### INDIGENT DEFENSE SERVICES

##### Sections

10.101.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**10.101.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be inter-

preted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 30.]

### Chapter 10.105 RCW

#### PROPERTY INVOLVED IN A FELONY

##### Sections

10.105.010 Seizure and forfeiture.

**10.105.010 Seizure and forfeiture.** (1) The following are subject to seizure and forfeiture and no property right exists in them: All personal property, including, but not limited to, any item, object, tool, substance, device, weapon, machine, vehicle of any kind, money, security, or negotiable instrument, which has been or was actually employed as an instrumentality in the commission of, or in aiding or abetting in the commission of any felony, or which was furnished or was intended to be furnished by any person in the commission of, as a result of, or as compensation for the commission of, any felony, or which was acquired in whole or in part with proceeds traceable to the commission of a felony. No property may be forfeited under this section until after there has been a superior court conviction of the owner of the property for the felony in connection with which the property was employed, furnished, or acquired.

A forfeiture of property encumbered by a bona fide security interest is subject to the interest of the secured party if at the time the security interest was created, the secured party neither had knowledge of nor consented to the commission of the felony.

(2) Personal property subject to forfeiture under this chapter may be seized by any law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding;

(c) A law enforcement officer has probable cause to believe that the property is directly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the property was used or is intended to be used in the commission of a felony.

(3) In the event of seizure pursuant to this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within

fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. The notice of seizure may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1) of this section within forty-five days of the seizure, the item seized shall be deemed forfeited.

(5) If a person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the seized property within forty-five days of the seizure, the law enforcement agency shall give the person or persons a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of the property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the property involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorney's fees. The burden of producing evidence shall be upon the person claiming to be the lawful owner or the person claiming to have the lawful right to possession of the property. The seizing law enforcement agency shall promptly return the property to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession of the property.

(6) When property is forfeited under this chapter, after satisfying any court-ordered victim restitution, the seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to

such agency for the exclusive use of enforcing the criminal law;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public.

(7) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the state general fund.

(a) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents.

(b) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(c) Retained property and net proceeds not required to be paid to the state treasurer, or otherwise required to be spent under this section, shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources. [2009 c 479 § 15; 1993 c 288 § 2.]

Effective date—2009 c 479: See note following RCW 2.56.030.

## Title 11

### PROBATE AND TRUST LAW

#### Chapters

- 11.28** Letters testamentary and of administration.
- 11.40** Claims against estate.
- 11.42** Settlement of creditor claims for estates passing without probate.
- 11.66** Social security benefits.
- 11.68** Settlement of estates without administration.
- 11.84** Inheritance rights of slayers or abusers.
- 11.88** Guardianship—Appointment, qualification, removal of guardians.
- 11.90** Uniform adult guardianship and protective proceedings jurisdiction act.
- 11.94** Power of attorney.
- 11.95** Powers of appointment.
- 11.96A** Trust and estate dispute resolution.
- 11.98** Trusts.
- 11.104A** Washington principal and income act of 2002.
- 11.108** Miscellaneous provisions for distributions made by a governing instrument.

**Chapter 11.28 RCW**  
**LETTERS TESTAMENTARY AND**  
**OF ADMINISTRATION**

## Sections

- 11.28.090 Execution and form of letters testamentary.  
 11.28.140 Form of letters of administration.

**11.28.090 Execution and form of letters testamentary.** Letters testamentary to be issued to executors under the provisions of this chapter shall be signed by the clerk, and issued under the seal of the court, and may be in the following form:

State of Washington, county of . . . . .

In the superior court of the county of . . . . .

Whereas, the last will of A B, deceased, was, on the . . . . day of . . . . ., A.D., . . . ., duly exhibited, proven, and recorded in our said superior court; and whereas, it appears in and by said will that C D is appointed executor thereon, and, whereas, said C D has duly qualified, now, therefore, know all persons by these presents, that we do hereby authorize the said C D to execute said will according to law.

Witness my hand and the seal of said court this . . . . day of . . . . ., A.D., 19. . . [2009 c 549 § 1004; 1965 c 145 § 11.28.090. Prior: (i) 1917 c 156 § 56; RCW 11.28.080; RRS § 1426; prior: Code 1881 § 1382; 1863 p 218 § 116; 1860 p 181 § 83. (ii) 1917 c 156 § 59; RRS § 1429; prior: Code 1881 § 1386; 1863 p 219 § 120; 1860 p 181 § 87.]

**11.28.140 Form of letters of administration.** Letters of administration shall be signed by the clerk, and be under the seal of the court, and may be substantially in the following form:

State of Washington, County of . . . . .

Whereas, A.B., late of . . . . . on or about the . . . . day of . . . . . A.D., . . . . died intestate, leaving at the time of his or her death, property in this state subject to administration: Now, therefore, know all persons by these presents, that we do hereby appoint . . . . . administrator upon said estate, and whereas said administrator has duly qualified, hereby authorize him or her to administer the same according to law.

Witness my hand and the seal of said court this . . . . day of . . . . . A.D., 19. . . [2009 c 549 § 1005; 1965 c 145 § 11.28.140. Prior: 1917 c 156 § 65; RRS § 1435; prior: Code 1881 § 1392; 1863 p 220 § 125; 1860 p 182 § 92.]

**Chapter 11.40 RCW**  
**CLAIMS AGAINST ESTATE**

## Sections

- 11.40.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**11.40.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted

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as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 31.]

**Chapter 11.42 RCW**  
**SETTLEMENT OF CREDITOR CLAIMS FOR**  
**ESTATES PASSING WITHOUT PROBATE**

## Sections

- 11.42.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**11.42.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 32.]

**Chapter 11.66 RCW**  
**SOCIAL SECURITY BENEFITS**

## Sections

- 11.66.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**11.66.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated,



dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 33.]

### Chapter 11.68 RCW

#### SETTLEMENT OF ESTATES WITHOUT ADMINISTRATION

##### Sections

11.68.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**11.68.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 34.]

### Chapter 11.84 RCW

#### INHERITANCE RIGHTS OF SLAYERS OR ABUSERS

##### Sections

11.84.010 Definitions.  
 11.84.020 Slayer or abuser not to benefit from death.  
 11.84.025 Disposition of retirement system proceeds payable to slayer or abuser.  
 11.84.030 Slayer or abuser deemed to predecease decedent.  
 11.84.040 Distribution of decedent's property.  
 11.84.050 Distribution of property held jointly with slayer or abuser.  
 11.84.070 Property subject to divestment, etc.  
 11.84.080 Contingent remainders and future interests.  
 11.84.090 Property appointed—Powers of revocation or appointment.  
 11.84.100 Insurance proceeds.  
 11.84.110 Payment by insurance company, bank, etc.—No additional liability.  
 11.84.120 Rights of persons without notice dealing with slayer or abuser.  
 11.84.130 Record of conviction as evidence against claimant of property.  
 11.84.140 Slayer determination—Conviction—Preponderance of evidence.  
 11.84.150 Abuser determination—Conviction—Clear, cogent, and convincing evidence.  
 11.84.160 Abuser determination—Evidence factors.  
 11.84.170 Abuser—When entitled to property interest.  
 11.84.180 Application—Relation to other laws.

**11.84.010 Definitions.** As used in this chapter:

(1) "Abuser" means any person who participates, either as a principal or an accessory before the fact, in the willful and unlawful financial exploitation of a vulnerable adult.

(2) "Decedent" means:

(a) Any person whose life is taken by a slayer; or

(b) Any deceased person who, at any time during life in which he or she was a vulnerable adult, was the victim of financial exploitation by an abuser.

(3) "Financial exploitation" has the same meaning as provided in RCW 74.34.020, as enacted or hereafter amended.

(4) "Property" includes any real and personal property and any right or interest therein.

(5) "Slayer" means any person who participates, either as a principal or an accessory before the fact, in the willful and unlawful killing of any other person.

(6) "Vulnerable adult" has the same meaning as provided in RCW 74.34.020. [2009 c 525 § 1; 1965 c 145 § 11.84.010. Prior: 1955 c 141 § 1.]

#### **11.84.020 Slayer or abuser not to benefit from death.**

No slayer or abuser shall in any way acquire any property or receive any benefit as the result of the death of the decedent, but such property shall pass as provided in the sections following. [2009 c 525 § 2; 1965 c 145 § 11.84.020. Prior: 1955 c 141 § 2.]

**11.84.025 Disposition of retirement system proceeds payable to slayer or abuser.** Proceeds payable to a slayer or abuser as the beneficiary of any benefits flowing from one of the retirement systems listed in RCW 41.50.030, by virtue of the decedent's membership in the department of retirement systems or by virtue of the death of decedent, shall be paid instead as designated in RCW 41.04.273. [2009 c 525 § 3; 1998 c 292 § 502.]

**Application—Conflict with federal requirements—1998 c 292:** See notes following RCW 41.04.273.

**Part headings and section captions not law—Effective dates—1998 c 292:** See RCW 11.11.902 and 11.11.903.

**11.84.030 Slayer or abuser deemed to predecease decedent.** The slayer or abuser shall be deemed to have predeceased the decedent as to property which would have passed from the decedent or his or her estate to the slayer or abuser under the statutes of descent and distribution or have been acquired by statutory right as surviving spouse or surviving domestic partner or under any agreement made with the decedent under the provisions of RCW 26.16.120 as it now exists or is hereafter amended. [2009 c 525 § 4; 2008 c 6 § 624; 1965 c 145 § 11.84.030. Prior: 1955 c 141 § 3.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**11.84.040 Distribution of decedent's property.** Property which would have passed to or for the benefit of the slayer or abuser by devise or legacy from the decedent shall be distributed as if he or she had predeceased the decedent. [2009 c 525 § 5; 1965 c 145 § 11.84.040. Prior: 1955 c 141 § 4.]

**11.84.050 Distribution of property held jointly with slayer or abuser.** (1) One-half of any property held by the slayer or abuser and the decedent as joint tenants, joint owners or joint obligees shall pass upon the death of the decedent to his or her estate, and the other half shall pass to his or her estate upon the death of the slayer or abuser, unless the slayer or abuser obtains a separation or severance of the property or a decree granting partition.

(2) As to property held jointly by three or more persons, including the slayer or abuser and the decedent, any enrichment which would have accrued to the slayer or abuser as a result of the death of the decedent shall pass to the estate of the decedent. If the slayer or abuser becomes the final survivor, one-half of the property shall immediately pass to the estate of the decedent and the other half shall pass to his or her estate upon the death of the slayer or abuser, unless the slayer or abuser obtains a separation or severance of the property or a decree granting partition.

(3) The provisions of this section shall not affect any enforceable agreement between the parties or any trust arising because a greater proportion of the property has been contributed by one party than by the other. [2009 c 525 § 6; 1965 c 145 § 11.84.050. Prior: 1955 c 141 § 5.]

**11.84.070 Property subject to divestment, etc.** Any interest in property whether vested or not, held by the slayer or abuser, subject to be divested, diminished in any way or extinguished, if the decedent survives him or her or lives to a certain age, shall be held by the slayer or abuser during his or her lifetime or until the decedent would have reached such age, but shall then pass as if the decedent had died immediately thereafter. [2009 c 525 § 7; 1965 c 145 § 11.84.070. Prior: 1955 c 141 § 7.]

**11.84.080 Contingent remainders and future interests.** As to any contingent remainder or executory or other future interest held by the slayer or abuser, subject to become vested in him or her or increased in any way for him or her upon the condition of the death of the decedent:

(1) If the interest would not have become vested or increased if he or she had predeceased the decedent, he or she shall be deemed to have so predeceased the decedent;

(2) In any case the interest shall not be vested or increased during the period of the life expectancy of the decedent. [2009 c 525 § 8; 1965 c 145 § 11.84.080. Prior: 1955 c 141 § 8.]

**11.84.090 Property appointed—Powers of revocation or appointment.** (1) Property appointed by the will of the decedent to or for the benefit of the slayer or abuser shall be distributed as if the slayer or abuser had predeceased the decedent.

(2) Property held either presently or in remainder by the slayer or abuser, subject to be divested by the exercise by the decedent of a power of revocation or a general power of appointment shall pass to the estate of the decedent, and property so held by the slayer or abuser, subject to be divested by the exercise by the decedent of a power of appointment to a particular person or persons or to a class of persons, shall pass to such person or persons, or in equal shares to the members of such class of persons, exclusive of

the slayer or abuser. [2009 c 525 § 9; 1965 c 145 § 11.84.090. Prior: 1955 c 141 § 9.]

**11.84.100 Insurance proceeds.** (1) Insurance proceeds payable to the slayer or abuser as the beneficiary or assignee of any policy or certificate of insurance on the life of the decedent, or as the survivor of a joint life policy, shall be paid instead to the estate of the decedent, unless the policy or certificate designate some person other than the slayer or abuser or his or her estate as secondary beneficiary to him or her and in which case such proceeds shall be paid to such secondary beneficiary in accordance with the applicable terms of the policy.

(2) If the decedent is beneficiary or assignee of any policy or certificate of insurance on the life of the slayer or abuser, the proceeds shall be paid to the estate of the decedent upon the death of the slayer or abuser, unless the policy names some person other than the slayer or abuser or his or her estate as secondary beneficiary, or unless the slayer or abuser by naming a new beneficiary or assigning the policy performs an act which would have deprived the decedent of his or her interest in the policy if he or she had been living. [2009 c 525 § 10; 1965 c 145 § 11.84.100. Prior: 1955 c 141 § 10.]

**11.84.110 Payment by insurance company, bank, etc.—No additional liability.** Any insurance company making payment according to the terms of its policy or any bank or other person performing an obligation for the slayer or abuser as one of several joint obligees shall not be subjected to additional liability by the terms of this chapter if such payment or performance is made without written notice, at its home office or at an individual's home or business address, of the killing by a slayer or financial exploitation by an abuser. [2009 c 525 § 11; 1965 c 145 § 11.84.110. Prior: 1955 c 141 § 11.]

**11.84.120 Rights of persons without notice dealing with slayer or abuser.** The provisions of this chapter shall not affect the rights of any person who, before the interests of the slayer or abuser have been adjudicated, purchases or has agreed to purchase, from the slayer or abuser for value and without notice property which the slayer or abuser would have acquired except for the terms of this chapter, but all proceeds received by the slayer or abuser from such sale shall be held by him or her in trust for the persons entitled to the property under the provisions of this chapter, and the slayer or abuser shall also be liable both for any portion of such proceeds which he or she may have dissipated and for any difference between the actual value of the property and the amount of such proceeds. [2009 c 525 § 12; 1965 c 145 § 11.84.120. Prior: 1955 c 141 § 12.]

**11.84.130 Record of conviction as evidence against claimant of property.** Any record of conviction for having participated in the willful and unlawful killing of the decedent or for conduct constituting financial exploitation against the decedent, including but not limited to theft, forgery, fraud, identity theft, robbery, burglary, or extortion, shall be admissible in evidence against a claimant of property in any

civil proceeding arising under this chapter. [2009 c 525 § 13; 1965 c 145 § 11.84.130. Prior: 1955 c 141 § 13.]

*Evidence, proof of public documents: Chapter 5.44 RCW; Rules of court: CR 44.*

**11.84.140 Slayer determination—Conviction—Preponderance of evidence.** (1) A final judgment of conviction for the willful and unlawful killing of the decedent is conclusive for purposes of determining whether a person is a slayer under this section.

(2) In the absence of a criminal conviction, a superior court finding by a preponderance of the evidence that a person participated in the willful and unlawful killing of the decedent is conclusive for purposes of determining whether a person is a slayer under this section. [2009 c 525 § 14.]

**11.84.150 Abuser determination—Conviction—Clear, cogent, and convincing evidence.** (1) A final judgment of conviction for conduct constituting financial exploitation against the decedent, including but not limited to theft, forgery, fraud, identity theft, robbery, burglary, or extortion, is conclusive for purposes of determining whether a person is an abuser under this section.

(2) In the absence of a criminal conviction, a superior court finding by clear, cogent, and convincing evidence that a person participated in conduct constituting financial exploitation against the decedent is conclusive for purposes of determining whether a person is an abuser under this section. [2009 c 525 § 15.]

**11.84.160 Abuser determination—Evidence factors.**

(1) In determining whether a person is an abuser for purposes of this chapter, the court must find by clear, cogent, and convincing evidence that:

(a) The decedent was a vulnerable adult at the time the alleged financial exploitation took place; and

(b) The conduct constituting financial exploitation was willful action or willful inaction causing injury to the property of the vulnerable adult.

(2) A finding of abuse by the department of social and health services is not admissible for any purpose in any claim or proceeding under this chapter.

(3) Except as provided in subsection (2) of this section, evidence of financial exploitation is admissible if it is not inadmissible pursuant to the rules of evidence. [2009 c 525 § 16.]

**11.84.170 Abuser—When entitled to property interest.** Notwithstanding the provisions of this chapter:

(1) An abuser is entitled to acquire or receive an interest in property or any other benefit described in this chapter if the court determines by clear, cogent, and convincing evidence that the decedent:

(a) Knew of the financial exploitation; and

(b) Subsequently ratified his or her intent to transfer the property interest or benefit to that person.

(2) The court may consider the record of proceedings and in its discretion allow an abuser to acquire or receive an interest in property or any other benefit described in this chapter in any manner the court deems equitable. In deter-

mining what is equitable, the court may consider, among other things:

(a) The various elements of the decedent's dispositive scheme;

(b) The decedent's likely intent given the totality of the circumstances; and

(c) The degree of harm resulting from the abuser's financial exploitation of the decedent. [2009 c 525 § 17.]

**11.84.180 Application—Relation to other laws.** The provisions of this act are supplemental to, and do not derogate from, any other statutory or common law proceedings, theories, or remedies including, but not limited to, the common law allocation of the burden of proof or production among the parties. [2009 c 525 § 21.]

**Chapter 11.88 RCW**

**GUARDIANSHIP—APPOINTMENT,  
QUALIFICATION, REMOVAL OF GUARDIANS**

Sections

11.88.030 Petition—Contents—Hearing. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

11.88.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**11.88.030 Petition—Contents—Hearing.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (1) Any person or \*entity

may petition for the appointment of a qualified person, trust company, national bank, or nonprofit corporation authorized in RCW 11.88.020 as the guardian or limited guardian of an incapacitated person. No liability for filing a petition for guardianship or limited guardianship shall attach to a petitioner acting in good faith and upon reasonable basis. A petition for guardianship or limited guardianship shall state:

(a) The name, age, residence, and post office address of the alleged incapacitated person;

(b) The nature of the alleged incapacity in accordance with RCW 11.88.010;

(c) The approximate value and description of property, including any compensation, pension, insurance, or allowance, to which the alleged incapacitated person may be entitled;

(d) Whether there is, in any state, a guardian or limited guardian, or pending guardianship action for the person or estate of the alleged incapacitated person;

(e) The residence and post office address of the person whom petitioner asks to be appointed guardian or limited guardian;

(f) The names and addresses, and nature of the relationship, so far as known or can be reasonably ascertained, of the persons most closely related by blood, marriage, or state registered domestic partnership to the alleged incapacitated person;

(g) The name and address of the person or facility having the care and custody of the alleged incapacitated person;

(h) The reason why the appointment of a guardian or limited guardian is sought and the interest of the petitioner in

the appointment, and whether the appointment is sought as guardian or limited guardian of the person, the estate, or both;

(i) A description of any alternate arrangements previously made by the alleged incapacitated person, such as trusts or powers of attorney, including identifying any guardianship nominations contained in a power of attorney, and why a guardianship is nevertheless necessary;

(j) The nature and degree of the alleged incapacity and the specific areas of protection and assistance requested and the limitation of rights requested to be included in the court's order of appointment;

(k) The requested term of the limited guardianship to be included in the court's order of appointment;

(l) Whether the petitioner is proposing a specific individual to act as guardian ad litem and, if so, the individual's knowledge of or relationship to any of the parties, and why the individual is proposed.

(2)(a) The attorney general may petition for the appointment of a guardian or limited guardian in any case in which there is cause to believe that a guardianship is necessary and no private party is able and willing to petition.

(b) Prepayment of a filing fee shall not be required in any guardianship or limited guardianship brought by the attorney general. Payment of the filing fee shall be ordered from the estate of the incapacitated person at the hearing on the merits of the petition, unless in the judgment of the court, such payment would impose a hardship upon the incapacitated person, in which case the filing shall be waived.

(3) No filing fee shall be charged by the court for filing either a petition for guardianship or a petition for limited guardianship if the petition alleges that the alleged incapacitated person has total assets of a value of less than three thousand dollars.

(4)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five court days after the petition has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

**IMPORTANT NOTICE  
PLEASE READ CAREFULLY**

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE . . . . . COUNTY SUPERIOR COURT BY . . . . . IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

(1) TO MARRY, DIVORCE, OR ENTER INTO OR END A STATE REGISTERED DOMESTIC PARTNERSHIP;

(2) TO VOTE OR HOLD AN ELECTED OFFICE;

(3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;

(4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;

(5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;

(6) TO POSSESS A LICENSE TO DRIVE;

(7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;

(8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;

(9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;

(10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU.

YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU.

YOU HAVE THE RIGHT TO BE PRESENT IN COURT AND TESTIFY WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN. IF A GUARDIAN AD LITEM IS APPOINTED, YOU HAVE THE RIGHT TO REQUEST THE COURT TO REPLACE THAT PERSON.

(5) All petitions filed under the provisions of this section shall be heard within sixty days unless an extension of time is requested by a party or the guardian ad litem within such sixty day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date. [2009 c 521 § 36; 1996 c 249 § 8; 1995 c 297 § 1; 1991 c 289 § 2; 1990 c 122 § 4; 1977 ex.s. c 309 § 3; 1975 1st ex.s. c 95 § 4; 1965 c 145 § 11.88.030. Prior: 1927 c 170 § 1; 1917 c 156 § 197; RRS § 1567; prior: 1909 c 118 § 1; 1903 c 130 § 1.]

**\*Reviser's note:** Trust companies, national banks, and nonprofit corporations are no longer referred to in RCW 11.88.020, as amended by 1997 c 312 § 1.

**Intent—1996 c 249:** See note following RCW 2.56.030.

**Effective date—1990 c 122:** See note following RCW 11.88.005.

**Severability—1977 ex.s. c 309:** See note following RCW 11.88.005.

**11.88.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to

implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 35.]

### Chapter 11.90 RCW

## UNIFORM ADULT GUARDIANSHIP AND PROTECTIVE PROCEEDINGS JURISDICTION ACT

### Sections

#### GENERAL PROVISIONS

- 11.90.010 Short title. *(Effective January 1, 2010.)*  
 11.90.020 Definitions. *(Effective January 1, 2010.)*  
 11.90.030 Foreign country treatment. *(Effective January 1, 2010.)*  
 11.90.040 Communications with out-of-state courts. *(Effective January 1, 2010.)*  
 11.90.050 Requests between in-state and out-of-state courts. *(Effective January 1, 2010.)*  
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#### JURISDICTION

- 11.90.200 Definitions. *(Effective January 1, 2010.)*  
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#### TRANSFER OF GUARDIANSHIP

- 11.90.400 Procedure for transfer of guardianship to an out-of-state court. *(Effective January 1, 2010.)*  
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#### MISCELLANEOUS PROVISIONS

- 11.90.450 Uniformity. *(Effective January 1, 2010.)*  
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#### GENERAL PROVISIONS

**11.90.010 Short title.** *(Effective January 1, 2010.)* This chapter may be cited as the uniform adult guardianship and protective proceedings jurisdiction act. [2009 c 81 § 1.]

**Effective date—2009 c 81:** "This act takes effect January 1, 2010." [2009 c 81 § 24.]

**11.90.020 Definitions.** *(Effective January 1, 2010.)* In this chapter:

(1) "Adult" means an individual who has attained eighteen years of age.

(2) "Guardian of the estate" means a person appointed by the court to administer the property of an adult, and includes a conservator appointed by the court in another state.

(3) "Guardian of the person" or "guardian" means a person appointed by the court to make decisions regarding the person of an adult.

(4) "Guardianship order" means an order appointing a guardian of the person or guardian of the estate.

(5) "Guardianship proceeding" means a judicial proceeding in which an order for the appointment of a guardian of the person or guardian of the estate is sought or has been issued.

(6) "Incapacitated person" means an adult for whom a guardian of the person or guardian of the estate has been appointed.

(7) "Party" means the respondent, petitioner, guardian of the person or guardian of the estate, or any other person allowed by the court to participate in a guardianship or protective proceeding.

(8) "Person," except in the term incapacitated person or protected person, means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(9) "Protected person" means an adult for whom a protective order has been issued.

(10) "Protective order" means an order appointing a guardian of the estate or other order related to management of an adult's property, including an order issued by a court in another state appointing a conservator.

(11) "Protective proceeding" means a judicial proceeding in which a protective order is sought or has been issued.

(12) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(13) "Respondent" means an adult for whom a protective order or the appointment of a guardian of the person is sought.

(14) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, a federally recognized Indian tribe, or any territory or insular possession subject to the jurisdiction of the United States. [2009 c 81 § 2.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.030 Foreign country treatment.** *(Effective January 1, 2010.)* A court of this state may treat a foreign country as if it were a state for the purpose of applying this chapter. [2009 c 81 § 3.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.040 Communications with out-of-state courts.** *(Effective January 1, 2010.)* (1) A court of this state may communicate with a court in another state concerning a proceeding arising under this chapter. The court may allow the parties to participate in the communication. Except as otherwise provided in subsection (2) of this section, the court shall make a record of the communication. The record may be limited to the fact that the communication occurred.

(2) Courts may communicate concerning schedules, calendars, court records, and other administrative matters without making a record. [2009 c 81 § 4.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.050 Requests between in-state and out-of-state courts. (Effective January 1, 2010.)** (1) In a guardianship or protective proceeding in this state, a court of this state may request the appropriate court of another state to do any of the following:

- (a) Hold an evidentiary hearing;
- (b) Order a person in that state to produce evidence or give testimony pursuant to procedures of that state;
- (c) Order that an evaluation or assessment be made of the respondent;
- (d) Order any appropriate investigation of a person involved in a proceeding;
- (e) Forward to the court of this state a certified copy of the transcript or other record of a hearing under (a) of this subsection or any other proceeding, any evidence otherwise produced under (b) of this subsection, and any evaluation or assessment prepared in compliance with an order under (c) or (d) of this subsection;
- (f) Issue any order necessary to assure the appearance in the proceeding of a person whose presence is necessary for the court to make a determination, including the respondent or the incapacitated or protected person;
- (g) Issue an order authorizing the release of medical, financial, criminal, or other relevant information in that state, including protected health information as defined in 45 C.F.R. Sec. 164.504.

(2) If a court of another state in which a guardianship or protective proceeding is pending requests assistance of the kind provided in subsection (1) of this section, a court of this state has jurisdiction for the limited purpose of granting the request or making reasonable efforts to comply with the request. [2009 c 81 § 5.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.060 Testimony and documentary evidence from another state. (Effective January 1, 2010.)** (1) In a guardianship or protective proceeding, in addition to other procedures that may be available, testimony of a witness who is located in another state may be offered by deposition or other means allowable in this state for testimony taken in another state. The court on its own motion may order that the testimony of a witness be taken in another state and may prescribe the manner in which and the terms upon which the testimony is to be taken.

(2) In a guardianship or protective proceeding, a court in this state may permit a witness located in another state to be deposed or to testify by telephone or audiovisual or other electronic means. A court of this state shall cooperate with the court of the other state in designating an appropriate location for the deposition or testimony.

(3) Documentary evidence transmitted from another state to a court of this state by technological means that do not produce an original writing may not be excluded from evidence on an objection based on the best evidence rule. [2009 c 81 § 6.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

## JURISDICTION

### 11.90.200 Definitions. (Effective January 1, 2010.)

(1) In this chapter:

(a) "Emergency" means a circumstance that likely will result in substantial harm to a respondent's health, safety, or welfare, and for which the appointment of a guardian is necessary because no other person has authority and is willing to act on the respondent's behalf.

(b) "Home state" means the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months immediately before the filing of a petition for a protective order or the appointment of a guardian; or if none, the state in which the respondent was physically present, including any period of temporary absence, for at least six consecutive months ending within the six months prior to the filing of the petition.

(c) "Significant-connection state" means a state, other than the home state, with which a respondent has a significant connection other than mere physical presence and in which substantial evidence concerning the respondent is available.

(2) In determining under RCW 11.90.220 and 11.90.400(5) whether a respondent has a significant connection with a particular state, the court shall consider:

(a) The location of the respondent's family and other persons required to be notified of the guardianship or protective proceeding;

(b) The length of time the respondent at any time was physically present in the state and the duration of any absence;

(c) The location of the respondent's property; and

(d) The extent to which the respondent has ties to the state such as voting registration, state or local tax return filing, vehicle registration, driver's license, social relationship, and receipt of services. [2009 c 81 § 7.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.210 Exclusive jurisdictional basis. (Effective January 1, 2010.)** This chapter provides the exclusive jurisdictional basis for a court of this state to appoint a guardian or issue a protective order for an adult under chapters 11.88 and 11.92 RCW. [2009 c 81 § 8.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.220 Appointing a guardian or issuing a protective order. (Effective January 1, 2010.)** A court of this state has jurisdiction to appoint a guardian or issue a protective order for a respondent if:

(1) This state is the respondent's home state;

(2) On the date the petition is filed, this state is a significant-connection state and:

(a) The respondent does not have a home state or a court of the respondent's home state has declined to exercise jurisdiction because this state is a more appropriate forum; or

(b) The respondent has a home state, a petition for an appointment or order is not pending in a court of that state or another significant-connection state, and, before the court makes the appointment or issues the order:

(i) A petition for an appointment or order is not filed in the respondent's home state;

(ii) An objection to the court's jurisdiction is not filed by a person required to be notified of the proceeding; and

(iii) The court in this state concludes that it is an appropriate forum under the factors set forth in RCW 11.90.250;

(3) This state does not have jurisdiction under either subsection (1) or (2) of this section, the respondent's home state and all significant-connection states have declined to exercise jurisdiction because this state is the more appropriate forum, and jurisdiction in this state is consistent with the constitutions of this state and the United States; or

(4) The requirements for special jurisdiction under RCW 11.90.230 are met. [2009 c 81 § 9.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.230 Special jurisdiction. (Effective January 1, 2010.)** (1) A court of this state lacking jurisdiction under RCW 11.90.220 has special jurisdiction to do any of the following:

(a) In an emergency, process a petition under RCW 11.88.090 for appointment of a guardian for a respondent who is physically present in this state, for a term not exceeding ninety days;

(b) Issue a protective order with respect to a respondent's real or tangible personal property located in this state if a petition for appointment of a guardian or a conservator for the respondent is pending or has been approved in another state;

(c) Appoint a guardian of the person or guardian of the estate for an incapacitated or protected person for whom a provisional order to transfer the proceeding from another state has been issued under procedures similar to RCW 11.90.400.

(2) If a petition for the appointment of a guardian in an emergency is brought in this state and this state was not the respondent's home state on the date the petition was filed, the court shall dismiss the proceeding at the request of the court of the home state, if any, whether dismissal is requested before or after the emergency appointment. [2009 c 81 § 10.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.240 Exclusive jurisdiction for court appointing a guardian or issuing a protective order. (Effective January 1, 2010.)** Except as otherwise provided in RCW 11.90.230, a court that has appointed a guardian or issued a protective order consistent with this chapter has exclusive and continuing jurisdiction over the proceeding until it is terminated by the court or the appointment or order expires by its own terms. [2009 c 81 § 11.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.250 In-state court declining jurisdiction. (Effective January 1, 2010.)** (1) A court of this state having jurisdiction under RCW 11.90.220 to appoint a guardian or issue a protective order may decline to exercise its jurisdiction if it determines at any time that a court of another state is a more appropriate forum.

(2) If a court of this state declines to exercise its jurisdiction under subsection (1) of this section, it shall either dismiss or stay the proceeding. The court may impose any condition

the court considers just and proper, including the condition that a petition for the appointment of a guardian or issuance of a protective order be filed promptly in another state.

(3) In determining whether it is an appropriate forum, the court shall consider all relevant factors, including:

(a) Any expressed preference of the respondent;

(b) Whether abuse, neglect, or exploitation of the respondent has occurred or is likely to occur and which state could best protect the respondent from the abuse, neglect, or exploitation;

(c) The length of time the respondent was physically present in or was a legal resident of this or another state;

(d) The distance of the respondent from the court in each state;

(e) The financial circumstances of the respondent's estate;

(f) The nature and location of the evidence;

(g) The ability of the court in each state to decide the issue expeditiously and the procedures necessary to present evidence;

(h) The familiarity of the court of each state with the facts and issues in the proceeding; and

(i) If an appointment were made, the court's ability to monitor the conduct of the guardian of the person or guardian of the estate. [2009 c 81 § 12.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.260 Jurisdiction required by unjustifiable conduct. (Effective January 1, 2010.)** (1) If at any time a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because of unjustifiable conduct, the court may:

(a) Decline to exercise jurisdiction;

(b) Exercise jurisdiction for the limited purpose of fashioning an appropriate remedy to ensure the health, safety, and welfare of the respondent or the protection of the respondent's property or prevent a repetition of the unjustifiable conduct, including staying the proceeding until a petition for the appointment of a guardian or issuance of a protective order is filed in a court of another state having jurisdiction; or

(c) Continue to exercise jurisdiction after considering:

(i) The extent to which the respondent and all persons required to be notified of the proceedings have acquiesced in the exercise of the court's jurisdiction;

(ii) Whether it is a more appropriate forum than the court of any other state under the factors set forth in RCW 11.90.250(3); and

(iii) Whether the court of any other state would have jurisdiction under factual circumstances in substantial conformity with the jurisdictional standards of RCW 11.90.220.

(2) If a court of this state determines that it acquired jurisdiction to appoint a guardian or issue a protective order because a party seeking to invoke its jurisdiction engaged in unjustifiable conduct, it may assess against that party necessary and reasonable expenses, including attorneys' fees, investigative fees, court costs, communication expenses, witness fees and expenses, and travel expenses. The court may not assess fees, costs, or expenses of any kind against this state or a governmental subdivision, agency, or instrumental-

ity of this state unless authorized by law other than this chapter. [2009 c 81 § 13.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.270 Notice of petition requirements when not respondent's home state on filing date. (Effective January 1, 2010.)** If a petition for the appointment of a guardian or issuance of a protective order is brought in this state and this state was not the respondent's home state on the date the petition was filed, in addition to complying with the notice requirements of this state, notice of the petition must be given to those persons who would be entitled to notice of the petition if a proceeding were brought in the respondent's home state. The notice must be given in the same manner as notice is required to be given in this state. [2009 c 81 § 14.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.280 Rules when guardian appointment or protective order petition is filed in Washington and another state. (Effective January 1, 2010.)** Except for a petition for the appointment of a guardian in an emergency or issuance of a protective order limited to property located in this state under RCW 11.90.230(1) (a) or (b), if a petition for the appointment of a guardian or issuance of a protective order is filed in this state and in another state and neither petition has been dismissed or withdrawn, the following rules apply:

(1) If the court in this state has jurisdiction under RCW 11.90.220, it may proceed with the case unless a court in another state acquires jurisdiction under provisions similar to RCW 11.90.220 before the appointment or issuance of the order.

(2) If the court in this state does not have jurisdiction under RCW 11.90.220, whether at the time the petition is filed or at any time before the appointment or issuance of the order, the court shall stay the proceeding and communicate with the court in the other state. If the court in the other state has jurisdiction, the court in this state shall dismiss the petition unless the court in the other state determines that the court in this state is a more appropriate forum. [2009 c 81 § 15.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

#### TRANSFER OF GUARDIANSHIP

**11.90.400 Procedure for transfer of guardianship to an out-of-state court. (Effective January 1, 2010.)** (1) A guardian of the person or guardian of the estate appointed in this state may petition the court to transfer the guardianship to another state.

(2) Notice of a petition under subsection (1) of this section must be given to the persons that would be entitled to notice of a petition in this state for the appointment of a guardian of the person or guardian of the estate.

(3) On the court's own motion or on request of the guardian of the person or guardian of the estate, the incapacitated or protected person, or other person required to be notified of the petition, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition to transfer a guardianship and shall direct the

guardian of the person or guardian of the estate to petition for guardianship in the other state if the court is satisfied that the guardianship will be accepted by the court in the other state and the court finds that:

(a) The incapacitated person is physically present in or is reasonably expected to move permanently to the other state;

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the incapacitated person; and

(c) Plans for care and services for the incapacitated person in the other state are reasonable and sufficient.

(5) The court shall issue a provisional order granting a petition to transfer a guardianship of the estate and shall direct the guardian of the estate to petition for guardianship of the estate or conservatorship in the other state if the court is satisfied that the guardianship of the estate will be accepted by the court of the other state and the court finds that:

(a) The protected person is physically present in or is reasonably expected to move permanently to the other state, or the protected person has a significant connection to the other state considering the factors in RCW 11.90.200(2);

(b) An objection to the transfer has not been made or, if an objection has been made, the objector has not established that the transfer would be contrary to the interests of the protected person; and

(c) Adequate arrangements will be made for management of the protected person's property.

(6) The court shall issue a final order confirming the transfer and terminating the guardianship of the person or guardianship of the estate upon its receipt of:

(a) A provisional order accepting the proceeding from the court to which the proceeding is to be transferred which is issued under provisions similar to RCW 11.90.410; and

(b) The documents required to terminate a guardianship of the person or guardianship of the estate in this state. [2009 c 81 § 16.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.410 Procedures for transfer of guardianship or conservatorship to Washington. (Effective January 1, 2010.)** (1) To confirm transfer of a guardianship or conservatorship transferred to this state under provisions similar to RCW 11.90.400, the guardian or conservator must petition the court in this state to accept the guardianship or conservatorship. The petition must include a certified copy of the other state's provisional order of transfer.

(2) Notice of a petition under subsection (1) of this section must be given to those persons that would be entitled to notice if the petition were a petition for the appointment of a guardian or issuance of a protective order in both the transferring state and this state. The notice must be given in the same manner as notice is required to be given in this state.

(3) On the court's own motion or on request of the guardian or conservator, the incapacitated or protected person, or other person required to be notified of the proceeding, the court shall hold a hearing on a petition filed pursuant to subsection (1) of this section.

(4) The court shall issue an order provisionally granting a petition filed under subsection (1) of this section unless:



(a) An objection is made and the objector establishes that transfer of the proceeding would be contrary to the interests of the incapacitated or protected person; or

(b) The guardian or conservator is ineligible for appointment in this state.

(5) The court shall issue a final order accepting the proceeding and appointing the guardian or conservator as guardian of the person or guardian of the estate in this state upon its receipt from the court from which the proceeding is being transferred of a final order issued under provisions similar to RCW 11.90.400 transferring the proceeding to this state.

(6) Not later than ninety days after issuance of a final order accepting transfer of a guardianship or conservatorship, the court shall determine whether the guardianship of the person or guardianship of the estate needs to be modified to conform to the law of this state.

(7) In granting a petition under this section, the court shall recognize a guardianship or conservatorship order from the other state, including the determination of the incapacitated or protected person's incapacity and the appointment of the guardian or conservator.

(8) The denial by a court of this state of a petition to accept a guardianship or conservatorship transferred from another state does not affect the ability of the guardian or conservator to seek appointment as guardian or guardian of the estate in this state if the court has jurisdiction to make an appointment other than by reason of the provisional order of transfer. [2009 c 81 § 17.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.420 Registering out-of-state guardianship. (Effective January 1, 2010.)** If a guardian has been appointed in another state and a petition for the appointment of a guardian is not pending in this state, the guardian appointed in the other state, after giving notice to the appointing court of an intent to register, may register the guardianship order in this state by filing as a foreign judgment in a court, in any appropriate county of this state, certified copies of the order and letters of office. [2009 c 81 § 18.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.430 Registering an out-of-state protective order. (Effective January 1, 2010.)** If a guardian of the estate or conservator has been appointed in another state and a petition for a protective order is not pending in this state, the guardian of the estate or conservator appointed in the other state, after giving notice to the appointing court of an intent to register, may register the protective order in this state by filing as a foreign judgment in a court of this state, in any county in which property belonging to the protected person is located, certified copies of the order and letters of office and of any bond. [2009 c 81 § 19.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.440 Enforcement of guardianship or protective order from another state. (Effective January 1, 2010.)** (1) Upon registration of a guardianship or protective order from another state, the guardian or conservator may exercise in this state all powers authorized in the order of appointment except as prohibited under the laws of this state, including maintain-

ing actions and proceedings in this state and, if the guardian or conservator is not a resident of this state, subject to any conditions imposed upon nonresident parties.

(2) A court of this state may grant any relief available under this chapter and other law of this state to enforce a registered order. [2009 c 81 § 20.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

## MISCELLANEOUS PROVISIONS

**11.90.450 Uniformity. (Effective January 1, 2010.)** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2009 c 81 § 21.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.460 Application of the federal electronic signatures in global and national commerce act. (Effective January 1, 2010.)** This chapter modifies, limits, and supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b). [2009 c 81 § 22.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

**11.90.470 Application. (Effective January 1, 2010.)** (1) This chapter applies to guardianship and protective proceedings filed on or after January 1, 2010.

(2) RCW 11.90.010 through 11.90.060 and 11.90.400 through 11.90.460 apply to proceedings filed before January 1, 2010, regardless of whether a guardianship or protective order has been issued. [2009 c 81 § 23.]

**Effective date—2009 c 81:** See note following RCW 11.90.010.

## Chapter 11.94 RCW POWER OF ATTORNEY

### Sections

11.94.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**11.94.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other

law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 37.]

### Chapter 11.95 RCW POWERS OF APPOINTMENT

#### Sections

11.95.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**11.95.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 38.]

### Chapter 11.96A RCW TRUST AND ESTATE DISPUTE RESOLUTION

#### Sections

11.96A.030 Definitions.

**11.96A.030 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Citation" or "cite" and other similar terms, when required of a person interested in the estate or trust or a party to a petition, means to give notice as required under RCW 11.96A.100. "Citation" or "cite" and other similar terms, when required of the court, means to order, as authorized under RCW 11.96A.020 and 11.96A.060, and as authorized by law.

(2) "Matter" includes any issue, question, or dispute involving:

(a) The determination of any class of creditors, devisees, legatees, heirs, next of kin, or other persons interested in an estate, trust, nonprobate asset, or with respect to any other asset or property interest passing at death;

(b) The direction of a personal representative or trustee to do or to abstain from doing any act in a fiduciary capacity;

(c) The determination of any question arising in the administration of an estate or trust, or with respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, that may include, without limitation, questions relating to: (i) The construction of wills,

trusts, community property agreements, and other writings; (ii) a change of personal representative or trustee; (iii) a change of the situs of a trust; (iv) an accounting from a personal representative or trustee; or (v) the determination of fees for a personal representative or trustee;

(d) The grant to a personal representative or trustee of any necessary or desirable power not otherwise granted in the governing instrument or given by law;

(e) An action or proceeding under chapter 11.84 RCW;

(f) The amendment, reformation, or conformation of a will or a trust instrument to comply with statutes and regulations of the United States internal revenue service in order to achieve qualification for deductions, elections, and other tax requirements, including the qualification of any gift thereunder for the benefit of a surviving spouse who is not a citizen of the United States for the estate tax marital deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a qualified domestic trust under section 2056A of the internal revenue code, the qualification of any gift thereunder as a qualified conservation easement as permitted by federal law, or the qualification of any gift for the charitable estate tax deduction permitted by federal law, including the addition of mandatory governing instrument requirements for a charitable remainder trust; and

(g) With respect to any nonprobate asset, or with respect to any other asset or property interest passing at death, including joint tenancy property, property subject to a community property agreement, or assets subject to a pay on death or transfer on death designation:

(i) The ascertaining of any class of creditors or others for purposes of chapter 11.18 or 11.42 RCW;

(ii) The ordering of a qualified person, the notice agent, or resident agent, as those terms are defined in chapter 11.42 RCW, or any combination of them, to do or abstain from doing any particular act with respect to a nonprobate asset;

(iii) The ordering of a custodian of any of the decedent's records relating to a nonprobate asset to do or abstain from doing any particular act with respect to those records;

(iv) The determination of any question arising in the administration under chapter 11.18 or 11.42 RCW of a nonprobate asset;

(v) The determination of any questions relating to the abatement, rights of creditors, or other matter relating to the administration, settlement, or final disposition of a nonprobate asset under this title;

(vi) The resolution of any matter referencing this chapter, including a determination of any questions relating to the ownership or distribution of an individual retirement account on the death of the spouse of the account holder as contemplated by RCW 6.15.020(6);

(vii) The resolution of any other matter that could affect the nonprobate asset.

(3) "Nonprobate assets" has the meaning given in RCW 11.02.005.

(4) "Notice agent" has the meanings given in RCW 11.42.010.

(5) "Party" or "parties" means each of the following persons who has an interest in the subject of the particular proceeding and whose name and address are known to, or are reasonably ascertainable by, the petitioner:

(a) The trustor if living;

*approved at the November 2009 election under Referendum Measure 71.)*

- (b) The trustee;
- (c) The personal representative;
- (d) An heir;
- (e) A beneficiary, including devisees, legatees, and trust beneficiaries;
- (f) The surviving spouse or surviving domestic partner of a decedent with respect to his or her interest in the decedent's property;
- (g) A guardian ad litem;
- (h) A creditor;
- (i) Any other person who has an interest in the subject of the particular proceeding;
- (j) The attorney general if required under RCW 11.110.120;
- (k) Any duly appointed and acting legal representative of a party such as a guardian, special representative, or attorney-in-fact;
- (l) Where applicable, the virtual representative of any person described in this subsection the giving of notice to whom would meet notice requirements as provided in RCW 11.96A.120;
- (m) Any notice agent, resident agent, or a qualified person, as those terms are defined in chapter 11.42 RCW; and
- (n) The owner or the personal representative of the estate of the deceased owner of the nonprobate asset that is the subject of the particular proceeding, if the subject of the particular proceeding relates to the beneficiary's liability to a decedent's estate or creditors under RCW 11.18.200.

(6) "Persons interested in the estate or trust" means the trustor, if living, all persons beneficially interested in the estate or trust, persons holding powers over the trust or estate assets, the attorney general in the case of any charitable trust where the attorney general would be a necessary party to judicial proceedings concerning the trust, and any personal representative or trustee of the estate or trust.

(7) "Principal place of administration of the trust" means the trustee's usual place of business where the day-to-day records pertaining to the trust are kept, or the trustee's residence if the trustee has no such place of business.

(8) "Representative" and other similar terms refer to a person who virtually represents another under RCW 11.96A.120.

(9) The "situs" of a trust means the place where the principal place of administration of the trust is located, unless otherwise provided in the instrument creating the trust.

(10) "Trustee" means any acting and qualified trustee of the trust. [2009 c 525 § 20; 2008 c 6 § 927; 2006 c 360 § 10; 2002 c 66 § 2; 1999 c 42 § 104.]

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

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Clarification of laws—Enforceability of act—Severability—2006 c 360:** See notes following RCW 11.108.070.

## Chapter 11.98 RCW TRUSTS

### Sections

- 11.98.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is*

**11.98.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)* For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 39.]

## Chapter 11.104A RCW WASHINGTON PRINCIPAL AND INCOME ACT OF 2002

### Sections

- 11.104A.180 Deferred compensation, annuities, and similar payments.  
11.104A.906 Transitional matters.  
11.104A.907 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

**11.104A.180 Deferred compensation, annuities, and similar payments.** (a) In this section:

(1) "Payment" means a payment that a trustee may receive over a fixed number of years or during the life of one or more individuals because of services rendered or property transferred to the payer in exchange for future payments. The term includes a payment made in money or property from the payer's general assets or from a separate fund created by the payer. For purposes of subsections (d), (e), (f), and (g) of this section, the term also includes any payment from any separate fund, regardless of the reason for the payment.

(2) "Separate fund" includes a private or commercial annuity, an individual retirement account, and a pension, profit-sharing, stock-bonus, or stock-ownership plan.

(b) To the extent that a payment is characterized as interest, a dividend, or a payment made in lieu of interest or a dividend, a trustee shall allocate the payment to income. The trustee shall allocate to principal the balance of the payment and any other payment received in the same accounting period that is not characterized as interest, a dividend, or an equivalent payment.

(c) If no part of a payment is characterized as interest, a dividend, or an equivalent payment, a trustee shall allocate to income four percent of the total value of the interests of the trustee in the plan, annuity, or similar payment according to the most recent statement of value preceding the beginning of the accounting period and the balance to principal.

(d) Except as otherwise provided in subsection (e) of this section, subsections (f) and (g) of this section apply, and subsections (b) and (c) of this section do not apply, in determining the allocation of a payment made from a separate fund to:

(1) A trust to which an election to qualify for a marital deduction under 26 U.S.C. Sec. 2056(b)(7) of the federal internal revenue code of 1986, as amended as of July 26, 2009, has been made; or

(2) A trust that qualifies for the marital deduction under 26 U.S.C. Sec. 2056(b)(5) of the federal internal revenue code of 1986, as amended as of July 26, 2009.

(e) Subsections (d), (f), and (g) of this section do not apply if and to the extent that the series of payments would, without the application of subsection (d) of this section, qualify for the marital deduction under 26 U.S.C. Sec. 2056(b)(7)(C) of the federal internal revenue code of 1986, as amended as of July 26, 2009.

(f) A trustee shall determine the internal income of each separate fund for the accounting period as if the separate fund were a trust subject to this section. Upon request of the surviving spouse, the trustee shall demand that the person administering the separate fund distribute the internal income to the trust. The trustee shall allocate a payment from the separate fund to income to the extent of the internal income of the separate fund and distribute that amount to the surviving spouse. The trustee shall allocate the balance of the payment to principal. Upon request of the surviving spouse, the trustee shall allocate principal to income to the extent the internal income of the separate fund exceeds payments made from the separate fund to the trust during the accounting period.

(g) If a trustee cannot determine the internal income of a separate fund but can determine the value of the separate fund, the internal income of the separate fund is deemed to equal four percent of the fund's value, according to the most recent statement of value preceding the beginning of the accounting period. If the trustee can determine neither the internal income of the separate fund nor the fund's value, the internal income of the fund is deemed to equal the product of the interest rate and the present value of the expected future payments, as determined under 26 U.S.C. Sec. 7520 of the federal internal revenue code of 1986, as amended as of July 26, 2009, for the month preceding the accounting period for which the computation is made.

(h) This section does not apply to a payment to which RCW 11.104A.190 applies. [2009 c 365 § 1; 2002 c 345 § 409.]

**11.104A.906 Transitional matters.** RCW 11.104A.180 applies to a trust described in RCW 11.104A.180(d) on and after the following dates:

(a) If the trust is not funded as of July 26, 2009, the date of the decedent's death.

(b) If the trust is initially funded in the calendar year beginning January 1, 2009, the date of the decedent's death.

(c) If the trust is not described in subsection (a) or (b) of this section, January 1, 2009. [2009 c 365 § 2.]

**11.104A.907 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.**

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*(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)* For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 40.]

### Chapter 11.108 RCW

#### MISCELLANEOUS PROVISIONS FOR DISTRIBUTIONS MADE BY A GOVERNING INSTRUMENT

##### Sections

11.108.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

**11.108.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)* For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 41.]

## Title 12

### DISTRICT COURTS—CIVIL PROCEDURE

#### Chapters

**12.20 Judgments.**

**12.40 Small claims.**

#### Chapter 12.20 RCW

##### JUDGMENTS

##### Sections

12.20.060 Judgment for costs—Attorney's fee—Costs in civil actions for the recovery of money only.

**12.20.060 Judgment for costs—Attorney's fee—Costs in civil actions for the recovery of money only.** (1) When the prevailing party in district court is entitled to recover costs as authorized in RCW 4.84.010 in a civil action, the judge shall add the amount thereof to the judgment; in case of failure of the plaintiff to recover or of dismissal of the action, the judge shall enter up a judgment in favor of the defendant for the amount of his or her costs; and in case any party so entitled to costs is represented in the action by an attorney, the judge shall include attorney's fees in the amount provided in RCW 4.84.080 as part of the costs: PROVIDED, HOWEVER, That the plaintiff shall not be entitled to such attorney fee unless he or she obtains, exclusive of costs, a judgment in the sum of fifty dollars or more: AND PROVIDED FURTHER, That if the plaintiff obtains judgment, exclusive of costs, of at least fifty dollars but less than two hundred dollars, the judge shall include attorney fees of one hundred twenty-five dollars as part of the costs.

(2)(a) In any district court civil action for the recovery of money only, the plaintiff will be considered the prevailing party for the purpose of awarding costs, including a statutory attorney fee, if: (i) The defendant makes full or partial payment of the amounts sought by the plaintiff prior to the entry of judgment; and (ii) before such payment is tendered, the plaintiff has notified the defendant in writing that the full or partial payment of the amounts sued for might result in an award of costs. The plaintiff is not entitled to a statutory attorney fee unless the amount prayed for, exclusive of costs, is fifty dollars or more, and if the amount prayed for, exclusive of costs, is at least fifty dollars but less than two hundred dollars, the judgment must include a statutory attorney fee of one hundred twenty-five dollars as part of the costs.

(b) For the purposes of this section, "plaintiff" includes a counterclaimant, cross-claimant, and third-party plaintiff, and "defendant" includes a party defending a counterclaim, cross-claim, or third-party claim.

(c) A party may demand, offer, or accept payment of statutory costs before the entry of judgment in an action.

(d) This section may not be construed to (a) [(i)] authorize an award of costs if the action is resolved by a negotiated settlement or (b) [(ii)] limit or bar the operation of cost-shifting provisions of other statutes or court rules. [2009 c 240 § 3; 2004 c 123 § 2; 1993 c 341 § 1; 1985 c 240 § 2; 1984 c 258 § 89; 1975-'76 2nd ex.s. c 30 § 1; 1915 c 43 § 1; 1893 c 12 § 1; Code 1881 § 1785; 1873 p 350 § 84; 1854 p 237 § 85; RRS § 1862.]

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

*Attorneys' fee as costs in damage actions of ten thousand dollars or less: RCW 4.84.250 through 4.84.300.*

## Chapter 12.40 RCW SMALL CLAIMS

### Sections

12.40.020 Action—Commencement—Fee—Surcharge.

**12.40.020 Action—Commencement—Fee—Surcharge.** A small claims action shall be commenced by the plaintiff filing a claim, in the form prescribed by RCW 12.40.050, in the small claims department. A filing fee of

fourteen dollars plus any surcharge authorized by RCW 7.75.035 shall be paid when the claim is filed. Any party filing a counterclaim, cross-claim, or third-party claim in such action shall pay to the court a filing fee of fourteen dollars plus any surcharge authorized by RCW 7.75.035. Until July 1, 2011, in addition to the fees required by this section, an additional surcharge of ten dollars shall be charged on the filing fees required by this section, which shall be remitted to the state treasurer for deposit in the judicial stabilization trust account. [2009 c 572 § 2; 2005 c 457 § 14; 1990 c 172 § 3; 1984 c 258 § 58; 1919 c 187 § 2; RRS § 1777-2.]

**Effective date—2009 c 572:** See note following RCW 43.79.505.

**Intent—2005 c 457:** See note following RCW 43.08.250.

**Effective date—1990 c 172:** See note following RCW 7.75.035.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

## Title 13

## JUVENILE COURTS AND JUVENILE OFFENDERS

### Chapters

- 13.04** Basic juvenile court act.
- 13.32A** Family reconciliation act.
- 13.34** Juvenile court act—Dependency and termination of parent-child relationship.
- 13.40** Juvenile justice act of 1977.
- 13.50** Keeping and release of records by juvenile justice or care agencies.
- 13.60** Missing children clearinghouse.
- 13.64** Emancipation of minors.
- 13.70** Substitute care of children—Review board system.

### Chapter 13.04 RCW

#### BASIC JUVENILE COURT ACT

### Sections

13.04.030 Juvenile court—Exclusive original jurisdiction—Exceptions.

**13.04.030 Juvenile court—Exclusive original jurisdiction—Exceptions.** (1) Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings:

(a) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;

(b) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.161;

(c) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210;

(d) To approve or disapprove out-of-home placement as provided in RCW 13.32A.170;

(e) Relating to juveniles alleged or found to have committed offenses, traffic or civil infractions, or violations as provided in RCW 13.40.020 through 13.40.230, unless:

(i) The juvenile court transfers jurisdiction of a particular juvenile to adult criminal court pursuant to RCW 13.40.110;

(ii) The statute of limitations applicable to adult prosecution for the offense, traffic or civil infraction, or violation has expired;

(iii) The alleged offense or infraction is a traffic, fish, boating, or game offense, or traffic or civil infraction committed by a juvenile sixteen years of age or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction, in which instance the appropriate court of limited jurisdiction shall have jurisdiction over the alleged offense or infraction, and no guardian ad litem is required in any such proceeding due to the juvenile's age. If such an alleged offense or infraction and an alleged offense or infraction subject to juvenile court jurisdiction arise out of the same event or incident, the juvenile court may have jurisdiction of both matters. The jurisdiction under this subsection does not constitute "transfer" or a "decline" for purposes of \*RCW 13.40.110(1) or (e)(i) of this subsection. Courts of limited jurisdiction which confine juveniles for an alleged offense or infraction may place juveniles in juvenile detention facilities under an agreement with the officials responsible for the administration of the juvenile detention facility in RCW 13.04.035 and 13.20.060;

(iv) The alleged offense is a traffic or civil infraction, a violation of compulsory school attendance provisions under chapter 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has assumed concurrent jurisdiction over those offenses as provided in \*\*RCW 13.04.0301; or

(v) The juvenile is sixteen or seventeen years old on the date the alleged offense is committed and the alleged offense is:

(A) A serious violent offense as defined in RCW 9.94A.030;

(B) A violent offense as defined in RCW 9.94A.030 and the juvenile has a criminal history consisting of: (I) One or more prior serious violent offenses; (II) two or more prior violent offenses; or (III) three or more of any combination of the following offenses: Any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's thirteenth birthday and prosecuted separately;

(C) Robbery in the first degree, rape of a child in the first degree, or drive-by shooting, committed on or after July 1, 1997;

(D) Burglary in the first degree committed on or after July 1, 1997, and the juvenile has a criminal history consisting of one or more prior felony or misdemeanor offenses; or

(E) Any violent offense as defined in RCW 9.94A.030 committed on or after July 1, 1997, and the juvenile is alleged to have been armed with a firearm.

(I) In such a case the adult criminal court shall have exclusive original jurisdiction, except as provided in (e)(v)(E)(II) and (III) of this subsection.

(II) The juvenile court shall have exclusive jurisdiction over the disposition of any remaining charges in any case in which the juvenile is found not guilty in the adult criminal court of the charge or charges for which he or she was transferred, or is convicted in the adult criminal court of a lesser included offense that is not also an offense listed in (e)(v) of this subsection. The juvenile court shall enter an order extending juvenile court jurisdiction if the juvenile has turned eighteen years of age during the adult criminal court proceed-

ings pursuant to RCW 13.40.300. However, once the case is returned to juvenile court, the court may hold a decline hearing pursuant to RCW 13.40.110 to determine whether to retain the case in juvenile court for the purpose of disposition or return the case to adult criminal court for sentencing.

(III) The prosecutor and respondent may agree to juvenile court jurisdiction and waive application of exclusive adult criminal jurisdiction in (e)(v)(A) through (E) of this subsection and remove the proceeding back to juvenile court with the court's approval.

If the juvenile challenges the state's determination of the juvenile's criminal history under (e)(v) of this subsection, the state may establish the offender's criminal history by a preponderance of the evidence. If the criminal history consists of adjudications entered upon a plea of guilty, the state shall not bear a burden of establishing the knowing and voluntariness of the plea;

(f) Under the interstate compact on juveniles as provided in chapter 13.24 RCW;

(g) Relating to termination of a diversion agreement under RCW 13.40.080, including a proceeding in which the divertee has attained eighteen years of age;

(h) Relating to court validation of a voluntary consent to an out-of-home placement under chapter 13.34 RCW, by the parent or Indian custodian of an Indian child, except if the parent or Indian custodian and child are residents of or domiciled within the boundaries of a federally recognized Indian reservation over which the tribe exercises exclusive jurisdiction;

(i) Relating to petitions to compel disclosure of information filed by the department of social and health services pursuant to RCW 74.13.042; and

(j) Relating to judicial determinations and permanency planning hearings involving developmentally disabled children who have been placed in out-of-home care pursuant to a voluntary placement agreement between the child's parent, guardian, or legal custodian and the department of social and health services.

(2) The family court shall have concurrent original jurisdiction with the juvenile court over all proceedings under this section if the superior court judges of a county authorize concurrent jurisdiction as provided in RCW 26.12.010.

(3) The juvenile court shall have concurrent original jurisdiction with the family court over child custody proceedings under chapter 26.10 RCW and parenting plans or residential schedules under chapters 26.09 and 26.26 RCW as provided for in RCW 13.34.155.

(4) A juvenile subject to adult superior court jurisdiction under subsection (1)(e)(i) through (v) of this section, who is detained pending trial, may be detained in a detention facility as defined in RCW 13.40.020 pending sentencing or a dismissal. [2009 c 526 § 1; 2009 c 454 § 1. Prior: 2005 c 290 § 1; 2005 c 238 § 1; 2000 c 135 § 2; prior: 1997 c 386 § 17; 1997 c 341 § 3; 1997 c 338 § 7; prior: 1995 c 312 § 39; 1995 c 311 § 15; 1994 sp.s. c 7 § 519; 1988 c 14 § 1; 1987 c 170 § 1; 1985 c 354 § 29; 1984 c 272 § 1; 1981 c 299 § 1; 1980 c 128 § 6; 1979 c 155 § 3; 1977 ex.s. c 291 § 4; 1937 c 65 § 1; 1929 c 176 § 1; 1921 c 135 § 1; 1913 c 160 § 2; RRS § 1987-2.]

**Reviser's note:** \*(1) RCW 13.40.110 was amended by 2009 c 454 § 3, changing subsection (1) to subsections (1) and (2).

\*\* (2) RCW 13.04.0301 was decodified September 2003.

(3) This section was amended by 2009 c 454 § 1 and by 2009 c 526 § 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).

**Application—1997 c 386:** See note following RCW 13.50.010.

**Finding—Intent—1997 c 341:** "The legislature finds that a swift and certain response to a juvenile who begins engaging in acts of delinquency may prevent the offender from becoming a chronic or more serious offender. However, given pressing demands to address serious offenders, the system does not always respond to minor offenders expeditiously and effectively. Consequently, this act is adopted to implement an experiment to determine whether granting courts of limited jurisdiction concurrent jurisdiction over certain juvenile offenses will improve the system's effectiveness in curbing delinquency. The legislature may ascertain whether this approach might be successful on a larger scale by conducting an experiment with local governments, which are the laboratories of democracy." [1997 c 341 § 1.]

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**Application of 1994 sp.s. c 7 amendments:** "Provisions governing exceptions to juvenile court jurisdiction in the amendments to RCW 13.04.030 contained in section 519, chapter 7, Laws of 1994 sp. sess. shall apply to serious violent and violent offenses committed on or after June 13, 1994. The criminal history which may result in loss of juvenile court jurisdiction upon the alleged commission of a serious violent or violent offense may have been acquired on, before, or after June 13, 1994." [1994 sp.s. c 7 § 540.]

**Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Savings—1988 c 14:** "Any court validation of a voluntary consent to relinquishment or adoption of an Indian child which was obtained in a juvenile court or superior court pursuant to chapter 26.33 RCW after July 25, 1987, and before June 9, 1988, shall be valid and effective in all respects." [1988 c 14 § 2.]

**Severability—1987 c 170:** "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 170 § 15.]

**Severability—Effective date—1985 c 354:** See RCW 71.34.900 and 71.34.901.

**Effective date—Severability—1980 c 128:** See notes following RCW 46.63.060.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

*Court commissioners: Chapter 2.24 RCW, state Constitution Art. 4 § 23.*

*Jurisdiction of superior courts: State Constitution Art. 4 § 6 (Amendment 65).*

## Chapter 13.32A RCW

### FAMILY RECONCILIATION ACT

#### Sections

- 13.32A.128 Child admitted to secure facility—Limitations.  
 13.32A.130 Child admitted to secure facility—Maximum hours of custody—Evaluation for semi-secure facility or release to department—Parental right to remove child—Reconciliation effort—Information to parent and child—Written statement of services and rights—Crisis residential center immunity from liability.

**13.32A.128 Child admitted to secure facility—Limitations.** The department may take a runaway youth to a secure facility after attempting to notify the parent of the

child's whereabouts. The department may not take a child to a secure facility if the department has reasonable cause to believe that the reason for the child's runaway status is the result of abuse or neglect. [2009 c 569 § 5.]

**13.32A.130 Child admitted to secure facility—Maximum hours of custody—Evaluation for semi-secure facility or release to department—Parental right to remove child—Reconciliation effort—Information to parent and child—Written statement of services and rights—Crisis residential center immunity from liability.** (1) A child admitted to a secure facility located in a juvenile detention center shall remain in the facility for at least twenty-four hours after admission but for not more than five consecutive days. A child admitted to a secure facility not located in a juvenile detention center or a semi-secure facility may remain for not more than fifteen consecutive days. If a child is transferred between a secure and semi-secure facility, the aggregate length of time a child may remain in both facilities shall not exceed fifteen consecutive days per admission, and in no event may a child's stay in a secure facility located in a juvenile detention center exceed five days per admission.

(2)(a)(i) The facility administrator shall determine within twenty-four hours after a child's admission to a secure facility whether the child is likely to remain in a semi-secure facility and may transfer the child to a semi-secure facility or release the child to the department. The determination shall be based on: (A) The need for continued assessment, protection, and treatment of the child in a secure facility; and (B) the likelihood the child would remain at a semi-secure facility until his or her parents can take the child home or a petition can be filed under this title.

(ii) In making the determination the administrator shall consider the following information if known: (A) The child's age and maturity; (B) the child's condition upon arrival at the center; (C) the circumstances that led to the child's being taken to the center; (D) whether the child's behavior endangers the health, safety, or welfare of the child or any other person; (E) the child's history of running away; and (F) the child's willingness to cooperate in the assessment.

(b) If the administrator of a secure facility determines the child is unlikely to remain in a semi-secure facility, the administrator shall keep the child in the secure facility pursuant to this chapter and in order to provide for space for the child may transfer another child who has been in the facility for at least seventy-two hours to a semi-secure facility. The administrator shall only make a transfer of a child after determining that the child who may be transferred is likely to remain at the semi-secure facility.

(c) A crisis residential center administrator is authorized to transfer a child to a crisis residential center in the area where the child's parents reside or where the child's lawfully prescribed residence is located.

(d) An administrator may transfer a child from a semi-secure facility to a secure facility whenever he or she reasonably believes that the child is likely to leave the semi-secure facility and not return and after full consideration of all factors in (a)(i) and (ii) of this subsection.

(3) If no parent is available or willing to remove the child during the first seventy-two hours following admission, the

department shall consider the filing of a petition under RCW 13.32A.140.

(4) Notwithstanding the provisions of subsection (1) of this section, the parents may remove the child at any time unless the staff of the crisis residential center has reasonable cause to believe that the child is absent from the home because he or she is abused or neglected or if allegations of abuse or neglect have been made against the parents. The department or any agency legally charged with the supervision of a child may remove a child from a crisis residential center at any time after the first twenty-four-hour period after admission has elapsed and only after full consideration by all parties of the factors in subsection (2)(a) of this section.

(5) Crisis residential center staff shall make reasonable efforts to protect the child and achieve a reconciliation of the family. If a reconciliation and voluntary return of the child has not been achieved within forty-eight hours from the time of admission, and if the administrator of the center does not consider it likely that reconciliation will be achieved within five days of the child's admission to the center, then the administrator shall inform the parent and child of: (a) The availability of counseling services; (b) the right to file a child in need of services petition for an out-of-home placement, the right of a parent to file an at-risk youth petition, and the right of the parent and child to obtain assistance in filing the petition; (c) the right to request the facility administrator or his or her designee to form a multidisciplinary team; (d) the right to request a review of any out-of-home placement; (e) the right to request a mental health or chemical dependency evaluation by a county-designated professional or a private treatment facility; and (f) the right to request treatment in a program to address the child's at-risk behavior under RCW 13.32A.197.

(6) At no time shall information regarding a parent's or child's rights be withheld. The department shall develop and distribute to all law enforcement agencies and to each crisis residential center administrator a written statement delineating the services and rights. The administrator of the facility or his or her designee shall provide every resident and parent with a copy of the statement.

(7) A crisis residential center and any person employed at the center acting in good faith in carrying out the provisions of this section are immune from criminal or civil liability for such actions. [2009 c 569 § 1. Prior: 2000 c 162 § 13; 2000 c 162 § 3; 2000 c 123 § 15; 1997 c 146 § 4; 1996 c 133 § 8; 1995 c 312 § 12; 1994 sp.s. c 7 § 508; 1992 c 205 § 206; 1990 c 276 § 8; 1985 c 257 § 9; 1981 c 298 § 9; 1979 c 155 § 27.]

**Effective date—2000 c 162 §§ 11-17:** See note following RCW 13.32A.060.

**Findings—Short title—Intent—Construction—1996 c 133:** See notes following RCW 13.32A.197.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Part headings not law—Severability—1992 c 205:** See notes following RCW 13.40.010.

**Intent—1990 c 276:** See RCW 13.32A.015.

**Conflict with federal requirements—Severability—1990 c 276:** See notes following RCW 13.32A.020.

**Severability—1985 c 257:** See note following RCW 13.34.165.

**Severability—1981 c 298:** See note following RCW 13.32A.040.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

## Chapter 13.34 RCW

### JUVENILE COURT ACT— DEPENDENCY AND TERMINATION OF PARENT-CHILD RELATIONSHIP

#### Sections

- 13.34.025 Child dependency cases—Coordination of services—Remedial services.
- 13.34.030 Definitions.
- 13.34.035 Standard court forms—Rules—Administrative office of the courts to develop and establish—Failure to use or follow—Distribution.
- 13.34.062 Shelter care—Notice of custody and rights.
- 13.34.065 Shelter care—Hearing—Recommendation as to further need—Release (*as amended by 2009 c 397*).
- 13.34.065 Shelter care—Hearing—Recommendation as to further need—Release (*as amended by 2009 c 477*).
- 13.34.065 Shelter care—Hearing—Recommendation as to further need—Release (*as amended by 2009 c 491*).
- 13.34.065 Shelter care—Hearing—Recommendation as to further need—Case management by supervising agency, when appropriate—Release (*as amended by 2009 c 520*).
- 13.34.067 Shelter care—Case conference—Service agreement.
- 13.34.094 Description of services provided to parents.
- 13.34.096 Right to be heard—Notice.
- 13.34.100 Appointment of guardian ad litem—Background information—Rights—Appointment of counsel for child—Review.
- 13.34.125 Voluntary adoption plan—Consideration of preferences for proposed placement.
- 13.34.130 Order of disposition for a dependent child, alternatives—Petition seeking termination of parent-child relationship—Contact with siblings—Placement with relatives, foster family home, group care facility, or other suitable persons.
- 13.34.136 Permanency plan of care.
- 13.34.138 Review hearings—Findings—Duties of parties involved—In-home placement requirements—Housing assistance.
- 13.34.141 Entry, order of disposition—Parent, guardian, or custodian of child to engage in services and maintain contact with child—Notice.
- 13.34.145 Permanency planning hearing—Purpose—Time limits—Goals—Review hearing—Petition for termination of parental rights—Guardianship petition—Agency responsibility to provide services to parents—Due process rights.
- 13.34.155 Concurrent jurisdiction over nonparental actions for child custody (*as amended by 2009 c 520*).
- 13.34.155 Concurrent jurisdiction over nonparental actions for child custody—Establishment or modification of parenting plan (*as amended by 2009 c 526*).
- 13.34.174 Order of alcohol or substance abuse diagnostic investigation and evaluation—Treatment plan—Breach of plan—Reports.
- 13.34.176 Violation of alcohol or substance abuse treatment conditions—Hearing—Notice—Modification of order.
- 13.34.180 Order terminating parent and child relationship—Petition—Filing—Allegations (*as amended by 2009 c 477*).
- 13.34.180 Order terminating parent and child relationship—Petition—Filing—Allegations (*as amended by 2009 c 520*).
- 13.34.210 Order terminating parent and child relationship—Custody where no one has parental rights.
- 13.34.215 Petition reinstating terminated parental rights—Notice—Achievement of permanency plan—Effect of granting the petition—Hearing—Child support liability—Retroactive application—Limitation on liability.
- 13.34.230 Guardianship for dependent child—Petition for—Notice to, intervention by, department or supervising agency.
- 13.34.233 Guardianship for dependent child—Modification or termination of order—Hearing—Termination of guardianship.
- 13.34.234 Guardianship for dependent child—Dependency guardianship subsidies—Rules.
- 13.34.238 Guardianship for dependent child—Relative guardianship subsidies.
- 13.34.245 Voluntary consent to foster care placement for Indian child—Validation—Withdrawal of consent—Termination.
- 13.34.260 Foster home placement—Parental preferences—Foster parent contact with birth parents encouraged.
- 13.34.265 Foster home placement—Considerations.
- 13.34.320 Inpatient mental health treatment—When parental consent required—Hearing.
- 13.34.330 Inpatient mental health treatment—Placement.



13.34.340 Release of records—Disclosure to treating physician.  
 13.34.350 Dependent children—Information sharing—Guidelines.  
 13.34.360 Transfer of newborn to qualified person—Criminal liability—  
 Notification to child protective services—Definitions.  
 13.34.370 Evaluation of parties—Selection of evaluators.  
 13.34.380 Visitation policies and protocols—Development—Elements.  
 13.34.385 Petition for visitation—Relatives of dependent children—  
 Notice—Modification of order—Effect of granting the peti-  
 tion—Retroactive application.  
 13.34.390 Comprehensive services for drug-affected and alcohol-  
 affected mothers and infants.  
 13.34.400 Child welfare proceedings—Placement—Documentation.  
 13.34.803 Repealed.  
 13.34.805 Repealed.  
 13.34.8051 Repealed.  
 13.34.810 Repealed.  
 13.34.830 Child protection and child welfare—Racial disproportional-  
 ity—Evaluation—Report.  
 13.34.900 Construction—Chapter applicable to state registered domestic  
 partnerships—2009 c 521. (*Effective if E2SSB 5688 is  
 approved at the November 2009 election under Referendum  
 Measure 71.*)

**13.34.025 Child dependency cases—Coordination of services—Remedial services.**

(1) The department and supervising agencies shall develop methods for coordination of services to parents and children in child dependency cases. To the maximum extent possible under current funding levels, the department and supervising agencies must:

(a) Coordinate and integrate services to children and families, using service plans and activities that address the children’s and families’ multiple needs, including ensuring that siblings have regular visits with each other, as appropriate. Assessment criteria should screen for multiple needs;

(b) Develop treatment plans for the individual needs of the client in a manner that minimizes the number of contacts the client is required to make; and

(c) Access training for department and supervising agency staff to increase skills across disciplines to assess needs for mental health, substance abuse, developmental disabilities, and other areas.

(2) The department shall coordinate within the administrations of the department, and with contracted service providers including supervising agencies, to ensure that parents in dependency proceedings under this chapter receive priority access to remedial services recommended by the department or supervising agency in its social study or ordered by the court for the purpose of correcting any parental deficiencies identified in the dependency proceeding that are capable of being corrected in the foreseeable future. Services may also be provided to caregivers other than the parents as identified in RCW 13.34.138.

(a) For purposes of this chapter, remedial services are those services defined in the federal adoption and safe families act as time-limited family reunification services. Remedial services include individual, group, and family counseling; substance abuse treatment services; mental health services; assistance to address domestic violence; services designed to provide temporary child care and therapeutic services for families; and transportation to or from any of the above services and activities.

(b) The department shall provide funds for remedial services if the parent is unable to pay to the extent funding is appropriated in the operating budget or otherwise available to the department for such specific services. As a condition for receiving funded remedial services, the court may inquire into the parent’s ability to pay for all or part of such services

or may require that the parent make appropriate applications for funding to alternative funding sources for such services.

(c) If court-ordered remedial services are unavailable for any reason, including lack of funding, lack of services, or language barriers, the department or supervising agency shall promptly notify the court that the parent is unable to engage in the treatment due to the inability to access such services.

(d) This section does not create an entitlement to services and does not create judicial authority to order the provision of services except for the specific purpose of making reasonable efforts to remedy parental deficiencies identified in a dependency proceeding under this chapter. [2009 c 520 § 20; 2007 c 410 § 2; 2002 c 52 § 2; 2001 c 256 § 2.]

**Short title—2007 c 410:** See note following RCW 13.34.138.

**Intent—2002 c 52:** "It is the intent of the legislature to recognize that those sibling relationships a child has are an integral aspect of the family unit, which should be nurtured. The legislature presumes that nurturing the existing sibling relationships is in the best interest of a child, in particular in those situations where a child cannot be with their parents, guardians, or legal custodians as a result of court intervention." [2002 c 52 § 1.]

**Finding—2001 c 256:** "The department of social and health services serves parents and children with multiple needs, which cannot be resolved in isolation. Further, the complexity of service delivery systems is a barrier for families in crisis when a child is removed or a parent is removed from the home. The department must undertake efforts to streamline the delivery of services." [2001 c 256 § 1.]

**13.34.030 Definitions.** For purposes of this chapter:

(1) "Abandoned" means when the child’s parent, guardian, or other custodian has expressed, either by statement or conduct, an intent to forego, for an extended period, parental rights or responsibilities despite an ability to exercise such rights and responsibilities. If the court finds that the petitioner has exercised due diligence in attempting to locate the parent, no contact between the child and the child’s parent, guardian, or other custodian for a period of three months creates a rebuttable presumption of abandonment, even if there is no expressed intent to abandon.

(2) "Child" and "juvenile" means any individual under the age of eighteen years.

(3) "Current placement episode" means the period of time that begins with the most recent date that the child was removed from the home of the parent, guardian, or legal custodian for purposes of placement in out-of-home care and continues until: (a) The child returns home; (b) an adoption decree, a permanent custody order, or guardianship order is entered; or (c) the dependency is dismissed, whichever occurs first.

(4) "Department" means the department of social and health services.

(5) "Dependency guardian" means the person, nonprofit corporation, or Indian tribe appointed by the court pursuant to this chapter for the limited purpose of assisting the court in the supervision of the dependency.

(6) "Dependent child" means any child who:

(a) Has been abandoned;

(b) Is abused or neglected as defined in chapter 26.44 RCW by a person legally responsible for the care of the child; or

(c) Has no parent, guardian, or custodian capable of adequately caring for the child, such that the child is in circum-

stances which constitute a danger of substantial damage to the child's psychological or physical development.

(7) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual.

(8) "Guardian" means the person or agency that: (a) Has been appointed as the guardian of a child in a legal proceeding other than a proceeding under this chapter; and (b) has the legal right to custody of the child pursuant to such appointment. The term "guardian" shall not include a "dependency guardian" appointed pursuant to a proceeding under this chapter.

(9) "Guardian ad litem" means a person, appointed by the court to represent the best interests of a child in a proceeding under this chapter, or in any matter which may be consolidated with a proceeding under this chapter. A "court-appointed special advocate" appointed by the court to be the guardian ad litem for the child, or to perform substantially the same duties and functions as a guardian ad litem, shall be deemed to be guardian ad litem for all purposes and uses of this chapter.

(10) "Guardian ad litem program" means a court-authorized volunteer program, which is or may be established by the superior court of the county in which such proceeding is filed, to manage all aspects of volunteer guardian ad litem representation for children alleged or found to be dependent. Such management shall include but is not limited to: Recruitment, screening, training, supervision, assignment, and discharge of volunteers.

(11) "Housing assistance" means appropriate referrals by the department or other supervising agencies to federal, state, local, or private agencies or organizations, assistance with forms, applications, or financial subsidies or other monetary assistance for housing. For purposes of this chapter, "housing assistance" is not a remedial service or time-limited family reunification service as described in RCW 13.34.025(2).

(12) "Indigent" means a person who, at any stage of a court proceeding, is:

(a) Receiving one of the following types of public assistance: Temporary assistance for needy families, general assistance, poverty-related veterans' benefits, food stamps or food stamp benefits transferred electronically, refugee resettlement benefits, medicaid, or supplemental security income; or

(b) Involuntarily committed to a public mental health facility; or

(c) Receiving an annual income, after taxes, of one hundred twenty-five percent or less of the federally established poverty level; or

(d) Unable to pay the anticipated cost of counsel for the matter before the court because his or her available funds are insufficient to pay any amount for the retention of counsel.

(13) "Out-of-home care" means placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the

child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(14) "Preventive services" means preservation services, as defined in chapter 74.14C RCW, and other reasonably available services, including housing assistance, capable of preventing the need for out-of-home placement while protecting the child.

(15) "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to RCW 74.15.030.

(16) "Sibling" means a child's birth brother, birth sister, adoptive brother, adoptive sister, half-brother, or half-sister, or as defined by the law or custom of the Indian child's tribe for an Indian child as defined in 25 U.S.C. Sec. 1903(4).

(17) "Social study" means a written evaluation of matters relevant to the disposition of the case and shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific services and activities, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such services and activities are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify the services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs that have been considered and rejected; the preventive services, including housing assistance, that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal;

(e) A description of the steps that will be taken to minimize the harm to the child that may result if separation occurs including an assessment of the child's relationship and emotional bond with any siblings, and the agency's plan to provide ongoing contact between the child and the child's siblings if appropriate; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

(18) "Supervising agency" means an agency licensed by the state under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 with whom the department has entered into a performance-based contract to provide child welfare services as defined in RCW 74.13.020. [2009 c 520 § 21; 2009 c 397 § 1; 2003 c 227 § 2; 2002 c 52 § 3; 2000 c 122 § 1; 1999 c 267 § 6; 1998 c 130 § 1; 1997 c 386 § 7; 1995 c 311 § 23; 1994 c 288 § 1; 1993 c 241 § 1; 1988 c 176 § 901; 1987 c 524 § 3; 1983 c 311 § 2; 1982 c 129 § 4; 1979 c 155 § 37; 1977 ex.s. c 291 § 31.]

**Reviser's note:** This section was amended by 2009 c 397 § 1 and by 2009 c 520 § 21, 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—2003 c 227:** See note following RCW 13.34.130.

**Intent—2002 c 52:** See note following RCW 13.34.025.

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**Conflict with federal requirements—1993 c 241:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1993 c 241 § 5.]

**Severability—1988 c 176:** See RCW 71A.10.900.

**Legislative finding—1983 c 311:** "The legislature finds that in order for the state to receive federal funds for family foster care under Title IV-B and Title IV-E of the social security act, all children in family foster care must be subjected to periodic court review. Unfortunately, this includes children who are developmentally disabled and who are placed in family foster care solely because their parents have determined that the children's service needs require out-of-home placement. Except for providing such needed services, the parents of these children are completely competent to care for the children. The legislature intends by this act to minimize the embarrassment and inconvenience of developmentally disabled persons and their families caused by complying with these federal requirements." [1983 c 311 § 1.]

**Severability—1982 c 129:** See note following RCW 9A.04.080.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**13.34.035 Standard court forms—Rules—Administrative office of the courts to develop and establish—Failure to use or follow—Distribution.** (1) The administrative office of the courts shall develop standard court forms and format rules for mandatory use by parties in dependency matters commenced under this chapter or chapter 26.44 RCW. Forms shall be developed not later than November 1, 2009, and the mandatory use requirement shall be effective January 1, 2010. The administrative office of the courts has continuing responsibility to develop and revise mandatory forms and format rules as appropriate.

(2) According to rules established by the administrative office of the courts, a party may delete unnecessary portions of the forms and may supplement the mandatory forms with additional material.

(3) Failure by a party to use the mandatory forms or follow the format rules shall not be a reason to dismiss a case, refuse a filing, or strike a pleading. The court may, however, require the party to submit a corrected pleading and may impose terms payable to the opposing party or payable to the court, or both.

(4) The administrative office of the courts shall distribute a master copy of the mandatory forms to all county court clerks. Upon request, the administrative office of the courts and county clerks must distribute the forms to the public and may charge for the cost of production and distribution of the forms. Private vendors also may distribute the forms. Distribution of forms may be in printed or electronic form. [2009 c 491 § 6.]

**13.34.062 Shelter care—Notice of custody and rights.**

(1)(a) Whenever a child is taken into custody by child protective services pursuant to a court order issued under RCW 13.34.050 or when child protective services is notified that a child has been taken into custody pursuant to RCW 26.44.050 or 26.44.056, child protective services shall make reasonable efforts to inform the parent, guardian, or legal custodian of the fact that the child has been taken into custody, the reasons why the child was taken into custody, and their legal rights under this title, including the right to a shelter care hearing, as soon as possible. Notice must be provided in an understandable manner and take into consideration the parent's, guardian's, or legal custodian's primary language, level of education, and cultural issues.

(b) In no event shall the notice required by this section be provided to the parent, guardian, or legal custodian more than twenty-four hours after the child has been taken into custody or twenty-four hours after child protective services has been notified that the child has been taken into custody.

(2)(a) The notice of custody and rights may be given by any means reasonably certain of notifying the parents including, but not limited to, written, telephone, or in person oral notification. If the initial notification is provided by a means other than writing, child protective services shall make reasonable efforts to also provide written notification.

(b) The written notice of custody and rights required by this section shall be in substantially the following form:

"NOTICE

Your child has been placed in temporary custody under the supervision of Child Protective Services (or other person or agency). You have important legal rights and you must take steps to protect your interests.

1. A court hearing will be held before a judge within 72 hours of the time your child is taken into custody excluding Saturdays, Sundays, and holidays. You should call the court at (insert appropriate phone number here) for specific information about the date, time, and location of the court hearing.

2. You have the right to have a lawyer represent you at the hearing. Your right to representation continues after the shelter care hearing. You have the right to records the department intends to rely upon. A lawyer can look at the files in your case, talk to child protective services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

4. If your hearing occurs before a court commissioner, you have the right to have the decision of the court commissioner reviewed by a superior court judge. To obtain that review, you must, within ten days after the entry of the decision of the court commissioner, file with the court a motion for revision of the decision, as provided in RCW 2.24.050.

You should be present at any shelter care hearing. If you do not come, the judge will not hear what you have to say.

You may call the Child Protective Services' caseworker for more information about your child. The caseworker's name and telephone number are: (insert name and telephone number).

5. You have a right to a case conference to develop a written service agreement following the shelter care hearing. The service agreement may not conflict with the court's order of shelter care. You may request that a multidisciplinary team, family group conference, or prognostic staffing be convened for your child's case. You may participate in these processes with your counsel present.

6. If your child is placed in the custody of the department of social and health services or other supervising agency, immediately following the shelter care hearing, the court will enter an order granting the department or other supervising agency the right to inspect and copy all health, medical, mental health, and education records of the child, directing health care providers to release such information without your further consent, and granting the department or supervising agency or its designee the authority and responsibility, where applicable, to:

- (1) Notify the child's school that the child is in out-of-home placement;
- (2) Enroll the child in school;
- (3) Request the school transfer records;
- (4) Request and authorize evaluation of special needs;
- (5) Attend parent or teacher conferences;
- (6) Excuse absences;
- (7) Grant permission for extracurricular activities;
- (8) Authorize medications which need to be administered during school hours and sign for medical needs that arise during school hours; and
- (9) Complete or update school emergency records.

7. If the court decides to place your child in the custody of the department of social and health services or other supervising agency, the department or agency will create a permanency plan for your child, including a primary placement goal and secondary placement goal. The department or agency also will recommend that the court order services for your child and for you, if needed. The department or agency is required to make reasonable efforts to provide you with services to address your parenting problems, and to provide you with visitation with your child according to court orders. Failure to promptly engage in services or to maintain contact with your child may lead to the filing of a petition to terminate your parental rights.

8. Primary and secondary permanency plans are intended to run at the same time so that your child will have a permanent home as quickly as possible. Absent good cause, and when appropriate, the department or other supervising agency must follow the wishes of a natural parent regarding placement of a child. You should tell your lawyer and the court where you wish your child placed immediately, including whether you want your child placed with you, with a relative, or with another suitable person. You also should tell your lawyer and the court what services you feel are necessary and your wishes regarding visitation with your child. Even if you want another parent or person to be the primary placement choice for your child, you should tell your lawyer, the department or other supervising agency, and the court if you want to be a secondary placement option, and you should

comply with court orders for services and participate in visitation with your child. Early and consistent involvement in your child's case plan is important for the well-being of your child.

9. A dependency petition begins a judicial process, which, if the court finds your child dependent, could result in substantial restrictions including, the entry or modification of a parenting plan or residential schedule, nonparental custody order or decree, guardianship order, or permanent loss of your parental rights."

Upon receipt of the written notice, the parent, guardian, or legal custodian shall acknowledge such notice by signing a receipt prepared by child protective services. If the parent, guardian, or legal custodian does not sign the receipt, the reason for lack of a signature shall be written on the receipt. The receipt shall be made a part of the court's file in the dependency action.

If after making reasonable efforts to provide notification, child protective services is unable to determine the whereabouts of the parents, guardian, or legal custodian, the notice shall be delivered or sent to the last known address of the parent, guardian, or legal custodian.

(3) If child protective services is not required to give notice under this section, the juvenile court counselor assigned to the matter shall make all reasonable efforts to advise the parents, guardian, or legal custodian of the time and place of any shelter care hearing, request that they be present, and inform them of their basic rights as provided in RCW 13.34.090.

(4) Reasonable efforts to advise and to give notice, as required in this section, shall include, at a minimum, investigation of the whereabouts of the parent, guardian, or legal custodian. If such reasonable efforts are not successful, or the parent, guardian, or legal custodian does not appear at the shelter care hearing, the petitioner shall testify at the hearing or state in a declaration:

(a) The efforts made to investigate the whereabouts of, and to advise, the parent, guardian, or custodian; and

(b) Whether actual advice of rights was made, to whom it was made, and how it was made, including the substance of any oral communication or copies of written materials used. [2009 c 477 § 2. Prior: 2007 c 413 § 4; 2007 c 409 § 5; 2004 c 147 § 2; 2001 c 332 § 2; 2000 c 122 § 5.]

**Findings—Intent—2009 c 477:** "The legislature finds that when children have been found dependent and placed in out-of-home care, the likelihood of reunification with their parents diminishes significantly after fifteen months. The legislature also finds that early and consistent parental engagement in services and participation in appropriate parent-child contact and visitation increases the likelihood of successful reunifications. The legislature intends to promote greater awareness among parents in dependency cases of the importance of active participation in services, visitation, and case planning for the child, and the risks created by failure to participate in their child's case over the long term." [2009 c 477 § 1.]

**Severability—2007 c 413:** See note following RCW 13.34.215.

**Effective date—2007 c 409:** See note following RCW 13.34.096.

**Effective date—2004 c 147:** See note following RCW 13.34.067.

**13.34.065 Shelter care—Hearing—Recommendation as to further need—Release (as amended by 2009 c 397).** (1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately

and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) The department of social and health services shall submit a recommendation to the court as to the further need for shelter care in all cases in which it is the petitioner. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the supervising agency or the department of social and health services to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home. If the dependency petition or other information before the court alleges that homelessness or the lack of suitable housing was a significant factor contributing to the removal of the child, the court shall inquire as to whether housing assistance was provided to the family to prevent or eliminate the need for removal of the child or children;

(e) Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child;

(f) Whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare act apply, and whether there is compliance with the Indian child welfare act, including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; or

(C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative, unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The relative must be willing and available to:

(i) Care for the child and be able to meet any special needs of the child;

(ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and

(iii) Cooperate with the department in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative pursuant to RCW 13.34.060(1).

(d) If a relative is not available, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other person approved by the court pursuant to this section, shall be contingent upon cooperation with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative under (b) of this subsection or with another suitable person under (d) of this subsection.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as

to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(i) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department. [2009 c 397 § 2; 2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

**13.34.065 Shelter care—Hearing—Recommendation as to further need—Release (as amended by 2009 c 477).** (1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) The department of social and health services shall submit a recommendation to the court as to the further need for shelter care in all cases in which it is the petitioner. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the supervising agency or the department of social and health services to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home;

(e) Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child;

(f) Whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare act apply, and whether there is compliance with the Indian child welfare act, including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; or

(C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative, unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The relative must be willing and available to:

(i) Care for the child and be able to meet any special needs of the child;

(ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and

(iii) Cooperate with the department in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative pursuant to RCW 13.34.060(1). In determining placement, the court shall weigh the child's length of stay and attachment to the current provider in determining what is in the best interest of the child.

(d) If a relative is not available, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other person approved by the court pursuant to this section, shall be contingent upon cooperation with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative under (b) of this subsection or with another suitable person under (d) of this subsection.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree

to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department. [2009 c 477 § 3; 2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

**Findings—Intent—2009 c 477:** See note following RCW 13.34.062.

**13.34.065 Shelter care—Hearing—Recommendation as to further need—Release (as amended by 2009 c 491).** (1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) The department of social and health services shall submit a recommendation to the court as to the further need for shelter care in all cases in which it is the petitioner. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the supervising agency or the department of social and health services to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative. The court shall ask the parents whether the department discussed with them the placement of the child with a relative or other suitable person described in RCW 13.34.130(1)(b) and shall determine what efforts have been made toward such a placement;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home;

(e) Is the placement proposed by the agency the least disruptive and most family-like setting that meets the needs of the child;

(f) Whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare act apply, and whether there is compliance with the Indian child welfare act, including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; or

(C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative or other suitable person as described in RCW 13.34.130(1)(b), unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The court must also determine whether placement with the relative or other suitable person is in the child's best interests. The relative or other suitable person must be willing and available to:

(i) Care for the child and be able to meet any special needs of the child;

(ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and

(iii) Cooperate with the department in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative or other suitable person, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative or other suitable person pursuant to RCW 13.34.060(1).

(d) If a relative or other suitable person is not available, the court shall order continued shelter care ~~((or order placement with another suitable person, and the court))~~ and shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other suitable person approved by the court pursuant to this section, shall be contingent upon cooperation with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other suitable person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative or other suitable person under (b) of this subsection ~~((or with another suitable person under (d) of this subsection))~~.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the department. [2009 c 491 § 1; 2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

**13.34.065 Shelter care—Hearing—Recommendation as to further need—Case management by supervising agency, when appropriate—Release (as amended by 2009 c 520).** (1)(a) When a child is taken into custody, the court shall hold a shelter care hearing within seventy-two hours, excluding Saturdays, Sundays, and holidays. The primary purpose of the shelter care hearing is to determine whether the child can be immediately and safely returned home while the adjudication of the dependency is pending.

(b) Any parent, guardian, or legal custodian who for good cause is unable to attend the shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. Upon the request of the parent, the court shall schedule the hearing within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

(2)(a) If it is likely that the child will remain in shelter care longer than seventy-two hours, in those areas in which child welfare services are being provided by a supervising agency, the supervising agency shall assume case management responsibilities of the case. The department ~~((of social and~~

~~health services))~~ or supervising agency shall submit a recommendation to the court as to the further need for shelter care in all cases in which ~~((it is the petitioner))~~ the child will remain in shelter care longer than the seventy-two hour period. In all other cases, the recommendation shall be submitted by the juvenile court probation counselor.

(b) All parties have the right to present testimony to the court regarding the need or lack of need for shelter care.

(c) Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(3)(a) At the commencement of the hearing, the court shall notify the parent, guardian, or custodian of the following:

(i) The parent, guardian, or custodian has the right to a shelter care hearing;

(ii) The nature of the shelter care hearing, the rights of the parents, and the proceedings that will follow; and

(iii) If the parent, guardian, or custodian is not represented by counsel, the right to be represented. If the parent, guardian, or custodian is indigent, the court shall appoint counsel as provided in RCW 13.34.090; and

(b) If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, whether such waiver is knowing and voluntary. A parent may not waive his or her right to the shelter care hearing unless he or she appears in court and the court determines that the waiver is knowing and voluntary. Regardless of whether the court accepts the parental waiver of the shelter care hearing, the court must provide notice to the parents of their rights required under (a) of this subsection and make the finding required under subsection (4) of this section.

(4) At the shelter care hearing the court shall examine the need for shelter care and inquire into the status of the case. The paramount consideration for the court shall be the health, welfare, and safety of the child. At a minimum, the court shall inquire into the following:

(a) Whether the notice required under RCW 13.34.062 was given to all known parents, guardians, or legal custodians of the child. The court shall make an express finding as to whether the notice required under RCW 13.34.062 was given to the parent, guardian, or legal custodian. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order ~~((the supervising agency or))~~ the department ~~((of social and health services))~~ to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090;

(b) Whether the child can be safely returned home while the adjudication of the dependency is pending;

(c) What efforts have been made to place the child with a relative;

(d) What services were provided to the family to prevent or eliminate the need for removal of the child from the child's home;

(e) Is the placement proposed by the department or supervising agency the least disruptive and most family-like setting that meets the needs of the child;

(f) Whether it is in the best interest of the child to remain enrolled in the school, developmental program, or child care the child was in prior to placement and what efforts have been made to maintain the child in the school, program, or child care if it would be in the best interest of the child to remain in the same school, program, or child care;

(g) Appointment of a guardian ad litem or attorney;

(h) Whether the child is or may be an Indian child as defined in 25 U.S.C. Sec. 1903, whether the provisions of the Indian child welfare act apply, and whether there is compliance with the Indian child welfare act, including notice to the child's tribe;

(i) Whether, as provided in RCW 26.44.063, restraining orders, or orders expelling an allegedly abusive household member from the home of a nonabusive parent, guardian, or legal custodian, will allow the child to safely remain in the home;

(j) Whether any orders for examinations, evaluations, or immediate services are needed. The court may not order a parent to undergo examinations, evaluation, or services at the shelter care hearing unless the parent agrees to the examination, evaluation, or service;

(k) The terms and conditions for parental, sibling, and family visitation.

(5)(a) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(i) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for



removal of the child from the child's home and to make it possible for the child to return home; and

(ii)(A) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(B) The release of such child would present a serious threat of substantial harm to such child, notwithstanding an order entered pursuant to RCW 26.44.063; or

(C) The parent, guardian, or custodian to whom the child could be released has been charged with violating RCW 9A.40.060 or 9A.40.070.

(b) If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order placement with a relative, unless there is reasonable cause to believe the health, safety, or welfare of the child would be jeopardized or that the efforts to reunite the parent and child will be hindered. The relative must be willing and available to:

(i) Care for the child and be able to meet any special needs of the child;

(ii) Facilitate the child's visitation with siblings, if such visitation is part of the supervising agency's plan or is ordered by the court; and

(iii) Cooperate with the department or supervising agency in providing necessary background checks and home studies.

(c) If the child was not initially placed with a relative, and the court does not release the child to his or her parent, guardian, or legal custodian, the supervising agency shall make reasonable efforts to locate a relative pursuant to RCW 13.34.060(1).

(d) If a relative is not available, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order. If the court orders placement of the child with a person not related to the child and not licensed to provide foster care, the placement is subject to all terms and conditions of this section that apply to relative placements.

(e) Any placement with a relative, or other person approved by the court pursuant to this section, shall be contingent upon cooperation with the department's or supervising agency's case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order is grounds for removal of the child from the home of the relative or other person, subject to review by the court.

(f) Uncertainty by a parent, guardian, legal custodian, relative, or other suitable person that the alleged abuser has in fact abused the child shall not, alone, be the basis upon which a child is removed from the care of a parent, guardian, or legal custodian under (a) of this subsection, nor shall it be a basis, alone, to preclude placement with a relative under (b) of this subsection or with another suitable person under (d) of this subsection.

(6)(a) A shelter care order issued pursuant to this section shall include the requirement for a case conference as provided in RCW 13.34.067. However, if the parent is not present at the shelter care hearing, or does not agree to the case conference, the court shall not include the requirement for the case conference in the shelter care order.

(b) If the court orders a case conference, the shelter care order shall include notice to all parties and establish the date, time, and location of the case conference which shall be no later than thirty days before the fact-finding hearing.

(c) The court may order another conference, case staffing, or hearing as an alternative to the case conference required under RCW 13.34.067 so long as the conference, case staffing, or hearing ordered by the court meets all requirements under RCW 13.34.067, including the requirement of a written agreement specifying the services to be provided to the parent.

(7)(a) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be placed in shelter care for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(b)(i) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

(ii) The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent, guardian, or legal custodian and give weight to that fact before ordering return of the child to shelter care.

(8)(a) If a child is returned home from shelter care a second time in the case, or if the supervisor of the caseworker deems it necessary, the multidisciplinary team may be reconvened.

(b) If a child is returned home from shelter care a second time in the case a law enforcement officer must be present and file a report to the depart-

ment. [2009 c 520 § 22; 2008 c 267 § 2; 2007 c 413 § 5; 2001 c 332 § 3; 2000 c 122 § 7.]

**Reviser's note:** RCW 13.34.065 was amended four times during the 2009 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.

**Severability—2007 c 413:** See note following RCW 13.34.215.

**13.34.067 Shelter care—Case conference—Service agreement.** (1)(a) Following shelter care and no later than thirty days prior to fact-finding, the department or supervising agency shall convene a case conference as required in the shelter care order to develop and specify in a written service agreement the expectations of both the department or supervising agency and the parent regarding voluntary services for the parent.

(b) The case conference shall include the parent, counsel for the parent, caseworker, counsel for the state, guardian ad litem, counsel for the child, and any other person agreed upon by the parties. Once the shelter care order is entered, the department or supervising agency is not required to provide additional notice of the case conference to any participants in the case conference.

(c) The written service agreement expectations must correlate with the court's findings at the shelter care hearing. The written service agreement must set forth specific services to be provided to the parent.

(d) The case conference agreement must be agreed to and signed by the parties. The court shall not consider the content of the discussions at the case conference at the time of the fact-finding hearing for the purposes of establishing that the child is a dependent child, and the court shall not consider any documents or written materials presented at the case conference but not incorporated into the case conference agreement, unless the documents or written materials were prepared for purposes other than or as a result of the case conference and are otherwise admissible under the rules of evidence.

(2) At any other stage in a dependency proceeding, the department or supervising agency, upon the parent's request, shall convene a case conference. [2009 c 520 § 23; 2004 c 147 § 1; 2001 c 332 § 1.]

**Effective date—2004 c 147:** "This act takes effect July 1, 2004." [2004 c 147 § 5.]

**13.34.094 Description of services provided to parents.** The department, or supervising agency after the shelter care hearing, shall, within existing resources, provide to parents requesting or participating in a multidisciplinary team, family group conference, case conference, or prognostic staffing information that describes these processes prior to the processes being undertaken. [2009 c 520 § 24; 2004 c 147 § 3; 2001 c 332 § 6.]

**Effective date—2004 c 147:** See note following RCW 13.34.067.

**13.34.096 Right to be heard—Notice.** The department or supervising agency shall provide the child's foster parents, preadoptive parents, or other caregivers with notice of their right to be heard prior to each proceeding held with respect to the child in juvenile court under this chapter. The rights to notice and to be heard apply only to persons with whom a

child has been placed by the department before shelter care or supervising agency and who are providing care to the child at the time of the proceeding. This section shall not be construed to grant party status to any person solely on the basis of such notice and right to be heard. [2009 c 520 § 25; 2007 c 409 § 1.]

**Effective date—2007 c 409:** "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, 2007." [2007 c 409 § 8.]

**13.34.100 Appointment of guardian ad litem—Background information—Rights—Appointment of counsel for child—Review.** (1) The court shall appoint a guardian ad litem for a child who is the subject of an action under this chapter, unless a court for good cause finds the appointment unnecessary. The requirement of a guardian ad litem may be deemed satisfied if the child is represented by independent counsel in the proceedings. The court shall attempt to match a child with special needs with a guardian ad litem who has specific training or education related to the child's individual needs.

(2) If the court does not have available to it a guardian ad litem program with a sufficient number of volunteers, the court may appoint a suitable person to act as guardian ad litem for the child under this chapter. Another party to the proceeding or the party's employee or representative shall not be so appointed.

(3) Each guardian ad litem program shall maintain a background information record for each guardian ad litem in the program. The background information record shall include, but is not limited to, the following information:

- (a) Level of formal education;
- (b) General training related to the guardian ad litem's duties;
- (c) Specific training related to issues potentially faced by children in the dependency system;
- (d) Specific training or education related to child disability or developmental issues;
- (e) Number of years' experience as a guardian ad litem;
- (f) Number of appointments as a guardian ad litem and the county or counties of appointment;
- (g) The names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause;
- (h) Founded allegations of abuse or neglect as defined in RCW 26.44.020;
- (i) The results of an examination of state and national criminal identification data. The examination shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation. The background check shall be done through the Washington state patrol criminal identification section and must include a national check from the federal bureau of investigation based on the submission of fingerprints; and
- (j) Criminal history, as defined in RCW 9.94A.030, for the period covering ten years prior to the appointment.

The background information record shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program a suitable person appointed by the court to act as guardian ad litem shall provide the background information record to the court.

Upon appointment, the guardian ad litem, or guardian ad litem program, shall provide the parties or their attorneys with a copy of the background information record. The portion of the background information record containing the results of the criminal background check and the criminal history shall not be disclosed to the parties or their attorneys. The background information record shall not include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

(4) The appointment of the guardian ad litem shall remain in effect until the court discharges the appointment or no longer has jurisdiction, whichever comes first. The guardian ad litem may also be discharged upon entry of an order of guardianship.

(5) A guardian ad litem through counsel, or as otherwise authorized by the court, shall have the right to present evidence, examine and cross-examine witnesses, and to be present at all hearings. A guardian ad litem shall receive copies of all pleadings and other documents filed or submitted to the court, and notice of all hearings according to court rules. The guardian ad litem shall receive all notice contemplated for a parent or other party in all proceedings under this chapter.

(6) If the child requests legal counsel and is age twelve or older, or if the guardian ad litem or the court determines that the child needs to be independently represented by counsel, the court may appoint an attorney to represent the child's position.

(7) For the purposes of child abuse prevention and treatment act (42 U.S.C. Secs. 5101 et seq.) grants to this state under P.L. 93-247, or any related state or federal legislation, a person appointed pursuant to RCW 13.34.100 shall be deemed a guardian ad litem to represent the best interests of the minor in proceedings before the court.

(8) When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program shall give the court the name of the person it recommends. The program shall attempt to match a child with special needs with a guardian ad litem who has specific training or education related to the child's individual needs. The court shall immediately appoint the person recommended by the program.

(9) If a party in a case reasonably believes the court-appointed special advocate or volunteer guardian ad litem is inappropriate or unqualified, the party may request a review of the appointment by the program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party seeking the review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal of the court-appointed special advocate or volunteer guardian ad litem on

the grounds the advocate or volunteer is inappropriate or unqualified. [2009 c 480 § 2; 2000 c 124 § 2; 1996 c 249 § 13; 1994 c 110 § 2; 1993 c 241 § 2; 1988 c 232 § 1; 1979 c 155 § 43; 1977 ex.s. c 291 § 38.]

**Grievance rules—2000 c 124:** See note following RCW 11.88.090.

**Intent—1996 c 249:** See note following RCW 2.56.030.

**Conflict with federal requirements—1993 c 241:** See note following RCW 13.34.030.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**13.34.125 Voluntary adoption plan—Consideration of preferences for proposed placement.** In those cases where an alleged father, birth parent, or parent has indicated his or her intention to make a voluntary adoption plan for the child and has agreed to the termination of his or her parental rights, the department or supervising agency shall follow the wishes of the alleged father, birth parent, or parent regarding the proposed adoptive placement of the child, if the court determines that the adoption is in the best interest of the child, and the prospective adoptive parents chosen by the alleged father, birth parent, or parent are properly qualified to adopt in compliance with the standards in this chapter and chapter 26.33 RCW. If the department or supervising agency has filed a termination petition, an alleged father's, birth parent's, or parent's preferences regarding the proposed adoptive placement of the child shall be given consideration. [2009 c 520 § 26; 1999 c 173 § 2.]

**Severability—1999 c 173:** "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." [1999 c 173 § 4.]

**13.34.130 Order of disposition for a dependent child, alternatives—Petition seeking termination of parent-child relationship—Contact with siblings—Placement with relatives, foster family home, group care facility, or other suitable persons.** If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030 after consideration of the social study prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In determining the disposition, the court should choose services to assist the parents in maintaining the child in the home, including housing assistance, if appropriate, that least interfere with family autonomy and are adequate to protect the child.

(b) Order the child to be removed from his or her home and into the custody, control, and care of a relative or other

suitable person, the department, or a supervising agency for supervision of the child's placement. The department or supervising agency has the authority to place the child, subject to review and approval by the court (i) with a relative as defined in RCW 74.15.020(2)(a), (ii) in the home of another suitable person if the child or family has a preexisting relationship with that person, and the person has completed all required criminal history background checks and otherwise appears to the department or supervising agency to be suitable and competent to provide care for the child, or (iii) in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW. Absent good cause, the department or supervising agency shall follow the wishes of the natural parent regarding the placement of the child in accordance with RCW 13.34.260. The department or supervising agency may only place a child with a person not related to the child as defined in RCW 74.15.020(2)(a) when the court finds that such placement is in the best interest of the child. Unless there is reasonable cause to believe that the health, safety, or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, the child shall be placed with a person who is: (A) Related to the child as defined in RCW 74.15.020(2)(a) with whom the child has a relationship and is comfortable; or (B) a suitable person as described in this subsection (1)(b); and (C) willing, appropriate, and available to care for the child. The court shall consider the child's existing relationships and attachments when determining placement.

(2) Placement of the child with a relative or other suitable person as described in subsection (1)(b) of this section shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services, including housing assistance, that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

(a) There is no parent or guardian available to care for such child;

(b) The parent, guardian, or legal custodian is not willing to take custody of the child; or

(c) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger.

(3) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court shall consider whether it is in a child's best interest to be placed with, have contact with, or have visits with siblings.

(a) There shall be a presumption that such placement, contact, or visits are in the best interests of the child provided that:

(i) The court has jurisdiction over all siblings subject to the order of placement, contact, or visitation pursuant to peti-

tions filed under this chapter or the parents of a child for whom there is no jurisdiction are willing to agree; and

(ii) There is no reasonable cause to believe that the health, safety, or welfare of any child subject to the order of placement, contact, or visitation would be jeopardized or that efforts to reunite the parent and child would be hindered by such placement, contact, or visitation. In no event shall parental visitation time be reduced in order to provide sibling visitation.

(b) The court may also order placement, contact, or visitation of a child with a step-brother or step-sister provided that in addition to the factors in (a) of this subsection, the child has a relationship and is comfortable with the step-sibling.

(4) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section and placed into nonparental or nonrelative care, the court shall order a placement that allows the child to remain in the same school he or she attended prior to the initiation of the dependency proceeding when such a placement is practical and in the child's best interest.

(5) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the requirements of RCW 13.34.132 are met.

(6) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative or other suitable person, the child shall remain in foster care and the court shall direct the department or supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative or other person appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives or other suitable persons, pursuant to this section, shall be contingent upon cooperation by the relative or other suitable person with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts, sibling contacts, and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's or other suitable person's home, subject to review by the court. [2009 c 520 § 27; 2009 c 491 § 2; 2009 c 397 § 3. Prior: 2007 c 413 § 6; 2007 c 412 § 2; 2003 c 227 § 3; 2002 c 52 § 5; 2000 c 122 § 15; prior: 1999 c 267 § 16; 1999 c 267 § 9; 1999 c 173 § 3; prior: 1998 c 314 § 2; 1998 c 130 § 2; 1997 c 280 § 1; prior: 1995 c 313 § 2; 1995 c 311 § 19; 1995 c 53 § 1; 1994 c 288 § 4; 1992 c 145 § 14; 1991 c 127 § 4; prior: 1990 c 284 § 32; 1990 c 246 § 5; 1989 1st ex.s. c 17 § 17; prior: 1988 c 194 § 1; 1988 c 190 § 2; 1988 c 189 § 2; 1984 c 188 § 4; prior: 1983 c 311 § 5; 1983 c 246 § 2; 1979 c 155 § 46; 1977 ex.s. c 291 § 41.]

**Reviser's note:** This section was amended by 2009 c 397 § 3, 2009 c 491 § 2, and by 2009 c 520 § 27, 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).

**Severability—2007 c 413:** See note following RCW 13.34.215.

**Intent—2003 c 227:** "It is the intent of the legislature to recognize the importance of emotional ties formed by siblings with each other, especially in those circumstances which warrant court intervention into family relationships. It is the intent of the legislature to encourage the courts and public agencies which deal with families to acknowledge and give thoughtful consideration to the quality and nature of sibling relationships when intervening in family relationships. It is not the intent of the legislature to create legal obligations or responsibilities between siblings and other family members whether by blood or marriage, step families, foster families, or adopted families that do not already exist. Neither is it the intent of the legislature to mandate sibling placement, contact, or visitation if there is reasonable cause to believe that the health, safety, or welfare of a child or siblings would be jeopardized. Finally, it is not the intent of the legislature to manufacture or anticipate family relationships which do not exist at the time of the court intervention, or to disrupt already existing positive family relationships." [2003 c 227 § 1.]

**Intent—2002 c 52:** See note following RCW 13.34.025.

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26:** See RCW 74.15.900 and 74.15.901.

**Severability—1999 c 173:** See note following RCW 13.34.125.

**Finding—Effective date—1990 c 284:** See notes following RCW 74.13.250.

**Severability—1990 c 246:** See note following RCW 13.34.060.

**Legislative finding—1983 c 311:** See note following RCW 13.34.030.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**13.34.136 Permanency plan of care.** (1) Whenever a child is ordered removed from the home, a permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(2) The agency supervising the dependency shall submit a written permanency plan to all parties and the court not less than fourteen days prior to the scheduled hearing. Responsive reports of parties not in agreement with the department's or supervising agency's proposed permanency plan must be provided to the department or supervising agency, all other parties, and the court at least seven days prior to the hearing.

The permanency plan shall include:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; permanent legal custody; long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; successful completion of a responsible living skills program; or independent living, if appropriate and if the child is age sixteen or older. The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW;

(b) Unless the court has ordered, pursuant to RCW 13.34.130(5), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, what steps the supervising agency or the department will take to promote existing appropriate sibling relationships and/or facilitate placement together or contact in accordance with the best interests of each child, and what actions the department or supervising agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The department's or supervising agency's plan shall specify what services the parents will be offered to enable them to resume custody, what requirements the parents must meet to resume custody, and a time limit for each service plan and parental requirement.

(ii) Visitation is the right of the family, including the child and the parent, in cases in which visitation is in the best interest of the child. Early, consistent, and frequent visitation is crucial for maintaining parent-child relationships and making it possible for parents and children to safely reunify. The supervising agency or department shall encourage the maximum parent and child and sibling contact possible, when it is in the best interest of the child, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation shall not be limited as a sanction for a parent's failure to comply with court orders or services where the health, safety, or welfare of the child is not at risk as a result of the visitation. Visitation may be limited or denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare. The court and the department or supervising agency should rely upon community resources, relatives, foster parents, and other appropriate persons to provide transportation and supervision for visitation to the extent that such resources are available, and appropriate, and the child's safety would not be compromised.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The plan shall state whether both in-state and, where appropriate, out-of-state placement options have been considered by the department or supervising agency.

(v) Unless it is not in the best interests of the child, whenever practical, the plan should ensure the child remains enrolled in the school the child was attending at the time the child entered foster care.

(vi) The supervising agency or department shall provide all reasonable services that are available within the department or supervising agency, or within the community, or those services which the department has existing contracts to purchase. It shall report to the court if it is unable to provide such services; and

(c) If the court has ordered, pursuant to RCW 13.34.130(5), that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-

finding hearing on the termination petition. The department or supervising agency shall not be required to develop a plan of services for the parents or provide services to the parents if the court orders a termination petition be filed. However, reasonable efforts to ensure visitation and contact between siblings shall be made unless there is reasonable cause to believe the best interests of the child or siblings would be jeopardized.

(3) Permanency planning goals should be achieved at the earliest possible date. If the child has been in out-of-home care for fifteen of the most recent twenty-two months, the court shall require the department or supervising agency to file a petition seeking termination of parental rights in accordance with RCW 13.34.145(3)(b)(vi). In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(4) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(5) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(6) The court shall consider the child's relationships with the child's siblings in accordance with RCW 13.34.130(3). Whenever the permanency plan for a child is adoption, the court shall encourage the prospective adoptive parents, birth parents, foster parents, kinship caregivers, and the department or other supervising agency to seriously consider the long-term benefits to the child adoptee and his or her siblings of providing for and facilitating continuing postadoption contact between the siblings. To the extent that it is feasible, and when it is in the best interests of the child adoptee and his or her siblings, contact between the siblings should be frequent and of a similar nature as that which existed prior to the adoption. If the child adoptee or his or her siblings are represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child custody proceeding, the court shall inquire of each attorney and guardian ad litem regarding the potential benefits of continuing contact between the siblings and the potential detriments of severing contact. This section does not require the department of social and health services or other supervising agency to agree to any specific provisions in an open adoption agreement and does not create a new obligation for the department to provide supervision or transportation for visits between siblings separated by adoption from foster care.

(7) For purposes related to permanency planning:

(a) "Guardianship" means a dependency guardianship or a legal guardianship pursuant to chapter 11.88 RCW or equivalent laws of another state or a federally recognized Indian tribe.

(b) "Permanent custody order" means a custody order entered pursuant to chapter 26.10 RCW.

(c) "Permanent legal custody" means legal custody pursuant to chapter 26.10 RCW or equivalent laws of another state or a federally recognized Indian tribe. [2009 c 520 § 28; 2009 c 234 § 5. Prior: 2008 c 267 § 3; 2008 c 152 § 2; 2007 c 413 § 7; 2004 c 146 § 1; 2003 c 227 § 4; 2002 c 52 § 6; 2000 c 122 § 18.]

**Reviser's note:** This section was amended by 2009 c 234 § 5 and by 2009 c 520 § 28, 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—2008 c 152:** "The legislature finds that meeting the needs of vulnerable children who enter the child welfare system includes protecting the child's right to a safe, stable, and permanent home where the child receives basic nurturing. The legislature also finds that according to measures of timely dependency case processing, many children's cases are not meeting the federal and state standards intended to promote child-centered decision making in dependency cases. The legislature intends to encourage a greater focus on children's developmental needs and to promote closer adherence to timeliness standards in the resolution of dependency cases." [2008 c 152 § 1.]

**Severability—2007 c 413:** See note following RCW 13.34.215.

**Intent—2003 c 227:** See note following RCW 13.34.130.

**Intent—2002 c 52:** See note following RCW 13.34.025.

**13.34.138 Review hearings—Findings—Duties of parties involved—In-home placement requirements—Housing assistance.** (1) The status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first. The purpose of the hearing shall be to review the progress of the parties and determine whether court supervision should continue.

(a) The initial review hearing shall be an in-court review and shall be set six months from the beginning date of the placement episode or no more than ninety days from the entry of the disposition order, whichever comes first. The requirements for the initial review hearing, including the in-court review requirement, shall be accomplished within existing resources.

(b) The initial review hearing may be a permanency planning hearing when necessary to meet the time frames set forth in RCW 13.34.145(1)(a) or 13.34.134.

(2)(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision by the supervising agency or department shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) Prior to the child returning home, the department or supervising agency must complete the following:

(i) Identify all adults residing in the home and conduct background checks on those persons;

(ii) Identify any persons who may act as a caregiver for the child in addition to the parent with whom the child is being placed and determine whether such persons are in need of any services in order to ensure the safety of the child, regardless of whether such persons are a party to the dependency. The department or supervising agency may recommend to the court and the court may order that placement of

the child in the parent's home be contingent on or delayed based on the need for such persons to engage in or complete services to ensure the safety of the child prior to placement. If services are recommended for the caregiver, and the caregiver fails to engage in or follow through with the recommended services, the department or supervising agency must promptly notify the court; and

(iii) Notify the parent with whom the child is being placed that he or she has an ongoing duty to notify the department or supervising agency of all persons who reside in the home or who may act as a caregiver for the child both prior to the placement of the child in the home and subsequent to the placement of the child in the home as long as the court retains jurisdiction of the dependency proceeding or the department is providing or monitoring either remedial services to the parent or services to ensure the safety of the child to any caregivers.

Caregivers may be required to engage in services under this subsection solely for the purpose of ensuring the present and future safety of a child who is a ward of the court. This subsection does not grant party status to any individual not already a party to the dependency proceeding, create an entitlement to services or a duty on the part of the department or supervising agency to provide services, or create judicial authority to order the provision of services to any person other than for the express purposes of this section or RCW 13.34.025 or if the services are unavailable or unsuitable or the person is not eligible for such services.

(c) If the child is not returned home, the court shall establish in writing:

(i) Whether the supervising agency or the department is making reasonable efforts to provide services to the family and eliminate the need for placement of the child. If additional services, including housing assistance, are needed to facilitate the return of the child to the child's parents, the court shall order that reasonable services be offered specifying such services;

(ii) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(iii) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(iv) Whether the services set forth in the case plan and the responsibilities of the parties need to be clarified or modified due to the availability of additional information or changed circumstances;

(v) Whether there is a continuing need for placement;

(vi) Whether a parent's homelessness or lack of suitable housing is a significant factor delaying permanency for the child by preventing the return of the child to the home of the child's parent and whether housing assistance should be provided by the department or supervising agency;

(vii) Whether the child is in an appropriate placement which adequately meets all physical, emotional, and educational needs;

(viii) Whether preference has been given to placement with the child's relatives if such placement is in the child's best interests;

(ix) Whether both in-state and, where appropriate, out-of-state placements have been considered;

(x) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(xi) Whether terms of visitation need to be modified;

(xii) Whether the court-approved long-term permanent plan for the child remains the best plan for the child;

(xiii) Whether any additional court orders need to be made to move the case toward permanency; and

(xiv) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(d) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

(3)(a) In any case in which the court orders that a dependent child may be returned to or remain in the child's home, the in-home placement shall be contingent upon the following:

(i) The compliance of the parents with court orders related to the care and supervision of the child, including compliance with the supervising agency's case plan; and

(ii) The continued participation of the parents, if applicable, in available substance abuse or mental health treatment if substance abuse or mental illness was a contributing factor to the removal of the child.

(b) The following may be grounds for removal of the child from the home, subject to review by the court:

(i) Noncompliance by the parents with the department's or supervising agency's case plan or court order;

(ii) The parent's inability, unwillingness, or failure to participate in available services or treatment for themselves or the child, including substance abuse treatment if a parent's substance abuse was a contributing factor to the abuse or neglect; or

(iii) The failure of the parents to successfully and substantially complete available services or treatment for themselves or the child, including substance abuse treatment if a parent's substance abuse was a contributing factor to the abuse or neglect.

(c) In a pending dependency case in which the court orders that a dependent child may be returned home and that child is later removed from the home, the court shall hold a review hearing within thirty days from the date of removal to determine whether the permanency plan should be changed, a termination petition should be filed, or other action is warranted. The best interests of the child shall be the court's primary consideration in the review hearing.

(4) The court's authority to order housing assistance under this chapter is: (a) Limited to cases in which a parent's homelessness or lack of suitable housing is a significant factor delaying permanency for the child and housing assistance would aid the parent in providing an appropriate home for the child; and (b) subject to the availability of funds appropriated for this specific purpose. Nothing in this chapter shall be construed to create an entitlement to housing assistance nor to create judicial authority to order the provision of such assistance to any person or family if the assistance or funding are unavailable or the child or family are not eligible for such assistance.

(5) The court shall consider the child's relationship with siblings in accordance with RCW 13.34.130(3). [2009 c 520

§ 29; 2009 c 491 § 3; 2009 c 397 § 4; 2009 c 152 § 1. Prior: 2007 c 413 § 8; 2007 c 410 § 1; 2005 c 512 § 3; 2003 c 227 § 5; 2001 c 332 § 5; 2000 c 122 § 19.]

**Reviser's note:** This section was amended by 2009 c 152 § 1, 2009 c 397 § 4, 2009 c 491 § 3, and by 2009 c 520 § 29, 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).

**Severability—2007 c 413:** See note following RCW 13.34.215.

**Short title—2007 c 410:** "This act may be known and cited as Siritá's law." [2007 c 410 § 9.]

**Finding—Intent—Effective date—Short title—2005 c 512:** See notes following RCW 26.44.100.

**Intent—2003 c 227:** See note following RCW 13.34.130.

**13.34.141 Entry, order of disposition—Parent, guardian, or custodian of child to engage in services and maintain contact with child—Notice.** (1) After entry of a dispositional order pursuant to RCW 13.34.130 ordering placement of a child in out-of-home care, the department shall continue to encourage the parent, guardian, or custodian of the child to engage in services and maintain contact with the child, which shall be accomplished by attaching a standard notice to the services and safety plan to be provided in advance of hearings conducted pursuant to RCW 13.34.138.

(2) The notice shall be photocopied on contrasting paper to distinguish it from the services and safety plan to which it is attached, and shall be in substantially the following form:

"NOTICE

If you have not been maintaining consistent contact with your child in out-of-home care, your ability to reunify with your child may be jeopardized. If this is your situation, you need to be aware that you have important legal rights and must take steps to protect your interests.

1. The department of social and health services (or other supervising agency) and the court have created a permanency plan for your child, including a primary placement plan and a secondary placement plan, and recommending services needed before your child can be placed in the primary or secondary placement. If you want the court to order that your child be reunified with you, you should notify your lawyer and the department, and you should carefully comply with court orders for services and participate regularly in visitation with your child. Failure to promptly engage in services or to maintain contact with your child may lead to the filing of a petition to terminate your rights as a parent.

2. Primary and secondary permanency plans are intended to run at the same time so that your child will have a permanent home as quickly as possible. Even if you want another parent or person to be the primary placement choice for your child, you should tell your lawyer, the department, and the court if you want to be the secondary placement option, and you should comply with any court orders for services and participate in visitation with your child. Early and consistent involvement in your child's case plan is important for the well-being of your child.

3. Dependency review hearings, and all other dependency case hearings, are legal proceedings with potentially serious consequences. Failure to participate, respond, or comply with court orders may lead to the loss of your parental rights." [2009 c 484 § 1.]

**13.34.145 Permanency planning hearing—Purpose—Time limits—Goals—Review hearing—Petition for termination of parental rights—Guardianship petition—Agency responsibility to provide services to parents—Due process rights.** (1) The purpose of a permanency planning hearing is to review the permanency plan for the child, inquire into the welfare of the child and progress of the case, and reach decisions regarding the permanent placement of the child.

(a) A permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree, guardianship order, or permanent custody order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

(b) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve months, as provided in this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home of the parent, guardian, or legal custodian, an adoption decree, guardianship order, or a permanent custody order is entered, or the dependency is dismissed. Every effort shall be made to provide stability in long-term placement, and to avoid disruption of placement, unless the child is being returned home or it is in the best interest of the child.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(2) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(3) At the permanency planning hearing, the court shall conduct the following inquiry:

(a) If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate.

(b) In cases where the primary permanency planning goal has not been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. The court shall review the permanency plan prepared by the agency and make explicit findings regarding each of the following:

(i) The continuing necessity for, and the safety and appropriateness of, the placement;

(ii) The extent of compliance with the permanency plan by the department or supervising agency and any other ser-

vice providers, the child's parents, the child, and the child's guardian, if any;

(iii) The extent of any efforts to involve appropriate service providers in addition to department or supervising agency staff in planning to meet the special needs of the child and the child's parents;

(iv) The progress toward eliminating the causes for the child's placement outside of his or her home and toward returning the child safely to his or her home or obtaining a permanent placement for the child;

(v) The date by which it is likely that the child will be returned to his or her home or placed for adoption, with a guardian or in some other alternative permanent placement; and

(vi) If the child has been placed outside of his or her home for fifteen of the most recent twenty-two months, not including any period during which the child was a runaway from the out-of-home placement or the first six months of any period during which the child was returned to his or her home for a trial home visit, the appropriateness of the permanency plan, whether reasonable efforts were made by the department or supervising agency to achieve the goal of the permanency plan, and the circumstances which prevent the child from any of the following:

(A) Being returned safely to his or her home;

(B) Having a petition for the involuntary termination of parental rights filed on behalf of the child;

(C) Being placed for adoption;

(D) Being placed with a guardian;

(E) Being placed in the home of a fit and willing relative of the child; or

(F) Being placed in some other alternative permanent placement, including independent living or long-term foster care.

At this hearing, the court shall order the department or supervising agency to file a petition seeking termination of parental rights if the child has been in out-of-home care for fifteen of the last twenty-two months since the date the dependency petition was filed unless the court makes a good cause exception as to why the filing of a termination of parental rights petition is not appropriate. Any good cause finding shall be reviewed at all subsequent hearings pertaining to the child. For purposes of this section, "good cause exception" includes but is not limited to the following: The child is being cared for by a relative; the department has not provided to the child's family such services as the court and the department have deemed necessary for the child's safe return home; or the department has documented in the case plan a compelling reason for determining that filing a petition to terminate parental rights would not be in the child's best interests.

(c)(i) If the permanency plan identifies independent living as a goal, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial, personal, social, educational, and nonfinancial affairs prior to approving independent living as a permanency plan of care.

(ii) The permanency plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living.



(iii) The department or supervising agency shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(d) If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall:

(i) Enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280, 13.34.215(5), and 13.34.096; and

(ii) If the department or supervising agency is recommending a placement other than the child's current placement with a foster parent, relative, or other suitable person, enter a finding as to the reasons for the recommendation for a change in placement.

(4) In all cases, at the permanency planning hearing, the court shall:

(a)(i) Order the permanency plan prepared by the supervising agency to be implemented; or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(5) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

(6) Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

(7) If the court orders the child returned home, casework supervision by the department or supervising agency shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.138, and the court shall determine the need for continued intervention.

(8) The juvenile court may hear a petition for permanent legal custody when: (a) The court has ordered implementation of a permanency plan that includes permanent legal custody; and (b) the party pursuing the permanent legal custody is the party identified in the permanency plan as the prospective legal custodian. During the pendency of such proceeding, the court shall conduct review hearings and further permanency planning hearings as provided in this chapter. At the conclusion of the legal guardianship or permanent legal custody proceeding, a juvenile court hearing shall be held for the purpose of determining whether dependency should be dismissed. If a guardianship or permanent custody order has been entered, the dependency shall be dismissed.

(9) Continued juvenile court jurisdiction under this chapter shall not be a barrier to the entry of an order establishing a legal guardianship or permanent legal custody when the requirements of subsection (8) of this section are met.

(10) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of depen-

gency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the department or supervising agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

(11) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights. The court shall consider the child's relationships with siblings in accordance with RCW 13.34.130.

(12) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter. [2009 c 520 § 30; 2009 c 491 § 4; 2009 c 477 § 4; 2008 c 152 § 3; 2007 c 413 § 9; 2003 c 227 § 6. Prior: 2000 c 135 § 4; 2000 c 122 § 20; 1999 c 267 § 17; prior: 1998 c 314 § 3; 1998 c 130 § 3; prior: 1995 c 311 § 20; 1995 c 53 § 2; 1994 c 288 § 5; 1993 c 412 § 1; 1989 1st ex.s. c 17 § 18; 1988 c 194 § 3.]

**Reviser's note:** This section was amended by 2009 c 477 § 4, 2009 c 491 § 4, and by 2009 c 520 § 30, 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).

**Findings—Intent—2009 c 477:** See note following RCW 13.34.062.

**Findings—Intent—2008 c 152:** See note following RCW 13.34.136.

**Severability—2007 c 413:** See note following RCW 13.34.215.

**Intent—2003 c 227:** See note following RCW 13.34.130.

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26:** See RCW 74.15.900 and 74.15.901.

**13.34.155 Concurrent jurisdiction over nonparental actions for child custody (as amended by 2009 c 520).** (1) The court hearing the dependency petition may hear and determine issues related to chapter 26.10 RCW in a dependency proceeding as necessary to facilitate a permanency plan for the child or children as part of the dependency disposition order or a dependency review order or as otherwise necessary to implement a permanency plan of care for a child. The parents, guardians, or legal custodian of the child must agree, subject to court approval, to establish a permanent custody order. This agreed order may have the concurrence of the other parties to the dependency including the supervising agency, the guardian ad litem of the child, and the child if age twelve or older, and must also be in the best interests of the child. If the petitioner for a custody order under chapter 26.10 RCW is not a party to the dependency proceeding, he or she must agree on the record or by the filing of a declaration to the entry of a custody order. Once an order is entered under chapter 26.10 RCW, and the dependency petition dismissed, the department or supervising agency shall not continue to supervise the placement.

(2) Any court order determining issues under chapter 26.10 RCW is subject to modification upon the same showing and standards as a court order determining Title 26 RCW issues.

(3) Any order entered in the dependency court establishing or modifying a permanent legal custody order under chapter 26.10 RCW shall also be filed in the chapter 26.10 RCW action by the prevailing party. Once filed, any order establishing or modifying permanent legal custody shall survive dismissal of the dependency proceeding. [2009 c 520 § 31; 2000 c 135 § 1.]

**13.34.155 Concurrent jurisdiction over nonparental actions for child custody—Establishment or modification of parenting plan (as amended by 2009 c 526).** (1) The court hearing the dependency petition may hear and determine issues related to chapter 26.10 RCW in a dependency proceeding as necessary to facilitate a permanency plan for the child or children as part of the dependency disposition order or a dependency review order or as otherwise necessary to implement a permanency plan of care for

a child. The parents, guardians, or legal custodian of the child must agree, subject to court approval, to establish a permanent custody order. This agreed order may have the concurrence of the other parties to the dependency including the supervising agency, the guardian ad litem of the child, and the child if age twelve or older, and must also be in the best interests of the child. If the petitioner for a custody order under chapter 26.10 RCW is not a party to the dependency proceeding, he or she must agree on the record or by the filing of a declaration to the entry of a custody order. Once an order is entered under chapter 26.10 RCW, and the dependency petition dismissed, the department shall not continue to supervise the placement.

(2)(a) The court hearing the dependency petition may establish or modify a parenting plan under chapter 26.09 or 26.26 RCW as part of a disposition order or at a review hearing when doing so will implement a permanent plan of care for the child and result in dismissal of the dependency.

(b) The dependency court shall adhere to procedural requirements under chapter 26.09 RCW and must make a written finding that the parenting plan established or modified by the dependency court under this section is in the child's best interests.

(c) Unless the whereabouts of one of the parents is unknown to either the department or the court, the parents must agree, subject to court approval, to establish the parenting plan or modify an existing parenting plan.

(d) Whenever the court is asked to establish or modify a parenting plan, the child's residential schedule, the allocation of decision-making authority, and dispute resolution under this section, the dependency court may:

(i) Appoint a guardian ad litem to represent the interests of the child when the court believes the appointment is necessary to protect the best interests of the child; and

(ii) Appoint an attorney to represent the interests of the child with respect to provisions for the parenting plan.

(e) The dependency court must make a written finding that the parenting plan established or modified by the dependency court under this section is in the child's best interests.

(f) The dependency court may interview the child in chambers to ascertain the child's wishes as to the child's residential schedule in a proceeding for the entry or modification of a parenting plan under this section. The court may permit counsel to be present at the interview. The court shall cause a record of the interview to be made and to become part of the court record of the dependency case and the case under chapter 26.09 or 26.26 RCW.

(g) In the absence of agreement by a parent, guardian, or legal custodian of the child to allow the juvenile court to hear and determine issues related to the establishment or modification of a parenting plan under chapter 26.09 or 26.26 RCW, a party may move the court to transfer such issues to the family law department of the superior court for further resolution. The court may only grant the motion upon entry of a written finding that it is in the best interests of the child.

(h) In any parenting plan agreed to by the parents and entered or modified in juvenile court under this section, all issues pertaining to child support and the division of marital property shall be referred to or retained by the family law department of the superior court.

(3) Any court order determining issues under chapter 26.10 RCW is subject to modification upon the same showing and standards as a court order determining Title 26 RCW issues.

~~((3))~~ (4) Any order entered in the dependency court establishing or modifying a permanent legal custody order or parenting plan, or residential schedule under chapters 26.09, 26.10, and 26.26 RCW shall also be filed in the chapter 26.09, 26.10, and 26.26 RCW action by the moving or prevailing party. If the petitioning or moving party has been found indigent and appointed counsel at public expense in the dependency proceeding, no filing fees shall be imposed by the clerk. Once filed, any order, parenting plan, or residential schedule establishing or modifying permanent legal custody of a child shall survive dismissal of the dependency proceeding. [2009 c 526 § 2; 2000 c 135 § 1.]

**Reviser's note:** RCW 13.34.155 was amended twice during the 2009 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.

**13.34.174 Order of alcohol or substance abuse diagnostic investigation and evaluation—Treatment plan—Breach of plan—Reports.** (1) The provisions of this section shall apply when a court orders a party to undergo an alcohol or substance abuse diagnostic investigation and evaluation.

(2) The facility conducting the investigation and evaluation shall make a written report to the court stating its findings and recommendations including family-based services or treatment when appropriate. If its findings and recommendations support treatment, it shall also recommend a treatment plan setting out:

- (a) Type of treatment;
- (b) Nature of treatment;
- (c) Length of treatment;
- (d) A treatment time schedule; and
- (e) Approximate cost of the treatment.

The affected person shall be included in developing the appropriate treatment plan. The treatment plan must be signed by the treatment provider and the affected person. The initial written progress report based on the treatment plan shall be sent to the appropriate persons six weeks after initiation of treatment. Subsequent progress reports shall be provided after three months, six months, twelve months, and thereafter every six months if treatment exceeds twelve months. Reports are to be filed with the court in a timely manner. Close-out of the treatment record must include summary of pretreatment and posttreatment, with final outcome and disposition. The report shall also include recommendations for ongoing stability and decrease in destructive behavior.

Each report shall also be filed with the court and a copy given to the person evaluated and the person's counsel. A copy of the treatment plan shall also be given to the department's or supervising agency's caseworker and to the guardian ad litem. Any program for chemical dependency shall meet the program requirements contained in chapter 70.96A RCW.

(3) If the court has ordered treatment pursuant to a dependency proceeding it shall also require the treatment program to provide, in the reports required by subsection (2) of this section, status reports to the court, the department, the supervising agency, and the person or person's counsel regarding the person's cooperation with the treatment plan proposed and the person's progress in treatment.

(4) If a person subject to this section fails or neglects to carry out and fulfill any term or condition of the treatment plan, the program or agency administering the treatment shall report such breach to the court, the department, the guardian ad litem, the supervising agency if any, and the person or person's counsel, within twenty-four hours, together with its recommendation. These reports shall be made as a declaration by the person who is personally responsible for providing the treatment.

(5) Nothing in this chapter may be construed as allowing the court to require the department to pay for the cost of any alcohol or substance abuse evaluation or treatment program. [2009 c 520 § 32; 2000 c 122 § 23; 1993 c 412 § 5.]

**13.34.176 Violation of alcohol or substance abuse treatment conditions—Hearing—Notice—Modification of order.** (1) The court, upon receiving a report under RCW 13.34.174(4) or at the department's or supervising agency's request, may schedule a show cause hearing to determine whether the person is in violation of the treatment conditions. All parties shall be given notice of the hearing. The court shall hold the hearing within ten days of the request for a

hearing. At the hearing, testimony, declarations, reports, or other relevant information may be presented on the person's alleged failure to comply with the treatment plan and the person shall have the right to present similar information on his or her own behalf.

(2) If the court finds that there has been a violation of the treatment conditions it shall modify the dependency order, as necessary, to ensure the safety of the child. The modified order shall remain in effect until the party is in full compliance with the treatment requirements. [2009 c 520 § 33; 2000 c 122 § 24; 1993 c 412 § 6.]

**13.34.180 Order terminating parent and child relationship—Petition—Filing—Allegations (as amended by 2009 c 477).** (1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection (2) or (3) of this section applies:

- (a) That the child has been found to be a dependent child;
- (b) That the court has entered a dispositional order pursuant to RCW 13.34.130;
- (c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;
- (d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;
- (e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

- (i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts; ((e#))
- (ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; or
- (iii) Failure of the parent to have contact with the child for an extended period of time after the filing of the dependency petition if the parent was provided an opportunity to have a relationship with the child by the department or the court and received documented notice of the potential consequences of this failure, except that the actual inability of a parent to have visitation with the child including, but not limited to, mitigating circumstances such as a parent's incarceration or service in the military does not in and of itself constitute failure to have contact with the child; and
- (f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

(2) In lieu of the allegations in subsection (1) of this section, the petitioner may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

(3) In lieu of the allegations in subsection (1)(b) through (f) of this section, the petition may allege that the parent has been convicted of:

- (a) Murder in the first degree, murder in the second degree, or homicide by abuse as defined in chapter 9A.32 RCW against another child of the parent;
  - (b) Manslaughter in the first degree or manslaughter in the second degree, as defined in chapter 9A.32 RCW against another child of the parent;
  - (c) Attempting, conspiring, or soliciting another to commit one or more of the crimes listed in (a) or (b) of this subsection; or
  - (d) Assault in the first or second degree, as defined in chapter 9A.36 RCW, against the surviving child or another child of the parent.
- (4) Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

"NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.
2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the department of social and health services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).
3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.  
You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number)."

[2009 c 477 § 5; 2001 c 332 § 4; 2000 c 122 § 25; 1998 c 314 § 4; 1997 c 280 § 2. Prior: 1993 c 412 § 2; 1993 c 358 § 3; 1990 c 246 § 7; 1988 c 201 § 2; 1987 c 524 § 6; 1979 c 155 § 47; 1977 ex.s. c 291 § 46.]

**Findings—Intent—2009 c 477:** See note following RCW 13.34.062.

**13.34.180 Order terminating parent and child relationship—Petition—Filing—Allegations (as amended by 2009 c 520).** (1) A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party, including the supervising agency, to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege all of the following unless subsection (2) or (3) of this section applies:

- (a) That the child has been found to be a dependent child;
- (b) That the court has entered a dispositional order pursuant to RCW 13.34.130;
- (c) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency;
- (d) That the services ordered under RCW 13.34.136 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided;
- (e) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

- (i) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts; or

(ii) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time or for periods of time that present a risk of imminent harm to the child, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; and

(f) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home.

(2) In lieu of the allegations in subsection (1) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found.

(3) In lieu of the allegations in subsection (1)(b) through (f) of this section, the petition may allege that the parent has been convicted of:

(a) Murder in the first degree, murder in the second degree, or homicide by abuse as defined in chapter 9A.32 RCW against another child of the parent;

(b) Manslaughter in the first degree or manslaughter in the second degree, as defined in chapter 9A.32 RCW against another child of the parent;

(c) Attempting, conspiring, or soliciting another to commit one or more of the crimes listed in (a) or (b) of this subsection; or

(d) Assault in the first or second degree, as defined in chapter 9A.36 RCW, against the surviving child or another child of the parent.

(4) Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

**"NOTICE**

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.

2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the (~~department of social and health services~~) supervising agency and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number)."

[2009 c 520 § 34; 2001 c 332 § 4; 2000 c 122 § 25; 1998 c 314 § 4; 1997 c 280 § 2. Prior: 1993 c 412 § 2; 1993 c 358 § 3; 1990 c 246 § 7; 1988 c 201 § 2; 1987 c 524 § 6; 1979 c 155 § 47; 1977 ex.s. c 291 § 46.]

**Reviser's note:** RCW 13.34.180 was amended twice during the 2009 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.

**Severability—1990 c 246:** See note following RCW 13.34.060.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**13.34.210 Order terminating parent and child relationship—Custody where no one has parental rights.** If, upon entering an order terminating the parental rights of a parent, there remains no parent having parental rights, the court shall commit the child to the custody of the department or a supervising agency willing to accept custody for the purpose of placing the child for adoption. If an adoptive home

has not been identified, the department or supervising agency shall place the child in a licensed foster home, or take other suitable measures for the care and welfare of the child. The custodian shall have authority to consent to the adoption of the child consistent with chapter 26.33 RCW, the marriage of the child, the enlistment of the child in the armed forces of the United States, necessary surgical and other medical treatment for the child, and to consent to such other matters as might normally be required of the parent of the child.

If a child has not been adopted within six months after the date of the order and a guardianship of the child under RCW 13.34.231 or chapter 11.88 RCW, or a permanent custody order under chapter 26.10 RCW, has not been entered by the court, the court shall review the case every six months until a decree of adoption is entered. The supervising agency shall take reasonable steps to ensure that the child maintains relationships with siblings as provided in RCW 13.34.130(3) and shall report to the court the status and extent of such relationships. [2009 c 520 § 35; 2009 c 152 § 2; 2003 c 227 § 8; 2000 c 122 § 28; 1991 c 127 § 6; 1988 c 203 § 2; 1979 c 155 § 49; 1977 ex.s. c 291 § 49.]

**Reviser's note:** This section was amended by 2009 c 152 § 2 and by 2009 c 520 § 35, 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—2003 c 227:** See note following RCW 13.34.130.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**13.34.215 Petition reinstating terminated parental rights—Notice—Achievement of permanency plan—Effect of granting the petition—Hearing—Child support liability—Retroactive application—Limitation on liability.** (1) A child may petition the juvenile court to reinstate the previously terminated parental rights of his or her parent under the following circumstances:

(a) The child was previously found to be a dependent child under this chapter;

(b) The child's parent's rights were terminated in a proceeding under this chapter;

(c) The child has not achieved his or her permanency plan within three years of a final order of termination; and

(d) The child must be at least twelve years old at the time the petition is filed. Upon the child's motion for good cause shown, or on its own motion, the court may hear a petition filed by a child younger than twelve years old.

(2) A child seeking to petition under this section shall be provided counsel at no cost to the child.

(3) The petition must be signed by the child in the absence of a showing of good cause as to why the child could not do so.

(4) If, after a threshold hearing to consider the parent's apparent fitness and interest in reinstatement of parental rights, the court finds by a preponderance of the evidence that the best interests of the child may be served by reinstatement of parental rights, the juvenile court shall order that a hearing on the merits of the petition be held.

(5) The court shall give prior notice for any proceeding under this section, or cause prior notice to be given, to the

department or the supervising agency, the child's attorney, and the child. The court shall also order the department or supervising agency to give prior notice of any hearing to the child's former parent whose parental rights are the subject of the petition, any parent whose rights have not been terminated, the child's current foster parent, relative caregiver, guardian or custodian, and the child's tribe, if applicable.

(6) The juvenile court shall conditionally grant the petition if it finds by clear and convincing evidence that the child has not achieved his or her permanency plan and is not likely to imminently achieve his or her permanency plan and that reinstatement of parental rights is in the child's best interest. In determining whether reinstatement is in the child's best interest the court shall consider, but is not limited to, the following:

(a) Whether the parent whose rights are to be reinstated is a fit parent and has remedied his or her deficits as provided in the record of the prior termination proceedings and prior termination order;

(b) The age and maturity of the child, and the ability of the child to express his or her preference;

(c) Whether the reinstatement of parental rights will present a risk to the child's health, welfare, or safety; and

(d) Other material changes in circumstances, if any, that may have occurred which warrant the granting of the petition.

(7) In determining whether the child has or has not achieved his or her permanency plan or whether the child is likely to achieve his or her permanency plan, the department or supervising agency shall provide the court, and the court shall review, information related to any efforts to achieve the permanency plan including efforts to achieve adoption or a permanent guardianship.

(8)(a) If the court conditionally grants the petition under subsection (6) of this section, the case will be continued for six months and a temporary order of reinstatement entered. During this period, the child shall be placed in the custody of the parent. The department or supervising agency shall develop a permanency plan for the child reflecting the plan to be reunification and shall provide transition services to the family as appropriate.

(b) If the child must be removed from the parent due to abuse or neglect allegations prior to the expiration of the conditional six-month period, the court shall dismiss the petition for reinstatement of parental rights if the court finds the allegations have been proven by a preponderance of the evidence.

(c) If the child has been successfully placed with the parent for six months, the court order reinstating parental rights remains in effect and the court shall dismiss the dependency.

(9) After the child has been placed with the parent for six months, the court shall hold a hearing. If the placement with the parent has been successful, the court shall enter a final order of reinstatement of parental rights, which shall restore all rights, powers, privileges, immunities, duties, and obligations of the parent as to the child, including those relating to custody, control, and support of the child. The court shall dismiss the dependency and direct the clerk's office to provide a certified copy of the final order of reinstatement of parental rights to the parent at no cost.

(10) The granting of the petition under this section does not vacate or otherwise affect the validity of the original termination order.

(11) Any parent whose rights are reinstated under this section shall not be liable for any child support owed to the department pursuant to RCW 13.34.160 or Title 26 RCW or costs of other services provided to a child for the time period from the date of termination of parental rights to the date parental rights are reinstated.

(12) A proceeding to reinstate parental rights is a separate action from the termination of parental rights proceeding and does not vacate the original termination of parental rights. An order granted under this section reinstates the parental rights to the child. This reinstatement is a recognition that the situation of the parent and child have changed since the time of the termination of parental rights and reunification is now appropriate.

(13) This section is retroactive and applies to any child who is under the jurisdiction of the juvenile court at the time of the hearing regardless of the date parental rights were terminated.

(14) The state, the department, the supervising agency, and its employees are not liable for civil damages resulting from any act or omission in the provision of services under this section, unless the act or omission constitutes gross negligence. This section does not create any duty and shall not be construed to create a duty where none exists. This section does not create a cause of action against the state, the department, the supervising agency, or its employees concerning the original termination. [2009 c 520 § 36; 2008 c 267 § 1; 2007 c 413 § 1.]

**Severability—2007 c 413:** "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." [2007 c 413 § 13.]

**13.34.230 Guardianship for dependent child—Petition for—Notice to, intervention by, department or supervising agency.** Any party to a dependency proceeding, including the supervising agency, may file a petition in juvenile court requesting that guardianship be created as to a dependent child. The department or supervising agency shall receive notice of any guardianship proceedings and have the right to intervene in the proceedings. [2009 c 520 § 37; 1981 c 195 § 1; 1979 c 155 § 51.]

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**13.34.233 Guardianship for dependent child—Modification or termination of order—Hearing—Termination of guardianship.** (1) Any party may request the court under RCW 13.34.150 to modify or terminate a dependency guardianship order. Notice of any motion to modify or terminate the guardianship shall be served on all other parties, including any agency that was responsible for supervising the child's placement at the time the guardianship petition was filed. Notice in all cases shall be served upon the department. If the department or supervising agency was not previously a party to the guardianship proceeding, the department or supervising agency shall nevertheless have the right to: (a)

Initiate a proceeding to modify or terminate a guardianship; and (b) intervene at any stage of such a proceeding.

(2) The guardianship may be modified or terminated upon the motion of any party, the department, or the supervising agency if the court finds by a preponderance of the evidence that there has been a substantial change of circumstances subsequent to the establishment of the guardianship and that it is in the child's best interest to modify or terminate the guardianship. The court shall hold a hearing on the motion before modifying or terminating a guardianship.

(3) Upon entry of an order terminating the guardianship, the dependency guardian shall not have any rights or responsibilities with respect to the child and shall not have legal standing to participate as a party in further dependency proceedings pertaining to the child. The court may allow the child's dependency guardian to attend dependency review proceedings pertaining to the child for the sole purpose of providing information about the child to the court.

(4) Upon entry of an order terminating the guardianship, the child shall remain dependent and the court shall either return the child to the child's parent or order the child into the custody, control, and care of the department or a supervising agency for placement in a foster home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to such chapter. The court shall not place a child in the custody of the child's parent unless the court finds that reasons for removal as set forth in RCW 13.34.130 no longer exist and that such placement is in the child's best interest. The court shall thereafter conduct reviews as provided in RCW 13.34.138 and, where applicable, shall hold a permanency planning hearing in accordance with RCW 13.34.145. [2009 c 520 § 38; 2000 c 122 § 30; 1995 c 311 § 24; 1994 c 288 § 8; 1981 c 195 § 4.]

**13.34.234 Guardianship for dependent child—Dependency guardianship subsidies—Rules.** A dependency guardian who is a licensed foster parent at the time the guardianship is established under RCW 13.34.231 and 13.34.232 and who has been the child's foster parent for a minimum of six consecutive months preceding entry of the guardianship order is eligible for a guardianship subsidy on behalf of the child. The department may establish rules setting eligibility, application, and program standards consistent with applicable federal guidelines. [2009 c 235 § 6; 1994 c 288 § 9; 1981 c 195 § 5.]

**Findings—Intent—2009 c 235:** See note following RCW 74.13.031.

**13.34.238 Guardianship for dependent child—Relative guardianship subsidies.** The legislature intends to make subsidized relative guardianships, as permitted under federal law, available to Washington families through amending the state's dependency guardianship statute and through the following implementation directives for a relative guardianship program:

(1) Relative guardianships shall be a permissible permanency plan under this chapter for a dependent child who is Title IV-E eligible and for whom the prospective relative guardian has been the licensed foster care provider for at least six consecutive months prior to the guardianship being established;

(2) The department shall conduct routine and cost-efficient outreach regarding the relative guardianship program through the kinship care oversight committee, the area administrations on aging, and appropriate community partners;

(3) Relative guardianship subsidy agreements shall be designed to promote long-term permanency for the child and to support stability of the guardianship. The child's best interests shall govern the issue of whether and what kinds of supports will be available under the program; and

(4) The subsidized relative guardianship program shall be implemented in a manner consistent with federal laws, rules, and regulations for the receipt and expenditure of federal funds for subsidies to relative guardians. [2009 c 235 § 5.]

**Findings—Intent—2009 c 235:** See note following RCW 74.13.031.

**13.34.245 Voluntary consent to foster care placement for Indian child—Validation—Withdrawal of consent—Termination.**

(1) Where any parent or Indian custodian voluntarily consents to foster care placement of an Indian child and a petition for dependency has not been filed regarding the child, such consent shall not be valid unless executed in writing before the court and filed with the court. The consent shall be accompanied by the written certification of the court that the terms and consequences of the consent were fully explained in detail to the parent or Indian custodian during the court proceeding and were fully understood by the parent or Indian custodian. The court shall also certify in writing either that the parent or Indian custodian fully understood the explanation in English or that it was interpreted into a language that the parent or Indian custodian understood. Any consent given prior to, or within ten days after, the birth of the Indian child shall not be valid.

(2) To obtain court validation of a voluntary consent to foster care placement, any person may file a petition for validation alleging that there is located or residing within the county an Indian child whose parent or Indian custodian wishes to voluntarily consent to foster care placement of the child and requesting that the court validate the consent as provided in this section. The petition shall contain the name, date of birth, and residence of the child, the names and residences of the consenting parent or Indian custodian, and the name and location of the Indian tribe in which the child is a member or eligible for membership. The petition shall state whether the placement preferences of 25 U.S.C. Sec. 1915 (b) or (c) will be followed. Reasonable attempts shall be made by the petitioner to ascertain and set forth in the petition the identity, location, and custodial status of any parent or Indian custodian who has not consented to foster care placement and why that parent or Indian custodian cannot assume custody of the child.

(3) Upon filing of the petition for validation, the clerk of the court shall schedule the petition for a hearing on the court validation of the voluntary consent no later than forty-eight hours after the petition has been filed, excluding Saturdays, Sundays, and holidays. Notification of time, date, location, and purpose of the validation hearing shall be provided as soon as possible to the consenting parent or Indian custodian, the department or supervising agency which is to assume

responsibility for the child's placement and care pursuant to the consent to foster care placement, and the Indian tribe in which the child is enrolled or eligible for enrollment as a member. If the identity and location of any nonconsenting parent or Indian custodian is known, reasonable attempts shall be made to notify the parent or Indian custodian of the consent to placement and the validation hearing. Notification under this subsection may be given by the most expedient means, including, but not limited to, mail, personal service, telephone, and telegraph.

(4) Any parent or Indian custodian may withdraw consent to a voluntary foster care placement, made under this section, at any time. Unless the Indian child has been taken in custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130, the Indian child shall be returned to the parent or Indian custodian upon withdrawal of consent to foster care placement of the child.

(5) Upon termination of the voluntary foster care placement and return of the child to the parent or Indian custodian, the department or supervising agency which had assumed responsibility for the child's placement and care pursuant to the consent to foster care placement shall file with the court written notification of the child's return and shall also send such notification to the Indian tribe in which the child is enrolled or eligible for enrollment as a member and to any other party to the validation proceeding including any non-custodial parent. [2009 c 520 § 39; 1997 c 386 § 18; 1987 c 170 § 2.]

**Application—1997 c 386:** See note following RCW 13.50.010.

**Severability—1987 c 170:** See note following RCW 13.04.030.

**13.34.260 Foster home placement—Parental preferences—Foster parent contact with birth parents encouraged.** (1) In an attempt to minimize the inherent intrusion in the lives of families involved in the foster care system and to maintain parental authority where appropriate, the department, absent good cause, shall follow the wishes of the natural parent regarding the placement of the child with a relative or other suitable person pursuant to RCW 13.34.130. Preferences such as family constellation, sibling relationships, ethnicity, and religion shall be considered when matching children to foster homes. Parental authority is appropriate in areas that are not connected with the abuse or neglect that resulted in the dependency and shall be integrated through the foster care team.

(2) When a child is placed in out-of-home care, relatives, other suitable persons, and foster parents are encouraged to:

(a) Provide consultation to the foster care team based upon their experience with the child placed in their care;

(b) Assist the birth parents by helping them understand their child's needs and correlating appropriate parenting responses;

(c) Participate in educational activities, and enter into community-building activities with birth families and other foster families;

(d) Transport children to family time visits with birth families and assist children and their families in maximizing the purposefulness of family time.

(3) For purposes of this section, "foster care team" means the relative, other suitable person, or foster parent currently providing care, the currently assigned social worker, and the parent or parents; and "birth family" means the persons described in RCW 74.15.020(2)(a). [2009 c 491 § 5; 2003 c 226 § 2; 2002 c 52 § 7; 2000 c 122 § 32; 1990 c 284 § 25.]

**Findings—Intent—2003 c 226:** "The legislature finds that a large group of children spend a significant part of their lives in foster care. Each individual connected to a child in an out-of-home placement must have an abiding appreciation of the seriousness of the child's separation from his or her family and the past, whether that separation is short, long, or permanent in nature. It is the intent of the legislature to recognize and honor the history and the family connections that each child brings to an out-of-home placement.

The legislature finds that creating and sanctioning a connection between a child's birth parents and foster family, when appropriate, can result in better relationships among birth families, children, foster families, and social workers. Creating and sanctioning this connection can result in greater foster placement stability and fewer disruptions for children, as well as greater satisfaction for foster parents and social workers." [2003 c 226 § 1.]

**Intent—2002 c 52:** See note following RCW 13.34.025.

**Finding—Effective date—1990 c 284:** See notes following RCW 74.13.250.

**13.34.265 Foster home placement—Considerations.** If a child has been previously placed in out-of-home care and is subsequently returned to out-of-home care, and the department cannot locate an appropriate and available relative or other suitable person, the preferred placement for the child is in a foster family home where the child previously was placed, if the following conditions are met:

(1) The foster family home is available and willing to care for the child;

(2) The foster family is appropriate and able to meet the child's needs; and

(3) The placement is in the best interest of the child. [2009 c 482 § 2.]

**13.34.320 Inpatient mental health treatment—When parental consent required—Hearing.** The department or supervising agency shall obtain the prior consent of a child's parent, legal guardian, or legal custodian before a dependent child is admitted into an inpatient mental health treatment facility. If the child's parent, legal guardian, or legal custodian is unavailable or does not agree with the proposed admission, the department or supervising agency shall request a hearing and provide notice to all interested parties to seek prior approval of the juvenile court before such admission. In the event that an emergent situation creating a risk of substantial harm to the health and welfare of a child in the custody of the department or supervising agency does not allow time for the department or supervising agency to obtain prior approval or to request a court hearing before consenting to the admission of the child into an inpatient mental health hospital, the department or supervising agency shall seek court approval by requesting that a hearing be set on the first available court date. [2009 c 520 § 40; 1999 c 188 § 2.]

**Intent—1999 c 188:** "It is the intent of the legislature that minor children in the care and custody of the department of social and health services under chapter 13.34 RCW be provided the most appropriate possible mental health care consistent with the child's best interests, family reconciliation, the child's medical need for mental health treatment, available state and community resources, and professional standards of medical care. The leg-

islature intends that admission of such minors for mental health hospitalization be made pursuant to the criteria and standards for mental health services for minors established in chapter 71.34 RCW, and that minor children in the care and custody of the department in need of mental health hospitalization shall retain all rights set forth therein. The legislature specifically intends that this act may not be construed to affect the standards or procedures established for the involuntary commitment of minors under chapter 71.34 RCW." [1999 c 188 § 1.]

**13.34.330 Inpatient mental health treatment—Placement.** A dependent child who is admitted to an inpatient mental health facility shall be placed in a facility, with available treatment space, that is closest to the family home, unless the department or supervising agency, in consultation with the admitting authority finds that admission in the facility closest to the child's home would jeopardize the health or safety of the child. [2009 c 520 § 41; 1999 c 188 § 3.]

**Intent—1999 c 188:** See note following RCW 13.34.320.

**13.34.340 Release of records—Disclosure to treating physician.** For minors who cannot consent to the release of their records with the department or supervising agency because they are not old enough to consent to treatment, or, if old enough, lack the capacity to consent, or if the minor is receiving treatment involuntarily with a provider the department or supervising agency has authorized to provide mental health treatment under RCW 13.34.320, the department or supervising agency shall disclose, upon the treating physician's request, all relevant records, including the minor's passport as established under RCW 74.13.285, in the department's or supervising agency's possession that the treating physician determines contain information required for treatment of the minor. The treating physician shall maintain all records received from the department or supervising agency in a manner that distinguishes the records from any other records in the minor's file with the treating physician and the department or supervising agency records may not be disclosed by the treating physician to any other person or entity absent a court order except that, for medical purposes only, a treating physician may disclose the department or supervising agency records to another treating physician. [2009 c 520 § 42; 2000 c 122 § 35; 1999 c 188 § 4.]

**Intent—1999 c 188:** See note following RCW 13.34.320.

**13.34.350 Dependent children—Information sharing—Guidelines.** In order to facilitate communication of information needed to serve the best interest of any child who is the subject of a dependency case filed under this chapter, the department shall, consistent with state and federal law governing the release of confidential information, establish guidelines, and shall use those guidelines for the facilitation of communication of relevant information among divisions, providers, the courts, the family, caregivers, caseworkers, and others. [2009 c 520 § 43; 2001 c 52 § 2.]

**Finding—2001 c 52:** "Recent analysis of the child dependency system following the death of Zy'Nyia Nobles indicated poor communication of relevant information from the courts, to the department, within programs between caseworkers, between divisions, among specialists, caregivers, and family. Appropriate service delivery necessitates communication of relevant information. Barriers to appropriate communication must be eliminated." [2001 c 52 § 1.]

**Construction—2001 c 52:** "Nothing in this act shall be construed to create a private right of action or claim against the department of social and

health services on the part of any individual or organization." [2001 c 52 § 4.]

**13.34.360 Transfer of newborn to qualified person—Criminal liability—Notification to child protective services—Definitions.** (1) For purposes of this section:

(a) "Appropriate location" means (i) the emergency department of a hospital licensed under chapter 70.41 RCW during the hours the hospital is in operation; (ii) a fire station during its hours of operation and while fire personnel are present; or (iii) a federally designated rural health clinic during its hours of operation.

(b) "Newborn" means a live human being who is less than seventy-two hours old.

(c) "Qualified person" means (i) any person that the parent transferring the newborn reasonably believes is a bona fide employee, volunteer, or medical staff member of the hospital or federally designated rural health clinic and who represents to the parent transferring the newborn that he or she can and will summon appropriate resources to meet the newborn's immediate needs; or (ii) a firefighter, volunteer, or emergency medical technician at a fire station who represents to the parent transferring the newborn that he or she can and will summon appropriate resources to meet the newborn's immediate needs.

(2) A parent of a newborn who transfers the newborn to a qualified person at an appropriate location is not subject to criminal liability under RCW 9A.42.060, 9A.42.070, 9A.42.080, 26.20.030, or 26.20.035.

(3)(a) The qualified person at an appropriate location shall not require the parent transferring the newborn to provide any identifying information in order to transfer the newborn.

(b) The qualified person at an appropriate location shall attempt to protect the anonymity of the parent who transfers the newborn, while providing an opportunity for the parent to anonymously give the qualified person such information as the parent knows about the family medical history of the parents and the newborn. The qualified person at an appropriate location shall provide referral information about adoption options, counseling, appropriate medical and emotional after-care services, domestic violence, and legal rights to the parent seeking to transfer the newborn.

(c) If a parent of a newborn transfers the newborn to a qualified person at an appropriate location pursuant to this section, the qualified person shall cause child protective services to be notified within twenty-four hours after receipt of such a newborn. Child protective services shall assume custody of the newborn within twenty-four hours after receipt of notification.

(d) A federally designated rural health clinic is not required to provide ongoing medical care of a transferred newborn beyond that already required by law and may transfer the newborn to a hospital licensed under chapter 70.41 RCW. The federally designated rural health clinic shall notify child protective services of the transfer of the newborn to the hospital.

(e) A hospital, federally designated rural health clinic, or fire station, its employees, volunteers, and medical staff are immune from any criminal or civil liability for accepting or receiving a newborn under this section.



(4)(a) Beginning July 1, 2011, an appropriate location shall post a sign indicating that the location is an appropriate place for the safe and legal transfer of a newborn.

(b) To cover the costs of acquiring and placing signs, appropriate locations may accept nonpublic funds and donations. [2009 c 290 § 1; 2002 c 331 § 2.]

**Intent—2002 c 331:** "The legislature intends to increase the likelihood that pregnant women will obtain adequate prenatal care and will provide their newborns with adequate health care during the first few days of their lives. The legislature recognizes that prenatal and postdelivery health care for newborns and their mothers is especially critical to their survival and well-being. The legislature does not intend to encourage the abandonment of newborn children nor to change existing law relating to notification to parents under chapter 13.34 RCW, but rather to assure that abandonment does not occur and that all newborns have an opportunity for adequate health care and a stable home life." [2002 c 331 § 1.]

**Effective date—2002 c 331:** "Sections 1 through 7 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, 2002]." [2002 c 331 § 9.]

**13.34.370 Evaluation of parties—Selection of evaluators.** The court may order expert evaluations of parties to obtain information regarding visitation issues or other issues in a case. These evaluations shall be performed by appointed evaluators who are mutually agreed upon by the court, the supervising agency, the department, and the parents' counsel, and, if the child is to be evaluated, by the representative for the child. If no agreement can be reached, the court shall select the expert evaluator. [2009 c 520 § 44; 2004 c 146 § 2.]

**13.34.380 Visitation policies and protocols—Development—Elements.** The department shall develop consistent policies and protocols, based on current relevant research, concerning visitation for dependent children to be implemented consistently throughout the state. The department shall develop the policies and protocols in consultation with researchers in the field, community-based agencies, court-appointed special advocates, parents' representatives, and court representatives. The policies and protocols shall include, but not be limited to: The structure and quality of visitations; and training for department and supervising agency caseworkers, visitation supervisors, and foster parents related to visitation.

The policies and protocols shall be consistent with the provisions of this chapter and implementation of the policies and protocols shall be consistent with relevant orders of the court. [2009 c 520 § 45; 2004 c 146 § 3.]

**13.34.385 Petition for visitation—Relatives of dependent children—Notice—Modification of order—Effect of granting the petition—Retroactive application.** (1) A relative of a dependent child may petition the juvenile court for reasonable visitation with the child if:

- (a) The child has been found to be a dependent child under this chapter;
- (b) The parental rights of both of the child's parents have been terminated;
- (c) The child is in the custody of the department, another public agency, or a supervising agency; and

(d) The child has not been adopted and is not in a preadoptive home or other permanent placement at the time the petition for visitation is filed.

(2) The court shall give prior notice for any proceeding under this section, or cause prior notice to be given, to the department, other public agency, or supervising agency having custody of the child, the child's attorney or guardian ad litem if applicable, and the child. The court shall also order the custodial agency to give prior notice of any hearing to the child's current foster parent, relative caregiver, guardian or custodian, and the child's tribe, if applicable.

(3) The juvenile court may grant the petition for visitation if it finds that the requirements of subsection (1) of this section have been met, and that unsupervised visitation between the child and the relative does not present a risk to the child's safety or well-being and that the visitation is in the best interests of the child. In determining the best interests of the child the court shall consider, but is not limited to, the following:

- (a) The love, affection, and strength of the relationship between the child and the relative;
  - (b) The length and quality of the prior relationship between the child and the relative;
  - (c) Any criminal convictions for or founded history of abuse or neglect of a child by the relative;
  - (d) Whether the visitation will present a risk to the child's health, welfare, or safety;
  - (e) The child's reasonable preference, if the court considers the child to be of sufficient age to express a preference;
  - (f) Any other factor relevant to the child's best interest.
- (4) The visitation order may be modified at any time upon a showing that the visitation poses a risk to the child's safety or well-being. The visitation order shall state that visitation will automatically terminate upon the child's placement in a preadoptive home, if the child is adopted, or if there is a subsequent founded abuse or neglect allegation against the relative.

(5) The granting of the petition under this section does not grant the relative the right to participate in the dependency action and does not grant any rights to the relative not otherwise specified in the visitation order.

(6) This section is retroactive and applies to any eligible dependent child at the time of the filing of the petition for visitation, regardless of the date parental rights were terminated.

(7) For the purpose of this section, "relative" means a relative as defined in RCW 74.15.020(2)(a), except parents.

(8) This section is intended to provide an additional procedure by which a relative may request visitation with a dependent child. It is not intended to impair or alter the ability a court currently has to order visitation with a relative under the dependency statutes. [2009 c 520 § 46; 2008 c 259 § 1.]

**13.34.390 Comprehensive services for drug-affected and alcohol-affected mothers and infants.** The department and the department of health shall develop and expand comprehensive services for drug-affected and alcohol-affected mothers and infants. Subject to funds appropriated for this purpose, the expansion shall be in evidence-based, research-based, or consensus-based practices, and shall expand capac-

ity in underserved regions of the state. [2009 c 520 § 47; 2005 c 504 § 303.]

**Findings—Intent—Severability—Application—Construction—Captions, part headings, subheadings not law—Adoption of rules—Effective dates—2005 c 504:** See notes following RCW 71.05.027.

**Alphabetization—Correction of references—2005 c 504:** See note following RCW 71.05.020.

**13.34.400 Child welfare proceedings—Placement—Documentation.** In any proceeding under this chapter, if the department or supervising agency submits a report to the court in which the department is recommending a new placement or a change in placement, the department or supervising agency shall include the documents relevant to persons in the home in which a child will be placed and listed in subsections (1) through (5) of this section to the report. The department or supervising agency shall include only these relevant documents and shall not attach the entire history of the subject of the report.

(1) If the report contains a recommendation, opinion, or assertion by the department or supervising agency relating to substance abuse treatment, mental health treatment, anger management classes, or domestic violence classes, the department or supervising agency shall attach the document upon which the recommendation, opinion, or assertion was based. The documentation may include the progress report or evaluation submitted by the provider, but may not include the entire history with the provider.

(2) If the report contains a recommendation, opinion, or assertion by the department or supervising agency relating to visitation with a child, the department or supervising agency shall attach the document upon which the recommendation, opinion, or assertion was based. The documentation may include the most recent visitation report, a visitation report referencing a specific incident alleged in the report, or summary of the visitation prepared by the person who supervised the visitation. The documentation attached to the report shall not include the entire visitation history.

(3) If the report contains a recommendation, opinion, or assertion by the department or supervising agency relating to the psychological status of a person, the department or supervising agency shall attach the document upon which the recommendation, opinion, or assertion was based. The documentation may include the progress report, evaluation, or summary submitted by the provider, but shall not include the entire history of the person.

(4) If the report contains a recommendation, opinion, or assertion by the department or supervising agency relating to injuries to a child, the department or supervising agency shall attach a summary of the physician's report, prepared by the physician or the physician's designee, relating to the recommendation, opinion, or assertion by the department.

(5) If the report contains a recommendation, opinion, or assertion by the department or supervising agency relating to a home study, licensing action, or background check information, the department or supervising agency shall attach the document or documents upon which that recommendation, opinion, or assertion is based. [2009 c 520 § 48; 2007 c 411 § 2.]

**Finding—2007 c 411:** "The legislature finds that in order to allow courts to make well-informed placement decisions for children in the care of

the state, the courts must have accurate information, including documentation supporting assertions or recommendations made by social workers, when appropriate." [2007 c 411 § 1.]

**Short title—2007 c 411:** "This act shall be known and cited as the Rafael Gomez act." [2007 c 411 § 3.]

**13.34.803 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**13.34.805 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**13.34.8051 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**13.34.810 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**13.34.830 Child protection and child welfare—Racial disproportionality—Evaluation—Report.** (1) Within amounts appropriated for this specific purpose, or within funding made available by private grant or contribution, the Washington state institute for public policy shall evaluate the department of social and health services' use of structured decision-making practices and implementation of the family team decision-making model to determine whether and how those child protection and child welfare efforts result in reducing disproportionate representation of African-American, Native American, and Latino children in the state's child welfare system. The institute shall analyze the points in the system at which current data reflect the greatest levels of disproportionality. The institute shall report its findings to the legislature and the department of social and health services by September 1, 2010.

(2) If adequate funding is not made available through state appropriation or through private grant or contribution to simultaneously study the impact on racial disproportionality of both the structured decision-making process and family team decision-making model, the institute shall first study and report on the family team decision-making model. The department of social and health services and the Washington state institute for public policy jointly, shall:

(a) Promptly complete and execute a data sharing agreement to comply with the department's confidential or records requirements and to provide the institute with data and other information necessary to conduct its evaluation; and

(b) Identify potential sources of private funding to supplement any state-appropriated amounts. [2009 c 213 § 2.]

**Findings—2009 c 213:** "(1) The legislature finds that research conducted by the Washington state institute for public policy released in June 2008, demonstrates that racial disproportionality exists in Washington's child welfare system and that the greatest disproportionality occurs when the initial referral to child protective services is made and when the decision is made to place a child in out-of-home care. The institute's research also demonstrates that children of African-American, Native American, and Latino families have disproportionately longer lengths of stay in foster care.

(2) The legislature finds further that the department of social and health services, in a December 2008 report issued pursuant to chapter 465, Laws of 2007, identified initial recommendations for remediation of racial disproportionality, including examining specific current child welfare practices, structured decision making and family team decision making, to determine whether and how these practices might result in reducing or eliminating racial disproportionality." [2009 c 213 § 1.]

**13.34.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 42.]

**Chapter 13.40 RCW**

**JUVENILE JUSTICE ACT OF 1977**

Sections

13.40.020 Definitions.  
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 13.40.308 Juvenile offender adjudicated of taking motor vehicle without permission in the first degree, theft of motor vehicle, possession of a stolen vehicle, taking motor vehicle without permission in the second degree—Minimum sentences.  
 13.40.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**13.40.020 Definitions.** For the purposes of this chapter:

- (1) "Community-based rehabilitation" means one or more of the following: Employment; attendance of information classes; literacy classes; counseling, outpatient substance abuse treatment programs, outpatient mental health programs, anger management classes, education or outpatient treatment programs to prevent animal cruelty, or other services; or attendance at school or other educational programs appropriate for the juvenile as determined by the school district. Placement in community-based rehabilitation programs is subject to available funds;
- (2) Community-based sanctions may include one or more of the following:
  - (a) A fine, not to exceed five hundred dollars;
  - (b) Community restitution not to exceed one hundred fifty hours of community restitution;
- (3) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender as punishment for committing an

offense. Community restitution may be performed through public or private organizations or through work crews;

(4) "Community supervision" means an order of disposition by the court of an adjudicated youth not committed to the department or an order granting a deferred disposition. A community supervision order for a single offense may be for a period of up to two years for a sex offense as defined by RCW 9.94A.030 and up to one year for other offenses. As a mandatory condition of any term of community supervision, the court shall order the juvenile to refrain from committing new offenses. As a mandatory condition of community supervision, the court shall order the juvenile to comply with the mandatory school attendance provisions of chapter 28A.225 RCW and to inform the school of the existence of this requirement. Community supervision is an individualized program comprised of one or more of the following:

- (a) Community-based sanctions;
- (b) Community-based rehabilitation;
- (c) Monitoring and reporting requirements;
- (d) Posting of a probation bond;

(5) "Confinement" means physical custody by the department of social and health services in a facility operated by or pursuant to a contract with the state, or physical custody in a detention facility operated by or pursuant to a contract with any county. The county may operate or contract with vendors to operate county detention facilities. The department may operate or contract to operate detention facilities for juveniles committed to the department. Pretrial confinement or confinement of less than thirty-one days imposed as part of a disposition or modification order may be served consecutively or intermittently, in the discretion of the court;

(6) "Court," when used without further qualification, means the juvenile court judge(s) or commissioner(s);

(7) "Criminal history" includes all criminal complaints against the respondent for which, prior to the commission of a current offense:

- (a) The allegations were found correct by a court. If a respondent is convicted of two or more charges arising out of the same course of conduct, only the highest charge from among these shall count as an offense for the purposes of this chapter; or
- (b) The criminal complaint was diverted by a prosecutor pursuant to the provisions of this chapter on agreement of the respondent and after an advisement to the respondent that the criminal complaint would be considered as part of the respondent’s criminal history. A successfully completed deferred adjudication that was entered before July 1, 1998, or a deferred disposition shall not be considered part of the respondent’s criminal history;

(8) "Department" means the department of social and health services;

(9) "Detention facility" means a county facility, paid for by the county, for the physical confinement of a juvenile alleged to have committed an offense or an adjudicated offender subject to a disposition or modification order. "Detention facility" includes county group homes, inpatient substance abuse programs, juvenile basic training camps, and electronic monitoring;

(10) "Diversion unit" means any probation counselor who enters into a diversion agreement with an alleged youthful offender, or any other person, community accountability

board, youth court under the supervision of the juvenile court, or other entity except a law enforcement official or entity, with whom the juvenile court administrator has contracted to arrange and supervise such agreements pursuant to RCW 13.40.080, or any person, community accountability board, or other entity specially funded by the legislature to arrange and supervise diversion agreements in accordance with the requirements of this chapter. For purposes of this subsection, "community accountability board" means a board comprised of members of the local community in which the juvenile offender resides. The superior court shall appoint the members. The boards shall consist of at least three and not more than seven members. If possible, the board should include a variety of representatives from the community, such as a law enforcement officer, teacher or school administrator, high school student, parent, and business owner, and should represent the cultural diversity of the local community;

(11) "Foster care" means temporary physical care in a foster family home or group care facility as defined in RCW 74.15.020 and licensed by the department, or other legally authorized care;

(12) "Institution" means a juvenile facility established pursuant to chapters 72.05 and 72.16 through 72.20 RCW;

(13) "Intensive supervision program" means a parole program that requires intensive supervision and monitoring, offers an array of individualized treatment and transitional services, and emphasizes community involvement and support in order to reduce the likelihood a juvenile offender will commit further offenses;

(14) "Juvenile," "youth," and "child" mean any individual who is under the chronological age of eighteen years and who has not been previously transferred to adult court pursuant to RCW 13.40.110, unless the individual was convicted of a lesser charge or acquitted of the charge for which he or she was previously transferred pursuant to RCW 13.40.110 or who is not otherwise under adult court jurisdiction;

(15) "Juvenile offender" means any juvenile who has been found by the juvenile court to have committed an offense, including a person eighteen years of age or older over whom jurisdiction has been extended under RCW 13.40.300;

(16) "Local sanctions" means one or more of the following: (a) 0-30 days of confinement; (b) 0-12 months of community supervision; (c) 0-150 hours of community restitution; or (d) \$0-\$500 fine;

(17) "Manifest injustice" means a disposition that would either impose an excessive penalty on the juvenile or would impose a serious, and clear danger to society in light of the purposes of this chapter;

(18) "Monitoring and reporting requirements" means one or more of the following: Curfews; requirements to remain at home, school, work, or court-ordered treatment programs during specified hours; restrictions from leaving or entering specified geographical areas; requirements to report to the probation officer as directed and to remain under the probation officer's supervision; and other conditions or limitations as the court may require which may not include confinement;

(19) "Offense" means an act designated a violation or a crime if committed by an adult under the law of this state,

under any ordinance of any city or county of this state, under any federal law, or under the law of another state if the act occurred in that state;

(20) "Probation bond" means a bond, posted with sufficient security by a surety justified and approved by the court, to secure the offender's appearance at required court proceedings and compliance with court-ordered community supervision or conditions of release ordered pursuant to RCW 13.40.040 or 13.40.050. It also means a deposit of cash or posting of other collateral in lieu of a bond if approved by the court;

(21) "Respondent" means a juvenile who is alleged or proven to have committed an offense;

(22) "Restitution" means financial reimbursement by the offender to the victim, and shall be limited to easily ascertainable damages for injury to or loss of property, actual expenses incurred for medical treatment for physical injury to persons, lost wages resulting from physical injury, and costs of the victim's counseling reasonably related to the offense. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses. Nothing in this chapter shall limit or replace civil remedies or defenses available to the victim or offender;

(23) "Secretary" means the secretary of the department of social and health services. "Assistant secretary" means the assistant secretary for juvenile rehabilitation for the department;

(24) "Services" means services which provide alternatives to incarceration for those juveniles who have pleaded or been adjudicated guilty of an offense or have signed a diversion agreement pursuant to this chapter;

(25) "Sex offense" means an offense defined as a sex offense in RCW 9.94A.030;

(26) "Sexual motivation" means that one of the purposes for which the respondent committed the offense was for the purpose of his or her sexual gratification;

(27) "Surety" means an entity licensed under state insurance laws or by the state department of licensing, to write corporate, property, or probation bonds within the state, and justified and approved by the superior court of the county having jurisdiction of the case;

(28) "Violation" means an act or omission, which if committed by an adult, must be proven beyond a reasonable doubt, and is punishable by sanctions which do not include incarceration;

(29) "Violent offense" means a violent offense as defined in RCW 9.94A.030;

(30) "Youth court" means a diversion unit under the supervision of the juvenile court. [2009 c 454 § 2; 2004 c 120 § 2. Prior: 2002 c 237 § 7; 2002 c 175 § 19; 1997 c 338 § 10; (1997 c 338 § 9 expired July 1, 1998); prior: 1995 c 395 § 2; 1995 c 134 § 1; prior: 1994 sp.s. c 7 § 520; 1994 c 271 § 803; 1994 c 261 § 18; 1993 c 373 § 1; 1990 1st ex.s. c 12 § 1; 1990 c 3 § 301; 1989 c 407 § 1; 1988 c 145 § 17; 1983 c 191 § 7; 1981 c 299 § 2; 1979 c 155 § 54; 1977 ex.s. c 291 § 56.]

**Effective date—2004 c 120:** See note following RCW 13.40.010.

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Alphabetization of definitions—1997 c 338:** "The code reviser shall alphabetize the definitions in RCW 13.40.020 and correct any references." [1997 c 338 § 71.]

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Purpose—Severability—1994 c 271:** See notes following RCW 9A.28.020.

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

**Severability—1993 c 373:** "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 373 § 3.]

**Effective date—1990 1st ex.s. c 12:** "This act shall take effect July 1, 1990." [1990 1st ex.s. c 12 § 5.]

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**Effective date—Savings—Application—1988 c 145:** See notes following RCW 9A.44.010.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**13.40.070 Complaints—Screening—Filing information—Diversion—Modification of community supervision—Notice to parent or guardian—Probation counselor acting for prosecutor—Referral to mediation or reconciliation programs. (Expires July 1, 2011.)** (1) Complaints referred to the juvenile court alleging the commission of an offense shall be referred directly to the prosecutor. The prosecutor, upon receipt of a complaint, shall screen the complaint to determine whether:

(a) The alleged facts bring the case within the jurisdiction of the court; and

(b) On a basis of available evidence there is probable cause to believe that the juvenile did commit the offense.

(2) If the identical alleged acts constitute an offense under both the law of this state and an ordinance of any city or county of this state, state law shall govern the prosecutor's screening and charging decision for both filed and diverted cases.

(3) If the requirements of subsections (1)(a) and (b) of this section are met, the prosecutor shall either file an information in juvenile court or divert the case, as set forth in subsections (5), (6), and (7) of this section. If the prosecutor finds that the requirements of subsection (1)(a) and (b) of this section are not met, the prosecutor shall maintain a record, for one year, of such decision and the reasons therefor. In lieu of filing an information or diverting an offense a prosecutor may file a motion to modify community supervision where such offense constitutes a violation of community supervision.

(4) An information shall be a plain, concise, and definite written statement of the essential facts constituting the offense charged. It shall be signed by the prosecuting attorney and conform to chapter 10.37 RCW.

(5) Except as provided in RCW 13.40.213, where a case is legally sufficient, the prosecutor shall file an information with the juvenile court if:

(a) An alleged offender is accused of a class A felony, a class B felony, an attempt to commit a class B felony, a class

C felony listed in RCW 9.94A.411(2) as a crime against persons or listed in RCW 9A.46.060 as a crime of harassment, or a class C felony that is a violation of RCW 9.41.080 or 9.41.040(2)(a)(iii); or

(b) An alleged offender is accused of a felony and has a criminal history of any felony, or at least two gross misdemeanors, or at least two misdemeanors; or

(c) An alleged offender has previously been committed to the department; or

(d) An alleged offender has been referred by a diversion unit for prosecution or desires prosecution instead of diversion; or

(e) An alleged offender has two or more diversion agreements on the alleged offender's criminal history; or

(f) A special allegation has been filed that the offender or an accomplice was armed with a firearm when the offense was committed.

(6) Where a case is legally sufficient the prosecutor shall divert the case if the alleged offense is a misdemeanor or gross misdemeanor or violation and the alleged offense is the offender's first offense or violation. If the alleged offender is charged with a related offense that must or may be filed under subsections (5) and (7) of this section, a case under this subsection may also be filed.

(7) Where a case is legally sufficient and falls into neither subsection (5) nor (6) of this section, it may be filed or diverted. In deciding whether to file or divert an offense under this section the prosecutor shall be guided only by the length, seriousness, and recency of the alleged offender's criminal history and the circumstances surrounding the commission of the alleged offense.

(8) Whenever a juvenile is placed in custody or, where not placed in custody, referred to a diversion interview, the parent or legal guardian of the juvenile shall be notified as soon as possible concerning the allegation made against the juvenile and the current status of the juvenile. Where a case involves victims of crimes against persons or victims whose property has not been recovered at the time a juvenile is referred to a diversion unit, the victim shall be notified of the referral and informed how to contact the unit.

(9) The responsibilities of the prosecutor under subsections (1) through (8) of this section may be performed by a juvenile court probation counselor for any complaint referred to the court alleging the commission of an offense which would not be a felony if committed by an adult, if the prosecutor has given sufficient written notice to the juvenile court that the prosecutor will not review such complaints.

(10) The prosecutor, juvenile court probation counselor, or diversion unit may, in exercising their authority under this section or RCW 13.40.080, refer juveniles to mediation or victim offender reconciliation programs. Such mediation or victim offender reconciliation programs shall be voluntary for victims. [2009 c 252 § 3; 2003 c 53 § 98; 2001 c 175 § 2; 1997 c 338 § 17; 1994 sp.s. c 7 § 543; 1992 c 205 § 107; 1989 c 407 § 9; 1983 c 191 § 18; 1981 c 299 § 7; 1979 c 155 § 60; 1977 ex.s. c 291 § 61.]

**Findings—Expiration date—2009 c 252:** See notes following RCW 13.40.213.

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

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Application—1994 sp.s. c 7 §§ 540-545:** See note following RCW 13.50.010.

**Part headings not law—Severability—1992 c 205:** See notes following RCW 13.40.010.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**13.40.110 Hearing on question of declining jurisdiction—Held, when—Findings.** (1) Discretionary decline hearing - The prosecutor, respondent, or the court on its own motion may, before a hearing on the information on its merits, file a motion requesting the court to transfer the respondent for adult criminal prosecution and the matter shall be set for a hearing on the question of declining jurisdiction.

(2) Mandatory decline hearing - Unless waived by the court, the parties, and their counsel, a decline hearing shall be held when:

(a) The respondent is sixteen or seventeen years of age and the information alleges a class A felony or an attempt, solicitation, or conspiracy to commit a class A felony;

(b) The respondent is seventeen years of age and the information alleges assault in the second degree, extortion in the first degree, indecent liberties, child molestation in the second degree, kidnapping in the second degree, or robbery in the second degree; or

(c) The information alleges an escape by the respondent and the respondent is serving a minimum juvenile sentence to age twenty-one.

(3) The court after a decline hearing may order the case transferred for adult criminal prosecution upon a finding that the declination would be in the best interest of the juvenile or the public. The court shall consider the relevant reports, facts, opinions, and arguments presented by the parties and their counsel.

(4) When the respondent is transferred for criminal prosecution or retained for prosecution in juvenile court, the court shall set forth in writing its finding which shall be supported by relevant facts and opinions produced at the hearing. [2009 c 454 § 3; 1997 c 338 § 20; 1990 c 3 § 303; 1988 c 145 § 18; 1979 c 155 § 63; 1977 ex.s. c 291 § 65.]

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**Effective date—Savings—Application—1988 c 145:** See notes following RCW 9A.44.010.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**13.40.127 Deferred disposition.** (1) A juvenile is eligible for deferred disposition unless he or she:

(a) Is charged with a sex or violent offense;

(b) Has a criminal history which includes any felony;

(c) Has a prior deferred disposition or deferred adjudication; or

(d) Has two or more adjudications.

(2) The juvenile court may, upon motion at least fourteen days before commencement of trial and, after consulting the juvenile's custodial parent or parents or guardian and with the consent of the juvenile, continue the case for disposition for a period not to exceed one year from the date the juvenile is found guilty. The court shall consider whether the offender and the community will benefit from a deferred disposition before deferring the disposition.

(3) Any juvenile who agrees to a deferral of disposition shall:

(a) Stipulate to the admissibility of the facts contained in the written police report;

(b) Acknowledge that the report will be entered and used to support a finding of guilt and to impose a disposition if the juvenile fails to comply with terms of supervision; and

(c) Waive the following rights to: (i) A speedy disposition; and (ii) call and confront witnesses.

The adjudicatory hearing shall be limited to a reading of the court's record.

(4) Following the stipulation, acknowledgment, waiver, and entry of a finding or plea of guilt, the court shall defer entry of an order of disposition of the juvenile.

(5) Any juvenile granted a deferral of disposition under this section shall be placed under community supervision. The court may impose any conditions of supervision that it deems appropriate including posting a probation bond. Payment of restitution under RCW 13.40.190 shall be a condition of community supervision under this section.

The court may require a juvenile offender convicted of animal cruelty in the first degree to submit to a mental health evaluation to determine if the offender would benefit from treatment and such intervention would promote the safety of the community. After consideration of the results of the evaluation, as a condition of community supervision, the court may order the offender to attend treatment to address issues pertinent to the offense.

(6) A parent who signed for a probation bond has the right to notify the counselor if the juvenile fails to comply with the bond or conditions of supervision. The counselor shall notify the court and surety of any failure to comply. A surety shall notify the court of the juvenile's failure to comply with the probation bond. The state shall bear the burden to prove, by a preponderance of the evidence, that the juvenile has failed to comply with the terms of community supervision.

(7) A juvenile's lack of compliance shall be determined by the judge upon written motion by the prosecutor or the juvenile's juvenile court community supervision counselor. If a juvenile fails to comply with terms of supervision, the court shall enter an order of disposition.

(8) At any time following deferral of disposition the court may, following a hearing, continue the case for an additional one-year period for good cause.

(9) At the conclusion of the period set forth in the order of deferral and upon a finding by the court of full compliance with conditions of supervision and payment of full restitution, the respondent's conviction shall be vacated and the court shall dismiss the case with prejudice, except that a conviction under RCW 16.52.205 shall not be vacated.

(10)(a) Records of deferred disposition cases vacated under subsection (9) of this section shall be sealed no later than thirty days after the juvenile's eighteenth birthday provided that the juvenile does not have any charges pending at that time. If a juvenile has already reached his or her eighteenth birthday before July 26, 2009, and does not have any charges pending, he or she may request that the court issue an order sealing the records of his or her deferred disposition cases vacated under subsection (9) of this section, and this request shall be granted. Nothing in this subsection shall preclude a juvenile from petitioning the court to have the records of his or her deferred dispositions sealed under RCW 13.50.050 (11) and (12).

(b) Records sealed under this provision shall have the same legal status as records sealed under RCW 13.50.050. [2009 c 236 § 1; 2004 c 117 § 2; 2001 c 175 § 3; 1997 c 338 § 21.]

**Effective date—2004 c 117:** See note following RCW 13.40.0357.

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**13.40.135 Sexual motivation special allegation—Procedures.** (1) The prosecuting attorney shall file a special allegation of sexual motivation in every juvenile offense other than sex offenses as defined in RCW 9.94A.030 when sufficient admissible evidence exists, which, when considered with the most plausible, reasonably consistent defense that could be raised under the evidence, would justify a finding of sexual motivation by a reasonable and objective fact finder.

(2) In a juvenile case wherein there has been a special allegation the state shall prove beyond a reasonable doubt that the juvenile committed the offense with a sexual motivation. The court shall make a finding of fact of whether or not the sexual motivation was present at the time of the commission of the offense. This finding shall not be applied to sex offenses as defined in RCW 9.94A.030.

(3) The prosecuting attorney shall not withdraw the special allegation of "sexual motivation" without approval of the court through an order of dismissal. The court shall not dismiss the special allegation unless it finds that such an order is necessary to correct an error in the initial charging decision or unless there are evidentiary problems which make proving the special allegation doubtful. [2009 c 28 § 33; 1997 c 338 § 23; 1990 c 3 § 604.]

**Effective date—2009 c 28:** See note following RCW 2.24.040.

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Effective date—Application—1990 c 3 §§ 601-605:** See note following RCW 9.94A.835.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**13.40.210 Setting of release date—Administrative release authorized, when—Parole program, revocation or modification of, scope—Intensive supervision program—Parole officer's right of arrest.** (1) The secretary shall set a release date for each juvenile committed to its custody. The release date shall be within the prescribed range to which a juvenile has been committed under RCW 13.40.0357 or 13.40.030 except as provided in RCW 13.40.320 concerning offenders the department determines are eligible for the juvenile offender basic training camp program. Such dates shall be determined prior to the expiration of sixty percent of a juvenile's minimum term of confinement included within the prescribed range to which the juvenile has been committed. The secretary shall release any juvenile committed to the custody of the department within four calendar days prior to the juvenile's release date or on the release date set under this chapter. Days spent in the custody of the department shall be tolled by any period of time during which a juvenile has absented himself or herself from the department's supervision without the prior approval of the secretary or the secretary's designee.

(2) The secretary shall monitor the average daily population of the state's juvenile residential facilities. When the secretary concludes that in-residence population of residential facilities exceeds one hundred five percent of the rated bed capacity specified in statute, or in absence of such specification, as specified by the department in rule, the secretary may recommend reductions to the governor. On certification by the governor that the recommended reductions are necessary, the secretary has authority to administratively release a sufficient number of offenders to reduce in-residence population to one hundred percent of rated bed capacity. The secretary shall release those offenders who have served the greatest proportion of their sentence. However, the secretary may deny release in a particular case at the request of an offender, or if the secretary finds that there is no responsible custodian, as determined by the department, to whom to release the offender, or if the release of the offender would pose a clear danger to society. The department shall notify the committing court of the release at the time of release if any such early releases have occurred as a result of excessive in-residence population. In no event shall an offender adjudicated of a violent offense be granted release under the provisions of this subsection.

(3)(a) Following the release of any juvenile under subsection (1) of this section, the secretary may require the juvenile to comply with a program of parole to be administered by the department in his or her community which shall last no longer than eighteen months, except that in the case of a juvenile sentenced for rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, or indecent liberties with forcible compulsion, the period of parole shall be twenty-four months and, in the discretion of the secretary, may be up to thirty-six months when the secretary finds that an additional period of parole is necessary and appropriate in the interests of public safety or to meet the ongoing needs of the juvenile. A parole program is mandatory for offenders released under subsection (2) of

this section and for offenders who receive a juvenile residential commitment sentence of theft of a motor vehicle, possession of a stolen motor vehicle, or taking a motor vehicle without permission 1. The decision to place an offender on parole shall be based on an assessment by the department of the offender's risk for reoffending upon release. The department shall prioritize available parole resources to provide supervision and services to offenders at moderate to high risk for reoffending.

(b) The secretary shall, for the period of parole, facilitate the juvenile's reintegration into his or her community and to further this goal shall require the juvenile to refrain from possessing a firearm or using a deadly weapon and refrain from committing new offenses and may require the juvenile to: (i) Undergo available medical, psychiatric, drug and alcohol, sex offender, mental health, and other offense-related treatment services; (ii) report as directed to a parole officer and/or designee; (iii) pursue a course of study, vocational training, or employment; (iv) notify the parole officer of the current address where he or she resides; (v) be present at a particular address during specified hours; (vi) remain within prescribed geographical boundaries; (vii) submit to electronic monitoring; (viii) refrain from using illegal drugs and alcohol, and submit to random urinalysis when requested by the assigned parole officer; (ix) refrain from contact with specific individuals or a specified class of individuals; (x) meet other conditions determined by the parole officer to further enhance the juvenile's reintegration into the community; (xi) pay any court-ordered fines or restitution; and (xii) perform community restitution. Community restitution for the purpose of this section means compulsory service, without compensation, performed for the benefit of the community by the offender. Community restitution may be performed through public or private organizations or through work crews.

(c) The secretary may further require up to twenty-five percent of the highest risk juvenile offenders who are placed on parole to participate in an intensive supervision program. Offenders participating in an intensive supervision program shall be required to comply with all terms and conditions listed in (b) of this subsection and shall also be required to comply with the following additional terms and conditions: (i) Obey all laws and refrain from any conduct that threatens public safety; (ii) report at least once a week to an assigned community case manager; and (iii) meet all other requirements imposed by the community case manager related to participating in the intensive supervision program. As a part of the intensive supervision program, the secretary may require day reporting.

(d) After termination of the parole period, the juvenile shall be discharged from the department's supervision.

(4)(a) The department may also modify parole for violation thereof. If, after affording a juvenile all of the due process rights to which he or she would be entitled if the juvenile were an adult, the secretary finds that a juvenile has violated a condition of his or her parole, the secretary shall order one of the following which is reasonably likely to effectuate the purpose of the parole and to protect the public: (i) Continued supervision under the same conditions previously imposed; (ii) intensified supervision with increased reporting requirements; (iii) additional conditions of supervision authorized by this chapter; (iv) except as provided in (a)(v) and (vi) of

this subsection, imposition of a period of confinement not to exceed thirty days in a facility operated by or pursuant to a contract with the state of Washington or any city or county for a portion of each day or for a certain number of days each week with the balance of the days or weeks spent under supervision; (v) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the offense for which the offender was sentenced is rape in the first or second degree, rape of a child in the first or second degree, child molestation in the first degree, indecent liberties with forcible compulsion, or a sex offense that is also a serious violent offense as defined by RCW 9.94A.030; and (vi) the secretary may order any of the conditions or may return the offender to confinement for the remainder of the sentence range if the youth has completed the basic training camp program as described in RCW 13.40.320.

(b) The secretary may modify parole and order any of the conditions or may return the offender to confinement for up to twenty-four weeks if the offender was sentenced for a sex offense as defined under RCW 9A.44.130 and is known to have violated the terms of parole. Confinement beyond thirty days is intended to only be used for a small and limited number of sex offenders. It shall only be used when other graduated sanctions or interventions have not been effective or the behavior is so egregious it warrants the use of the higher level intervention and the violation: (i) Is a known pattern of behavior consistent with a previous sex offense that puts the youth at high risk for reoffending sexually; (ii) consists of sexual behavior that is determined to be predatory as defined in RCW 71.09.020; or (iii) requires a review under chapter 71.09 RCW, due to a recent overt act. The total number of days of confinement for violations of parole conditions during the parole period shall not exceed the number of days provided by the maximum sentence imposed by the disposition for the underlying offense pursuant to RCW 13.40.0357. The department shall not aggregate multiple parole violations that occur prior to the parole revocation hearing and impose consecutive twenty-four week periods of confinement for each parole violation. The department is authorized to engage in rule making pursuant to chapter 34.05 RCW, to implement this subsection, including narrowly defining the behaviors that could lead to this higher level intervention.

(c) If the department finds that any juvenile in a program of parole has possessed a firearm or used a deadly weapon during the program of parole, the department shall modify the parole under (a) of this subsection and confine the juvenile for at least thirty days. Confinement shall be in a facility operated by or pursuant to a contract with the state or any county.

(5) A parole officer of the department of social and health services shall have the power to arrest a juvenile under his or her supervision on the same grounds as a law enforcement officer would be authorized to arrest the person.

(6) If so requested and approved under chapter 13.06 RCW, the secretary shall permit a county or group of counties to perform functions under subsections (3) through (5) of this section. [2009 c 187 § 1. Prior: 2007 c 203 § 1; 2007 c 199 § 13; 2002 c 175 § 27; prior: 2001 c 137 § 2; 2001 c 51 § 1; 1997 c 338 § 32; 1994 sp.s. c 7 § 527; 1990 c 3 § 304;



1987 c 505 § 4; 1985 c 287 § 1; 1985 c 257 § 4; 1983 c 191 § 11; 1979 c 155 § 71; 1977 ex.s. c 291 § 75.]

**Applicability—2007 c 203:** "This act applies prospectively only and not retroactively. It applies only to juvenile offenders who have been adjudicated for an offense that occurred on or after October 1, 2007." [2007 c 203 § 2.]

**Effective date—2007 c 203:** "This act takes effect October 1, 2007." [2007 c 203 § 3.]

**Findings—Intent—Short title—2007 c 199:** See notes following RCW 9A.56.065.

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Effective date—2001 c 51:** "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 17, 2001]." [2001 c 51 § 2.]

**Findings—Intent—1997 c 338 §§ 32 and 34:** See note following RCW 13.40.212.

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Finding—Intent—Severability—Effective dates—Contingent expiration date—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**Intent—1985 c 257 § 4:** "To promote both public safety and the welfare of juvenile offenders, it is the intent of the legislature that services to juvenile offenders be delivered in the most effective and efficient means possible. Section 4 of this act facilitates those objectives by permitting counties to supervise parole of juvenile offenders. This is consistent with the philosophy of chapter 13.06 RCW to deliver community services to juvenile offenders comprehensively at the county level." [1985 c 257 § 3.]

**Severability—1985 c 257:** See note following RCW 13.34.165.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

**Effective dates—Severability—1977 ex.s. c 291:** See notes following RCW 13.04.005.

**13.40.213 Juveniles alleged to have committed offenses of prostitution or prostitution loitering—Diversion. (Expires July 1, 2011.)** (1) When a juvenile is alleged to have committed the offenses of prostitution or prostitution loitering, a prosecutor may divert the offense if the county in which the offense is alleged to have been committed has a comprehensive program that provides:

- (a) Safe and stable housing;
- (b) Comprehensive on-site case management;
- (c) Integrated mental health and chemical dependency services, including specialized trauma recovery services;
- (d) Education and employment training delivered on-site; and
- (e) Referrals to off-site specialized services, as appropriate.

(2) A prosecutor may divert a case for prostitution or prostitution loitering into the comprehensive program described in this section, notwithstanding the filing criteria set forth in RCW 13.40.070(5).

(3) A diversion agreement under this section may extend to twelve months.

(4)(a) The administrative office of the courts shall compile data regarding:

(i) The number of juveniles whose cases are diverted into the comprehensive program described in this section;

(ii) Whether the juveniles complete their diversion agreements under this section; and

(iii) Whether juveniles whose cases have been diverted under this section have been subsequently arrested or committed subsequent offenses.

(b) A report of the data compiled shall be provided to the governor and the appropriate committee of the legislature by November 1, 2010. [2009 c 252 § 2.]

**Findings—2009 c 252:** "The legislature finds that juveniles involved in the commercial sex trade are sexually exploited and that they face extreme threats to their physical and emotional well-being. In order to help them break out of the isolation, fear, and danger of the commercial sex trade and to assist them in their recovery from the resulting mental and physical harm and in the development of skills that will allow them to become independent and achieve long-term security, these juveniles are in critical need of comprehensive services, including housing, mental health counseling, education, employment, chemical dependency treatment, and skill building. The legislature further finds that a diversion program to provide these comprehensive services, working within existing resources in the counties which prosecute juveniles for prostitution and prostitution loitering, may be an appropriate alternative to the prosecution of juveniles involved in the commercial sex trade." [2009 c 252 § 1.]

**Expiration date—2009 c 252:** "This act expires July 1, 2011." [2009 c 252 § 4.]

**13.40.308 Juvenile offender adjudicated of taking motor vehicle without permission in the first degree, theft of motor vehicle, possession of a stolen vehicle, taking motor vehicle without permission in the second degree—Minimum sentences.** (1) If a respondent is adjudicated of taking a motor vehicle without permission in the first degree as defined in RCW 9A.56.070, the court shall impose the following minimum sentence, in addition to any restitution the court may order payable to the victim:

(a) Juveniles with a prior criminal history score of zero to one-half points shall be sentenced to a standard range sentence that includes no less than three months of community supervision, forty-five hours of community restitution, a two hundred dollar fine, and a requirement that the juvenile remain at home such that the juvenile is confined to a private residence for no less than five days. The juvenile may be subject to electronic monitoring where available. If the juvenile is enrolled in school, the confinement shall be served on nonschool days;

(b) Juveniles with a prior criminal history score of three-quarters to one and one-half points shall be sentenced to a standard range sentence that includes six months of community supervision, no less than ten days of detention, ninety hours of community restitution, and a four hundred dollar fine; and

(c) Juveniles with a prior criminal history score of two or more points shall be sentenced to no less than fifteen to thirty-six weeks commitment to the juvenile rehabilitation administration, four months of parole supervision, ninety hours of community restitution, and a four hundred dollar fine.

(2) If a respondent is adjudicated of theft of a motor vehicle as defined under RCW 9A.56.065, or possession of a stolen vehicle as defined under RCW 9A.56.068, the court shall impose the following minimum sentence, in addition to any restitution the court may order payable to the victim:

(a) Juveniles with a prior criminal history score of zero to one-half points shall be sentenced to a standard range sen-

tence that includes no less than three months of community supervision, forty-five hours of community restitution, a two hundred dollar fine, and either ninety hours of community restitution or a requirement that the juvenile remain at home such that the juvenile is confined in a private residence for no less than five days. The juvenile may be subject to electronic monitoring where available;

(b) Juveniles with a prior criminal history score of three-quarters to one and one-half points shall be sentenced to a standard range sentence that includes no less than six months of community supervision, no less than ten days of detention, ninety hours of community restitution, and a four hundred dollar fine; and

(c) Juveniles with a prior criminal history score of two or more points shall be sentenced to no less than fifteen to thirty-six weeks commitment to the juvenile rehabilitation administration, four months of parole supervision, ninety hours of community restitution, and a four hundred dollar fine.

(3) If a respondent is adjudicated of taking a motor vehicle without permission in the second degree as defined in RCW 9A.56.075, the court shall impose a standard range as follows:

(a) Juveniles with a prior criminal history score of zero to one-half points shall be sentenced to a standard range sentence that includes three months of community supervision, fifteen hours of community restitution, and a requirement that the juvenile remain at home such that the juvenile is confined in a private residence for no less than one day. If the juvenile is enrolled in school, the confinement shall be served on non-school days. The juvenile may be subject to electronic monitoring where available;

(b) Juveniles with a prior criminal history score of three-quarters to one and one-half points shall be sentenced to a standard range sentence that includes no less than one day of detention, three months of community supervision, thirty hours of community restitution, a one hundred fifty dollar fine, and a requirement that the juvenile remain at home such that the juvenile is confined in a private residence for no less than two days. If the juvenile is enrolled in school, the confinement shall be served on nonschool days. The juvenile may be subject to electronic monitoring where available; and

(c) Juveniles with a prior criminal history score of two or more points shall be sentenced to no less than three days of detention, six months of community supervision, forty-five hours of community restitution, a one hundred fifty dollar fine, and a requirement that the juvenile remain at home such that the juvenile is confined in a private residence for no less than seven days. If the juvenile is enrolled in school, the confinement shall be served on nonschool days. The juvenile may be subject to electronic monitoring where available. [2009 c 454 § 4; 2007 c 199 § 15.]

**Findings—Intent—Short title—2007 c 199:** See notes following RCW 9A.56.065.

**13.40.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted

as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 43.]

## Chapter 13.50 RCW

### KEEPING AND RELEASE OF RECORDS BY JUVENILE JUSTICE OR CARE AGENCIES

#### Sections

13.50.010 Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access.

#### **13.50.010 Definitions—Conditions when filing petition or information—Duties to maintain accurate records and access.** (1) For purposes of this chapter:

(a) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the legislative children's oversight committee, the office of the family and children's ombudsman, the department of social and health services and its contracting agencies, schools; persons or public or private agencies having children committed to their custody; and any placement oversight committee created under RCW 72.05.415;

(b) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders;

(c) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case;

(d) "Social file" means the juvenile court file containing the records and reports of the probation counselor.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information. Any information in records maintained by the department of social and health services relating to a petition filed pursuant to chapter 13.34 RCW that is found by the court to be false or inaccurate shall be corrected or expunged from such records by the agency;

(b) An agency shall take reasonable steps to assure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment. The court may also permit inspection by or release to individuals or agencies, including juvenile justice advisory committees of county law and justice councils, engaged in legitimate research for educational, scientific, or public purposes. The court may also permit inspection of, or release of information from, records which have been sealed pursuant to RCW 13.50.050(12). The court shall release to the sentencing guidelines commission records needed for its research and data-gathering functions under RCW 9.94A.850 and other statutes. Access to records or information for research purposes shall be permitted only if the anonymity of all persons mentioned in the records or information will be preserved. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) Juvenile detention facilities shall release records to the sentencing guidelines commission under RCW 9.94A.850 upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual's written permission.

(10) Requirements in this chapter relating to the court's authority to compel disclosure shall not apply to the legislative children's oversight committee or the office of the family and children's ombudsman.

(11) For the purpose of research only, the administrative office of the courts shall maintain an electronic research copy of all records in the judicial information system related to juveniles. Access to the research copy is restricted to the Washington state center for court research. The Washington state center for court research shall maintain the confidentiality of all confidential records and shall preserve the anonymity of all persons identified in the research copy. The

research copy may not be subject to any records retention schedule and must include records destroyed or removed from the judicial information system pursuant to RCW 13.50.050 (17) and (18) and 13.50.100(3).

(12) The court shall release to the Washington state office of public defense records needed to implement the agency's oversight, technical assistance, and other functions as required by RCW 2.70.020. Access to the records used as a basis for oversight, technical assistance, or other agency functions is restricted to the Washington state office of public defense. The Washington state office of public defense shall maintain the confidentiality of all confidential information included in the records. [2009 c 440 § 1; 1998 c 269 § 4. Prior: 1997 c 386 § 21; 1997 c 338 § 39; 1996 c 232 § 6; 1994 sp.s. c 7 § 541; 1993 c 374 § 1; 1990 c 246 § 8; 1986 c 288 § 11; 1979 c 155 § 8.]

**Alphabetization—1998 c 269:** "The code reviser shall alphabetize the definitions in RCW 13.50.010 and 74.15.020 and correct any references." [1998 c 269 § 18.]

**Intent—Finding—Effective date—1998 c 269:** See notes following RCW 72.05.020.

**Application—1997 c 386:** "Sections 8 through 14 and 17 through 34 of this act apply only to incidents occurring on or after January 1, 1998." [1997 c 386 § 67.]

**Effective date—1997 c 386:** "Sections 8 through 13 and 21 through 34 of this act take effect January 1, 1998." [1997 c 386 § 68.]

**Finding—Evaluation—Report—1997 c 338:** See note following RCW 13.40.0357.

**Severability—Effective dates—1997 c 338:** See notes following RCW 5.60.060.

**Effective dates—1996 c 232:** See note following RCW 9.94A.850.

**Application—1994 sp.s. c 7 §§ 540-545:** "Sections 540 through 545 of this act shall apply to offenses committed on or after July 1, 1994." [1994 sp.s. c 7 § 917.]

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Severability—1990 c 246:** See note following RCW 13.34.060.

**Severability—1986 c 288:** See note following RCW 13.32A.050.

**Effective date—Severability—1979 c 155:** See notes following RCW 13.04.011.

## Chapter 13.60 RCW

### MISSING CHILDREN CLEARINGHOUSE

#### Sections

- 13.60.010 Missing children clearinghouse—Hot line—Distribution of information—Amber alert plan.
- 13.60.050 Endangered missing person advisory plan.
- 13.60.110 Task force on missing and exploited children—Establishment—Activities.

#### **13.60.010 Missing children clearinghouse—Hot line—Distribution of information—Amber alert plan.**

The Washington state patrol shall establish a missing children clearinghouse which shall include the maintenance and operation of a toll-free, twenty-four-hour telephone hotline. The clearinghouse shall distribute information to local law enforcement agencies, school districts, the department of social and health services, and the general public regarding missing children. The information shall include pictures, bulletins, training sessions, reports, and biographical materials that will assist in local law enforcement efforts to locate missing children. The state patrol shall also maintain a regu-

larly updated computerized link with national and other state-wide missing person systems or clearinghouses, and within existing resources, shall develop and implement a plan, commonly known as an "amber alert plan," for voluntary cooperation between local, state, tribal, and other law enforcement agencies, state government agencies, radio and television stations, and cable and satellite systems to enhance the public's ability to assist in recovering abducted children.

"Child" or "children," as used in this chapter, means an individual under eighteen years of age. [2009 c 20 § 1; 1985 c 443 § 22.]

**Severability—Effective date—1985 c 443:** See notes following RCW 7.69.010.

### 13.60.050 Endangered missing person advisory plan.

Within existing resources, the Washington state patrol shall develop and implement a plan, commonly known as an "endangered missing person advisory plan," for voluntary cooperation between local, state, tribal, and other law enforcement agencies, state government agencies, radio and television stations, and cable and satellite systems to enhance the public's ability to assist in recovering endangered missing persons who do not qualify for inclusion in an amber alert. [2009 c 20 § 2.]

**13.60.110 Task force on missing and exploited children—Establishment—Activities.** (1) A task force on missing and exploited children is established in the Washington state patrol. The task force shall be under the direction of the chief of the state patrol.

(2) The task force is authorized to assist law enforcement agencies, upon request, in cases involving missing or exploited children by:

- (a) Direct assistance and case management;
- (b) Technical assistance;
- (c) Personnel training;
- (d) Referral for assistance from local, state, national, and international agencies; and
- (e) Coordination and information sharing among local, state, interstate, and federal law enforcement and social service agencies.

(3) To maximize the efficiency and effectiveness of state resources and to improve interagency cooperation, the task force shall, where feasible, use existing facilities, systems, and staff made available by the state patrol and other local, state, interstate, and federal law enforcement and social service agencies. The chief of the state patrol may employ such additional personnel as are necessary for the work of the task force and may share personnel costs with other agencies.

(4) The chief of the state patrol shall seek public and private grants and gifts to support the work of the task force.

(5) For the purposes of RCW 13.60.100 through 13.60.120, "exploited children" means children under the age of eighteen who are employed, used, persuaded, induced, enticed, or coerced to engage in, or assist another person to engage in, sexually explicit conduct. "Exploited children" also means the rape, molestation, or use for prostitution of children under the age of eighteen. [2009 c 518 § 4; 1999 c 168 § 2.]

**Short title—1999 c 168:** See note following RCW 13.60.100.

## Chapter 13.64 RCW EMANCIPATION OF MINORS

### Sections

13.64.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**13.64.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 44.]

## Chapter 13.70 RCW SUBSTITUTE CARE OF CHILDREN— REVIEW BOARD SYSTEM

### Sections

13.70.003 through 13.70.150 Repealed.

**13.70.003 through 13.70.150 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Title 14 AERONAUTICS

### Chapters

**14.08 Municipal airports—1945 act.**

**14.12 Airport zoning.**

## Chapter 14.08 RCW MUNICIPAL AIRPORTS—1945 ACT

### Sections

14.08.120 Specific powers of municipalities operating airports.

**14.08.120 Specific powers of municipalities operating airports.** In addition to the general powers conferred in this chapter, and without limitation thereof, a municipality that has established or may hereafter establish airports, restricted landing areas, or other air navigation facilities, or that has acquired or set apart or may hereafter acquire or set apart real property for that purpose or purposes is authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation, and regulation thereof in an officer, a board, or body of the municipality by ordinance or resolution that prescribes the powers and duties of the officer, board, or body; and the municipality may also vest authority for industrial and commercial development in a municipal airport commission consisting of at least five resident taxpayers of the municipality to be appointed by the governing board of the municipality by an ordinance or resolution that includes (a) the terms of office, which may not exceed six years and which shall be staggered so that not more than three terms will expire in the same year, (b) the method of appointment and filling vacancies, (c) a provision that there shall be no compensation but may provide for a per diem of not to exceed twenty-five dollars per day plus travel expenses for time spent on commission business, (d) the powers and duties of the commission, and (e) any other matters necessary to the exercise of the powers relating to industrial and commercial development. The expense of the construction, enlargement, improvement, maintenance, equipment, industrial and commercial development, operation, and regulation are the responsibility of the municipality.

(2) To adopt and amend all needed rules, regulations, and ordinances for the management, government, and use of any properties under its control, whether within or outside the territorial limits of the municipality; to provide fire protection for the airport, including the acquisition and operation of fire protection equipment and facilities, and the right to contract with any private body or political subdivision of the state for the furnishing of such fire protection; to appoint airport guards or police, with full police powers; to fix by ordinance or resolution, as may be appropriate, penalties for the violation of the rules, regulations, and ordinances, and enforce those penalties in the same manner in which penalties prescribed by other rules, regulations, and ordinances of the municipality are enforced. For the purposes of such management and government and direction of public use, that part of all highways, roads, streets, avenues, boulevards, and territory that adjoins the limits of any airport or restricted landing area acquired or maintained under the provisions of this chapter is under like control and management of the municipality. It may also adopt and enact rules, regulations, and ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within the municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Rules, regulations, and ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar rules, regulations, and ordinances. They shall conform to and be consistent with the laws of this state and the rules of the state department of transportation and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and the rules and standards issued from time to time pursuant thereto.

(3) To create a special airport fund, and provide that all receipts from the operation of the airport be deposited in the fund, which fund shall remain intact from year to year and may be pledged to the payment of aviation bonds, or kept for

future maintenance, construction, or operation of airports or airport facilities.

(4) To lease airports or other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, any municipal or state government or the national government, or any department thereof, for operation; to lease or assign to private parties, any municipal or state government or the national government, or any department thereof, for operation or use consistent with the purposes of this chapter, space, area, improvements, or equipment of such airports; to authorize its lessees to construct, alter, repair, or improve the leased premises at the cost of the lessee and to reimburse its lessees for such cost, provided the cost is paid solely out of funds fully collected from the airport's tenants; to sell any part of such airports, other air navigation facilities or real property to any municipal or state government, or to the United States or any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services, and facilities: PROVIDED, That in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

(5) Acting through its governing body, to sell or lease any property, real or personal, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aircraft landings, aircraft takeoffs or related aeronautic purposes, in accordance with the laws of this state, or the provisions of the charter of the municipality, governing the sale or leasing of similar municipally owned property. The municipal airport commission, if one has been organized and appointed under subsection (1) of this section, may lease any airport property for aircraft landings, aircraft takeoffs, or related aeronautic purposes. If there is a finding by the governing body of the municipality that any airport property, real or personal, is not required for aircraft landings, aircraft takeoffs, or related aeronautic purposes, then the municipal airport commission may lease such space, land, area, or improvements, or construct improvements, or take leases back for financing purposes, grant concessions on such space, land, area, or improvements, all for industrial or commercial purposes, by private negotiation and under such terms and conditions that seem just and proper to the municipal airport commission. Any such lease of real property for aircraft manufacturing or aircraft industrial purposes or to any manufacturer of aircraft or aircraft parts or for any other business, manufacturing, or industrial purpose or operation relating to, identified with, or in any way dependent upon the use, operation, or maintenance of the airport, or for any commercial or industrial purpose may be made for any period not to exceed seventy-five years, but any such lease of real property made for a longer period than ten years shall contain provisions requiring the municipality and the lessee to permit the rentals for each five-year period thereafter, to be readjusted at the commencement of each such period if written request for readjustment is given by either party to the other at least thirty days before the commencement of the five-year period for which the readjustment is requested. If the parties cannot agree upon the rentals for the five-year period, they shall submit to have the disputed rentals for the period adjusted by arbitration. The

lessee shall pick one arbitrator, and the governing body of the municipality shall pick one, and the two so chosen shall select a third. After a review of all pertinent facts the board of arbitrators may increase or decrease such rentals or continue the previous rate thereof.

The proceeds of the sale of any property the purchase price of which was obtained by the sale of bonds shall be deposited in the bond sinking fund. If all the proceeds of the sale are not needed to pay the principal of bonds remaining unpaid, the remainder shall be paid into the airport fund of the municipality. The proceeds of sales of property the purchase price of which was paid from appropriations of tax funds shall be paid into the airport fund of the municipality.

(6) To determine the charges or rental for the use of any properties under its control and the charges for any services or accommodations, and the terms and conditions under which such properties may be used: PROVIDED, That in all cases the public is not deprived of its rightful, equal, and uniform use of the property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. The municipality shall have and may enforce liens, as provided by law for liens and enforcement thereof, for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.

(7) To impose a customer facility charge upon customers of rental car companies accessing the airport for the purposes of financing, designing, constructing, operating, and maintaining consolidated rental car facilities and common use transportation equipment and facilities which are used to transport the customer between the consolidated car rental facilities and other airport facilities. The airport operator may require the rental car companies to collect the facility charges, and any facility charges so collected shall be deposited in a trust account for the benefit of the airport operator and remitted at the direction of the airport operator, but no more often than once per month. The charge shall be calculated on a per-day basis. Facility charges may not exceed the reasonable costs of financing, designing, constructing, operating, and maintaining the consolidated car rental facilities and common use transportation equipment and facilities and may not be used for any other purpose. For the purposes of this subsection (7), if an airport operator makes use of its own funds to finance the consolidated rental car facilities and common use transportation equipment and facilities, the airport operator (a) is entitled to earn a rate of return on such funds no greater than the interest rate that the airport operator would pay to finance such facilities in the appropriate capital market, provided that the airport operator establish the rate of return in consultation with the rental car companies, and (b) may use the funds earned under (a) of this subsection for purposes other than those associated with the consolidated rental car facilities and common use transportation equipment and facilities.

(8) To exercise all powers necessarily incidental to the exercise of the general and special powers granted in this section. [2009 c 124 § 1; 2005 c 76 § 1; 1990 c 215 § 1; 1984 c 7 § 5; 1961 c 74 § 2; 1959 c 231 § 2; 1957 c 14 § 1. Prior: 1953 c 178 § 1; 1945 c 182 § 8; Rem. Supp. 1945 § 2722-37. Formerly RCW 14.08.120 through 14.08.150 and 14.08.320.]

**Effective date—2009 c 124:** "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 17, 2009]." [2009 c 124 § 2.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**Continuation of existing law—1957 c 14:** "The provisions of section 1 of this act shall be construed as a restatement and continuation of existing law, and not as a new enactment. It shall not be construed as affecting any existing right acquired under its provisions, nor as affecting any proceeding instituted thereunder." [1957 c 14 § 2.]

**Validating—1957 c 14:** "The provisions of section 1 of this act are retroactive and any actions or proceedings had or taken under the provisions of RCW 14.08.120 through 14.08.150 or 14.08.320 are hereby ratified, validated and confirmed." [1957 c 14 § 3.]

*Appointment of police officers by port districts operating airports:* RCW 53.08.280.

## Chapter 14.12 RCW AIRPORT ZONING

### Sections

#### 14.12.010 Definitions.

**14.12.010 Definitions.** As used in this chapter, unless the context otherwise requires:

(1) "Airport hazard" means any structure or tree or use of land which obstructs the airspace required for the flight of aircraft in landing or taking-off at an airport or is otherwise hazardous to such landing or taking-off of aircraft.

(2) "Airport hazard area" means any area of land or water upon which an airport hazard might be established if not prevented as provided in this chapter.

(3) "Airports" means any area of land or water designed and set aside for the landing and taking-off of aircraft and utilized or to be utilized in the interest of the public for such purposes.

(4) "Person" means any individual, firm, copartnership, corporation, company, association, joint stock association or body politic, including the state and its political subdivisions, and includes any trustee, receiver, assignee, or other similar representative thereof.

(5) "Political subdivision" means any county, city, town, port district or other municipal or quasi municipal corporation authorized by law to acquire, own or operate an airport.

(6) "Structure" means any object constructed or installed by a human being, including, but without limitation, buildings, towers, smokestacks, and overhead transmission lines.

(7) "Tree" means any object of natural growth. [2009 c 549 § 1006; 1945 c 174 § 1; Rem. Supp. 1945 § 2722-15.]

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

## Title 15

### AGRICULTURE AND MARKETING

#### Chapters

**15.04** General provisions.

**15.09** Horticultural pest and disease board.

**15.17** Standards of grades and packs.

**15.65** Washington state agricultural commodity boards.

- 15.66 Washington state agricultural commodity commissions.  
 15.88 Wine commission.  
 15.89 Washington beer commission.  
 15.115 Washington grain commission.

**Chapter 15.04 RCW**  
**GENERAL PROVISIONS**

## Sections

- 15.04.200 Agricultural development or trade promotion and promotional hosting—Expenditures, approval by commodity commission—Exemption from housing requirements.

**15.04.200 Agricultural development or trade promotion and promotional hosting—Expenditures, approval by commodity commission—Exemption from housing requirements.** (1) Under the authority of Article VIII of the state Constitution as amended, agricultural commodity commission expenditures for agricultural development or trade promotion and promotional hosting by an agricultural commodities commission under chapters 15.24, 15.28, 15.44, 15.65, 15.66, 15.88, 15.89, 15.115, and 16.67 RCW shall be pursuant to specific budget items as approved by the agricultural commodity commission at the annual public hearings on the agricultural commodity commission budget.

(2) Agricultural commodity commissions shall adopt rules governing promotional hosting expenditures by agricultural commodity commission employees, agents or commissioners. The rules shall identify officials and agents authorized to make expenditures and the objectives of the expenditures. Individual agricultural commodity commission commissioners shall make promotional hosting expenditures, or seek reimbursements for these expenditures, only in those instances where the expenditures have been approved by the agricultural commodity commission. All payments and reimbursements shall be identified and supported on vouchers.

(3) Agricultural commodity commissions shall be exempt from the requirements of RCW 43.01.090 and 43.19.500 and chapter 43.82 RCW. [2009 c 33 § 33; 2006 c 330 § 24; 1987 c 452 § 16; 1986 c 203 § 24; 1985 c 26 § 1.]

**Construction—Severability—2006 c 330:** See RCW 15.89.900 and 15.89.901.

**Construction—Effective dates—Severability—1987 c 452:** See RCW 15.88.900 through 15.88.902.

**Severability—1986 c 203:** See note following RCW 15.17.230.

**Effective date—Contingency—1985 c 26:** "This act shall take effect January 1, 1986, if the proposed amendment to Article VIII, of the state Constitution authorizing agricultural commodity assessments for agricultural development or trade promotion and promotional hosting to be deemed a public use for a public purpose is validly submitted to and is approved and ratified by the voters at a general election held in November 1985. If the proposed amendment is not so approved and ratified, this act shall be null and void in its entirety." [1985 c 26 § 2.] The proposed constitutional amendment was approved by the voters on November 5, 1985. See Article VIII, section 11 of the state Constitution.

**Chapter 15.09 RCW**  
**HORTICULTURAL PEST AND DISEASE BOARD**

## Sections

- 15.09.030 Members—Appointment—Terms.

**15.09.030 Members—Appointment—Terms.** Each horticultural pest and disease board shall be comprised of five voting members, four of whom shall be appointed by the board of county commissioners and one of whom shall be appointed by the director. In addition, the chief county extension agent, or a county extension agent appointed by the chief agent, shall be a nonvoting member of the board.

Of the four members appointed by the board of county commissioners, one of such members shall have at least a practical knowledge of horticultural pests and diseases, and the other members shall be residents of the county, shall own land within the county and shall be engaged in the primary and commercial production of a horticultural product or products. Such appointed members shall serve a term of two years and shall serve without salary. If no such qualified candidate resides in the county, a nonresident that owns property in the county and is engaged in the primary and commercial production of a horticultural product or products may be appointed as a member of the horticultural pest and disease board. [2009 c 96 § 1; 1988 c 254 § 7; 1969 c 113 § 3.]

**Chapter 15.17 RCW**  
**STANDARDS OF GRADES AND PACKS**

## Sections

- 15.17.243 Repealed.  
 15.17.247 District two—Transfer of funds—Control of *Rhagoletis pomonella*. (*Expires July 1, 2013.*)

**15.17.243 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**15.17.247 District two—Transfer of funds—Control of *Rhagoletis pomonella*.** (*Expires July 1, 2013.*) (1) The district manager for district two as defined in WAC 16-390-010 is authorized to transfer one hundred fifty thousand dollars from the fruit and vegetable district fund to the plant pest account within the agricultural local fund. The amount transferred is to be derived from fees collected for state inspections of tree fruits and is to be used solely for activities related to the control of *Rhagoletis pomonella* in district two. The transfer of money must occur by September 1, 2009. On June 30, 2013, any unexpended portion of the one hundred fifty thousand dollars must be transferred to the fruit and vegetable inspection account and deposited in the district account for the district that includes Yakima county.

(2) This section expires July 1, 2013. [2009 c 208 § 1.]

**Chapter 15.65 RCW**  
**WASHINGTON STATE AGRICULTURAL COMMODITY BOARDS**

## Sections

- 15.65.020 Definitions.  
 15.65.620 Chapter not to affect other laws—Agreements and orders under prior law may be made subject to chapter.

**15.65.020 Definitions.** The following terms are hereby defined:

(1) "Affected commodity" means that part or portion of any agricultural commodity which is covered by or forms the

subject matter of any marketing agreement or order or proposal, and includes all affected units thereof as herein defined and no others.

(2) "Affected parties" means any producer, affected producer, handler, or commodity board member.

(3) "Affected unit" means in the case of marketing agreements and orders drawn on the basis of a production area, any unit of the commodity specified in or covered by such agreement or order which is produced in such area and sold or marketed or delivered for sale or marketing; and "affected unit" means, in the case of marketing agreements and orders drawn on the basis of marketing area, any unit of the commodity specified in or covered by such agreement or order which is stored in frozen condition or sold or marketed or delivered for sale or marketing within such marketing area: PROVIDED, That in the case of marketing agreements "affected unit" shall include only those units which are produced by producers or handled by handlers who have assented to such agreement.

(4) "Agricultural commodity" means any of the following commodities or products: Llamas, alpacas, or any other animal or any distinctive type of agricultural, horticultural, viticultural, floricultural, vegetable, or animal product, including, but not limited to, products qualifying as organic food products under chapter 15.86 RCW and private sector cultured aquatic products as defined in RCW 15.85.020 and other fish and fish products, either in its natural or processed state, including beehives containing bees and honey and Christmas trees but not including timber or timber products. The director is hereby authorized to determine (on the basis of common usage and practice) what kinds, types or subtypes should be classed together as an agricultural commodity for the purposes of this chapter.

(5) "Assessment" means the monetary amount established in a marketing order or agreement that is to be paid by each affected producer to a commodity board in accordance with the schedule established in the marketing order or agreement.

(6) "Commercial quantities" as applied to producers and/or production means such quantities per year (or other period of time) of an agricultural commodity as the director finds are not less than the minimum which a prudent person engaged in agricultural production would produce for the purpose of making such quantity of such commodity a substantial contribution to the economic operation of the farm on which such commodity is produced. "Commercial quantities" as applied to handlers and/or handling means such quantities per year (or other period of time) of an agricultural commodity or product thereof as the director finds are not less than the minimum which a prudent person engaged in such handling would handle for the purpose of making such quantity a substantial contribution to the handling operation in which such commodity or product thereof is so handled. In either case the director may in his or her discretion: (a) Determine that substantial quantity is any amount above zero; and (b) apply the quantity so determined on a uniform rule applicable alike to all persons which he or she finds to be similarly situated.

(7) "Commodity board" means any board established pursuant to RCW 15.65.220. "Board" means any such commodity board unless a different board is expressly specified.

(8) "Cooperative association" means any incorporated or unincorporated association of producers which conforms to the qualifications set out in the act of congress of the United States of February 18, 1922 as amended, known as the "Capper-Volstead Act" and which is engaged in making collective sales or in marketing any agricultural commodity or product thereof or in rendering service for or advancing the interests of the producers of such commodity on a nonprofit cooperative basis.

(9) "Department" means the department of agriculture of the state of Washington.

(10) "Director" means the director of agriculture of the state of Washington or his or her duly appointed representative. The phrase "director or his or her designee" means the director unless, in the provisions of any marketing agreement or order, he or she has designated an administrator, board, or other designee to act in the matter designated, in which case "director or his or her designee" means for such order or agreement the administrator, board, or other person(s) so designated and not the director.

(11) "Handler" means any person who acts, either as principal, agent or otherwise, in processing, selling, marketing or distributing an agricultural commodity or storage of a frozen agricultural commodity which was not produced by him or her. "Handler" does not mean a common carrier used to transport an agricultural commodity. "Affected handler" means any handler of an affected commodity. "To handle" means to act as a handler.

(12) "List of affected handlers" means a list containing the names and addresses of affected handlers. This list shall contain the names and addresses of all affected handlers and, if requested by the director, the amount, by unit, of the affected commodity handled during a designated period under this chapter.

(13) "List of affected parties" means a list containing the names and mailing addresses of affected parties. This list shall contain the names and addresses of all affected parties and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(14) "List of affected producers" means a list containing the names and mailing addresses of affected producers. This list shall contain the names and addresses of all affected producers and, if requested by the director, the amount, by unit, of the affected commodity produced during a designated period under this chapter.

(15) "Mail" or "send" for purposes of any notice relating to rule making, referenda, or elections means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(16) "Marketing agreement" means an agreement entered into and issued by the director pursuant to this chapter.

(17) "Marketing order" means an order adopted by the director under this chapter that establishes a commodity board for an agricultural commodity or agricultural commodities with like or common qualities or producers.

(18) "Member of a cooperative association" means any producer who markets his or her product through such cooperative association and who is a voting stockholder of or has



a vote in the control of or is a party to a marketing agreement with such cooperative association with respect to such product.

(19) "Percent by numbers" means the percent of those persons on the list of affected parties or affected producers.

(20) "Person" means any individual, firm, corporation, limited liability company, trust, association, partnership, society, or any other organization of individuals, or any unit or agency of local, state, or federal government.

(21) "Producer" means any person engaged in the business of producing any agricultural commodity for market in commercial quantities. "Affected producer" means any producer who is subject to a marketing order or agreement. "To produce" means to act as a producer. For the purposes of RCW 15.65.140 and 15.65.160 as now or hereafter amended "producer" shall include bailees who contract to produce or grow any agricultural product on behalf of a bailor who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase.

(22) "Producer-handler" means any person who acts both as a producer and as a handler with respect to any agricultural commodity. A producer-handler shall be deemed to be a producer with respect to the agricultural commodities which he or she produces, and a handler with respect to the agricultural commodities which he or she handles, including those produced by himself or herself.

(23) "Producer marketing" or "marketed by producers" means any or all operations performed by any producer or cooperative association of producers in preparing for market and marketing, and shall include: (a) selling any agricultural commodity produced by such producer(s) to any handler; (b) delivering any such commodity or otherwise disposing of it for commercial purposes to or through any handler.

(24) "Production area" and "marketing area" means any area defined as such in any marketing order or agreement in accordance with RCW 15.65.350. "Affected area" means the marketing or production area so defined in such order, agreement or proposal.

(25) "Represented in a referendum" means that a written document evidencing approval or assent or disapproval or dissent is duly and timely filed with or mailed to the director by or on behalf of an affected producer and/or a volume of production of an affected commodity in a form which the director finds meets the requirements of this chapter. "Referendum" means a vote by the affected parties or affected producers which is conducted by secret ballot.

(26) "Rule-making proceedings" means the rule-making provisions as outlined in chapter 34.05 RCW.

(27) "Section" means a section of this chapter unless some other statute is specifically mentioned. The present includes the past and future tenses, and the past or future the present. The masculine gender includes the feminine and neuter. The singular number includes the plural and the plural includes the singular.

(28) "Sell" includes offer for sale, expose for sale, have in possession for sale, exchange, barter or trade.

(29) "Unit" of an agricultural commodity means a unit of volume, weight, quantity, or other measure in which such commodity is commonly measured. The director shall designate in each marketing order and agreement the unit to be used therein.

nate in each marketing order and agreement the unit to be used therein.

(30) "Vacancy" means that a board member leaves or is removed from a board position prior to the end of a term, or a nomination process for the beginning of a term concludes with no candidates for a position.

(31) "Volume of production" means the percent of the average volume of production of the affected commodity of those on the list of affected parties or affected producers for a production period. For the purposes of this chapter, a production period is a minimum three-year period or as specified in the marketing order or agreement. [2009 c 549 § 1007; 2002 c 313 § 1; 1993 c 80 § 2; 1986 c 203 § 15. Prior: 1985 c 457 § 13; 1985 c 261 § 1; 1975 1st ex.s. c 7 § 2; 1961 c 256 § 2.]

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

**Effective dates—2002 c 313:** "This act takes effect July 1, 2002, except for sections 1, 15, 17, 29, 30, 39, 45, 57, 58, 137, and 138 of this act which 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 2, 2002]." [2002 c 313 § 139.]

**Severability—1986 c 203:** See note following RCW 15.17.230.

**15.65.620 Chapter not to affect other laws—Agreements and orders under prior law may be made subject to chapter.** Nothing in this chapter shall apply to nor alter nor change any provision of the statutes of the state of Washington relating to the apple commission (RCW 15.24.010-15.24.210 inclusive), to the soft tree fruits commission (RCW 15.28.010-15.28.310 inclusive), to [the] dairy products commission (RCW 15.44.010-15.44.180 inclusive), or to the grain commission (chapter 15.115 RCW). No marketing agreement or order containing any of the provisions specified in RCW 15.65.310 or 15.65.320 shall be issued with respect to the respective commodities affected by said statutes unless and until any commission established by any such statute shall cease to perform the provisions of its respective statute. The provisions of this chapter shall have no application to any marketing agreement or order issued pursuant to the Washington agricultural enabling act of 1955 (chapter 15.66 RCW); except that any such marketing agreement or order issued pursuant to said 1955 act may be brought under this chapter upon compliance with the provisions of this chapter relating to amendments of marketing agreements and orders, whereupon:

(1) The provisions of this chapter shall apply to and the provisions of said 1955 act shall cease to apply to such marketing agreement or order; and

(2) All assets and liabilities of, or pertaining to such agreement or order, and of any commission or agency established by it, shall continue to exist with respect to such agreement, order, commission or agency after being so brought under this chapter. [2009 c 33 § 34; 1961 c 256 § 62.]

## Chapter 15.66 RCW

### WASHINGTON STATE AGRICULTURAL COMMODITY COMMISSIONS

#### Sections

15.66.270 Exempt commissions—Marketing agreements and orders.

**15.66.270 Exempt commissions—Marketing agreements and orders.** This chapter does not apply to any provision of the statutes of the state of Washington relating to the Washington apple commission (chapter 15.24 RCW), to the soft tree fruits commission (chapter 15.28 RCW), to the dairy products commission (chapter 15.44 RCW), or to the Washington grain commission (chapter 15.115 RCW). Marketing agreements or orders shall not be issued with respect to apples, soft tree fruits, dairy products, or wheat or barley for the purposes specified in RCW 15.66.030 (1) or (2). [2009 c 33 § 35; 2007 c 234 § 100; 1961 c 11 § 15.66.270. Prior: 1955 c 191 § 27.]

### Chapter 15.88 RCW WINE COMMISSION

#### Sections

15.88.190 Commission must assist legislative gift center—Selection of Washington wines.

**15.88.190 Commission must assist legislative gift center—Selection of Washington wines.** The commission must assist the legislative gift center in selecting the Washington wines the legislative gift center will sell as provided in RCW 44.73.015. [2009 c 228 § 4.]

**Findings—Intent—2009 c 228:** See note following RCW 66.12.195.

### Chapter 15.89 RCW WASHINGTON BEER COMMISSION

#### Sections

15.89.070 Commission powers and duties.

**15.89.070 Commission powers and duties.** The commission shall:

(1) Elect a chair and officers. The officers must include a treasurer who is responsible for all receipts and disbursements by the commission and the faithful discharge of whose duties shall be guaranteed by a bond at the sole expense of the commission. The commission must adopt rules for its own governance that provide for the holding of an annual meeting for the election of officers and the transaction of other business and for other meetings the commission may direct;

(2) Do all things reasonably necessary to effect the purposes of this chapter. However, the commission has no rule-making power except as provided in this chapter;

(3) Employ and discharge managers, secretaries, agents, attorneys, and employees and engage the services of independent contractors;

(4) Retain, as necessary, the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review by the office of the attorney general;

(5) Receive donations of beer from producers for promotional purposes under subsections (6) and (7) of this section and for fund-raising purposes under subsection (8) of this section. Donations of beer for promotional purposes may only be disseminated without charge;

(6) Engage directly or indirectly in the promotion of Washington beer, including, without limitation, the acquisi-

tion in any lawful manner and the dissemination without charge of beer. This dissemination is not deemed a sale for any purpose and the commission is not deemed a producer, supplier, or manufacturer, or the clerk, servant, or agent of a producer, supplier, distributor, or manufacturer. This dissemination without charge shall be for agricultural development or trade promotion, and not for fund-raising purposes under subsection (8) of this section. Dissemination for promotional purposes may include promotional hosting and must in the good faith judgment of the commission be in the aid of the marketing, advertising, sale of beer, or of research related to such marketing, advertising, or sale;

(7) Promote Washington beer by conducting unique beer tastings without charge;

(8) Beginning July 1, 2007, fund the Washington beer commission through sponsorship of up to twelve beer festivals annually at which beer may be sold to festival participants. For this purpose, the commission would qualify for issue of a special occasion license as an exception to WAC 314-05-020 but must comply with laws under Title 66 RCW and rules adopted by the liquor control board under which such events may be conducted;

(9) Participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, regulation, distribution, sale, or use of beer including activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission;

(10) Acquire and transfer personal and real property, establish offices, incur expenses, and enter into contracts, including contracts for the creation and printing of promotional literature. The contracts are not subject to chapter 43.78 RCW, and are cancelable by the commission unless performed under conditions of employment that substantially conform to the laws of this state and the rules of the department of labor and industries. The commission may create debt and other liabilities that are reasonable for proper discharge of its duties under this chapter;

(11) Maintain accounts with one or more qualified public depositories as the commission may direct, for the deposit of money, and expend money for purposes authorized by this chapter by drafts made by the commission upon such institutions or by other means;

(12) Cause to be kept and annually closed, in accordance with generally accepted accounting principles, accurate records of all receipts, disbursements, and other financial transactions, available for audit by the state auditor;

(13) Create and maintain a list of producers and disseminate information among and solicit the opinions of producers with respect to the discharge of the duties of the commission, directly or by arrangement with trade associations or other instrumentalities;

(14) Employ, designate as an agent, act in concert with, and enter into contracts with any person, council, commission, or other entity to promote the general welfare of the beer industry and particularly to assist in the sale and distribution of Washington beer in domestic and foreign commerce. The commission shall expend money necessary or advisable for this purpose and to pay its proportionate share of the cost of any program providing direct or indirect assistance to the sale and distribution of Washington beer in domestic or foreign

commerce, employing and paying for vendors of professional services of all kinds;

(15) Sue and be sued as a commission, without individual liability for acts of the commission within the scope of the powers conferred upon it by this chapter;

(16) Serve as liaison with the liquor control board on behalf of the commission and not for any individual producer;

(17) Receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the commission and expend the same or any income therefrom according to the terms of the gifts, grants, or endowments. [2009 c 373 § 9; 2007 c 211 § 1; 2006 c 330 § 8.]

### Chapter 15.115 RCW

#### WASHINGTON GRAIN COMMISSION

##### Sections

15.115.010	Legislative declaration.
15.115.020	Regulations and restraints applicable to the wheat and barley industries.
15.115.030	Definitions.
15.115.040	Washington grain commission—Created—Members—Term of office.
15.115.050	Initial appointments to the Washington grain commission—Expiration of interim terms.
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15.115.070	Industry representative member of the commission—Appointment.
15.115.080	Vacancy on the commission.
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15.115.100	Membership in associations with similar objectives—Contracting with such associations.
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15.115.130	Transfer of powers, duties, assets, etc., to the Washington grain commission.
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15.115.170	Liquor produced from wheat or barley.
15.115.180	Promotional printing and literature—Contracts.
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15.115.200	Bond requirements.
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15.115.220	Copies of proceedings, records, and acts of the commission admissible in court as prima facie evidence of the truth of the statements contained therein.
15.115.230	Application of RCW 42.56.380—Use of commercial information and records.
15.115.240	Commission shall reimburse department for certain costs—Funding of staff support.
15.115.250	Preparation of lists of producers and handlers of wheat and barley.
15.115.260	Annual assessments—Adjustments—Referendum—Temporary reduction—Limit on annual assessment.
15.115.270	Collection of assessment—Failure to pay assessment—Civil action—Venue.
15.115.280	Use of moneys received by the commission under this chapter.
15.115.290	Investment of funds of the commission.
15.115.300	Proof of eligibility to vote or hold a position on the commission—Records—Inspection by commission—Confidentiality of information—Limitation of section.
15.115.310	Penalties—Injunctions—Referring a violation to the county prosecutor—Jurisdiction.
15.115.900	Severability—2009 c 33.

**15.115.010 Legislative declaration.** The history, economy, culture, and the future of Washington state to a large degree all involve agriculture. In order to develop and promote Washington's agricultural products as part of the exist-

ing comprehensive scheme to regulate agricultural commodities, the legislature declares:

(1) That the marketing of wheat and barley produced in Washington is in the public interest. It is vital to the continued economic well-being of the citizens of this state and their general welfare that wheat and barley produced in Washington are properly promoted by:

(a) Enabling wheat producers and barley producers to help themselves in establishing orderly, fair, sound, efficient, and unhampered marketing, grading, and standardizing of the grains they produce; and

(b) Working towards stabilizing the agricultural industries by increasing consumption of wheat and barley within the state, the nation, and internationally;

(2) That the wheat and barley industries operate within a regulatory environment that imposes burdens on them for the benefit of society and the citizens of the state and that includes restrictions on marketing autonomy. Those restrictions may impair the agricultural producer's ability to compete in local, domestic, and foreign markets;

(3) That it is in the overriding public interest that support for the wheat and barley industries be clearly expressed, that adequate protection be given to the industries and their activities and operations, and that wheat and barley be promoted individually and as part of a comprehensive agricultural industry to:

(a) Enhance the reputation and image of Washington state's wheat and barley;

(b) Increase the sale and use of Washington state's wheat and barley in local, domestic, and foreign markets;

(c) Protect the public by educating the public in reference to the quality, care, and methods used in the production of Washington state's wheat and barley;

(d) Increase the knowledge of the health-giving qualities and dietetic value of Washington state's wheat and barley and wheat and barley products;

(e) Support and engage in programs or activities that benefit the planting, production, harvesting, handling, processing, marketing, and uses of wheat and barley produced in Washington state;

(4) That the commission is established primarily for the benefit of the people of the state of Washington and its economy. By enacting this chapter, the legislature hereby charges the commission, with oversight by the director, to speak on behalf of the Washington state government with regard to wheat and barley production in Washington and issues related to the wheat and barley industry in Washington; and

(5) That this chapter is enacted in the exercise of the police powers of this state for the purposes of protecting the health, peace, safety, and general welfare of the people of this state. [2009 c 33 § 1.]

**15.115.020 Regulations and restraints applicable to the wheat and barley industries.** The wheat and barley industries are highly regulated industries, and this chapter and the rules adopted under it are only one aspect of the regulation of those industries. Other regulations and restraints applicable to the wheat and barley industries include:

(1) Chapter 15.04 RCW, Washington agriculture general provisions;

(2) Chapter 15.08 RCW, horticultural pests and diseases;

- (3) Chapter 15.14 RCW, planting stock;
- (4) Chapter 15.49 RCW, seeds;
- (5) Chapter 15.54 RCW, fertilizers, minerals, and limes;
- (6) Chapter 15.58 RCW, Washington pesticide control act;
- (7) Chapter 15.64 RCW, farm marketing;
- (8) Chapter 15.83 RCW, agricultural marketing and fair practices;
- (9) Chapter 15.86 RCW, organic food products;
- (10) Chapter 15.92 RCW, center for sustaining agriculture and natural resources;
- (11) Chapter 17.24 RCW, insect pests and plant diseases;
- (12) Chapter 19.94 RCW, weights and measures;
- (13) Chapter 20.01 RCW, agricultural products—commission merchants, dealers, brokers, buyers, agents;
- (14) Chapter 22.09 RCW, agricultural commodities;
- (15) Chapter 43.23 RCW, department of agriculture;
- (16) Chapter 69.04 RCW, food, drugs, cosmetics, and poisons including provisions of Title 21 U.S.C. relating to the general manufacturing practices, food labeling, food standards, food additives, and pesticide tolerances;
- (17) Chapter 70.94 RCW, Washington clean air act, agricultural burning;
- (18) 7 U.S.C., Sec. 136, federal insecticide, fungicide, and rodenticide act; and
- (19) 7 U.S.C., Sec. 1621, agricultural marketing act. [2009 c 33 § 2.]

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

- (1) "Affected area" means the following counties located in the state of Washington: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima.
- (2) "Affected producer" means any producer who is subject to this chapter.
- (3) "Assessment" means the monetary amount established by the commission in accordance with this chapter.
- (4) "Commercial channels" means the sale of wheat or barley for use as food, feed, seed, or any industrial or chemical use, when sold to any commercial buyer, dealer, processor, cooperative, or to any person, public or private, who resells any wheat or barley or product produced from wheat or barley.
- (5) "Commercial quantities" means five hundred or more bushels of wheat or twenty tons of barley produced for market in any calendar year by any producer.
- (6) "Commission" means the Washington grain commission.
- (7) "Department" means the department of agriculture of the state of Washington.
- (8) "Director" means the director of agriculture of the state of Washington or any qualified person or persons designated by the director of agriculture to act concerning some matter under this chapter.
- (9) "Grain" or "grains" means wheat and barley and includes all kinds and varieties of wheat and barley grown in the state of Washington.

(10) "Handler" means any person who acts, either as principal, agent, or otherwise, in the processing, selling, marketing, or distributing of wheat or barley that is not produced by the handler. "Handler" does not include a common carrier used to transport an agricultural commodity. "To handle" means to act as a handler.

(11) "Hosting" may include providing meals, refreshments, lodging, transportation, gifts of a nominal value, reasonable and customary entertainment, and normal incidental expenses at meetings or gatherings.

(12) "Mail" or "send," for purposes of any notice relating to rule making, referenda, or elections, means regular mail or electronic distribution, as provided in RCW 34.05.260 for rule making. "Electronic distribution" or "electronically" means distribution by electronic mail or facsimile mail.

(13) "Marketing year" means the twelve-month period beginning June 1st of any year and ending on May 31st of the subsequent year. "Fiscal year" means the twelve-month period beginning July 1st of any year and ending on June 30th of the subsequent year.

(14) "Percent by numbers" means the percent of those persons on the list of affected parties or affected producers.

(15) "Person" includes any individual, firm, corporation, limited liability company, trust, association, partnership, society, or any other organization of individuals, or any unit or agency of local or state government.

(16) "Producer" means any person who is engaged in the business of producing or causing to be produced for market, in commercial quantities, wheat or barley grown in the designated affected area of the state of Washington, and who has been so engaged in at least one of the past three years. "Producer" includes a person who contracts to produce or grow wheat or barley on behalf of a person who retains title to the seed and its resulting agricultural product or the agricultural product delivered for further production or increase. "To produce" means to act as a producer.

(17) "Promotional hosting" means the hosting of individuals and groups of individuals at meetings, meals, and gatherings for the purpose of cultivating trade relations and promoting sales of wheat or barley or processed wheat or barley products.

(18) "Referendum" means a vote by the affected parties or affected producers which is conducted by secret ballot.

(19) "Rule-making proceedings" means rule making under chapter 34.05 RCW.

(20) "Vacancy" means that a commission member leaves or is removed from a position on the commission prior to the end of a term, or a nomination process for the beginning of a term concludes with no candidates for a position. [2009 c 33 § 3.]

**15.115.040 Washington grain commission—Created—Members—Term of office.** (1) There is hereby created the Washington grain commission. The commission is composed of five wheat producer members, two barley producer members, two members representing the wheat industry, one member representing the barley industry, and the director or his or her appointee. All members, including the director or his or her appointee, are full voting members of the commission.

(2)(a) Each wheat producer member of the commission must be a resident of Washington state, over the age of eighteen years at the time of appointment, and a producer of wheat in the district in and for which he or she is nominated and appointed. A wheat producer member must continue to satisfy these qualifications during his or her term of office.

(b) For the nomination and appointment of wheat producer members, the affected area is divided into districts as follows:

(i) District I: Ferry, Lincoln, Pend Oreille, Spokane, and Stevens counties;

(ii) District II: Whitman county;

(iii) District III: Asotin, Columbia, Garfield, and Walla Walla counties;

(iv) District IV: Adams, Chelan, Douglas, Grant, and Okanogan counties; and

(v) District V: Benton, Franklin, Kittitas, Klickitat, and Yakima counties.

(c) The wheat producers in each district are entitled to elect one wheat producer member of the commission.

(3)(a) Each barley producer member of the commission must be a resident of Washington state, over the age of eighteen years at the time of appointment, and a producer of barley in the district in and for which he or she is nominated and appointed. A barley producer member must continue to satisfy these qualifications during his or her term of office.

(b) For the nomination and appointment of barley producer members, the affected area is divided into districts as follows:

(i) District VI: Asotin, Benton, Columbia, Franklin, Garfield, Klickitat, Walla Walla, Whitman, and Yakima counties; and

(ii) District VII: Adams, Chelan, Douglas, Ferry, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, and Stevens counties.

(c) The barley producers in each district are entitled to elect one barley producer member of the commission.

(4) An industry member of the commission need not be a resident of Washington state, but must be involved with the handling, marketing, transportation, processing of, or research regarding wheat or barley produced in Washington state. An industry representative member must continue to satisfy these qualifications during his or her term of office.

(5)(a) The regular term of office of each producer member of the commission is three years from January 1st following his or her first appointment by the director and continues until a successor is appointed. The term of office for producer positions representing districts I, IV, and VII is from January 1, 2011, to December 31, 2014, and for three-year terms thereafter. The term of office for producer positions representing districts II, III, V, and VI is from January 1, 2012, to December 31, 2015, and for three-year terms thereafter.

(b) The regular term of office of each industry representative member of the commission is three years from January 1st following his or her appointment by the director and until a successor is appointed. The term of office for the barley industry representative position is from January 1, 2011, to December 31, 2014, and for three-year terms thereafter. The term of office for the wheat industry representative (position 1) is from January 1, 2011, to December 31, 2014, and for

three-year terms thereafter. The term of office for the wheat industry representative (position 2) is from January 1, 2012, to December 31, 2015, and for three-year terms thereafter.

(c) The director, or his or her appointee, is a permanent member of the commission. [2009 c 33 § 4.]

**15.115.050 Initial appointments to the Washington grain commission—Expiration of interim terms.** (1) The Washington grain commission replaces the Washington wheat commission and the Washington barley commission. To accomplish this transition, the initial appointments to the Washington grain commission are as follows:

(a) Within thirty days of July 26, 2009, the Washington wheat commission shall forward to the director the names of the currently appointed wheat producer members who shall be appointed to the interim terms specified in subsection (2) of this section. Thereafter, wheat producer members are nominated and appointed under RCW 15.115.060 and 15.115.080.

(b) Within thirty days of July 26, 2009, the Washington barley commission shall forward to the director the names of two currently appointed producer members, one who resides in and is a barley producer in district VI and one who resides in and is a barley producer in district VII who shall be appointed to the interim terms specified in subsection (2) of this section. Thereafter, barley producer members are nominated and appointed under RCW 15.115.060 and 15.115.080.

(c) Within thirty days of July 26, 2009, the Washington wheat commission shall forward to the director the names of the currently appointed wheat industry representative members who shall be appointed to the interim terms specified in subsection (3) of this section. Thereafter the director shall appoint wheat industry representative members under RCW 15.115.070 and 15.115.080.

(d) Within thirty days of July 26, 2009, the Washington barley commission shall forward to the director the name of one of the currently appointed barley industry representative members who shall be appointed to the interim term specified in subsection (3) of this section. Thereafter the director shall appoint the barley industry representative member under RCW 15.115.070 and 15.115.080.

(2) Interim terms for producer members expire as follows:

(a) Districts I, IV, and VII: December 31, 2010; and

(b) Districts II, III, V, and VI: December 31, 2011.

(3) Interim terms for industry representative members expire as follows:

(a) Barley industry representative: December 31, 2010;

(b) Wheat industry representative (position 1): December 31, 2010; and

(c) Wheat industry representative (position 2): December 31, 2011.

(4) The initial appointments under this section must be made within sixty days of July 26, 2009. [2009 c 33 § 5.]

**15.115.060 Producer members of the commission—Appointment—Nomination—Advisory ballot and advisory vote.** (1) The director shall appoint the producer members of the commission.

(2) Candidates for producer positions on the commission must be nominated to the director in accordance with this section.

(3)(a) The director shall mail nominating petitions for producer members not earlier than September 17th and not later than October 2nd in each district in which an open producer position will occur at the end of the year. Each nominating petition must be signed by the candidate and by at least five affected producers of the district from which the nominated candidate would be appointed.

(b) Signed nominating petitions must be filed with the director. A nominating petition is filed when it is postmarked by the deadline.

(c) The director shall determine the final date for filing nominating petitions and shall display that final date on the face of each nominating petition mailed under this subsection. The final date may not be earlier than October 8th and not later than October 13th in each district in which an open producer position will occur at the end of the year.

(4)(a) The director shall prepare an advisory ballot for each district in which an open producer position will occur. All candidates from a district who have been nominated as a producer member in accordance with subsection (3) of this section shall have their names placed on the advisory ballot for that district.

(b) The director shall mail advisory ballots to all affected producers in each district in which an open producer position will occur. Advisory ballots must be mailed not earlier than October 18th and not later than November 2nd in each district in which an open producer position will occur at the end of the year.

(c) Only those completed advisory ballots may be counted that are sent to the director and postmarked not later than November 25th in each district in which an open producer position will occur at the end of the year. Each advisory ballot must display the following language on its face: "Each completed advisory ballot must be postmarked not later than November 25, [insert year] to be counted."

(d) Each affected producer is entitled to one vote.

(e) The advisory vote must be conducted in a manner so that it is a secret ballot.

(5)(a) If two or more candidates for a position are named in valid petitions, an advisory vote must be held. If only one candidate for a position is named in valid petitions, an advisory vote need not be held, and the director may appoint that candidate or request an additional candidate from the commission for appointment consideration. If a candidate for a position is not named in any valid petition, the commission shall submit a candidate for the director's appointment consideration. Not more than one commission member may be part of the same person under this chapter.

(b) The director may request of any candidate whose name is forwarded to the director for potential appointment that the candidate submit a letter stating why he or she wishes to be appointed to the commission.

(c) If two or more candidates receive votes in an advisory vote, the director may select either of the two candidates receiving the most votes for the position or may reject both candidates and request a new advisory vote with nominees selected by the commission and, if desired, by the director. If no candidate has been nominated in a petition under subsection

(3) of this section, the director shall make an appointment to the position as provided in RCW 15.115.080.

(6) Except for good cause shown, appointments under this section must be made no later than fifteen days before the commencement of the term of office of the position for which the appointment is made. [2009 c 33 § 6.]

**15.115.070 Industry representative member of the commission—Appointment.** (1) The director shall appoint the industry representative members of the commission.

(2) Not later than November 1st preceding the expiration of an industry representative member's term of office, the commission shall, by majority vote of a quorum of the commission, select a qualified candidate for the industry representative position and forward the name of the candidate to the director.

(3) The director may select the candidate for the position or may reject the candidate and request that the commission forward the name of an additional candidate for appointment consideration by the director.

(4) Except for good cause shown, appointments under this section must be made no later than fifteen days before the commencement of the term of office of the position for which the appointment is made. [2009 c 33 § 7.]

**15.115.080 Vacancy on the commission.** In the event of a vacancy on the commission, the remaining members shall recommend to the director the name of a person qualified for appointment to the vacant position. The director may appoint that person for the position or may reject the candidate and request that the commission forward the name of an additional candidate for appointment consideration by the director. [2009 c 33 § 8.]

**15.115.090 Removal of a commission member.** If a commission member fails or refuses to perform his or her duties due to excessive absence or abandonment of his or her position or engages in any acts of dishonesty or willful misconduct, a majority of a quorum of the commission may recommend in writing to the director that the commission member be removed from his or her position on the commission. Upon receiving this recommendation, the director shall review the matter, including any statement from the commission member who is the subject of the recommendation, and determine whether adequate cause for removal is present. If the director finds that adequate cause for removal exists, the director shall remove the member from his or her commission position. The position is then vacant and must be filled as set forth in this chapter. [2009 c 33 § 9.]

**15.115.100 Membership in associations with similar objectives—Contracting with such associations.** (1) Any member of the commission also may be a member or officer of an association which has similar objectives for which the agricultural commission was formed.

(2) An agricultural commission also may contract with such an association for services necessary to carry out any purposes authorized under this chapter, provided that an appropriate contract has been entered into, and provided that any members with potential conflicts of interest comply with

applicable provisions in chapter 42.52 RCW. [2009 c 33 § 10.]

**15.115.110 Meetings—Proposed budget—Notice—Voting requirements.** (1) The commission shall hold regular meetings, at least quarterly, with the time, date, and place to be determined prior to the new calendar year and published in the state register as required in RCW 42.30.075.

(2) The commission may call special meetings as provided for in RCW 42.30.080.

(3) The commission shall hold an annual meeting. The proposed budget must be presented for discussion at the meeting. Notice of the annual meeting must be given by the commission at least ten days prior to the meeting through the regular news media.

(4) Any action taken by the commission requires the majority vote of the members present, provided a quorum is present.

(5) All commission meetings are open and public and must be conducted in accordance with chapter 42.30 RCW. [2009 c 33 § 11.]

**15.115.120 Quorum requirements—Compensation—Travel expenses.** (1) A majority of the voting members constitute a quorum for the transaction of all business and for carrying out the duties of the commission.

(2) A member of the commission shall not receive any salary or other compensation from the commission, except that each member of the commission is compensated in accordance with RCW 43.03.230 for each day spent in actual attendance at or traveling to and from meetings of the commission or on special assignments for the commission, together with subsistence, lodging, and travel expenses allowed by RCW 43.03.050 and 43.03.060. Employees of the commission also may be reimbursed subsistence, lodging, and travel expenses allowed by RCW 43.03.050 and 43.03.060 when on official commission business. [2009 c 33 § 12.]

**15.115.130 Transfer of powers, duties, assets, etc., to the Washington grain commission.** (1) The Washington grain commission is the successor in interest to the Washington wheat commission and the Washington barley commission and is vested with all powers and duties transferred to it under this chapter and other such powers and duties as may be authorized by law.

(2) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the Washington wheat commission or Washington barley commission must be delivered to the custody of the Washington grain commission. All cabinets, furniture, office equipment, motor vehicles, and other tangible property owned or employed by the Washington wheat commission or Washington barley commission must be delivered to the Washington grain commission. The Washington grain commission shall ensure the timely transfers of all legal titles, registrations, and licenses made necessary by this subsection. All funds, accounts, investments, credits, or other assets held by the Washington wheat commission or Washington barley commission must be transferred or assigned to the Washington

grain commission. All debts, liabilities, and obligations owed by the Washington wheat commission or Washington barley commission must be transferred or assigned to the Washington grain commission.

(3) All employees of the Washington wheat commission or Washington barley commission are transferred to the Washington grain commission.

(4) Beginning with the final initial appointment made under RCW 15.115.050, the interim commissioners shall submit timely reports to the director summarizing the progress made in completing the actions required under this section and any other actions necessary to complete the transition provided for in this chapter.

(5) When the interim commissioners have completed the actions required under this section and any other actions necessary to complete the transition provided for in this chapter, they shall so certify in writing to the director. The Washington wheat commission and Washington barley commission cease to exist as of the date that certification is received by the director. Once the director has received the certification, the director is authorized and shall take action to repeal the marketing orders addressing wheat or barley.

(6) All actions required under this section must be completed by the interim commissioners no later than one hundred twenty days after the final initial appointment is made under RCW 15.115.050.

(7) RCW 15.66.157 and 15.66.160 do not apply to the Washington wheat commission and the Washington barley commission. [2009 c 33 § 13.]

**15.115.140 Powers and duties.** (1) The commission is an agency of the Washington state government subject to oversight by the director. In exercising its powers and duties, the commission shall carry out the following purposes:

(a) To establish plans and conduct programs for advertising and sales promotion, to maintain present markets, or to create new or larger markets for wheat and barley grown in Washington;

(b) To engage in cooperative efforts in the domestic or foreign marketing of wheat and barley grown in Washington;

(c) To provide for carrying on research studies to find more efficient methods of production, irrigation, processing, transportation, handling, and marketing of wheat and barley grown in Washington;

(d) To adopt rules to provide for improving standards and grades by defining, establishing, and providing labeling requirements with respect to wheat and barley grown in Washington;

(e) To investigate and take necessary action to prevent unfair trade practices relating to wheat and barley grown in Washington;

(f) To provide information or communicate on matters pertaining to the production, irrigation, processing, transportation, marketing, or uses of wheat and barley grown in Washington to any elected official or officer or employee of any agency;

(g) To provide marketing information and services for producers of wheat and barley in Washington;

(h) To provide information and services for meeting resource conservation objectives of producers of wheat and barley in Washington;

(i) To provide for education and training related to wheat and barley grown in Washington; and

(j) To assist and cooperate with the department or any local, state, or federal government agency in the investigation and control of exotic pests and diseases that could damage or affect the production or trade of wheat and barley grown in Washington.

(2) The commission has the following powers and duties:

(a) To collect the assessments of producers as provided in this chapter and to expend the same in accordance with this chapter;

(b) To maintain a list of the names and addresses of affected producers that may be compiled from information used to collect assessments authorized under this chapter and data on the value of each producer's production for a minimum three-year period;

(c) To maintain a list of the names and addresses of persons who handle wheat or barley within the affected area and data on the amount and value of the wheat and barley handled for a minimum three-year period by each person;

(d) To request records and audit the records of producers or handlers of wheat or barley during normal business hours to determine whether the appropriate assessment has been paid;

(e) To fund, conduct, or otherwise participate in scientific research relating to wheat or barley, including but not limited to research to find more efficient methods of irrigation, production, processing, handling, transportation, and marketing of wheat or barley, or regarding pests, pesticides, food safety, irrigation, transportation, and environmental stewardship related to wheat or barley;

(f) To work cooperatively with local, state, and federal agencies, universities, and national organizations for the purposes provided in this chapter;

(g) To establish a foundation using commission funds as grant money when the foundation benefits the wheat or barley industry in Washington and implements the purposes provided in this chapter;

(h) To acquire or own intellectual property rights, licenses, or patents and to collect royalties resulting from commission-funded research related to wheat or barley;

(i) To enter into contracts or interagency agreements with any private or public agency, whether federal, state, or local, to carry out the purposes and powers provided in this chapter, including specifically contracts or agreements for research described in (e) of this subsection. Personal service contracts must comply with chapter 39.29 RCW;

(j) To institute and maintain in its own name any and all legal actions necessary to carry out the provisions of this chapter, including actions by injunction, mandatory injunction or civil recovery, or proceedings before administrative tribunals or other governmental authorities;

(k) To retain in emergent situations the services of private legal counsel to conduct legal actions on behalf of the commission. The retention of a private attorney is subject to review and approval by the office of the attorney general;

(l) To elect a chair and other officers as determined advisable;

(m) To employ and discharge at its discretion administrators and additional personnel, advertising and research

agencies, and other persons and firms as appropriate and pay compensation;

(n) To acquire personal property and purchase or lease office space and other necessary real property and transfer and convey that real property;

(o) To keep accurate records of all its receipts and disbursements by commodity, which records must be open to inspection and audit by the state auditor or private auditor designated by the state auditor at least every five years;

(p) To borrow money and incur indebtedness;

(q) To make necessary disbursements for routine operating expenses;

(r) To expend funds for commodity-related education, training, and leadership programs as the commission deems expedient;

(s) To accept and expend or retain any gifts, bequests, contributions, or grants from private persons or private and public agencies to carry out the purposes provided in this chapter;

(t) To apply for and administer federal market access programs or similar programs or projects and provide matching funds as may be necessary;

(u) To engage in appropriate fund-raising activities for the purpose of supporting activities of the commission authorized in this chapter;

(v) To participate in international, federal, state, and local hearings, meetings, and other proceedings relating to the production, irrigation, manufacture, regulation, transportation, distribution, sale, or use of wheat or barley; or the regulation of the manufacture, distribution, sale, or use of any pesticide, as defined in chapter 15.58 RCW, or any agricultural chemical which is of use or potential use in producing wheat or barley. This participation may include activities authorized under RCW 42.17.190, including the reporting of those activities to the public disclosure commission;

(w) To speak on behalf of the Washington state government on a nonexclusive basis regarding issues related to wheat and barley, including but not limited to trade negotiations and market access negotiations and to fund industry organizations engaging in those activities;

(x) To adopt, rescind, and amend rules and regulations reasonably necessary for the administration and operation of the commission and the enforcement of its duties under this chapter;

(y) To administer, enforce, direct, and control the provisions of this chapter and any rules adopted under this chapter; and

(z) Other powers and duties that are necessary to carry out the purposes of this chapter. [2009 c 33 § 14.]

**15.115.150 Director's duties.** (1) The commission shall develop and submit to the director for approval any plans, programs, and projects concerning the following:

(a) The establishment, issuance, effectuation, and administration of appropriate programs or projects for the advertising and promotion of wheat and barley; and

(b) The establishment and effectuation of market research projects, market development projects, or both, to the end that the marketing and utilization of wheat and barley may be encouraged, expanded, improved, or made more efficient.



(2) The director shall review the commission's advertising or promotion program to ensure that no false claims are being made concerning any agricultural commodity.

(3) The commission, prior to the beginning of its fiscal year, shall prepare and submit to the director for approval its research plan, its commodity-related education and training plan, and its budget on a fiscal period basis.

(4) The director shall review and make a determination of all submissions described in this section in a timely manner. [2009 c 33 § 15.]

**15.115.160 Rule-making proceedings.** (1) Except as provided in subsection (2) of this section, all rule-making proceedings conducted under this chapter must be in accordance with chapter 34.05 RCW.

(2) Rule-making proceedings conducted under this chapter are exempt from compliance with RCW 34.05.310 and 43.135.055 and chapter 19.85 RCW, the regulatory fairness act, when the proposed rule is subject to a referendum.

(3) Rules, regulations, and orders made by the commission must be filed with the director and become effective as provided in RCW 34.05.380. [2009 c 33 § 16.]

**15.115.170 Liquor produced from wheat or barley.**

(1) The commission may receive donations of liquor produced from wheat or barley grown in Washington and may use the liquor for the promotional purposes specified in subsection (2) of this section.

(2) The commission may engage directly or indirectly in the promotion of liquor produced from wheat or barley grown in Washington including, without limitation, the acquisition in any lawful manner and the dissemination without charge of the liquor. This dissemination is not deemed a sale for any purpose and the commission is not deemed a producer, supplier, or manufacturer, or the clerk, servant, or agent of a producer, supplier, distributor, or manufacturer under Title 66 RCW. This dissemination without charge may be solely for agricultural development or trade promotion, and not for fund-raising purposes under RCW 15.115.140(2)(u). Dissemination for promotional purposes may include promotional hosting and must in the good faith judgment of the commission be in the aid of the marketing, advertising, or promotion of wheat or barley grown in Washington, or research related to that marketing, advertising, or promotion.

(3) The commission shall adopt rules governing promotional hosting expenditures by its employees, agents, or commission members under RCW 15.04.200. [2009 c 33 § 17.]

**15.115.180 Promotional printing and literature—Contracts.** (1) The restrictive provisions of chapter 43.78 RCW do not apply to promotional printing and literature for the commission.

(2) All promotional printing contracts entered into by the commission must be executed and performed under conditions of employment that substantially conform to the laws of this state respecting hours of labor, the minimum wage scale, and the rules and regulations of the department of labor and industries regarding conditions of employment, hours of labor, and minimum wages, and the violation of such a provi-

sion of any contract is grounds for cancellation of the contract. [2009 c 33 § 19.]

**15.115.190 Handling, accounting, and disbursement of moneys.** (1) All money received by the commission from the assessment levied under this chapter and all moneys transferred to the commission under RCW 15.115.130(2) must be deposited in the banks designated by the commission and disbursed by order of the commission. RCW 43.01.050 does not apply to money collected under this chapter.

(2) The commission shall adopt rules or establish policies as it determines necessary to ensure proper accounting and disbursement of moneys received and held by the commission. [2009 c 33 § 20.]

**15.115.200 Bond requirements.** Unless covered by a blanket bond covering officials or employees of the state of Washington, every administrator, employee, or other person occupying a position of trust for the commission and every commission member actually handling or drawing upon funds shall give a bond in the penal amount as may be required by the commission, the premium for which bond or bonds must be paid by the commission. [2009 c 33 § 21.]

**15.115.210 Limitation of liability.** (1) Obligations incurred by the commission and any other liabilities or claims against the commission are enforceable only against the assets of the commission and, except to the extent of those assets, liability for the debts or actions of the commission does not exist against either the state of Washington or any subdivision or instrumentality thereof or against any member, employee, or agent of the commission or the state of Washington in his or her individual capacity.

(2) Except as otherwise provided in this chapter, neither the commission members, nor its employees, may be held individually responsible for errors in judgment, mistakes, or other acts, either of commission or omission, as principal, agent, person, or employee, except for their own individual acts of dishonesty or crime. A person or employee may not be held individually responsible for any act or omission of any other commission members. The liability of the commission members is several and not joint, and a member is not liable for the default of any other member. This subsection confirms that commission members have been and continue to be state officers or volunteers for purposes of RCW 4.92.075 and are entitled to the defenses, indemnifications, limitations of liability, and other protections and benefits of chapter 4.92 RCW.

(3) In any civil or criminal action or proceeding for violation of any statute, including a rule adopted under that statute, or common law against monopolies or combinations in restraint of trade, including any action under chapter 19.86 RCW, proof that the act complained of was done in compliance with the provisions of this chapter, and in furtherance of the purposes and provisions of this chapter, is a complete defense to such an action or proceeding. [2009 c 33 § 22.]

**15.115.220 Copies of proceedings, records, and acts of the commission admissible in court as prima facie evidence of the truth of the statements contained therein.**

Copies of the proceedings, records, and acts of the commission, when certified by the chair, are admissible in any court as prima facie evidence of the truth of the statements contained therein. [2009 c 33 § 23.]

**15.115.230 Application of RCW 42.56.380—Use of commercial information and records.** (1) Under RCW 42.56.380, certain agricultural business records, commission records, and department of agriculture records relating to the commission and producers of agricultural commodities are exempt from public disclosure.

(2) Financial and commercial information and records submitted to either the department or the commission for the purpose of administering this chapter may be shared between the department and the commission. They may also be used, if required, in any suit or administrative hearing involving this chapter.

(3) This section does not prohibit:

(a) The issuance of general statements based upon the reports of persons subject to this chapter as long as the statements do not identify the information furnished by any person; or

(b) The publication by the director or the commission of the name of any person violating this chapter and a statement of the manner of the violation by that person. [2009 c 33 § 24.]

**15.115.240 Commission shall reimburse department for certain costs—Funding of staff support.** (1) The commission shall reimburse the department for all costs incurred by the department for actions necessary to carry out this chapter, including the adoption of rules, facilitating or conducting nominations or advisory votes, and the review and approval required under RCW 15.115.150.

(2) The director may provide by rule for a method to fund staff support for all commodity boards or commissions in accordance with RCW 43.23.033 if a position is not directly funded by the legislature and costs are related to the specific activity undertaken on behalf of an individual commodity board or commission. The commission shall provide funds to the department according to the rules adopted by the director. [2009 c 33 § 25.]

**15.115.250 Preparation of lists of producers and handlers of wheat and barley.** (1) The commission shall prepare a list of all producers of wheat and a list of all producers of barley, which must include for each producer his or her name and address and the amount, by unit, of wheat or barley produced during the past three years.

(2) The commission shall prepare a list of all persons who handle wheat and all persons who handle barley, which must include for each handler his or her name and address and the amount, by unit, of wheat or barley handled during the past three years.

(3) It is the responsibility of each producer or handler to ensure that his or her correct address is filed with the commodity commission and to submit production data and handling data to the commission as prescribed in this chapter.

(4) Any qualified person may, at any time, have his or her name placed upon any list for which he or she qualifies by

delivering or mailing the information to the commission. The lists must be corrected and brought up-to-date in accordance with evidence and information provided to the commission.

(5) For all purposes of giving notice, conducting advisory votes, and holding referenda, the applicable list corrected up to the day preceding the date the list is certified by the commission is the list of all affected producers entitled to notice or to vote. Inadvertent failure to notify an affected producer does not invalidate a proceeding conducted under this chapter.

(6) At the director's request when conducting a referendum for the commission, the commission shall provide the director a certified list of affected producers from the commission records. The list must include all information required by the director to conduct a referendum under this chapter, must be used to determine assent as provided in this chapter, and must be kept in the rule-making file by the director. [2009 c 33 § 26.]

**15.115.260 Annual assessments—Adjustments—Referendum—Temporary reduction—Limit on annual assessment.** (1)(a) The initial annual assessments are the amounts most recently approved by referendum by wheat producers and barley producers and effective at the time the grain commission is established:

(i) The initial annual assessment on wheat is three-fourths of one percent of the net receipts at the first point of sale;

(ii) The initial annual assessment on barley is one percent of the net receipts at the first point of sale.

(b) The initial annual assessments established in this subsection are effective unless and until changed pursuant to the procedure in subsection (2) of this section.

(2)(a) If the commission determines, based on information available to it, that the revenue from the assessment levied on wheat or barley under this chapter is too high or is inadequate to accomplish the purposes of this chapter, then with the oversight of the director the commission shall adopt a resolution setting forth the needs of the industry, the extent and probable cost of the commission activities identified as necessary to address the needs of the industry together with a brief statement justifying each activity, the proposed new assessment rate, and the expected revenue from the proposed assessment levied. The resolution must be submitted to the director for review and approval.

(b) If the director objects to the proposed new assessment rate, the director shall explain the reasons for the objection to the commission in writing. The commission may adopt a revised resolution and submit it to the director for review and approval.

(c) Upon receiving the director's approval and with the director's oversight, the commission may conduct a referendum to determine whether affected producers assent to the proposed new assessment rate, or may refer the matter to the director to conduct the referendum on behalf of the commission. Only wheat producers may vote on a proposed new assessment rate on wheat, and only barley producers may vote on a proposed new assessment rate on barley.

(i) The producers have assented to the new rate if more than fifty percent by number and more than fifty percent by volume of those replying assent. The determination by vol-

ume is made on the basis of volume as determined in the list of affected producers created under RCW 15.115.250.

(ii) Results of the referendum must be communicated via the news media.

(iii) If the requisite assent is given, the commission shall adopt the new rate at its next meeting. The new rate must be adopted by rule in accordance with chapter 34.05 RCW, except as provided in RCW 15.115.160.

(3)(a) Notwithstanding the provisions in subsection (2) of this section, the commission may, by majority vote of a quorum of its members, adopt a finding that its current revenue substantially exceeds that needed to support the current needs of the industry and the current cost of commission activities and order a temporary reduction in the annual assessments below the rate currently authorized under subsection (1) of this section.

(b) With the director's approval, such a reduction commences on July 1st following the commission's action and expires automatically on June 30th of the subsequent year unless extended by a new action of the commission under this subsection.

(c) Any action taken under this subsection must be communicated to affected producers via the news media and any other means it deems effective.

(4) The annual assessment authorized in this chapter may not exceed three percent of the total market value of all affected units sold, processed, stored, or delivered for sale, processing, or storage by all affected producers of wheat or barley during the year to which the assessment applies. [2009 c 33 § 27.]

**15.115.270 Collection of assessment—Failure to pay assessment—Civil action—Venue.** (1) The collection of the assessment made and levied by the commission must be paid by the producer upon all commercial quantities of wheat and all commercial quantities of barley sold, processed, stored, or delivered for sale, processing, or storage by the producer. However, an assessment may not be levied or collected on wheat or barley grown and used by the producer for feed, seed, or personal consumption.

(2) Handlers including warehousemen, processors, and feedlots receiving wheat or barley in commercial quantities from producers shall collect the assessment made and levied by the commission from each producer whose production they handle and remit the assessment to the commission on a monthly basis. Affected units of wheat or barley must not be transported, carried, shipped, sold, stored, or otherwise handled or disposed of until every due and payable assessment under this chapter has been paid and the receipt issued, but liability under this chapter does not attach to common carriers in the regular course of their business.

(3) Any due and payable assessment levied under this chapter constitutes a personal debt of every person so assessed or who otherwise owes the assessment, and the assessment is due and payable to the commission on a monthly basis. In the event any person fails to pay the full amount of such an assessment, the commission may add to the unpaid assessment an amount not exceeding ten percent of the unpaid assessment to defray the cost of enforcing the collecting of the unpaid assessment. In the event of failure of the person or persons to pay any due and payable assessment,

the commission may bring a civil action against the person or persons in a state court of competent jurisdiction for the collection thereof, together with the additional ten percent, and the action must be tried and judgment rendered as in any other cause of action for debt due and payable. Venue for an action against a person owing a due and payable assessment to the commission is in Spokane county or a county in which the person produces or handles wheat or barley. [2009 c 33 § 28.]

**15.115.280 Use of moneys received by the commission under this chapter.** (1) All moneys collected or otherwise received by the commission under this chapter must be used solely by and for the commission and may not be used for any other commission or the department, except as otherwise provided in this chapter. These moneys must be deposited in accounts in the name of the commission in any bank which is a state depository. All expenses and disbursements incurred and made under this chapter must be paid from moneys collected and received under this chapter without the necessity of a specific legislative appropriation, and all moneys deposited for the account of any order must be paid from the account by check or voucher in the form and in the manner and upon the signature of the person as may be prescribed by the commission. RCW 43.01.050 is not applicable to such an account or any moneys so received, collected, or expended.

(2) The commission shall ensure that the expenditure of assessments collected from wheat producers and moneys transferred from the wheat commission under RCW 15.115.130(2) are used for purposes related to the wheat industry and that the expenditure of assessments collected from barley producers and moneys transferred from the barley commission under RCW 15.115.130(2) are used for purposes related to the barley industry. However, this section does not prevent assessments from wheat, assessments from barley, and moneys transferred from the wheat commission or barley commission under RCW 15.115.130(2) to be combined or used together for activities, projects, and other endeavors that benefit both the wheat and barley industries. [2009 c 33 § 29.]

**15.115.290 Investment of funds of the commission.** (1) Any funds of the commission may be invested in savings or time deposits in banks, trust companies, and mutual savings banks that are doing business in the United States, up to the amount of insurance afforded those accounts by the federal deposit insurance corporation.

(2) This section applies to all funds which may be lawfully so invested, which in the judgment of the commission are not required for immediate expenditure. The authority granted by this section is not exclusive and is cumulative and in addition to other authority provided by law for the investment of the funds including, but not limited to, authority granted under chapters 39.58, 39.59, and 43.84 RCW. [2009 c 33 § 30.]

**15.115.300 Proof of eligibility to vote or hold a position on the commission—Records—Inspection by commission—Confidentiality of information—Limitation of**

**section.** (1) To prove eligibility to vote or hold a position on the commission, each producer must show records of sales of commercial quantities of wheat or barley sold within the past three years if requested by the commission.

(2) Each handler shall keep a complete and accurate record of all wheat and barley handled.

(3) Handlers' records must be in the form and contain the information as the commission may by rule prescribe, must be preserved for a period of three years, and are subject to inspection at any time upon demand of the commission or its agents.

(4) The commission through its agents may enter and inspect the premises and records of any handler of wheat or barley for the purpose of enforcing this chapter. The commission has the authority to issue subpoenas for the production of books, records, documents, and other writings of any kind from any handler and from any person having, either directly or indirectly, actual or legal control of or over the premises, books, records, documents, or other writings, for the purpose of enforcing this chapter or rules adopted under this chapter.

(5) All information furnished to or acquired by the commission or by an agent of the commission under this section must be kept confidential by all officers, employees, and agents of the commission, except as may be necessary in a suit or other legal proceeding brought by, on behalf of, or against the commission or its employees or agents involving the enforcement of this chapter or rules adopted under this chapter.

(6) This section does not prohibit:

(a) The issuance of general statements based upon the reports of a number of persons subject to this chapter, which statements do not identify the information furnished by any person; or

(b) The publication by the commission or the director of the name of any person violating this chapter or rules adopted under this chapter, together with a statement of the particular provisions and the manner of the violation. [2009 c 33 § 31.]

**15.115.310 Penalties—Injunctions—Referring a violation to the county prosecutor—Jurisdiction.** (1) It is a misdemeanor for any person willfully to:

(a) Violate or aid in the violation of this chapter or rules adopted under this chapter;

(b) Submit a false or fraudulent report, statement, or record required by the director or the commission under this chapter or rules adopted under this chapter; or

(c) Fail or refuse to submit a report, statement, or record required by the director or the commission under this chapter or rules adopted under this chapter.

(2) In the event of a violation or threatened violation of this chapter or rules adopted under this chapter, the director or the commission is entitled to an injunction in a court of competent jurisdiction to prevent further violation and to a decree of specific performance, and to a temporary restraining order and injunction pending litigation.

(3) In the event of a violation or threatened violation of this chapter or rules adopted under this chapter, the director, the commission, or any affected producer on joining the commission may refer the violation to the prosecutor in any county in which the defendant or any defendant resides, or in

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which the violation was committed, or in which the defendant or any defendant has his or her principal place of business.

(4) The superior courts are hereby vested with jurisdiction to enforce this chapter and the rules of the commission issued under this chapter, and to prevent and restrain violations of this chapter. [2009 c 33 § 32.]

**15.115.900 Severability—2009 c 33.** 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. [2009 c 33 § 39.]

## Title 16

### ANIMALS AND LIVESTOCK

#### Chapters

**16.36 Animal health.**

**16.52 Prevention of cruelty to animals.**

#### Chapter 16.36 RCW

#### ANIMAL HEALTH

##### Sections

16.36.116 Civil infraction—Live nonambulatory livestock—Monetary penalty—Authorization by director—Issuance of notices—Enforcement.

**16.36.116 Civil infraction—Live nonambulatory livestock—Monetary penalty—Authorization by director—Issuance of notices—Enforcement.** (1) Any person found transporting animals on the public roads of this state that are not accompanied by valid health certificates, permits, or other documents as required by this chapter or its rules has committed a class 1 civil infraction.

(2) Any person who knowingly transports or accepts delivery of live nonambulatory livestock to, from, or between any livestock market, feedlot, slaughtering facility, or similar facility that trades in livestock has committed a civil infraction and shall be assessed a monetary penalty not to exceed one thousand dollars. The transport or acceptance of each nonambulatory livestock animal is considered a separate and distinct violation. Livestock that was ambulatory prior to transport to a feedlot and becomes nonambulatory because of an injury sustained during transport may be unloaded and placed in a separate pen for rehabilitation at the feedlot. For the purposes of this section, "nonambulatory livestock" has the same meaning as in RCW 16.52.225.

(3) The director is authorized to issue notices of and enforce civil infractions in the manner prescribed under chapter 7.80 RCW. [2009 c 347 § 1; 2007 c 71 § 3.]

#### Chapter 16.52 RCW

#### PREVENTION OF CRUELTY TO ANIMALS

##### Sections

16.52.011 Definitions—Principles of liability.  
16.52.085 Removal of animals for feeding—Examination—Notice—Euthanasia.

- 16.52.200 Sentences—Forfeiture of animals—Liability for costs—Civil penalty—Education, counseling.
- 16.52.225 Nonambulatory livestock—Transporting or accepting delivery—Gross misdemeanor—Definition.
- 16.52.310 Dog breeding—Limit on the number of dogs—Required conditions—Penalty—Limitation of section—Definitions. (Effective January 1, 2010.)

**16.52.011 Definitions—Principles of liability.** (1) Principles of liability as defined in chapter 9A.08 RCW apply to this chapter.

(2) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Abandons" means the knowing or reckless desertion of an animal by its owner or the causing of the animal to be deserted by its owner, in any place, without making provisions for the animal's adequate care.

(b) "Animal" means any nonhuman mammal, bird, reptile, or amphibian.

(c) "Animal care and control agency" means any city or county animal control agency or authority authorized to enforce city or county municipal ordinances regulating the care, control, licensing, or treatment of animals within the city or county, and any corporation organized under RCW 16.52.020 that contracts with a city or county to enforce the city or county ordinances governing animal care and control.

(d) "Animal control officer" means any individual employed, contracted, or appointed pursuant to RCW 16.52.025 by an animal care and control agency or humane society to aid in the enforcement of ordinances or laws regulating the care and control of animals. For purposes of this chapter, the term "animal control officer" shall be interpreted to include "humane officer" as defined in (f) of this subsection and RCW 16.52.025.

(e) "Euthanasia" means the humane destruction of an animal accomplished by a method that involves instantaneous unconsciousness and immediate death, or by a method that causes painless loss of consciousness, and death during the loss of consciousness.

(f) "Humane officer" means any individual employed, contracted, or appointed by an animal care and control agency or humane society as authorized under RCW 16.52.025.

(g) "Law enforcement agency" means a general authority Washington law enforcement agency as defined in RCW 10.93.020.

(h) "Necessary food" means the provision at suitable intervals of wholesome foodstuff suitable for the animal's age and species and sufficient to provide a reasonable level of nutrition for the animal.

(i) "Owner" means a person who has a right, claim, title, legal share, or right of possession to an animal or a person having lawful control, custody, or possession of an animal.

(j) "Person" means individuals, corporations, partnerships, associations, or other legal entities, and agents of those entities.

(k) "Similar animal" means an animal classified in the same genus.

(l) "Substantial bodily harm" means substantial bodily harm as defined in RCW 9A.04.110. [2009 c 287 § 1; 2007 c 376 § 2; 1994 c 261 § 2.]

**Finding—Intent—1994 c 261:** "The legislature finds there is a need to modernize the law on animal cruelty to more appropriately address the

nature of the offense. It is not the intent of this act to remove or decrease any of the exemptions from the statutes on animal cruelty that now apply to customary animal husbandry practices, state game or fish laws, rodeos, fairs under chapter 15.76 RCW, or medical research otherwise authorized under federal or state law. It is the intent of this act to require the enforcement of chapter 16.52 RCW by persons who are accountable to elected officials at the local and state level." [1994 c 261 § 1.]

**16.52.085 Removal of animals for feeding—Examination—Notice—Euthanasia.** (1) If a law enforcement officer or animal control officer has probable cause to believe that an owner of a domestic animal has violated this chapter or owns or possesses an animal in violation of an order issued under RCW 16.52.200(3) and no responsible person can be found to assume the animal's care, the officer may authorize, with a warrant, the removal of the animal to a suitable place for feeding and care, or may place the animal under the custody of an animal care and control agency. In determining what is a suitable place, the officer shall consider the animal's needs, including its size and behavioral characteristics. An officer may remove an animal under this subsection without a warrant only if the animal is in an immediate life-threatening condition.

(2) If a law enforcement officer or an animal control officer has probable cause to believe a violation of this chapter has occurred, the officer may authorize an examination of a domestic animal allegedly neglected or abused in violation of this chapter by a veterinarian to determine whether the level of neglect or abuse in violation of this chapter is sufficient to require removal of the animal. This section does not condone illegal entry onto private property.

(3) Any owner whose domestic animal is removed pursuant to this chapter shall be given written notice of the circumstances of the removal and notice of legal remedies available to the owner. The notice shall be given by posting at the place of seizure, by delivery to a person residing at the place of seizure, or by registered mail if the owner is known. In making the decision to remove an animal pursuant to this chapter, the officer shall make a good faith effort to contact the animal's owner before removal.

(4) The agency having custody of the animal may euthanize the animal or may find a responsible person to adopt the animal not less than fifteen business days after the animal is taken into custody. A custodial agency may euthanize severely injured, diseased, or suffering animals at any time. An owner may prevent the animal's destruction or adoption by: (a) Petitioning the district court of the county where the animal was seized for the animal's immediate return subject to court-imposed conditions, or (b) posting a bond or security in an amount sufficient to provide for the animal's care for a minimum of thirty days from the seizure date. If the custodial agency still has custody of the animal when the bond or security expires, the animal shall become the agency's property unless the court orders an alternative disposition. If a court order prevents the agency from assuming ownership and the agency continues to care for the animal, the court shall order the owner to renew a bond or security for the agency's continuing costs for the animal's care. When a court has prohibited the owner from owning or possessing a similar animal under RCW 16.52.200(3), the agency having custody of the animal may assume ownership upon seizure and the owner

may not prevent the animal's destruction or adoption by petitioning the court or posting a bond.

(5) If no criminal case is filed within fourteen business days of the animal's removal, the owner may petition the district court of the county where the animal was removed for the animal's return. The petition shall be filed with the court, with copies served to the law enforcement or animal care and control agency responsible for removing the animal and to the prosecuting attorney. If the court grants the petition, the agency which seized the animal must deliver the animal to the owner at no cost to the owner. If a criminal action is filed after the petition is filed but before the animal is returned, the petition shall be joined with the criminal matter.

(6) In a motion or petition for the animal's return before a trial, the burden is on the owner to prove by a preponderance of the evidence that the animal will not suffer future neglect or abuse and is not in need of being restored to health.

(7) Any authorized person treating or attempting to restore an animal to health under this chapter shall not be civilly or criminally liable for such action. [2009 c 287 § 2; 1994 c 261 § 6; 1987 c 335 § 1; 1974 ex.s. c 12 § 2.]

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

**Construction—1987 c 335:** "Nothing in this act shall be construed as expanding or diminishing, in any manner whatsoever, any authority granted officers under RCW 16.52.020 or 16.52.030." [1987 c 335 § 6.]

**Severability—1987 c 335:** "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 335 § 7.]

**16.52.200 Sentences—Forfeiture of animals—Liability for costs—Civil penalty—Education, counseling.** (1) The sentence imposed for a misdemeanor or gross misdemeanor violation of this chapter may be deferred or suspended in accordance with RCW 3.66.067 and 3.66.068, however the probationary period shall be two years.

(2) In case of multiple misdemeanor or gross misdemeanor convictions, the sentences shall be consecutive, however the probationary period shall remain two years.

(3) In addition to the penalties imposed by the court, the court shall order the forfeiture of all animals held by law enforcement or animal care and control authorities under the provisions of this chapter if any one of the animals involved dies as a result of a violation of this chapter or if the defendant has a prior conviction under this chapter. In other cases the court may enter an order requiring the owner to forfeit the animal if the court deems the animal's treatment to have been severe and likely to reoccur. If forfeiture is ordered, the owner shall be prohibited from owning or caring for any similar animals for a period of time as follows:

(a) Two years for a first conviction of animal cruelty in the second degree under RCW 16.52.207;

(b) Permanently for a first conviction of animal cruelty in the first degree under RCW 16.52.205;

(c) Permanently for a second or subsequent conviction of animal cruelty, except as provided in subsection (4) of this section.

(4) If a person has no more than two convictions of animal cruelty and each conviction is for animal cruelty in the second degree, the person may petition the sentencing court in which the most recent animal cruelty conviction occurred,

for a restoration of the right to own or possess a similar animal five years after the date of the second conviction. In determining whether to grant the petition, the court shall consider, but not be limited to, the following:

(a) The person's prior animal cruelty in the second degree convictions;

(b) The type of harm or violence inflicted upon the animals;

(c) Whether the person has completed the conditions imposed by the court as a result of the underlying convictions; and

(d) Any other matters the court finds reasonable and material to consider in determining whether the person is likely to abuse another animal.

The court may delay its decision on forfeiture under subsection (3) of this section until the end of the probationary period.

(5) In addition to fines and court costs, the defendant, only if convicted or in agreement, shall be liable for reasonable costs incurred pursuant to this chapter by law enforcement agencies, animal care and control agencies, or authorized private or public entities involved with the care of the animals. Reasonable costs include expenses of the investigation, and the animal's care, euthanization, or adoption.

(6) If convicted, the defendant shall also pay a civil penalty of one thousand dollars to the county to prevent cruelty to animals. These funds shall be used to prosecute offenses under this chapter and to care for forfeited animals pending trial.

(7) As a condition of the sentence imposed under this chapter or RCW 9.08.070 through 9.08.078, the court may also order the defendant to participate in an available animal cruelty prevention or education program or obtain available psychological counseling to treat mental health problems contributing to the violation's commission. The defendant shall bear the costs of the program or treatment. [2009 c 287 § 3; 2003 c 53 § 113; 1994 c 261 § 14; 1987 c 335 § 2.]

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

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

**Construction—Severability—1987 c 335:** See notes following RCW 16.52.085.

**16.52.225 Nonambulatory livestock—Transporting or accepting delivery—Gross misdemeanor—Definition.**

(1) Unless otherwise cited for a civil infraction by the department of agriculture under RCW 16.36.116(2), a person is guilty of a gross misdemeanor punishable as provided in RCW 9A.20.021 if he or she knowingly transports or accepts delivery of live nonambulatory livestock to, from, or between any livestock market, feedlot, slaughtering facility, or similar facility that trades in livestock. The transport or acceptance of each nonambulatory livestock animal is considered a separate and distinct violation.

(2) Nonambulatory livestock must be humanely euthanized before transport to, from, or between locations listed in subsection (1) of this section.

(3) Livestock that was ambulatory prior to transport to a feedlot and becomes nonambulatory because of an injury sustained during transport may be unloaded and placed in a separate pen for rehabilitation at the feedlot.

(4) For the purposes of this section, "nonambulatory livestock" means cattle, sheep, swine, goats, horses, mules, or other equine that cannot rise from a recumbent position or cannot walk, including but not limited to those with broken appendages, severed tendons or ligaments, nerve paralysis, a fractured vertebral column, or metabolic conditions. [2009 c 347 § 2; 2004 c 234 § 1.]

**Effective date—2004 c 234:** "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 31, 2004]." [2004 c 234 § 2.]

**16.52.310 Dog breeding—Limit on the number of dogs—Required conditions—Penalty—Limitation of section—Definitions. (Effective January 1, 2010.)** (1) A person may not own, possess, control, or otherwise have charge or custody of more than fifty dogs with intact sexual organs over the age of six months at any time.

(2) Any person who owns, possesses, controls, or otherwise has charge or custody of more than ten dogs with intact sexual organs over the age of six months and keeps the dogs in an enclosure for the majority of the day must at a minimum:

(a) Provide space to allow each dog to turn about freely, to stand, sit, and lie down. The dog must be able to lie down while fully extended without the dog's head, tail, legs, face, or feet touching any side of an enclosure and without touching any other dog in the enclosure when all dogs are lying down simultaneously. The interior height of the enclosure must be at least six inches higher than the head of the tallest dog in the enclosure when it is in a normal standing position. Each enclosure must be at least three times the length and width of the longest dog in the enclosure, from tip of nose to base of tail and shoulder blade to shoulder blade.

(b) Provide each dog that is over the age of four months with a minimum of one exercise period during each day for a total of not less than one hour of exercise during such day. Such exercise must include either leash walking or giving the dog access to an enclosure at least four times the size of the minimum allowable enclosure specified in (a) of this subsection allowing the dog free mobility for the entire exercise period, but may not include use of a cat mill, jenny mill, slat mill, or similar device, unless prescribed by a doctor of veterinary medicine. The exercise requirements in this subsection do not apply to a dog certified by a doctor of veterinary medicine as being medically precluded from exercise.

(c) Maintain adequate housing facilities and primary enclosures that meet the following requirements at a minimum:

(i) Housing facilities and primary enclosures must be kept in a sanitary condition. Housing facilities where dogs are kept must be sufficiently ventilated at all times to minimize odors, drafts, ammonia levels, and to prevent moisture condensation. Housing facilities must have a means of fire suppression, such as functioning fire extinguishers, on the premises and must have sufficient lighting to allow for observation of the dogs at any time of day or night;

(ii) Housing facilities must enable all dogs to remain dry and clean;

(iii) Housing facilities must provide shelter and protection from extreme temperatures and weather conditions that may be uncomfortable or hazardous to the dogs;

(iv) Housing facilities must provide sufficient shade to shelter all the dogs housed in the primary enclosure at one time;

(v) A primary enclosure must have floors that are constructed in a manner that protects the dogs' feet and legs from injury;

(vi) Primary enclosures must be placed no higher than forty-two inches above the floor and may not be placed over or stacked on top of another cage or primary enclosure;

(vii) Feces, hair, dirt, debris, and food waste must be removed from primary enclosures at least daily or more often if necessary to prevent accumulation and to reduce disease hazards, insects, pests, and odors; and

(viii) All dogs in the same enclosure at the same time must be compatible, as determined by observation. Animals with a vicious or aggressive disposition must never be placed in an enclosure with another animal, except for breeding purposes. Breeding females in heat may not be in the same enclosure at the same time with sexually mature males, except for breeding purposes. Breeding females and their litters may not be in the same enclosure at the same time with other adult dogs. Puppies under twelve weeks may not be in the same enclosure at the same time with other adult dogs, other than the dam or foster dam unless under immediate supervision.

(d) Provide dogs with easy and convenient access to adequate amounts of clean food and water. Food and water receptacles must be regularly cleaned and sanitized. All enclosures must contain potable water that is not frozen, is substantially free from debris, and is readily accessible to all dogs in the enclosure at all times.

(e) Provide veterinary care without delay when necessary. A dog may not be bred if a veterinarian determines that the animal is unfit for breeding purposes. Only dogs between the ages of twelve months and eight years of age may be used for breeding. Animals requiring euthanasia must be euthanized only by a licensed veterinarian.

(3) A person who violates subsection (1) or (2) of this section is guilty of a gross misdemeanor.

(4) This section does not apply to the following:

(a) A publicly operated animal control facility or animal shelter;

(b) A private, charitable not-for-profit humane society or animal adoption organization;

(c) A veterinary facility;

(d) A retail pet store;

(e) A research institution;

(f) A boarding facility; or

(g) A grooming facility.

(5) Subsection (1) of this section does not apply to a commercial dog breeder licensed, before January 1, 2010, by the United States department of agriculture pursuant to the federal animal welfare act (Title 7 U.S.C. Sec. 2131 et seq.).

(6) For the purposes of this section, the following definitions apply, unless the context clearly requires otherwise:

(a) "Dog" means any member of *Canis lupus familiaris*; and

(b) "Retail pet store" means a commercial establishment that engages in a for-profit business of selling at retail cats, dogs, or other animals to be kept as household pets and is regulated by the United States department of agriculture. [2009 c 286 § 2.]

**Findings—2009 c 286:** "The legislature finds that:

(1) Dogs are neither a commercial crop nor commodity and should not be indiscriminately or irresponsibly mass produced;

(2) Large-scale dog breeding increases the likelihood that the dogs will be denied their most basic needs including but not limited to: Sanitary living conditions, proper and timely medical care, the ability to move freely at least once per day, and adequate shelter from the elements;

(3) Without proper oversight, large-scale breeding facilities can easily fall below even the most basic standards of humane housing and husbandry;

(4) Current Washington state laws are inadequate regarding the care and husbandry of dogs in large-scale breeding facilities;

(5) No Washington state agency currently regulates large-scale breeding facilities;

(6) The United States department of agriculture does not regulate large-scale breeding facilities that sell dogs directly to the public and thus, such direct-sales breeders are currently exempt from even the minimum care and housing standards outlined in the federal animal welfare act;

(7) Documented conditions at large-scale breeding facilities include unsanitary conditions, potential for soil and groundwater contamination, the spread of zoonotic parasites and infectious diseases, and the sale of sick and dying animals to the public; and

(8) An unfair fiscal burden is placed on city, county, and state taxpayers as well as government agencies and nongovernmental organizations, which are required to care for discarded or abused and neglected dogs from large-scale breeding facilities." [2009 c 286 § 1.]

**Effective date—2009 c 286:** "This act takes effect January 1, 2010." [2009 c 286 § 3.]

**Title 17**

**WEEDS, RODENTS, AND PESTS**

**Chapters**

**17.21 Washington pesticide application act.**

**Chapter 17.21 RCW**

**WASHINGTON PESTICIDE APPLICATION ACT**

Sections

17.21.415 Schools—Policies and methods—Notification—Records—Liability.

**17.21.415 Schools—Policies and methods—Notification—Records—Liability.** (1) As used in this section, "school" means a licensed day care center or a public kindergarten or a public elementary or secondary school.

(2) A school shall provide written notification, upon request, to parents or guardians of students and employees describing the school's pest control policies and methods, including the posting and notification requirements of this section.

(3) A school shall establish a notification system that, as a minimum, notifies interested parents or guardians of students and employees at least forty-eight hours before a pesticide application to a school facility. The notification system shall include posting of the notification in a prominent place in the main office of the school.

(4) All notifications to parents, guardians, and employees shall include the heading "Notice: Pesticide Application" and, at a minimum, shall state:

- (a) The product name of the pesticide to be applied;
- (b) The intended date and time of application;
- (c) The location to which the pesticide is to be applied;
- (d) The pest to be controlled; and
- (e) The name and phone number of a contact person at the school.

(5) A school facility application must be made within forty-eight hours following the intended date and time stated in the notification or the notification process shall be repeated.

(6) A school shall, at the time of application, post notification signs for all pesticide applications made to school facilities unless the application is otherwise required to be posted by a certified applicator under the provisions of RCW 17.21.410(1)(d).

(a) Notification signs for applications made to school grounds by school employees shall be placed at the location of the application and at each primary point of entry to the school grounds. The signs shall be a minimum of four inches by five inches and shall include the words: "THIS LANDSCAPE HAS BEEN RECENTLY SPRAYED OR TREATED WITH PESTICIDES BY YOUR SCHOOL" as the headline and "FOR MORE INFORMATION PLEASE CALL" as the footer. The footer shall provide the name and telephone number of a contact person at the school.

(b) Notification signs for applications made to school facilities other than school grounds shall be posted at the location of the application. The signs shall be a minimum of eight and one-half by eleven inches and shall include the heading "Notice: Pesticide Application" and, at a minimum, shall state:

- (i) The product name of the pesticide applied;
- (ii) The date and time of application;
- (iii) The location to which the pesticide was applied;
- (iv) The pest to be controlled; and
- (v) The name and phone number of a contact person at the school.

(c) Notification signs shall be printed in colors contrasting to the background.

(d) Notification signs shall remain in place for at least twenty-four hours from the time the application is completed. In the event the pesticide label requires a restricted entry interval greater than twenty-four hours, the notification sign shall remain in place consistent with the restricted entry interval time as required by the label.

(7) A school facility application does not include the application of antimicrobial pesticides or the placement of insect or rodent baits that are not accessible to children.

(8) The prenotification requirements of this section do not apply if the school facility application is made when the school is not occupied by students for at least two consecutive days after the application.

(9) The prenotification requirements of this section do not apply to any emergency school facility application for control of any pest that poses an immediate human health or safety threat, such as an application to control stinging insects. When an emergency school facility application is made, notification consistent with the school's notification system shall occur as soon as possible after the application. The notification shall include information consistent with subsection (6)(b) of this section.



(10) A school shall make the records of all pesticide applications to school facilities required under this chapter, including an annual summary of the records, readily accessible to interested persons.

(11) A school is not liable for the removal of signs by unauthorized persons. A school that complies with this section may not be held liable for personal property damage or bodily injury resulting from signs that are placed as required. [2009 c 556 § 16; 2001 c 333 § 3.]

Effective date—2001 c 333: See note following RCW 17.21.020.

## Title 18

### BUSINESSES AND PROFESSIONS

#### Chapters

18.04	Accountancy.
18.06	Acupuncture.
18.20	Boarding homes.
18.27	Registration of contractors.
18.29	Dental hygienists.
18.32	Dentistry.
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18.39	Embalmers—Funeral directors.
18.51	Nursing homes.
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18.64	Pharmacists.
18.71	Physicians.
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18.88A	Nursing assistants.
18.88B	Long-term care workers.
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18.118	Regulation of business professions.
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18.135	Health care assistants.
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18.225	Mental health counselors, marriage and family therapists, social workers.
18.235	Uniform regulation of business and professions act.
18.290	Genetic counselors.
18.300	Body art, body piercing, and tattooing.

#### Chapter 18.04 RCW

#### ACCOUNTANCY

#### Sections

18.04.345 Prohibited practices.

**18.04.345 Prohibited practices.** (1) No individual may assume or use the designation "certified public accountant-inactive" or "CPA-inactive" or any other title, designation,

words, letters, abbreviation, sign, card, or device tending to indicate that the individual is a certified public accountant-inactive or CPA-inactive unless the individual holds a certificate. Individuals holding only a certificate may not practice public accounting.

(2) No individual may hold himself or herself out to the public or assume or use the designation "certified public accountant" or "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the individual is a certified public accountant or CPA unless the individual qualifies for the privileges authorized by RCW 18.04.350(2) or holds a license under RCW 18.04.105 and 18.04.215.

(3) No firm with an office in this state may perform or offer to perform attest services as defined in RCW 18.04.025(1) or compilation services as defined in RCW 18.04.025(6) or assume or use the designation "certified public accountant" or "CPA" or any other title, designation, words, letters, abbreviation, sign, card, or device tending to indicate that the firm is composed of certified public accountants or CPAs, unless the firm is licensed under RCW 18.04.195 and all offices of the firm in this state are maintained and registered under RCW 18.04.205. This subsection does not limit the services permitted under RCW 18.04.350(10) by persons not required to be licensed under this chapter.

(4) No firm may perform the services defined in RCW 18.04.025(1) (a), (c), or (d) for a client with its home office in this state unless the firm is licensed under RCW 18.04.195, renews the firm license as required under RCW 18.04.215, and all offices of the firm in this state are maintained and registered under RCW 18.04.205.

(5) No individual, partnership, limited liability company, or corporation offering public accounting services to the public may hold himself, herself, or itself out to the public, or assume or use along, or in connection with his, hers, or its name, or any other name the title or designation "certified accountant," "chartered accountant," "licensed accountant," "licensed public accountant," "public accountant," or any other title or designation likely to be confused with "certified public accountant" or any of the abbreviations "CA," "LA," "LPA," or "PA," or similar abbreviations likely to be confused with "CPA."

(6) No licensed firm may operate under an alias, a firm name, title, or "DBA" that differs from the firm name that is registered with the board.

(7) No individual with an office in this state may sign, affix, or associate his or her name or any trade or assumed name used by the individual in his or her business to any report prescribed by professional standards unless the individual holds a license to practice under RCW 18.04.105 and 18.04.215, a firm holds a license under RCW 18.04.195, and all of the individual's offices in this state are registered under RCW 18.04.205.

(8) No individual licensed in another state may sign, affix, or associate a firm name to any report prescribed by professional standards, or associate a firm name in conjunction with the title certified public accountant, unless the individual:

(a) Qualifies for the practice privileges authorized by RCW 18.04.350(2); or

(b) Is licensed under RCW 18.04.105 and 18.04.215, and all of the individual's offices in this state are maintained and registered under RCW 18.04.205.

(9) No individual, partnership, limited liability company, or corporation not holding a license to practice under RCW 18.04.105 and 18.04.215, or firm not licensed under RCW 18.04.195 or firm not registering all of the firm's offices in this state under RCW 18.04.205, or not qualified for the practice privileges authorized by RCW 18.04.350(2), may hold himself, herself, or itself out to the public as an "auditor" with or without any other description or designation by use of such word on any sign, card, letterhead, or in any advertisement or directory.

(10) For purposes of this section, because individuals practicing using practice privileges under RCW 18.04.350(2) are deemed substantially equivalent to licensees under RCW 18.04.105 and 18.04.215, every word, term, or reference that includes the latter shall be deemed to include the former, provided the conditions of such practice privilege, as set forth in RCW 18.04.350 (4) and (5) are maintained.

(11) Notwithstanding anything to the contrary in this section, it is not a violation of this section for a firm that does not hold a valid license under RCW 18.04.195 and that does not have an office in this state to provide its professional services in this state so long as it complies with the requirements of RCW 18.04.195(1)(b). [2009 c 116 § 1; 2008 c 16 § 5; 2001 c 294 § 17; 1999 c 378 § 8; 1992 c 103 § 14; 1986 c 295 § 15; 1983 c 234 § 16.]

**Finding—Intent—2008 c 16:** See note following RCW 18.04.025.

**Effective date—2001 c 294:** See note following RCW 18.04.015.

## Chapter 18.06 RCW ACUPUNCTURE

### Sections

18.06.080 Authority of secretary—Examination—Contents—Immunity.

**18.06.080 Authority of secretary—Examination—Contents—Immunity.** (1) The secretary is hereby authorized and empowered to execute the provisions of this chapter and shall offer examinations in acupuncture at least twice a year at such times and places as the secretary may select. The examination shall be a written examination and may include a practical examination.

(2) The secretary shall develop or approve a licensure examination in the subjects that the secretary determines are within the scope of and commensurate with the work performed by licensed acupuncturists and shall include but not necessarily be limited to anatomy, physiology, microbiology, biochemistry, pathology, hygiene, and acupuncture. All application papers shall be deposited with the secretary and there retained for at least one year, when they may be destroyed.

(3) If the examination is successfully passed, the secretary shall confer on such candidate the title of Licensed Acupuncturist.

(4) The secretary, ad hoc committee members, or individuals acting in their behalf are immune from suit in a civil action based on any certification or disciplinary proceedings or other official acts performed in the course of their duties.

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[2009 c 560 § 2; 1995 c 323 § 7; 1994 sp.s. c 9 § 502; 1992 c 110 § 3; 1991 c 3 § 10; 1985 c 326 § 8.]

**Intent—2009 c 560:** "One of the key roles of advisory boards, committees, and commissions is to provide input, advice and recommendations from stakeholders, other interested parties, and the public to state agencies. Some advisory boards, committees, and commissions may be abolished without detriment to the mission of the agency each supports. Most of the advisory functions of some boards, committees, and commissions can be performed without the administrative costs of maintaining formal organizations. In the interest of building a leaner, more efficient, and more responsible government, this vital communications conduit must be maintained for the benefit of the state and its citizens, through the use of modern communication technology. It is the intent of the legislature this interim to identify criteria to evaluate those advisory boards, committees, and commissions that may be eliminated or consolidated, and for agencies to identify new, less costly, and more effective opportunities to ensure a broad range of citizen participation is provided and that all reasonable efforts are made to ensure that channels are maintained for vital input from the citizens of Washington." [2009 c 560 § 1.]

**Effective date—2009 c 560:** "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 June 30, 2009." [2009 c 560 § 30.]

**Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560:** "(1) All documents and papers, equipment, or other tangible property in the possession of the terminated entity shall be delivered to the custody of the entity assuming the responsibilities of the terminated entity or if such responsibilities have been eliminated, documents and papers shall be delivered to the state archivist and equipment or other tangible property to the department of general administration.

(2) All funds held by, or other moneys due to, the terminated entity shall revert to the fund from which they were appropriated, or if that fund is abolished to the general fund.

(3) All contractual rights and duties of an entity shall be assigned or delegated to the entity assuming the responsibilities of the terminated entity, or if there is none to such entity as the governor shall direct." [2009 c 560 § 28.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

## Chapter 18.20 RCW BOARDING HOMES

### Sections

18.20.125 Inspections—Enforcement remedies—Screening—Limitations on unsupervised access to vulnerable adults.

18.20.260 Repealed.

18.20.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**18.20.125 Inspections—Enforcement remedies—Screening—Limitations on unsupervised access to vulnerable adults.** (1) Inspections must be outcome based and responsive to resident complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to facilities, residents, and other interested parties. This includes that when conducting licensing inspections, the department shall interview an appropriate percentage of residents, family members, and advocates in addition to interviewing appropriate staff.

(2) Prompt and specific enforcement remedies shall also be implemented without delay, consistent with RCW 18.20.190, for facilities found to have delivered care or failed to deliver care resulting in problems that are serious, recur-

ring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(3)(a) To the extent funding is available, the licensee, administrator, and their staff should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable adults. Employees may be provisionally hired pending the results of the background check if they have been given three positive references.

(b) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055.

(4) No licensee, administrator, or staff, or prospective licensee, administrator, or staff, with a stipulated finding of fact, conclusion of law, and agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into the state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults. [2009 c 580 § 3; 2004 c 140 § 4; 2003 c 231 § 5; 2001 c 85 § 2.]

**Findings—Effective date—2003 c 231:** See notes following RCW 18.20.020.

**Effective date—2001 c 85:** See note following RCW 18.20.115.

**18.20.260 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**18.20.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 45.]

**Chapter 18.27 RCW**

**REGISTRATION OF CONTRACTORS**

Sections

18.27.062 Inspection by department—Subcontractor list—Certificate of registration.

**18.27.062 Inspection by department—Subcontractor list—Certificate of registration.** A contractor must maintain and have available for inspection by the department a list of all direct subcontractors and a copy of their certificate of registration. [2009 c 432 § 1.]

**Report—2009 c 432:** "The department of labor and industries, the employment security department, and the department of revenue shall coordinate and report to the appropriate committees of the legislature by December 1st of each year on the effectiveness of efforts implemented since July 1, 2008, to address the underground economy. The agencies shall use benchmarks and measures established by the institute for public policy and other measures it determines appropriate." [2009 c 432 § 13.]

**Chapter 18.29 RCW**

**DENTAL HYGIENISTS**

Sections

18.29.056 Employment by health care facilities authorized—Limitations—Requirements for services performed in senior centers.  
 18.29.220 Community-based sealant programs in schools—Data collection.

**18.29.056 Employment by health care facilities authorized—Limitations—Requirements for services performed in senior centers.** (1)(a) Subject to RCW 18.29.230 and (e) of this subsection, dental hygienists licensed under this chapter with two years' practical clinical experience with a licensed dentist within the preceding five years may be employed, retained, or contracted by health care facilities and senior centers to perform authorized dental hygiene operations and services without dental supervision.

(b) Subject to RCW 18.29.230 and (e) of this subsection, dental hygienists licensed under this chapter with two years' practical clinical experience with a licensed dentist within the preceding five years may perform authorized dental hygiene operations and services without dental supervision under a lease agreement with a health care facility or senior center.

(c) Dental hygienists performing operations and services under (a) or (b) of this subsection are limited to removal of deposits and stains from the surfaces of the teeth, application of topical preventive or prophylactic agents, polishing and smoothing restorations, and performance of root planing and soft-tissue curettage, but shall not perform injections of anesthetic agents, administration of nitrous oxide, or diagnosis for dental treatment.

(d) The performance of dental hygiene operations and services in health care facilities shall be limited to patients, students, and residents of the facilities.

(e) A dental hygienist employed, retained, or contracted to perform services under this section or otherwise performing services under a lease agreement under this section in a senior center must, before providing services:

(i) Enter into a written practice arrangement plan, approved by the department, with a dentist licensed in this state, under which the dentist will provide off-site supervision of the dental services provided. This agreement does not create an obligation for the dentist to accept referrals of patients receiving services under the program;

(ii) Collect data on the patients treated by dental hygienists under the program, including age, treatments rendered, insurance coverage, if any, and patient referral to dentists. This data must be submitted to the department of health at the

end of each annual quarter, during the period of time between October 1, 2007, and October 1, 2013; and

(iii) Obtain information from the patient's primary health care provider about any health conditions of the patient that would be relevant to the provision of preventive dental care. The information may be obtained by the dental hygienist's direct contact with the provider or through a written document from the provider that the patient presents to the dental hygienist.

(f) For dental planning and dental treatment, dental hygienists shall refer patients to licensed dentists.

(2) For the purposes of this section:

(a) "Health care facilities" are limited to hospitals; nursing homes; home health agencies; group homes serving the elderly, individuals with disabilities, and juveniles; state-operated institutions under the jurisdiction of the department of social and health services or the department of corrections; and federal, state, and local public health facilities, state or federally funded community and migrant health centers, and tribal clinics.

(b) "Senior center" means a multipurpose community facility operated and maintained by a nonprofit organization or local government for the organization and provision of a combination of some of the following: Health, social, nutritional, educational services, and recreational activities for persons sixty years of age or older. [2009 c 321 § 1; 2007 c 270 § 1; 1997 c 37 § 2; 1984 c 279 § 63.]

**Report—2009 c 321:** "The secretary of health, in consultation with representatives of dental hygienists and dentists, shall provide a report to the appropriate committees of the legislature by December 1, 2013, that provides a summary of the information about patients receiving dental hygiene services in senior centers that is collected under RCW 18.29.056(1)(e)(ii), and in community-based sealant programs carried out in schools under RCW 18.29.220. This report must also include the following:

(1) For patients receiving scaling and root planing [planing] in senior center practices, an evaluation of the patient's need for pain control;

(2) For community-based sealant programs in schools, the number of sealants applied; the teeth cleaning method selected for the patient; whether the patient was reevaluated at a recall appointment; and the need for reapplication of the sealant at the recall appointment; and

(3) For patients receiving treatment in either the senior center practices or the community-based sealant programs in schools, the number of referred patients that are seen by a dentist; the lessons learned from these practices; and any unintended consequences or outcomes." [2009 c 321 § 3.]

**Effective date—2009 c 321:** "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, 2009." [2009 c 321 § 4.]

**Report—2007 c 270:** "The secretary of health, in consultation with representatives of dental hygienists and dentists, shall provide a report to the appropriate committees of the legislature by December 1, 2008, that:

(1) Provides a summary of the information about patients receiving dental services in senior centers that is collected under RCW 18.29.056(1)(c)(ii), and in community-based sealant programs carried out in schools under RCW 18.29.220, and describing the dental health outcomes, including both effects on dental health and adverse incidents, if any, related to the services these patients receive under the programs; and

(2) Makes recommendations, as appropriate, with regard to the services that could be appropriately provided by dental hygienists in senior centers and community-based sealant programs carried out in schools, and the effects on dental health of patients treated." [2007 c 270 § 4.]

**Severability—1984 c 279:** See RCW 18.130.901.

**18.29.220 Community-based sealant programs in schools—Data collection.** For low-income, rural, and other at-risk populations and in coordination with local public

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health jurisdictions and local oral health coalitions, a dental hygienist licensed in this state may assess for and apply sealants and apply fluoride varnishes, and may remove deposits and stains from the surfaces of teeth in community-based sealant programs carried out in schools:

(1) Without attending the department's school sealant endorsement program if the dental hygienist was licensed as of April 19, 2001; or

(2) If the dental hygienist is school sealant endorsed under RCW 43.70.650.

A hygienist providing services under this section must collect data on patients treated, including age, treatment rendered, methods of reimbursement for treatment, evidence of coordination with local public health jurisdictions and local oral health coalitions, and patient referrals to dentists. This data must be submitted to the department of health at the end of each annual quarter, during the period of time between October 1, 2007, and October 1, 2013. [2009 c 321 § 2; 2007 c 270 § 2; 2001 c 93 § 3.]

**Report—Effective date—2009 c 321:** See notes following RCW 18.29.056.

**Report—2007 c 270:** See note following RCW 18.29.056.

**Findings—Intent—Effective date—2001 c 93:** See notes following RCW 43.70.650.

## Chapter 18.32 RCW

### DENTISTRY

#### Sections

- 18.32.195 University of Washington dental school faculty and residents—Licenses.  
18.32.775 Disciplinary proceedings—Cost and fee recovery.

**18.32.195 University of Washington dental school faculty and residents—Licenses.** The commission may, without examination, issue a license to persons who possess the qualifications set forth in this section.

(1) The commission may, upon written request of the dean of the school of dentistry of the University of Washington, issue a license to practice dentistry in this state to persons who have been licensed or otherwise authorized to practice dentistry in another state or country and who have been accepted for employment by the school of dentistry as faculty members. For purposes of this subsection, this means teaching members of the faculty of the school of dentistry of the University of Washington. Such license shall permit the holder thereof to practice dentistry within the confines of the university facilities for a period of one year while he or she is so employed as a faculty member by the school of dentistry of the University of Washington. It shall terminate whenever the holder ceases to be a faculty member. Such license shall permit the holder thereof to practice dentistry only in connection with his or her duties in employment with the school of dentistry of the University of Washington. This limitation shall be stated on the license.

(2) The commission may, upon written request of the dean of the school of dentistry of the University of Washington or the director of a postdoctoral dental residency program approved by the commission, issue a limited license to practice dentistry in this state to university postdoctoral students or residents in dental education or to postdoctoral residents in

a dental residency program approved by the commission. Prior to July 1, 2010, a dental residency program must be accredited by the commission on dental accreditation, or be in the process of obtaining such accreditation, in order to be approved by the commission. On or after July 1, 2010, the dental residency program must be accredited by the commission on dental accreditation in order to be approved by the commission. The license shall permit the resident dentist to provide dental care only in connection with his or her duties as a university postdoctoral dental student or resident or a postdoctoral resident in a program approved by the commission.

(3) The commission may condition the granting of a license under this section with terms the commission deems appropriate. All persons licensed under this section shall be subject to the jurisdiction of the commission to the same extent as other members of the dental profession, in accordance with this chapter, and in addition the licensee may be disciplined by the commission after a hearing has been held in accordance with the provisions set forth in this chapter, and determination by the commission that such licensee has violated any of the restrictions set forth in this section.

(4) Persons applying for licensure pursuant to this section shall pay the application fee determined by the secretary and, in the event the license applied for is issued, a license fee at the rate provided for licenses generally. After review by the commission, licenses issued under this section may be renewed annually if the licensee continues to be employed as a faculty member of the school of dentistry of the University of Washington, or is a university postdoctoral student or resident in dental education, or a postdoctoral resident in a dental residency program approved by the commission, and otherwise meets the requirements of the provisions and conditions deemed appropriate by the commission. Any person who obtains a license pursuant to this section may, without an additional application fee, apply for licensure under this chapter, in which case the applicant shall be subject to examination and the other requirements of this chapter. [2009 c 327 § 1. Prior: 2005 c 454 § 1; 2005 c 164 § 1; 1994 sp.s. c 9 § 218; 1992 c 59 § 1; 1991 c 3 § 69; 1985 c 111 § 1.]

**Effective date—2009 c 327:** "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 4, 2009]." [2009 c 327 § 2.]

**Effective date—2005 c 454:** "This act takes effect July 1, 2006." [2005 c 454 § 4.]

**18.32.775 Disciplinary proceedings—Cost and fee recovery.** (1) In any disciplinary case pertaining to a dentist where there is a contested hearing, if the commission or its hearing panel makes the finding requisite for, and imposes upon the dentist, a disciplinary sanction or fine under RCW 18.130.160, unless it determines to waive the assessment of a hearing fee, it shall assess against the licensee a partial recovery of the state's hearing expenses as follows:

- (a) The partial recovery hearing fee must be:
  - (i) An amount equal to six thousand dollars for each full hearing day in the proceeding and one-half of that amount for any partial hearing day; and
  - (ii) A partial recovery of investigative and hearing preparation expenses in an amount as found to be reasonable

reimbursement under the circumstances but no more than ten thousand dollars;

(b) Substantiation of investigative and hearing preparation expenses for purposes of (a) of this subsection may be by affidavit or declaration descriptive of efforts expended, which are reviewable in the hearing as would be a cost bill;

(c) The commission or its hearing panel may waive the partial recovery hearing fee if it determines the assessment of the fee (i) would create substantial undue hardship for the dentist, or (ii) in all the circumstances of the case, including the nature of the charges alleged, it would be manifestly unjust to assess the fee. Consideration of the waiver must be applied for and considered during the hearing itself. This may be in advance of the decision related to RCW 18.130.160.

(2) If the dentist seeks judicial review of the disciplinary action and there was a partial recovery hearing fee assessed, then unless the license holder achieves a substantial element of relief, the reviewing trial court or appellate court shall further impose a partial cost recovery fee in the amount of twenty-five thousand dollars at the superior court level, twenty-five thousand dollars at the court of appeals level, and twenty-five thousand dollars at the supreme court level. Application for waiver may be made to the court at each level and must be considered by the court under the standards stated in subsection (1)(c) of this section.

(3) In any disciplinary case pertaining to a dentist where the case is resolved by agreement prior to completion of a contested hearing, the commission shall assess against the dentist a partial recovery of investigative and hearing preparation expenses in an amount as found to be reasonable reimbursement in the circumstances but no more than ten thousand dollars, unless it determines to waive this fee under the standards stated in subsection (1)(c) of this section.

(4) In any stipulated informal disposition of allegations pertaining to a dentist as contemplated under RCW 18.130.172, the potential dollar limit of reimbursement of investigative and processing costs may not exceed two thousand dollars per allegation.

(5) Should the dentist fail to pay any agreed reimbursement or ordered cost recovery under the statute, the commission may seek collection of the amount in the same manner as enforcement of a fine under RCW 18.130.165.

(6) All fee recoveries and reimbursements under this statute must be deposited to the health professions account for the portion of it allocated to the commission. The fee recoveries shall be fully credited in reduction of actual or projected expenditures used to determine dentist license renewal fees.

(7) The authority of the commission under this section is in addition to all of its authorities under RCW 18.130.160, elsewhere in chapter 18.130 RCW, or in this chapter. [2009 c 177 § 1.]

## Chapter 18.35 RCW

### HEARING AND SPEECH SERVICES

#### Sections

18.35.010	Definitions.
18.35.040	Applicants—Generally.
18.35.095	Licensure or certification—Inactive status.

- 18.35.150 Board of hearing and speech—Created—Membership—Qualifications—Terms—Vacancies—Meetings—Compensation—Travel expenses.
- 18.35.205 Chapter exclusive.
- 18.35.260 Misrepresentation of credentials.
- 18.35.280 Delegation to assistive personnel—Supervisor duties.
- 18.35.290 Delegation to assistive personnel—Assistant duties.
- 18.35.300 No requirement to contract with speech-language pathology assistant.
- 18.35.903 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

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

(1) "Assistive listening device or system" means an amplification system that is specifically designed to improve the signal to noise ratio for the listener, reduce interference from noise in the background, and enhance hearing levels at a distance by picking up sound from as close to source as possible and sending it directly to the ear of the listener, excluding hearing instruments as defined in this chapter.

(2) "Audiology" means the application of principles, methods, and procedures related to hearing and the disorders of hearing and to related language and speech disorders, whether of organic or nonorganic origin, peripheral or central, that impede the normal process of human communication including, but not limited to, disorders of auditory sensitivity, acuity, function, processing, or vestibular function, the application of aural habilitation, rehabilitation, and appropriate devices including fitting and dispensing of hearing instruments, and cerumen management to treat such disorders.

(3) "Board" means the board of hearing and speech.

(4) "Department" means the department of health.

(5) "Direct supervision" means the supervising speech-language pathologist is on-site and in view during the procedures or tasks. The board shall develop rules outlining the procedures or tasks allowable under direct supervision.

(6) "Establishment" means any permanent site housing a person engaging in the practice of fitting and dispensing of hearing instruments by a hearing instrument fitter/dispenser or audiologist; where the client can have personal contact and counsel during the firm's business hours; where business is conducted; and the address of which is given to the state for the purpose of bonding.

(7) "Facility" means any permanent site housing a person engaging in the practice of speech-language pathology and/or audiology, excluding the sale, lease, or rental of hearing instruments.

(8) "Fitting and dispensing of hearing instruments" means the sale, lease, or rental or attempted sale, lease, or rental of hearing instruments together with the selection and modification of hearing instruments and the administration of nondiagnostic tests as specified by RCW 18.35.110 and the use of procedures essential to the performance of these functions; and includes recommending specific hearing instrument systems, specific hearing instruments, or specific hearing instrument characteristics, the taking of impressions for ear molds for these purposes, the use of nondiagnostic procedures and equipment to verify the appropriateness of the hearing instrument fitting, and hearing instrument orientation. The fitting and dispensing of hearing instruments as

defined by this chapter may be equally provided by a licensed hearing instrument fitter/dispenser or licensed audiologist.

(9) "Good standing" means a licensed hearing instrument fitter/dispenser, licensed audiologist, licensed speech-language pathologist, or certified speech-language pathology assistant whose license or certification has not been subject to sanctions pursuant to chapter 18.130 RCW or sanctions by other states, territories, or the District of Columbia in the last two years.

(10) "Hearing health care professional" means an audiologist or hearing instrument fitter/dispenser licensed under this chapter or a physician specializing in diseases of the ear licensed under chapter 18.71 RCW.

(11) "Hearing instrument" means any wearable prosthetic instrument or device designed for or represented as aiding, improving, compensating for, or correcting defective human hearing and any parts, attachments, or accessories of such an instrument or device, excluding batteries and cords, ear molds, and assistive listening devices.

(12) "Hearing instrument fitter/dispenser" means a person who is licensed to engage in the practice of fitting and dispensing of hearing instruments and meets the qualifications of this chapter.

(13) "Indirect supervision" means the procedures or tasks are performed under the speech-language pathologist's overall direction and control, but the speech-language pathologist's presence is not required during the performance of the procedures or tasks. The board shall develop rules outlining the procedures or tasks allowable under indirect supervision.

(14) "Interim permit holder" means a person who holds the permit created under RCW 18.35.060 and who practices under the supervision of a licensed hearing instrument fitter/dispenser, licensed speech-language pathologist, or licensed audiologist.

(15) "Licensed audiologist" means a person who is licensed by the department to engage in the practice of audiology and meets the qualifications in this chapter.

(16) "Licensed speech-language pathologist" means a person who is licensed by the department to engage in the practice of speech-language pathology and meets the qualifications of this chapter.

(17) "Secretary" means the secretary of health.

(18) "Speech-language pathology" means the application of principles, methods, and procedures related to the development and disorders, whether of organic or nonorganic origin, that impede oral, pharyngeal, or laryngeal sensorimotor competencies and the normal process of human communication including, but not limited to, disorders and related disorders of speech, articulation, fluency, voice, verbal and written language, auditory comprehension, cognition/communication, and the application of augmentative communication treatment and devices for treatment of such disorders.

(19) "Speech-language pathology assistant" means a person who is certified by the department to provide speech-language pathology services under the direction and supervision of a licensed speech-language pathologist or speech-language pathologist certified as an educational staff associate by the superintendent of public instruction, and meets all of the requirements of this chapter. [2009 c 301 § 2; 2005 c 45 § 1; 2002 c 310 § 1; 1998 c 142 § 1; 1996 c 200 § 2; 1993 c

313 § 1; 1991 c 3 § 80; 1983 c 39 § 1; 1979 c 158 § 38; 1973 1st ex.s. c 106 § 1.]

**Alphabetization—2009 c 301 § 2:** "The code reviser is directed to put the defined terms in RCW 18.35.010 in alphabetical order." [2009 c 301 § 14.]

**Intent—2009 c 301:** "It is declared to be the policy of this state that, in order to safeguard the public health, safety, and welfare, to protect the public from incompetent, unscrupulous, unauthorized persons and unprofessional conduct, and to ensure the availability of the highest possible standards of speech-language pathology services to the communicatively impaired people of this state, it is necessary to provide regulatory authority over persons offering speech-language pathology services as speech-language pathology assistants." [2009 c 301 § 1.]

**Implementation—2009 c 301:** "In order to allow for adequate time to establish the program created in this act, the provisions of this act must be implemented beginning one year after July 26, 2009." [2009 c 301 § 15.]

**Speech-language pathology assistants—Certification requirements—2009 c 301:** See note following RCW 18.35.040.

**Effective date—2002 c 310:** "This act takes effect January 1, 2003." [2002 c 310 § 27.]

**Effective date—1998 c 142 §§ 1-14 and 16-20:** "Sections 1 through 14 and 16 through 20 of this act take effect January 1, 2003." [1998 c 142 § 21.]

**18.35.040 Applicants—Generally.** (1) An applicant for licensure as a hearing instrument fitter/dispenser must have the following minimum qualifications and shall pay a fee determined by the secretary as provided in RCW 43.70.250. An applicant shall be issued a license under the provisions of this chapter if the applicant has not committed unprofessional conduct as specified by chapter 18.130 RCW, and:

(a)(i) Satisfactorily completes the hearing instrument fitter/dispenser examination required by this chapter; and

(ii) Satisfactorily completes a minimum of a two-year degree program in hearing instrument fitter/dispenser instruction. The program must be approved by the board; or

(b) Holds a current, unsuspended, unrevoked license from another jurisdiction if the standards for licensing in such other jurisdiction are substantially equivalent to those prevailing in this state as provided in (a) of this subsection; or

(c)(i) Holds a current, unsuspended, unrevoked license from another jurisdiction, has been actively practicing as a licensed hearing aid fitter/dispenser in another jurisdiction for at least forty-eight of the last sixty months, and submits proof of completion of advance certification from either the international hearing society or the national board for certification in hearing instrument sciences; and

(ii) Satisfactorily completes the hearing instrument fitter/dispenser examination required by this chapter or a substantially equivalent examination approved by the board.

The applicant must present proof of qualifications to the board in the manner and on forms prescribed by the secretary and proof of completion of a minimum of four clock hours of AIDS education and training pursuant to rules adopted by the board.

(2)(a) An applicant for licensure as a speech-language pathologist or audiologist must have the following minimum qualifications:

(i) Has not committed unprofessional conduct as specified by the uniform disciplinary act;

(ii) Has a master's degree or the equivalent, or a doctorate degree or the equivalent, from a program at a board-approved institution of higher learning, which includes com-

pletion of a supervised clinical practicum experience as defined by rules adopted by the board; and

(iii) Has completed postgraduate professional work experience approved by the board.

(b) All qualified applicants must satisfactorily complete the speech-language pathology or audiology examinations required by this chapter.

(c) The applicant must present proof of qualifications to the board in the manner and on forms prescribed by the secretary and proof of completion of a minimum of four clock hours of AIDS education and training pursuant to rules adopted by the board.

(3) An applicant for certification as a speech-language pathology assistant shall pay a fee determined by the secretary as provided in RCW 43.70.250 and must have the following minimum qualifications:

(a) An associate of arts or sciences degree, or a certificate of proficiency, from a speech-language pathology assistant program from an institution of higher education that is approved by the board, as is evidenced by the following:

(i) Transcripts showing forty-five quarter hours or thirty semester hours of speech-language pathology coursework; and

(ii) Transcripts showing forty-five quarter hours or thirty semester hours of general education credit; or

(b) A bachelor of arts or bachelor of sciences degree, as evidenced by transcripts, from a speech, language, and hearing program from an institution of higher education that is approved by the board. [2009 c 301 § 3; 2007 c 271 § 1; 2002 c 310 § 4; 1998 c 142 § 3; 1996 c 200 § 5; 1991 c 3 § 81; 1989 c 198 § 2; 1985 c 7 § 30; 1983 c 39 § 4; 1975 1st ex.s. c 30 § 36; 1973 1st ex.s. c 106 § 4.]

**Speech-language pathology assistants—Certification requirements—2009 c 301:** "An applicant for certification as a speech-language pathology assistant may meet the requirements for certification as a speech-language pathology assistant if, within one year of July 26, 2009, he or she submits a competency checklist to the board of hearing and speech, and is employed under the supervision of a speech-language pathologist for at least six hundred hours within the last three years as defined by the board by rule." [2009 c 301 § 11.]

**Intent—Implementation—2009 c 301:** See notes following RCW 18.35.010.

**Effective date—2002 c 310:** See note following RCW 18.35.010.

**Effective date—1998 c 142 §§ 1-14 and 16-20:** See note following RCW 18.35.010.

### **18.35.095 Licensure or certification—Inactive status.**

(1) A hearing instrument fitter/dispenser licensed under this chapter and not actively practicing may be placed on inactive status by the department at the written request of the licensee. The board shall define by rule the conditions for inactive status licensure. In addition to the requirements of RCW 43.24.086, the licensing fee for a licensee on inactive status shall be directly related to the costs of administering an inactive license by the department. A hearing instrument fitter/dispenser on inactive status may be voluntarily placed on active status by notifying the department in writing, paying the remainder of the licensing fee for the licensing year, and complying with subsection (2) of this section.

(2) Hearing instrument fitter/dispenser inactive licensees applying for active licensure shall comply with the following: A licensee who has not fitted or dispensed hearing instru-

ments for more than five years from the expiration of the licensee's full fee license shall retake the practical or the written, or both, hearing instrument fitter/dispenser examinations required under this chapter and other requirements as determined by the board. Persons who have inactive status in this state but who are actively licensed and in good standing in any other state shall not be required to take the hearing instrument fitter/dispenser practical examination, but must submit an affidavit attesting to their knowledge of the current Washington Administrative Code rules and Revised Code of Washington statutes pertaining to the fitting and dispensing of hearing instruments.

(3) A speech-language pathologist or audiologist licensed under this chapter, or a speech-language pathology assistant certified under this chapter, and not actively practicing either speech-language pathology or audiology may be placed on inactive status by the department at the written request of the license or certification holder. The board shall define by rule the conditions for inactive status licensure or certification. In addition to the requirements of RCW 43.24.086, the fee for a license or certification on inactive status shall be directly related to the cost of administering an inactive license or certification by the department. A person on inactive status may be voluntarily placed on active status by notifying the department in writing, paying the remainder of the fee for the year, and complying with subsection (4) of this section.

(4) Speech-language pathologist, speech-language pathology assistant, or audiologist inactive license or certification holders applying for active licensure or certification shall comply with requirements set forth by the board, which may include completion of continuing competency requirements and taking an examination. [2009 c 301 § 4; 2002 c 310 § 9; 1996 c 200 § 12; 1993 c 313 § 12.]

**Intent—Implementation—2009 c 301:** See notes following RCW 18.35.010.

**Speech-language pathology assistants—Certification requirements—2009 c 301:** See note following RCW 18.35.040.

**Effective date—2002 c 310:** See note following RCW 18.35.010.

**18.35.150 Board of hearing and speech—Created—Membership—Qualifications—Terms—Vacancies—Meetings—Compensation—Travel expenses.** (1) There is created hereby the board of hearing and speech to govern the three separate professions: Hearing instrument fitting/dispensing, audiology, and speech-language pathology. The board shall consist of eleven members to be appointed by the governor.

(2) Members of the board shall be residents of this state. Three members shall represent the public and shall have an interest in the rights of consumers of health services, and shall not be or have been a member of, or married to a member of, another licensing board, a licensee of a health occupation board, an employee of a health facility, nor derive his or her primary livelihood from the provision of health services at any level of responsibility. Two members shall be hearing instrument fitter/dispensers who are licensed under this chapter, have at least five years of experience in the practice of hearing instrument fitting and dispensing, and must be actively engaged in fitting and dispensing within two years of appointment. Two members of the board shall be audiologists

licensed under this chapter who have at least five years of experience in the practice of audiology and must be actively engaged in practice within two years of appointment. Two members of the board shall be speech-language pathologists licensed under this chapter who have at least five years of experience in the practice of speech-language pathology and must be actively engaged in practice within two years of appointment. One advisory nonvoting member shall be a speech-language pathology assistant certified in Washington. One advisory nonvoting member shall be a medical physician licensed in the state of Washington.

(3) The term of office of a member is three years. Of the initial appointments, one hearing instrument fitter/dispenser, one speech-language pathologist, one audiologist, and one consumer shall be appointed for a term of two years, and one hearing instrument fitter/dispenser, one speech-language pathologist, one audiologist, and two consumers shall be appointed for a term of three years. Thereafter, all appointments shall be made for expired terms. No member shall be appointed to serve more than two consecutive terms. A member shall continue to serve until a successor has been appointed. The governor shall either reappoint the member or appoint a successor to assume the member's duties at the expiration of his or her predecessor's term. A vacancy in the office of a member shall be filled by appointment for the unexpired term.

(4) The chair shall rotate annually among the hearing instrument fitter/dispensers, speech-language pathologists, audiologists, and public members serving on the board. In the absence of the chair, the board shall appoint an interim chair. In event of a tie vote, the issue shall be brought to a second vote and the chair shall refrain from voting.

(5) The board shall meet at least once each year, at a place, day and hour determined by the board, unless otherwise directed by a majority of board members. The board shall also meet at such other times and places as are requested by the department or by three members of the board. A quorum is a majority of the board. A hearing instrument fitter/dispenser, speech-language pathologist, and audiologist must be represented. Meetings of the board shall be open and public, except the board may hold executive sessions to the extent permitted by chapter 42.30 RCW.

(6) Members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7) The governor may remove a member of the board for cause at the recommendation of a majority of the board. [2009 c 301 § 5; 2002 c 310 § 15; 1996 c 200 § 19; 1993 c 313 § 6; 1989 c 198 § 7; 1984 c 287 § 33; 1983 c 39 § 12; 1975-'76 2nd ex.s. c 34 § 35; 1973 1st ex.s. c 106 § 15.]

**Intent—Implementation—2009 c 301:** See notes following RCW 18.35.010.

**Speech-language pathology assistants—Certification requirements—2009 c 301:** See note following RCW 18.35.040.

**Effective date—2002 c 310:** See note following RCW 18.35.010.

**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.



*Secretary of health or designee as ex officio member of health professional licensure and disciplinary boards: RCW 43.70.300.*

**18.35.205 Chapter exclusive.** The legislature finds that the public health, safety, and welfare would best be protected by uniform regulation of hearing instrument fitter/dispensers, speech-language pathologists, speech-language pathology assistants, audiologists, and interim permit holders throughout the state. Therefore, the provisions of this chapter relating to the licensing of hearing instrument fitter/dispensers, speech-language pathologists, and audiologists, the certification of speech-language pathology assistants, and regulation of interim permit holders and their respective establishments or facilities is exclusive. No political subdivision of the state of Washington within whose jurisdiction a hearing instrument fitter/dispenser, audiologist, or speech-language pathologist establishment or facility is located may require any registrations, bonds, licenses, certificates, or interim permits of the establishment or facility or its employees or charge any fee for the same or similar purposes: PROVIDED, HOWEVER, That nothing herein shall limit or abridge the authority of any political subdivision to levy and collect a general and nondiscriminatory license fee levied on all businesses, or to levy a tax based upon the gross business conducted by any firm within the political subdivision. [2009 c 301 § 6; 2002 c 310 § 22; 1998 c 142 § 16; 1996 c 200 § 28; 1983 c 39 § 24.]

**Intent—Implementation—2009 c 301:** See notes following RCW 18.35.010.

**Speech-language pathology assistants—Certification requirements—2009 c 301:** See note following RCW 18.35.040.

**Effective date—2002 c 310:** See note following RCW 18.35.010.

**Effective date—1998 c 142 §§ 1-14 and 16-20:** See note following RCW 18.35.010.

**18.35.260 Misrepresentation of credentials.** (1) A person who is not a licensed hearing instrument fitter/dispenser may not represent himself or herself as being so licensed and may not use in connection with his or her name the words "licensed hearing instrument fitter/dispenser," "hearing instrument specialist," or "hearing aid fitter/dispenser," or a variation, synonym, word, sign, number, insignia, coinage, or whatever expresses, employs, or implies these terms, names, or functions of a licensed hearing instrument fitter/dispenser.

(2) A person who is not a licensed speech-language pathologist may not represent himself or herself as being so licensed and may not use in connection with his or her name the words including "licensed speech-language pathologist" or a variation, synonym, word, sign, number, insignia, coinage, or whatever expresses, employs, or implies these terms, names, or functions as a licensed speech-language pathologist.

(3) A person who is not a certified speech-language pathology assistant may not represent himself or herself as being so certified and may not use in connection with his or her name the words including "certified speech-language pathology assistant" or a variation, synonym, word, sign, number, insignia, coinage, or whatever expresses, employs, or implies these terms, names, or functions as a certified speech-language pathology assistant.

(4) A person who is not a licensed audiologist may not represent himself or herself as being so licensed and may not use in connection with his or her name the words "licensed audiologist" or a variation, synonym, letter, word, sign, number, insignia, coinage, or whatever expresses, employs, or implies these terms, names, or functions of a licensed audiologist.

(5) Nothing in this chapter prohibits a person credentialed in this state under another act from engaging in the practice for which he or she is credentialed. [2009 c 301 § 7; 2002 c 310 § 26; 1998 c 142 § 20; 1996 c 200 § 16.]

**Intent—Implementation—2009 c 301:** See notes following RCW 18.35.010.

**Speech-language pathology assistants—Certification requirements—2009 c 301:** See note following RCW 18.35.040.

**Effective date—2002 c 310:** See note following RCW 18.35.010.

**Effective date—1998 c 142 §§ 1-14 and 16-20:** See note following RCW 18.35.010.

**18.35.280 Delegation to assistive personnel—Supervisor duties.** Speech-language pathologists are responsible for patient care given by assistive personnel under their supervision. A speech-language pathologist may delegate to assistive personnel selected acts, tasks, or procedures that fall within the scope of speech-language pathology practice but do not exceed the education or training of the assistive personnel. [2009 c 301 § 9.]

**Intent—Implementation—2009 c 301:** See notes following RCW 18.35.010.

**Speech-language pathology assistants—Certification requirements—2009 c 301:** See note following RCW 18.35.040.

**18.35.290 Delegation to assistive personnel—Assistant duties.** A speech-language pathology assistant may only perform procedures or tasks delegated by the speech-language pathologist and must follow the individualized education program or treatment plan. Speech-language pathology assistants may not perform procedures or tasks that require diagnosis, evaluation, or clinical interpretation. [2009 c 301 § 10.]

**Intent—Implementation—2009 c 301:** See notes following RCW 18.35.010.

**Speech-language pathology assistants—Certification requirements—2009 c 301:** See note following RCW 18.35.040.

**18.35.300 No requirement to contract with speech-language pathology assistant.** Nothing in this chapter may be construed to require that a health carrier defined in RCW 48.43.005 contract with a person certified as a speech-language pathology assistant under this chapter. [2009 c 301 § 12.]

**Intent—Implementation—2009 c 301:** See notes following RCW 18.35.010.

**Speech-language pathology assistants—Certification requirements—2009 c 301:** See note following RCW 18.35.040.

**18.35.903 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife,

widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 46.]

### Chapter 18.39 RCW

#### EMBALMERS—FUNERAL DIRECTORS

##### Sections

18.39.010	Definitions.
18.39.173	Funeral and cemetery board—Membership—Appointment—Qualifications—Terms—Vacancies—Officers—Quorum.
18.39.175	Board—Duties and responsibilities—Rules.
18.39.217	License or endorsement required for cremation—Penalty.
18.39.800	Repealed.
18.39.810	Funeral and cemetery account.

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

(1) "Board" means the funeral and cemetery board created pursuant to RCW 18.39.173.

(2) "Director" means the director of licensing.

(3) "Embalmer" means a person engaged in the profession or business of disinfecting and preserving human remains for transportation or final disposition.

(4) "Funeral director" means a person engaged in the profession or business of providing for the care, shelter, transportation, and arrangements for the disposition of human remains that may include arranging and directing funeral, memorial, or other services.

(5) "Funeral establishment" means a place of business licensed in accordance with RCW 18.39.145, that provides for any aspect of the care, shelter, transportation, embalming, preparation, and arrangements for the disposition of human remains and includes all areas of such entity and all equipment, instruments, and supplies used in the care, shelter, transportation, preparation, and embalming of human remains.

(6) "Funeral merchandise or services" means those services normally performed and merchandise normally provided by funeral establishments, including the sale of burial supplies and equipment, but excluding the sale by a cemetery of lands or interests therein, services incidental thereto, markers, memorials, monuments, equipment, crypts, niches, or vaults.

(7) "Licensee" means any person or entity holding a license, registration, endorsement, or permit under this chapter issued by the director.

(8) "Prearrangement funeral service contract" means any contract under which, for a specified consideration, a funeral establishment promises, upon the death of the person named

or implied in the contract, to furnish funeral merchandise or services.

(9) "Public depository" means a public depository defined by RCW 39.58.010 or a state or federally chartered credit union.

(10) "Two-year college course" means the completion of sixty semester hours or ninety quarter hours of college credit, including the satisfactory completion of certain college courses, as set forth in this chapter.

Words used in this chapter importing the singular may be applied to the plural of the person or thing, words importing the plural may be applied to the singular, and words importing the masculine gender may be applied to the female. [2009 c 102 § 1; 2005 c 365 § 1; 2000 c 171 § 10; 1989 c 390 § 1; 1982 c 66 § 1; 1981 c 43 § 1; 1979 c 158 § 39; 1977 ex.s. c 93 § 1; 1965 ex.s. c 107 § 1; 1937 c 108 § 1; RRS § 8313.]

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

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**Effective dates—1982 c 66:** See note following RCW 18.39.240.

*Number and gender:* RCW 1.12.050.

**18.39.173 Funeral and cemetery board—Membership—Appointment—Qualifications—Terms—Vacancies—Officers—Quorum.** (1) A funeral and cemetery board is created. The initial appointments to the board include all members from the existing funeral directors and embalmers board and existing cemetery board with their year of expiration of term remaining the same. Subsequent to the initial appointments the board will consist of seven members to be appointed by the governor in accordance with this section.

(2) Three members of the board must be persons who have had experience in the active administrative management of a cemetery authority or as a member of the board of directors of a cemetery authority for a period of five years preceding appointment. Three members of the board must each be licensed in this state as funeral directors and embalmers and must have been continuously engaged in the practice as funeral directors and embalmers for a period of five years preceding appointment. One member must represent the general public and may not have worked in or received any substantive financial benefit from the funeral or cemetery industry. Board members must be a resident of the state of Washington.

(3) All members of the board shall be appointed to serve for a term of four years, to expire on July 1st of the year of termination of their term, and until their successors have been appointed. In case of a vacancy occurring on the board, the governor shall appoint a qualified member for the remainder of the unexpired term of the vacant office. Any member of the board who fails to properly discharge the duties of a member may be removed by the governor.

(4) The board shall meet once annually to conduct its business and to elect a chair, vice-chair, and other officers as the board determines, and at other times when called by the director, the chair, or a majority of the members. A majority of the members of the board shall at all times constitute a quorum. A quorum of the board to consider any charges

brought under this chapter must include two of the funeral director and embalmer members of the board. A quorum of the board to consider any charges brought under Title 68 RCW must include two of the members who have had experience in the active administrative management of a cemetery authority. If board members cannot serve due to a conflict of interest, a quorum constituting a majority of the members must preside over the hearing.

(5) Each member of the board must be compensated in accordance with RCW 43.03.240 and must receive travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2009 c 102 § 2; 2005 c 365 § 13; 1977 ex.s. c 93 § 8.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**18.39.175 Board—Duties and responsibilities—Rules.** The board shall have the following duties and responsibilities under this chapter:

(1) To be responsible for the preparation, conducting, and grading of examinations of applicants for funeral director and embalmer licenses;

(2) To certify to the director the results of examinations of applicants and certify the applicant as having "passed" or "failed";

(3) To make findings and recommendations to the director on any and all matters relating to the enforcement of this chapter;

(4) To adopt and enforce reasonable rules;

(5) To examine or audit or to direct the examination and audit of prearrangement funeral service trust fund records for compliance with this chapter and rules adopted by the board; and

(6) To adopt rules establishing mandatory continuing education requirements to be met by persons applying for license renewal. [2009 c 102 § 3; 2005 c 365 § 14; 1996 c 217 § 6; 1994 c 17 § 1. Prior: 1986 c 259 § 64; 1985 c 402 § 6; 1984 c 287 § 34; 1984 c 279 § 53; 1981 c 43 § 11; 1977 ex.s. c 93 § 9.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**Savings—1986 c 259 §§ 64, 73:** "The repeal of RCW 18.39.179 and the amendment of RCW 18.39.175 by this act shall not be construed as affecting any rights and duties which matured, penalties which were incurred, and proceedings which were begun before June 11, 1986." [1986 c 259 § 74.]

**Severability—1986 c 259:** See note following RCW 18.130.010.

**Legislative finding—1985 c 402:** See note following RCW 68.50.185.

**Legislative findings—Severability—Effective date—1984 c 287:** See notes following RCW 43.03.220.

**Severability—1984 c 279:** See RCW 18.130.901.

**18.39.217 License or endorsement required for cremation—Penalty.** (1) A license or endorsement issued by the board or under chapter 68.05 RCW is required in order to operate a crematory or conduct a cremation.

(2) Conducting a cremation without a license or endorsement is a misdemeanor. Each such cremation is a separate violation. [2009 c 102 § 4; 2005 c 365 § 18; 2003 c 53 § 128; 1985 c 402 § 7.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

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

**Legislative finding—1985 c 402:** See note following RCW 68.50.185.

**18.39.800 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**18.39.810 Funeral and cemetery account.** The funeral and cemetery account is created in the custody of the state treasurer. All receipts from fines and fees collected under this chapter and chapter 68.05 RCW must be deposited in the account. Expenditures from the account may be used only to carry out the duties required for the operation and enforcement of this chapter and chapter 68.05 RCW. Only the director of licensing or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2009 c 102 § 24.]

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** "Any residual balance of funds remaining in the funeral directors and embalmers account and the cemetery account must be transferred to the funeral and cemetery account established in section 24 of this act. The treasurer shall make the transfer after being notified by the office of financial management that it has completed the financial statement for fiscal year 2009, and no later than December 31, 2009." [2009 c 102 § 25.]

## Chapter 18.51 RCW

### NURSING HOMES

#### Sections

18.51.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**18.51.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 47.]

**Chapter 18.59 RCW**  
**OCCUPATIONAL THERAPY**

## Sections

18.59.160 Purchase, storage, and administration of medications—  
Restrictions—Liability.

**18.59.160 Purchase, storage, and administration of medications—Restrictions—Liability.** An occupational therapist licensed under this chapter may purchase, store, and administer topical and transdermal medications such as hydrocortisone, dexamethasone, fluocinonide, topical anesthetics, lidocaine, magnesium sulfate, and other similar medications for the practice of occupational therapy as prescribed by a health care provider with prescribing authority as authorized in RCW 18.59.100. Administration of medication must be documented in the patient's medical record. Some medications may be applied by the use of iontophoresis and phonophoresis. An occupational therapist may not purchase, store, or administer controlled substances. A pharmacist who dispenses such drugs to a licensed occupational therapist is not liable for any adverse reactions caused by any method of use by the occupational therapist. Application of a prescribed medication to a wound as authorized in this statute does not constitute wound care management. [2009 c 68 § 1.]

**Chapter 18.64 RCW**  
**PHARMACISTS**

## Sections

18.64.011 Definitions.  
18.64.500 Tamper-resistant prescription pads or paper.  
18.64.510 Limitation on authority to regulate or establish standards regarding a jail.

**18.64.011 Definitions.** Unless the context clearly requires otherwise, definitions of terms shall be as indicated when used in this chapter.

(1) "Administer" means the direct application of a drug or device, whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject.

(2) "Board" means the Washington state board of pharmacy.

(3) "Compounding" shall be the act of combining two or more ingredients in the preparation of a prescription.

(4) "Controlled substance" means a drug or substance, or an immediate precursor of such drug or substance, so designated under or pursuant to the provisions of chapter 69.50 RCW.

(5) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a drug or device, whether or not there is an agency relationship.

(6) "Department" means the department of health.

(7) "Device" means instruments, apparatus, and contrivances, including their components, parts, and accessories, intended (a) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or other animals, or (b) to affect the structure or any function of the body of human beings or other animals.

(8) "Dispense" means the interpretation of a prescription or order for a drug, biological, or device and, pursuant to that prescription or order, the proper selection, measuring, com-

pounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(9) "Distribute" means the delivery of a drug or device other than by administering or dispensing.

(10) The words "drug" and "devices" shall not include surgical or dental instruments or laboratory materials, gas and oxygen, therapy equipment, X-ray apparatus or therapeutic equipment, their component parts or accessories, or equipment, instruments, apparatus, or contrivances used to render such articles effective in medical, surgical, or dental treatment, or for use or consumption in or for mechanical, industrial, manufacturing, or scientific applications or purposes, nor shall the word "drug" include any article or mixture covered by the Washington pesticide control act (chapter 15.58 RCW), as enacted or hereafter amended, nor medicated feed intended for and used exclusively as a feed for animals other than human beings.

(11) "Drugs" means:

(a) Articles recognized in the official United States pharmacopoeia or the official homeopathic pharmacopoeia of the United States;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in human beings or other animals;

(c) Substances (other than food) intended to affect the structure or any function of the body of human beings or other animals; or

(d) Substances intended for use as a component of any substances specified in (a), (b), or (c) of this subsection, but not including devices or their component parts or accessories.

(12) "Health care entity" means an organization that provides health care services in a setting that is not otherwise licensed by the state. Health care entity includes a free-standing outpatient surgery center or a free-standing cardiac care center. It does not include an individual practitioner's office or a multipractitioner clinic.

(13) "Labeling" shall mean the process of preparing and affixing a label to any drug or device container. The label must include all information required by current federal and state law and pharmacy rules.

(14) "Legend drugs" means any drugs which are required by any applicable federal or state law or regulation to be dispensed on prescription only or are restricted to use by practitioners only.

(15) "Manufacture" means the production, preparation, propagation, compounding, or processing of a drug or other substance or device or the packaging or repackaging of such substance or device, or the labeling or relabeling of the commercial container of such substance or device, but does not include the activities of a practitioner who, as an incident to his or her administration or dispensing such substance or device in the course of his or her professional practice, prepares, compounds, packages, or labels such substance or device.

(16) "Manufacturer" shall mean a person, corporation, or other entity engaged in the manufacture of drugs or devices.

(17) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license

expiration date common to each renewable license endorsement.

(18) "Nonlegend" or "nonprescription" drugs means any drugs which may be lawfully sold without a prescription.

(19) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(20) "Pharmacist" means a person duly licensed by the Washington state board of pharmacy to engage in the practice of pharmacy.

(21) "Pharmacy" means every place properly licensed by the board of pharmacy where the practice of pharmacy is conducted.

(22) The word "poison" shall not include any article or mixture covered by the Washington pesticide control act (chapter 15.58 RCW), as enacted or hereafter amended.

(23) "Practice of pharmacy" includes the practice of and responsibility for: Interpreting prescription orders; the compounding, dispensing, labeling, administering, and distributing of drugs and devices; the monitoring of drug therapy and use; the initiating or modifying of drug therapy in accordance with written guidelines or protocols previously established and approved for his or her practice by a practitioner authorized to prescribe drugs; the participating in drug utilization reviews and drug product selection; the proper and safe storing and distributing of drugs and devices and maintenance of proper records thereof; the providing of information on legend drugs which may include, but is not limited to, the advising of therapeutic values, hazards, and the uses of drugs and devices.

(24) "Practitioner" means a physician, dentist, veterinarian, nurse, or other person duly authorized by law or rule in the state of Washington to prescribe drugs.

(25) "Prescription" means an order for drugs or devices issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe drugs or devices in the course of his or her professional practice for a legitimate medical purpose.

(26) "Secretary" means the secretary of health or the secretary's designee.

(27) "Wholesaler" shall mean a corporation, individual, or other entity which buys drugs or devices for resale and distribution to corporations, individuals, or entities other than consumers. [2009 c 549 § 1008; 1997 c 129 § 1; 1995 c 319 § 2; 1989 1st ex. s. c 9 § 412; 1984 c 153 § 3; 1982 c 182 § 29; 1979 c 90 § 5; 1963 c 38 § 1.]

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

**Effective date—Severability—1989 1st ex. s. c 9:** See RCW 43.70.910 and 43.70.920.

**Severability—1982 c 182:** See RCW 19.02.901.

**18.64.500 Tamper-resistant prescription pads or paper.** (1) Effective July 1, 2010, every prescription written in this state by a licensed practitioner must be written on a tamper-resistant prescription pad or paper approved by the board.

(2) A pharmacist may not fill a written prescription from a licensed practitioner unless it is written on an approved tamper-resistant prescription pad or paper, except that a phar-

macist may provide emergency supplies in accordance with the board and other insurance contract requirements.

(3) If a hard copy of an electronic prescription is given directly to the patient, the manually signed hard copy prescription must be on approved tamper-resistant paper that meets the requirements of this section.

(4) For the purposes of this section, "tamper-resistant prescription pads or paper" means a prescription pad or paper that has been approved by the board for use and contains the following characteristics:

(a) One or more industry-recognized features designed to prevent unauthorized copying of a completed or blank prescription form;

(b) One or more industry-recognized features designed to prevent the erasure or modification of information written on the prescription form by the practitioner; and

(c) One or more industry-recognized features designed to prevent the use of counterfeit prescription forms.

(5) Practitioners shall employ reasonable safeguards to assure against theft or unauthorized use of prescriptions.

(6) All vendors must have their tamper-resistant prescription pads or paper approved by the board prior to the marketing or sale of pads or paper in Washington state.

(7) The board shall create a seal of approval that confirms that a pad or paper contains all three industry-recognized characteristics required by this section. The seal must be affixed to all prescription pads or paper used in this state.

(8) The board may adopt rules necessary for the administration of chapter 328, Laws of 2009.

(9) The tamper-resistant prescription pad or paper requirements in this section shall not apply to:

(a) Prescriptions that are transmitted to the pharmacy by telephone, facsimile, or electronic means; or

(b) Prescriptions written for inpatients of a hospital, outpatients of a hospital, residents of a nursing home, inpatients or residents of a mental health facility, or individuals incarcerated in a local, state, or federal correction facility, when the health care practitioner authorized to write prescriptions writes the order into the patient's medical or clinical record, the order is given directly to the pharmacy, and the patient never has the opportunity to handle the written order.

(10) All acts related to the prescribing, dispensing, and records maintenance of all prescriptions shall be in compliance with applicable federal and state laws, rules, and regulations. [2009 c 328 § 1.]

**18.64.510 Limitation on authority to regulate or establish standards regarding a jail.** Nothing in this chapter or in any provision of law shall be interpreted to invest the board with the authority to regulate or establish standards regarding a jail as defined in RCW 70.48.020 that does not operate, in whole or in part, a pharmacy or a correctional pharmacy. This section does not limit the board's authority to regulate a pharmacist that has entered into an agreement with a jail for the provision of pharmaceutical services. [2009 c 411 § 2.]

## Chapter 18.71 RCW

## PHYSICIANS

## Sections

- 18.71.080 License renewal—Human trafficking information—Continuing education requirement—Failure to renew, procedure.
- 18.71.310 Impaired physician program—License surcharge—Payment of funds.
- 18.71.440 Commission to consider amending rules—Retired active physicians.

**18.71.080 License renewal—Human trafficking information—Continuing education requirement—Failure to renew, procedure.** (1) Every person licensed to practice medicine in this state shall pay licensing fees and renew his or her license in accordance with administrative procedures and administrative requirements adopted as provided in RCW 43.70.250 and 43.70.280. A physician who resides and practices in Washington and obtains or renews a retired active license shall be exempt from licensing fees imposed under this section. The commission may establish rules governing mandatory continuing education requirements which shall be met by physicians applying for renewal of licenses. The rules shall provide that mandatory continuing education requirements may be met in part by physicians showing evidence of the completion of approved activities relating to professional liability risk management. The number of hours of continuing education for a physician holding a retired active license shall not exceed fifty hours per year.

(2) The office of crime victims advocacy shall supply the commission with information on methods of recognizing victims of human trafficking, what services are available for these victims, and where to report potential trafficking situations. The information supplied must be culturally sensitive and must include information relating to minor victims. The commission shall disseminate this information to licensees by: Providing the information on the commission's web site; including the information in newsletters; holding trainings at meetings attended by organization members; or through another distribution method determined by the commission. The commission shall report to the office of crime victims advocacy on the method or methods it uses to distribute information under this subsection.

(3) The commission, in its sole discretion, may permit an applicant who has not renewed his or her license to be licensed without examination if it is satisfied that such applicant meets all the requirements for licensure in this state, and is competent to engage in the practice of medicine. [2009 c 492 § 5; 2009 c 403 § 2; 1996 c 191 § 52; 1994 sp.s. c 9 § 312. Prior: 1991 c 195 § 1; 1991 c 3 § 163; 1985 c 322 § 4; prior: 1979 c 158 §§ 53, 54, 55; 1975 1st ex.s. c 171 § 11; 1971 ex.s. c 266 § 12; 1955 c 202 § 36; prior: 1941 c 166 § 1, part; 1913 c 82 § 1, part; 1909 c 192 § 7, part; Rem. Supp. 1941 § 10010-1, part.]

**Reviser's note:** This section was amended by 2009 c 403 § 2 and by 2009 c 492 § 5, 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).

**Finding—Intent—2009 c 403:** "The legislature finds that increasing the number of retired physicians who provide volunteer health care services is a cost-effective way to improve access to health care for many citizens of this state. Physicians holding a retired active license must currently meet many of the same requirements as physicians in active practice, including at least fifty hours of continuing education a year, despite the fact that retired

active physicians may only practice a maximum of ninety days a year, are limited to providing primary care services, and are limited to providing such services only in community clinics that are operated by public or private tax-exempt corporations. This presents both financial and practical barriers for retired physicians who wish to provide health care services on a volunteer basis, barriers that are not as stringent in other states that provide similar licenses for retired physicians. It is therefore the intent of the legislature to ease some of these barriers in a manner that does not adversely affect public safety." [2009 c 403 § 1.]

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**18.71.310 Impaired physician program—License surcharge—Payment of funds.** (1) The commission shall enter into a contract with the entity to implement an impaired physician program. The commission may enter into a contract with the entity for up to six years in length. The impaired physician program may include any or all of the following:

(a) Entering into relationships supportive of the impaired physician program with professionals who provide either evaluation or treatment services, or both;

(b) Receiving and assessing reports of suspected impairment from any source;

(c) Intervening in cases of verified impairment, or in cases where there is reasonable cause to suspect impairment;

(d) Upon reasonable cause, referring suspected or verified impaired physicians for evaluation or treatment;

(e) Monitoring the treatment and rehabilitation of impaired physicians including those ordered by the commission;

(f) Providing monitoring and continuing treatment and rehabilitative support of physicians;

(g) Performing such other activities as agreed upon by the commission and the entity; and

(h) Providing prevention and education services.

(2) A contract entered into under subsection (1) of this section shall be financed by a surcharge of fifty dollars per year on each license renewal or issuance of a new license to be collected by the department of health from every physician and surgeon licensed under this chapter in addition to other license fees. These moneys shall be placed in the impaired physician account to be used solely for the implementation of the impaired physician program.

(3) All funds in the impaired physician account shall be paid to the contract entity within sixty days of deposit. [2009 c 98 § 1; 2001 c 109 § 1; 1998 c 132 § 4; 1997 c 79 § 2; 1994 sp.s. c 9 § 330; 1991 c 3 § 169; 1989 c 119 § 2; 1987 c 416 § 2. Formerly RCW 18.72.306.]

**Finding—Intent—Severability—1998 c 132:** See notes following RCW 18.71.0195.

**Effective date—1997 c 79:** See note following RCW 18.71.401.

**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 18.72.301.

**18.71.440 Commission to consider amending rules—Retired active physicians.** (1) The commission shall consider amending its rules on retired active physicians in a manner that improves access to health care services for the citizens of this state without compromising public safety. When considering whether to amend its rules, the commission shall, at a minimum, consider the following:

(a) Whether physicians holding retired active licenses should be allowed to provide health care services beyond primary care;

(b) Whether physicians holding retired active licenses should be allowed to provide health care services in settings beyond community clinics operated by public or private tax-exempt corporations; and

(c) The number and type of continuing education hours that physicians holding retired active licenses shall be required to obtain.

(2) The commission shall determine whether it will amend its rules in the manner suggested by this section no later than November 15, 2009. If the commission determines that it will not amend its rules, it shall provide a written explanation of its decision to the appropriate committees of the legislature no later than December 1, 2009. [2009 c 403 § 4.]

**Finding—Intent—2009 c 403:** See note following RCW 18.71.080.

### Chapter 18.71A RCW PHYSICIAN ASSISTANTS

#### Sections

18.71A.020 Rules fixing qualifications and restricting practice—Applications—Discipline—Payment of funds.

**18.71A.020 Rules fixing qualifications and restricting practice—Applications—Discipline—Payment of funds.** (1) The commission shall adopt rules fixing the qualifications and the educational and training requirements for licensure as a physician assistant or for those enrolled in any physician assistant training program. The requirements shall include completion of an accredited physician assistant training program approved by the commission and within one year successfully take and pass an examination approved by the commission, if the examination tests subjects substantially equivalent to the curriculum of an accredited physician assistant training program. An interim permit may be granted by the department of health for one year provided the applicant meets all other requirements. Physician assistants licensed by the board of medical examiners, or the medical quality assurance commission as of July 1, 1999, shall continue to be licensed.

(2)(a) The commission shall adopt rules governing the extent to which:

(i) Physician assistant students may practice medicine during training; and

(ii) Physician assistants may practice after successful completion of a physician assistant training course.

(b) Such rules shall provide:

(i) That the practice of a physician assistant shall be limited to the performance of those services for which he or she is trained; and

(ii) That each physician assistant shall practice medicine only under the supervision and control of a physician licensed in this state, but such supervision and control shall not be construed to necessarily require the personal presence of the supervising physician or physicians at the place where services are rendered.

(3) Applicants for licensure shall file an application with the commission on a form prepared by the secretary with the approval of the commission, detailing the education, training, and experience of the physician assistant and such other information as the commission may require. The application shall be accompanied by a fee determined by the secretary as provided in RCW 43.70.250 and 43.70.280. A surcharge of fifty dollars per year shall be charged on each license renewal or issuance of a new license to be collected by the department and deposited into the impaired physician account for physician assistant participation in the impaired physician program. Each applicant shall furnish proof satisfactory to the commission of the following:

(a) That the applicant has completed an accredited physician assistant program approved by the commission and is eligible to take the examination approved by the commission;

(b) That the applicant is of good moral character; and

(c) That the applicant is physically and mentally capable of practicing medicine as a physician assistant with reasonable skill and safety. The commission may require an applicant to submit to such examination or examinations as it deems necessary to determine an applicant's physical or mental capability, or both, to safely practice as a physician assistant.

(4) The commission may approve, deny, or take other disciplinary action upon the application for license as provided in the Uniform Disciplinary Act, chapter 18.130 RCW. The license shall be renewed as determined under RCW 43.70.250 and 43.70.280. The commission may authorize the use of alternative supervisors who are licensed either under chapter 18.57 or 18.71 RCW.

(5) All funds in the impaired physician account shall be paid to the contract entity within sixty days of deposit. [2009 c 98 § 2; 1999 c 127 § 1; 1998 c 132 § 14; 1996 c 191 § 57; 1994 sp.s. c 9 § 319; 1993 c 28 § 5; 1992 c 28 § 2; 1990 c 196 § 2; 1971 ex.s. c 30 § 2.]

**Finding—Intent—Severability—1998 c 132:** See notes following RCW 18.71.0195.

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

### Chapter 18.73 RCW EMERGENCY MEDICAL CARE AND TRANSPORTATION SERVICES

#### Sections

18.73.270 Disclosure of information by emergency medical personnel—Violent injuries—Immunity.

**18.73.270 Disclosure of information by emergency medical personnel—Violent injuries—Immunity.** (1) Except when treatment is provided in a hospital licensed under chapter 70.41 RCW, a physician's trained emergency medical service intermediate life support technician and paramedic, emergency medical technician, or first responder who renders treatment to a patient for (a) a bullet wound, gunshot wound, powder burn, or other injury arising from or caused by the discharge of a firearm; (b) an injury caused by a knife, an ice pick, or any other sharp or pointed instrument which federal, state, or local law enforcement authorities reasonably believe to have been intentionally inflicted upon a person; (c)

a blunt force injury that federal, state, or local law enforcement authorities reasonably believe resulted from a criminal act; or (d) injuries sustained in an automobile collision, shall disclose without the patient's authorization, upon a request from a federal, state, or local law enforcement authority as defined in RCW 70.02.010(3), the following information, if known:

- (i) The name of the patient;
- (ii) The patient's residence;
- (iii) The patient's sex;
- (iv) The patient's age;
- (v) The patient's condition or extent and location of injuries as determined by the physician's trained emergency medical service intermediate life support technician and paramedic, emergency medical technician, or first responder;
- (vi) Whether the patient was conscious when contacted;
- (vii) Whether the patient appears to have consumed alcohol or appears to be under the influence of alcohol or drugs;
- (viii) The name or names of the physician's trained emergency medical service intermediate life support technician and paramedic, emergency medical technician, or first responder who provided treatment to the patient; and
- (ix) The name of the facility to which the patient is being transported for additional treatment.

(2) A physician's trained emergency medical service intermediate life support technician and paramedic, emergency medical technician, first responder, or other individual who discloses information pursuant to this section is immune from civil or criminal liability or professional licensure action for the disclosure, provided that the physician's trained emergency medical service intermediate life support technician and paramedic, emergency medical technician, first responder, or other individual acted in good faith and without gross negligence or willful or wanton misconduct.

(3) The obligation to provide information pursuant to this section is secondary to patient care needs. Information must be provided as soon as reasonably possible taking into consideration a patient's emergency care needs.

(4) For purposes of this section, "a physician's trained emergency medical service intermediate life support technician and paramedic" has the same meaning as in RCW 18.71.200. [2009 c 359 § 1.]

### Chapter 18.79 RCW NURSING CARE

#### Sections

18.79.260 Registered nurse—Activities allowed—Delegation of tasks.

**18.79.260 Registered nurse—Activities allowed—Delegation of tasks.** (1) A registered nurse under his or her license may perform for compensation nursing care, as that term is usually understood, to individuals with illnesses, injuries, or disabilities.

(2) A registered nurse may, at or under the general direction of a licensed physician and surgeon, dentist, osteopathic physician and surgeon, naturopathic physician, optometrist, podiatric physician and surgeon, physician assistant, osteopathic physician assistant, or advanced registered nurse practitioner acting within the scope of his or her license, adminis-

ter medications, treatments, tests, and inoculations, whether or not the severing or penetrating of tissues is involved and whether or not a degree of independent judgment and skill is required. Such direction must be for acts which are within the scope of registered nursing practice.

(3) A registered nurse may delegate tasks of nursing care to other individuals where the registered nurse determines that it is in the best interest of the patient.

(a) The delegating nurse shall:

(i) Determine the competency of the individual to perform the tasks;

(ii) Evaluate the appropriateness of the delegation;

(iii) Supervise the actions of the person performing the delegated task; and

(iv) Delegate only those tasks that are within the registered nurse's scope of practice.

(b) A registered nurse, working for a home health or hospice agency regulated under chapter 70.127 RCW, may delegate the application, instillation, or insertion of medications to a registered or certified nursing assistant under a plan of care.

(c) Except as authorized in (b) or (e) of this subsection, a registered nurse may not delegate the administration of medications. Except as authorized in (e) of this subsection, a registered nurse may not delegate acts requiring substantial skill, and may not delegate piercing or severing of tissues. Acts that require nursing judgment shall not be delegated.

(d) No person may coerce a nurse into compromising patient safety by requiring the nurse to delegate if the nurse determines that it is inappropriate to do so. Nurses shall not be subject to any employer reprisal or disciplinary action by the nursing care quality assurance commission for refusing to delegate tasks or refusing to provide the required training for delegation if the nurse determines delegation may compromise patient safety.

(e) For delegation in community-based care settings or in-home care settings, a registered nurse may delegate nursing care tasks only to registered or certified nursing assistants. Simple care tasks such as blood pressure monitoring, personal care service, diabetic insulin device set up, verbal verification of insulin dosage for sight-impaired individuals, or other tasks as defined by the nursing care quality assurance commission are exempted from this requirement.

(i) "Community-based care settings" includes: Community residential programs for people with developmental disabilities, certified by the department of social and health services under chapter 71A.12 RCW; adult family homes licensed under chapter 70.128 RCW; and boarding homes licensed under chapter 18.20 RCW. Community-based care settings do not include acute care or skilled nursing facilities.

(ii) "In-home care settings" include an individual's place of temporary or permanent residence, but does not include acute care or skilled nursing facilities, and does not include community-based care settings as defined in (e)(i) of this subsection.

(iii) Delegation of nursing care tasks in community-based care settings and in-home care settings is only allowed for individuals who have a stable and predictable condition. "Stable and predictable condition" means a situation in which the individual's clinical and behavioral status is known and



does not require the frequent presence and evaluation of a registered nurse.

(iv) The determination of the appropriateness of delegation of a nursing task is at the discretion of the registered nurse. Other than delegation of the administration of insulin by injection for the purpose of caring for individuals with diabetes, the administration of medications by injection, sterile procedures, and central line maintenance may never be delegated.

(v) When delegating insulin injections under this section, the registered nurse delegator must instruct the individual regarding proper injection procedures and the use of insulin, demonstrate proper injection procedures, and must supervise and evaluate the individual performing the delegated task weekly during the first four weeks of delegation of insulin injections. If the registered nurse delegator determines that the individual is competent to perform the injection properly and safely, supervision and evaluation shall occur at least every ninety days thereafter.

(vi) The registered nurse shall verify that the nursing assistant has completed the required core nurse delegation training required in chapter 18.88A RCW prior to authorizing delegation.

(vii) The nurse is accountable for his or her own individual actions in the delegation process. Nurses acting within the protocols of their delegation authority are immune from liability for any action performed in the course of their delegation duties.

(viii) Nursing task delegation protocols are not intended to regulate the settings in which delegation may occur, but are intended to ensure that nursing care services have a consistent standard of practice upon which the public and the profession may rely, and to safeguard the authority of the nurse to make independent professional decisions regarding the delegation of a task.

(f) The nursing care quality assurance commission may adopt rules to implement this section.

(4) Only a person licensed as a registered nurse may instruct nurses in technical subjects pertaining to nursing.

(5) Only a person licensed as a registered nurse may hold herself or himself out to the public or designate herself or himself as a registered nurse. [2009 c 203 § 1; 2008 c 146 § 11; 2003 c 140 § 2; 2000 c 95 § 3; 1995 1st sp.s. c 18 § 51; 1995 c 295 § 1; 1994 sp.s. c 9 § 426.]

**Findings—Intent—Severability—2008 c 146:** See notes following RCW 74.41.040.

**Effective date—2003 c 140:** See note following RCW 18.79.040.

**Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18:** See notes following RCW 74.39A.030.

**Effective date—1995 c 295:** "This act shall take effect August 1, 1996." [1995 c 295 § 4.]

### Chapter 18.83 RCW PSYCHOLOGISTS

#### Sections

18.83.090 Continuing education requirements—Human trafficking information—License renewal.

**18.83.090 Continuing education requirements—Human trafficking information—License renewal.** (1)

The board shall establish rules governing mandatory continuing education requirements which shall be met by any psychologist applying for a license renewal.

(2) The office of crime victims advocacy shall supply the board with information on methods of recognizing victims of human trafficking, what services are available for these victims, and where to report potential trafficking situations. The information supplied must be culturally sensitive and must include information relating to minor victims. The board shall disseminate this information to licensees by: Providing the information on the board's web site; including the information in newsletters; holding trainings at meetings attended by organization members; or through another distribution method determined by the board. The board shall report to the office of crime victims advocacy on the method or methods it uses to distribute information under this subsection.

(3) Administrative procedures, administrative requirements, and fees for renewal and reissue of licenses shall be established as provided in RCW 43.70.250 and 43.70.280. [2009 c 492 § 6; 1996 c 191 § 68; 1991 c 3 § 200; 1984 c 279 § 83; 1977 c 58 § 1; 1975 1st ex.s. c 30 § 74; 1971 ex.s. c 266 § 16; 1965 c 70 § 9; 1955 c 305 § 9.]

**Severability—1984 c 279:** See RCW 18.130.901.

### Chapter 18.84 RCW RADIOLOGIC TECHNOLOGISTS

#### Sections

18.84.040 Powers of secretary—Application of uniform disciplinary act.  
18.84.070 Secretary immune from liability.

**18.84.040 Powers of secretary—Application of uniform disciplinary act.** (1) In addition to any other authority provided by law, the secretary may:

(a) Adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this chapter;

(b) Set all registration, certification, and renewal fees in accordance with RCW 43.70.250;

(c) Establish forms and procedures necessary to administer this chapter;

(d) Evaluate and designate those schools from which graduation will be accepted as proof of an applicant's eligibility to receive a certificate;

(e) Determine whether alternative methods of training are equivalent to formal education, and to establish forms, procedures, and criteria for evaluation of an applicant's alternative training to determine the applicant's eligibility to receive a certificate;

(f) Issue a certificate to any applicant who has met the education, training, examination, and conduct requirements for certification; and

(g) Issue a registration to an applicant who meets the requirement for a registration.

(2) The secretary may hire clerical, administrative, and investigative staff as needed to implement this chapter.

(3) The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of registrations and certifications, unregistered and uncertified practice, and the discipline of registrants and certificants under this chapter. The secretary is the disciplining authority under this chapter. [2009 c

560 § 17; 2008 c 246 § 4; 1994 sp.s. c 9 § 506; 1991 c 222 § 11; 1991 c 3 § 205; 1987 c 412 § 5.]

**Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560:** See notes following RCW 18.06.080.

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**18.84.070 Secretary immune from liability.** The secretary or individuals acting on his or her behalf are immune from suit in any civil action based on any certification or disciplinary proceedings or other official acts performed in the course of their duties. [2009 c 560 § 18; 1994 sp.s. c 9 § 507; 1991 c 3 § 208; 1987 c 412 § 8.]

**Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560:** See notes following RCW 18.06.080.

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

## Chapter 18.88A RCW NURSING ASSISTANTS

### Sections

18.88A.115 Home care aide certification reciprocity.

**18.88A.115 Home care aide certification reciprocity.** By August 1, 2010, the department of health shall develop, in consultation with the nursing care quality assurance commission and consumer and worker representatives, rules permitting reciprocity to the maximum extent possible under federal law between home care aide certification and nursing assistant certification. [2009 c 580 § 16; 2009 c 2 § 11 (Initiative Measure No. 1029, approved November 4, 2008).]

**Effective date—2009 c 580 § 16:** "Section 16 of this act takes effect September 1, 2009." [2009 c 580 § 19.]

**Effective date—2009 c 2 (Initiative Measure No. 1029) § 11:** "Section 11 of this act takes effect September 1, 2009." [2009 c 2 § 22 (Initiative Measure No. 1029, approved November 4, 2008).]

**Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029):** See notes following RCW 18.88B.020.

## Chapter 18.88B RCW LONG-TERM CARE WORKERS

### Sections

18.88B.010 Definitions.  
18.88B.020 Certification requirements.  
18.88B.030 Certification examinations.  
18.88B.040 Exemptions from training requirements.  
18.88B.050 Disciplinary action—Uncertified practice.

**18.88B.010 Definitions.** The definitions in RCW 74.39A.009 apply throughout this chapter unless the context clearly requires otherwise. [2009 c 2 § 17 (Initiative Measure No. 1029, approved November 4, 2008).]

**Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029):** See notes following RCW 18.88B.020.

**18.88B.020 Certification requirements.** (1) Effective January 1, 2011, except as provided in RCW 18.88B.040, the department of health shall require that any person hired as a

long-term care worker for the elderly or persons with disabilities must be certified as a home care aide within one hundred fifty days from the date of being hired.

(2) Except as provided in RCW 18.88B.040, certification as a home care aide requires both completion of seventy-five hours of training and successful completion of a certification examination pursuant to RCW 74.39A.073 and 18.88B.030.

(3) No person may practice or, by use of any title or description, represent himself or herself as a certified home care aide without being certified pursuant to this chapter.

(4) The department of health shall adopt rules by August 1, 2010, to implement this section. [2009 c 580 § 18; 2009 c 2 § 4 (Initiative Measure No. 1029, approved November 4, 2008).]

**Intent—Findings—2009 c 2 (Initiative Measure No. 1029):** "It is the intent of the people through this initiative to protect the safety of and improve the quality of care to the vulnerable elderly and persons with disabilities.

The people find and declare that current procedures to train and educate long-term care workers and to protect the elderly or persons with disabilities from caregivers with a criminal background are insufficient. The people find and declare that long-term care workers for the elderly or persons with disabilities should have a federal criminal background check and a formal system of education and experiential qualifications leading to a certification test.

The people find that the quality of long-term care services for the elderly and persons with disabilities is dependent upon the competency of the workers who provide those services. To assure and enhance the quality of long-term care services for the elderly and persons with disabilities, the people recognize the need for federal criminal background checks and increased training requirements. Their establishment should protect the vulnerable elderly and persons with disabilities, bring about a more stabilized workforce, improve the quality of long-term care services, and provide a valuable resource for recruitment into long-term care services for the elderly and persons with disabilities." [2009 c 2 § 1 (Initiative Measure No. 1029, approved November 4, 2008).]

**Construction—2009 c 2 (Initiative Measure No. 1029):** "The provisions of this act are to be liberally construed to effectuate the intent, policies, and purposes of this act." [2009 c 2 § 19 (Initiative Measure No. 1029, approved November 4, 2008).]

**Severability—2009 c 2 (Initiative Measure No. 1029):** "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." [2009 c 2 § 20 (Initiative Measure No. 1029, approved November 4, 2008).]

**Short title—2009 c 2 (Initiative Measure No. 1029):** "This act may be known and cited as the better background checks and improved training for long-term care workers for the elderly and persons with disabilities initiative of 2008." [2009 c 2 § 21 (Initiative Measure No. 1029, approved November 4, 2008).]

*Continuing education requirements:* RCW 74.39A.340.

*Criminal history checks on long-term care workers:* RCW 74.39A.055.

*Nursing assistant reciprocity:* RCW 18.88A.115.

*Training requirements:* RCW 74.39A.073.

**18.88B.030 Certification examinations.** (1) Effective January 1, 2011, except as provided in RCW 18.88B.040, the department of health shall require that all long-term care workers successfully complete a certification examination. Any long-term care worker failing to make the required grade for the examination will not be certified as a home care aide.

(2) The department of health, in consultation with consumer and worker representatives, shall develop a home care aide certification examination to evaluate whether an applicant possesses the skills and knowledge necessary to practice competently. Unless excluded by RCW 18.88B.040 (1) and

(2), only those who have completed the training requirements in RCW 74.39A.073 shall be eligible to sit for this examination.

(3) The examination shall include both a skills demonstration and a written or oral knowledge test. The examination papers, all grading of the papers, and records related to the grading of skills demonstration shall be preserved for a period of not less than one year. The department of health shall establish rules governing the number of times and under what circumstances individuals who have failed the examination may sit for the examination, including whether any intermediate remedial steps should be required.

(4) All examinations shall be conducted by fair and wholly impartial methods. The certification examination shall be administered and evaluated by the department of health or by a contractor to the department of health that is neither an employer of long-term care workers or private contractors providing training services under this chapter.

(5) The department of health has the authority to:

(a) Establish forms, procedures, and examinations necessary to certify home care aides pursuant to this chapter;

(b) Hire clerical, administrative, and investigative staff as needed to implement this section;

(c) Issue certification as a home care aide to any applicant who has successfully completed the home care aide examination;

(d) Maintain the official record of all applicants and persons with certificates;

(e) Exercise disciplinary authority as authorized in chapter 18.130 RCW; and

(f) Deny certification to applicants who do not meet training, competency examination, and conduct requirements for certification.

(6) The department of health shall adopt rules by August 1, 2010, that establish the procedures, including criteria for reviewing an applicant's state and federal background checks, and examinations necessary to carry this section into effect. [2009 c 580 § 4; 2009 c 2 § 6 (Initiative Measure No. 1029, approved November 4, 2008).]

**Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029):** See notes following RCW 18.88B.020.

#### **18.88B.040 Exemptions from training requirements.**

The following long-term care workers are not required to become a certified home care aide pursuant to this chapter.

(1) Registered nurses, licensed practical nurses, certified nursing assistants, medicare-certified home health aides, or other persons who hold a similar health credential, as determined by the secretary of health, or persons with special education training and an endorsement granted by the superintendent of public instruction, as described in RCW 28A.300.010, if the secretary of health determines that the circumstances do not require certification. Individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in RCW 74.39A.073 but must successfully complete a certification examination pursuant to RCW 18.88B.030.

(2) A person already employed as a long-term care worker prior to January 1, 2011, who completes all of his or her training requirements in effect as of the date he or she was

hired, is not required to obtain certification. Individuals exempted by this subsection may obtain certification as a home care aide from the department of health without fulfilling the training requirements in RCW 74.39A.073 but must successfully complete a certification examination pursuant to RCW 18.88B.030.

(3) All long-term care workers employed by supported living providers are not required to obtain certification under this chapter.

(4) An individual provider caring only for his or her biological, step, or adoptive child or parent is not required to obtain certification under this chapter.

(5) Prior to June 30, 2014, a person hired as an individual provider who provides twenty hours or less of care for one person in any calendar month is not required to obtain certification under this chapter.

(6) A long-term care worker exempted by this section from the training requirements contained in RCW 74.39A.073 may not be prohibited from enrolling in training pursuant to that section.

(7) The department of health shall adopt rules by August 1, 2010, to implement this section. [2009 c 580 § 15; 2009 c 2 § 7 (Initiative Measure No. 1029, approved November 4, 2008).]

**Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029):** See notes following RCW 18.88B.020.  
*Training requirements for individual providers caring for family members: RCW 74.39A.075.*

**18.88B.050 Disciplinary action—Uncertified practice.** (1) The uniform disciplinary act, chapter 18.130 RCW, governs uncertified practice, issuance of certificates, and the discipline of persons with certificates under this chapter. The secretary of health shall be the disciplinary authority under this chapter.

(2) The secretary of health may take action to immediately suspend the certification of a long-term care worker upon finding that conduct of the long-term care worker has caused or presents an imminent threat of harm to a functionally disabled person in his or her care.

(3) If the secretary of health imposes suspension or conditions for continuation of certification, the suspension or conditions for continuation are effective immediately upon notice and shall continue in effect pending the outcome of any hearing.

(4) The department of health shall take appropriate enforcement action related to the licensure of a private agency or facility licensed by the state, to provide personal care services, other than an individual provider, who knowingly employs a long-term care worker who is not a certified home care aide as required under this chapter or, if exempted from certification by RCW 18.88B.040, has not completed his or her required training pursuant to this chapter.

(5) Chapter 34.05 RCW shall govern actions by the department of health under this section.

(6) The department of health shall adopt rules by August 1, 2010, to implement this section. [2009 c 580 § 17; 2009 c 2 § 13 (Initiative Measure No. 1029, approved November 4, 2008).]

**Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029):** See notes following RCW 18.88B.020.

Enforcement actions: RCW 74.39A.085.

### Chapter 18.92 RCW

## VETERINARY MEDICINE, SURGERY, AND DENTISTRY

### Sections

18.92.013 Dispensing of drugs by registered or licensed personnel.

**18.92.013 Dispensing of drugs by registered or licensed personnel.** (1) A veterinarian legally prescribing drugs may delegate to a registered veterinary medication clerk, while under the veterinarian's direct supervision, certain nondiscretionary functions defined by the board and used in the preparing of legend and nonlegend drugs (except controlled substances as defined in or under chapter 69.50 RCW) associated with the practice of veterinary medicine. A veterinarian legally prescribing drugs may delegate to a licensed veterinary technician, while under the veterinarian's indirect supervision, certain nondiscretionary functions defined by the board and used in the preparing of legend drugs, nonlegend drugs, and controlled substances associated with the practice of veterinary medicine. Upon final approval of the packaged prescription following a direct physical inspection of the packaged prescription for proper formulation, packaging, and labeling by the veterinarian, the veterinarian may delegate the delivery of the prescription to a registered veterinary medication clerk or licensed veterinary technician, while under the veterinarian's indirect supervision. Dispensing of drugs by veterinarians, licensed veterinary technicians, and registered veterinary medication clerks shall meet the applicable requirements of chapters 18.64, 69.40, 69.41, and 69.50 RCW and is subject to inspection by the board of pharmacy investigators.

(2) A licensed veterinary technician may administer legend drugs under chapter 69.41 RCW and controlled substances under chapter 69.50 RCW under indirect supervision of a veterinarian.

(3) For the purposes of this section:

(a) "Direct supervision" means the veterinarian is on the premises and is quickly and easily available; and

(b) "Indirect supervision" means the veterinarian is not on the premises but has given written or oral instructions for the delegated task. [2009 c 136 § 1; 2007 c 235 § 5; 2000 c 93 § 8; 1993 c 78 § 2.]

### Chapter 18.96 RCW

## LANDSCAPE ARCHITECTS

### Sections

18.96.010 Evidence of qualifications required. (*Effective July 1, 2010.*)  
 18.96.020 Use of titles, descriptions, and phrases—License or authorization required. (*Effective July 1, 2010.*)  
 18.96.030 Definitions. (*Effective July 1, 2010.*)  
 18.96.040 Licensure board for landscape architects—Members—Qualifications. (*Effective July 1, 2010.*)  
 18.96.050 Repealed. (*Effective July 1, 2010.*)  
 18.96.060 Board—Adoption of rules—Executive director. (*Effective July 1, 2010.*)  
 18.96.070 Qualifications of applicants. (*Effective July 1, 2010.*)  
 18.96.080 Applications for licensure and examinations—Fees. (*Effective July 1, 2010.*)  
 18.96.090 Examinations. (*Effective July 1, 2010.*)  
 18.96.100 Reciprocity. (*Effective July 1, 2010.*)

18.96.110 Renewals. (*Effective July 1, 2010.*)  
 18.96.120 Unprofessional conduct—Grounds for disciplinary action. (*Effective July 1, 2010.*)  
 18.96.140 Reissuance of lost or destroyed certificates. (*Effective July 1, 2010.*)  
 18.96.150 Certificates of licensure—Issuance—Contents—Seal. (*Effective July 1, 2010.*)  
 18.96.160 Repealed. (*Effective July 1, 2010.*)  
 18.96.170 Repealed. (*Effective July 1, 2010.*)  
 18.96.180 Certificate of licensure suspension—Noncompliance with support order—Reissuance. (*Effective July 1, 2010.*)  
 18.96.190 Certificate of licensure suspension—Nonpayment or default on educational loan or scholarship. (*Effective July 1, 2010.*)  
 18.96.210 Landscape architects' license account.  
 18.96.220 Application—Professions and activities not affected. (*Effective July 1, 2010.*)  
 18.96.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**18.96.010 Evidence of qualifications required.** (*Effective July 1, 2010.*) In order to safeguard human health and property, and to promote the public welfare, any person in either public or private capacity practicing or offering to practice landscape architecture for hire shall be required to submit evidence that he or she is qualified so to practice and shall be licensed under the provisions of this chapter. [2009 c 370 § 2; 1969 ex.s. c 158 § 1.]

**Finding—2009 c 370:** "The legislature finds that in order to safeguard life, health, and property and to promote public welfare, it is necessary to regulate the practice of landscape architecture, based on the first action taken to regulate the profession in 1969, and subsequent review in year 1988 along with review and revisions in 2009." [2009 c 370 § 1.]

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** "Sections 1 through 16, 18, 20, and 21 of this act take effect July 1, 2010." [2009 c 370 § 24.]

**18.96.020 Use of titles, descriptions, and phrases—License or authorization required.** (*Effective July 1, 2010.*) (1) It is unlawful for any person to practice or offer to practice in this state, landscape architecture, or to use in connection with his or her name or otherwise assume, use, or advertise any title or description including the phrases "landscape architect," "landscape architecture," "landscape architectural," or language tending to imply that he or she is a landscape architect, unless the person is licensed or authorized to practice in the state of Washington under this chapter.

(2) A person may use the title "intern landscape architect" after graduation from an accredited degree program in landscape architecture and working under the direct supervision of a licensed landscape architect.

(3) This section does not affect the use of the phrases "landscape architect," "landscape architecture," or "landscape architectural" where a person does not practice or offer to practice landscape architecture. [2009 c 370 § 3; 1969 ex.s. c 158 § 2.]

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** See note following RCW 18.96.010.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**18.96.030 Definitions.** (*Effective July 1, 2010.*) The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Administration of the construction contract" means the periodic observation of materials and work to observe the

general compliance with the construction contract documents, and does not include responsibility for supervising construction methods and processes, site conditions, equipment operations, personnel, or safety on the worksite.

(2) "Board" means the state board of licensure for landscape architects.

(3) "Certificate of licensure" means the certificate issued by the director to newly licensed landscape architects.

(4) "Department" means the department of licensing.

(5) "Design" means the conceiving, planning, delineation, siting, and arrangement of natural and built features. Where applied to the discussion of structures or utility systems, design does not include the act of engineering such features.

(6) "Director" means the director of licensing.

(7) "Engineer" means an individual who is registered as an engineer under chapter 18.43 RCW.

(8) "Engineering" means the "practice of engineering" as defined in RCW 18.43.020.

(9) "Landscape architect" means an individual who engages in the practice of landscape architecture.

(10) "Landscape architecture" means the rendering of professional services in connection with consultations, investigations, reconnaissance, research, planning, design, construction document preparation, construction administration, or teaching supervision in connection with the development of land areas where, and to the extent that, the dominant purpose of such services is the preservation, enhancement, or determination of proper land uses, natural land features, ground cover and planting, naturalistic and aesthetic values, the settings and approaches to structures or other improvements, or natural drainage and erosion control. This practice includes the location, design, and arrangement of such tangible objects as pools, walls, steps, trellises, canopies, and such features as are incidental and necessary to the purposes in this chapter. Landscape architecture involves the design and arrangement of land forms and the development of outdoor space including, but not limited to, the design of public parks, trails, playgrounds, cemeteries, home and school grounds, and the development of industrial and recreational sites.

(11) "Licensed" means holding a currently valid certificate of licensure issued by the director authorizing the practice of landscape architecture.

(12) "Person" means any individual, partnership, professional service corporation, corporation, joint stock association, joint venture, or any other entity authorized to do business in the state.

(13) "Practice of landscape architecture" means the rendering of services where landscape architectural education, training, experience, and the application of mathematical, physical, and social science principles are applied in consultation, evaluation, planning, design including, but not limited to, the preparation and filing of plans, drawings, specifications, and other contract documents, and administration of contracts relative to projects principally directed at the functional and aesthetic use and preservation of land. [2009 c 370 § 4; 1979 c 158 § 73; 1969 ex.s. c 158 § 3.]

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** See note following RCW 18.96.010.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**18.96.040 Licensure board for landscape architects—Members—Qualifications. (Effective July 1, 2010.)** (1)(a) There is created a licensure board for landscape architects consisting of five members appointed by the governor.

(b) Four members shall be licensed landscape architects who are residents of the state and have at least eight years' experience in the practice of landscape architecture as registered or licensed landscape architects in responsible charge of landscape architectural work or responsible charge of landscape architectural teaching. One member shall be a public member, who is not and has never been a registered or licensed landscape architect and who does not employ and is not employed by or professionally or financially associated with a landscape architect.

(c) The term of each newly appointed member shall be six years.

(2)(a) Every member of the board shall receive a certificate of appointment from the governor. On the expiration of the term of each member, the governor shall appoint a successor to serve for a term of six years or until the next successor has been appointed.

(b) The governor may remove any member of the board for cause. Vacancies in the board for any reason shall be filled by appointment for the unexpired term.

(3) The board shall elect a chairman, a vice-chairman, and a secretary. The secretary may delegate his or her authority to the executive director.

(4) Members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2009 c 370 § 5; 1993 c 35 § 1; 1985 c 18 § 1; 1969 ex.s. c 158 § 4.]

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** See note following RCW 18.96.010.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**Effective date—1985 c 18:** "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 June 30, 1985." [1985 c 18 § 6.]

**18.96.050 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**18.96.060 Board—Adoption of rules—Executive director. (Effective July 1, 2010.)** (1) The board may adopt such rules under chapter 34.05 RCW as are necessary for the proper performance of its duties under this chapter.

(2) The director may employ an executive director subject to approval of the board. [2009 c 370 § 6; 2002 c 86 § 234; 1969 ex.s. c 158 § 6.]

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** See note following RCW 18.96.010.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**18.96.070 Qualifications of applicants. (Effective July 1, 2010.)** This section establishes the minimum evi-

dence satisfactory to the board that the applicant is qualified for licensure as a professional landscape architect.

(1) A certificate of licensure shall be granted by the director to all qualified applicants who are certified by the board as having passed the required examination and as having given satisfactory proof of completion of the required education and work experience.

(2) An applicant for licensure as a landscape architect shall be of a good moral character, at least eighteen years of age, and shall possess one of the following qualifications:

(a) Have a professional landscape architectural degree from an institution of higher education accredited by the national landscape architecture accreditation board, or an equivalent degree in landscape architecture as determined by the board, and three years of practical landscape architectural work experience under the supervision of a registered or licensed landscape architect; or

(b) Have a high school diploma or equivalent and eight years' practical landscape architectural work experience, which may include landscape design as a principal activity and postsecondary education approved by the board. At least six years of work experience must be under the direct supervision of a registered or licensed landscape architect. An applicant may receive up to two years of practical landscape architectural work experience for postsecondary education courses in landscape architecture, landscape architectural technology, or a related field, including courses in a community or technical college, if the courses are equivalent to education courses in an accredited landscape architectural degree program. [2009 c 370 § 7; 1969 ex.s. c 158 § 7.]

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** See note following RCW 18.96.010.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**18.96.080 Applications for licensure and examinations—Fees. (Effective July 1, 2010.)** (1) Application for licensure shall be filed with the board as provided by rule.

(2) The application for examination shall be filed with the board as prescribed by rule.

(3) The application and examination fees shall be determined by the director under RCW 43.24.086. [2009 c 370 § 8; 1993 c 35 § 2; 1985 c 7 § 74; 1975 1st ex.s. c 30 § 85; 1969 ex.s. c 158 § 8.]

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** See note following RCW 18.96.010.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**18.96.090 Examinations. (Effective July 1, 2010.)** (1) Examinations of landscape architects for certificates of licensure shall be held at least annually at such time and place as the board determines.

(2) The board shall determine the content, scope, and grading process of the examination. The board may adopt an appropriate national examination and grading procedure.

(3) Applicants who fail to pass any section of the examination shall be permitted to retake the parts failed as prescribed by the board. If the entire examination is not successfully completed within five years, a retake of the entire examination is required.

(4) Applicants for licensure may begin taking the examination upon graduating from an accredited landscape archi-

ture program if the applicant is employed under the supervision of a registered or licensed landscape architect.

(5) The director shall issue a certificate of licensure to qualified applicants as provided in RCW 18.96.150. [2009 c 370 § 9; 1993 c 35 § 3; 1985 c 18 § 2; 1969 ex.s. c 158 § 9.]

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** See note following RCW 18.96.010.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**Effective date—1985 c 18:** See note following RCW 18.96.040.

**18.96.100 Reciprocity. (Effective July 1, 2010.)** (1) The director may, upon receipt of the current licensure fee, grant a certificate of licensure to an applicant who is a licensed landscape architect in another state or territory of the United States, the District of Columbia, or another country, if that individual's qualifications and experience are determined by the board to be equivalent to the qualifications and experience required of a person licensed under RCW 18.96.070.

(2) A landscape architect licensed or registered in any other jurisdiction recognized by the board may offer to practice landscape architecture in this state if:

(a) It is clearly and prominently stated in any such offer that the landscape architect is not licensed to practice landscape architecture in Washington state; and

(b) Before practicing landscape architecture or signing a contract to provide landscape architectural services, the landscape architect obtains a certificate of licensure. [2009 c 370 § 10; 1993 c 35 § 4; 1985 c 7 § 75; 1975 1st ex.s. c 30 § 86; 1969 ex.s. c 158 § 10.]

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** See note following RCW 18.96.010.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**18.96.110 Renewals. (Effective July 1, 2010.)** (1) The renewal dates and fees for certificates of licensure shall be set by the director in accordance with RCW 43.24.086. Licensees who fail to pay the renewal fee within thirty days of the due date shall pay all delinquent fees plus a penalty fee equal to one-third of the renewal fee. A licensee who fails to pay a renewal fee for a period of five years may be reinstated under such circumstances as the board determines.

(2) Any licensee in good standing may withdraw from the practice of landscape architecture by giving written notice to the director, and may within five years thereafter resume active practice upon payment of the then-current renewal fee. A licensee may be reinstated after a withdrawal of more than five years under such circumstances as the board determines.

(3) A licensed landscape architect must demonstrate continuing professional education activities since the landscape architect's last renewal or initial licensure, as the case may be; the board shall by rule describe the professional development activities required by the board. The board may decline to renew a license if the landscape architect's continuing professional education activities do not meet the standards in the board's rules. In the application of this subsection, the board shall strive to ensure that rules are consistent with the continuing professional education requirements in use by the national professional organizations representing landscape architects and in use by other cohort states. Cohort states are those other United States determined by the board

to be comparable to Washington in natural factors and landscape architecture licensure. [2009 c 370 § 11; 1993 c 35 § 5. Prior: 1985 c 18 § 3; 1985 c 7 § 76; 1975 1st ex.s. c 30 § 87; 1969 ex.s. c 158 § 11.]

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** See note following RCW 18.96.010.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**Effective date—1985 c 18:** See note following RCW 18.96.040.

**18.96.120 Unprofessional conduct—Grounds for disciplinary action. (Effective July 1, 2010.)** The board may impose any action in RCW 18.235.110 upon the following grounds:

(1) Offering to pay, paying, or accepting, either directly or indirectly, any substantial gift, bribe, or other consideration to influence the award of professional work;

(2) Being willfully untruthful or deceptive in any professional report, statement, or testimony;

(3) Having a financial interest in the bidding for or the performance of a contract to supply labor or materials for or to construct a project for which employed or retained as a landscape architect except with the consent of the client or employer after disclosure of such facts; or allowing an interest in any business to affect a decision regarding landscape architectural work for which retained, employed, or called upon to perform;

(4) Signing or permitting a seal to be affixed to any drawings or specifications that were not prepared or reviewed by the landscape architect or under the landscape architect's personal supervision by persons subject to the landscape architect's direction and control; or

(5) Willfully evading or trying to evade any law, ordinance, code, or regulation governing site or landscape construction. [2009 c 370 § 12; 2002 c 86 § 235; 1997 c 58 § 827; 1969 ex.s. c 158 § 12.]

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** See note following RCW 18.96.010.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**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.

**Effective dates—Intent—1997 c 58:** See notes following RCW 74.20A.320.

**18.96.140 Reissuance of lost or destroyed certificates. (Effective July 1, 2010.)** A new certificate of licensure to replace any certificate lost or destroyed, or mutilated may be issued by the director, and a charge determined by the director as provided in RCW 43.24.086 shall be made for such issuance. [2009 c 370 § 13; 2002 c 86 § 236; 1985 c 7 § 77; 1975 1st ex.s. c 30 § 88; 1969 ex.s. c 158 § 14.]

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** See note following RCW 18.96.010.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**Effective dates—2002 c 86:** See note following RCW 18.08.340.

**Part headings not law—Severability—2002 c 86:** See RCW 18.235.902 and 18.235.903.

**18.96.150 Certificates of licensure—Issuance—Contents—Seal. (Effective July 1, 2010.)** (1) The director shall issue a certificate of licensure to any applicant who has, to the satisfaction of the board, met all the requirements for licensure upon payment of the licensure fee as provided in this chapter. All certificates of licensure shall show the full name of the licensee, have the license number, and shall be signed by the chair of the board and by the director. The issuance of a certificate of licensure by the director is prima facie evidence that the person named therein is entitled to all the rights and privileges of a licensed landscape architect.

(2) Each licensee shall obtain a seal of the design authorized by the board bearing the landscape architect's name, license number, the legend "Licensed Landscape Architect," and the name of this state. Drawings prepared by the licensee shall be sealed and signed by the licensee when filed with public authorities. It is unlawful to seal and sign a document after a licensee's certificate of licensure or authorization has expired, been revoked, or is suspended. A landscape architect shall not seal and sign technical submissions not prepared by the landscape architect or his or her regularly employed subordinates or individuals under his or her direct control, or if prepared by a landscape architect licensed in any jurisdiction recognized by the board, reviewed and accepted as the sealing landscape architect's own work; a landscape architect who signs or seals drawings or specifications that he or she has reviewed is responsible to the same extent as if prepared by that landscape architect. [2009 c 370 § 14; 1993 c 35 § 6; 1969 ex.s. c 158 § 15.]

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** See note following RCW 18.96.010.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**18.96.160 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**18.96.170 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**18.96.180 Certificate of licensure suspension—Non-compliance with support order—Reissuance. (Effective July 1, 2010.)** The board, through the director, shall immediately suspend the certificate of licensure to practice landscape architecture of a person who has been certified under \*RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a residential or visitation order. If the person has continued to meet other requirements for reinstatement during the suspension, reissuance of the certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the individual is in compliance with the order. [2009 c 370 § 15; 1969 ex.s. c 158 § 18.]

**\*Reviser's note:** RCW 74.20A.320 was amended by 2009 c 408 § 1, deleting language referring to certification. RCW 74.20A.324 appears to be the more appropriate reference.

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** See note following RCW 18.96.010.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**18.96.190 Certificate of licensure suspension—Non-payment or default on educational loan or scholarship. (Effective July 1, 2010.)** The board, through the director, shall suspend the certificate of licensure of any person who has been certified by a lending agency and reported to the board for nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. Before the suspension, the agency must provide the person an opportunity for a brief adjudicative proceeding under RCW 34.05.485 through 34.05.494 and issue a finding of nonpayment or default on a federally or state-guaranteed educational loan or service-conditional scholarship. The person's certificate of licensure shall not be reissued until the person provides the board a written release issued by the lending agency stating that the person is making payments on the loan in accordance with a repayment agreement approved by the lending agency. If the person has continued to meet all other requirements for certification of licensure during the suspension, reinstatement shall be automatic upon receipt of the notice and payment of any reinstatement fee the director may impose. [2009 c 370 § 16; 1996 c 293 § 15.]

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** See note following RCW 18.96.010.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**Severability—1996 c 293:** See note following RCW 18.04.420.

**18.96.210 Landscape architects' license account.** The landscape architects' license account is created in the custody of the state treasurer. All receipts from fees under this chapter must be deposited into the account. Expenditures from the account may be used only for administrative and operating purposes under this chapter. Only the director or the director's designees may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2009 c 370 § 17.]

**Effective date—2009 c 370 §§ 17 and 19:** "Sections 17 and 19 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 July 1, 2009." [2009 c 370 § 23.]

**Finding—2009 c 370:** See note following RCW 18.96.010.

**18.96.220 Application—Professions and activities not affected. (Effective July 1, 2010.)** This chapter does not affect or prevent:

- (1) The practice of architecture, land surveying, engineering, geology, or any recognized profession by persons not licensed as landscape architects;
- (2) Drafters, clerks, project managers, superintendents, and other employees of landscape architects from acting under the instructions, control, or supervision of their employers;
- (3) The construction, alteration, or supervision of sites by contractors or superintendents employed by contractors or the preparation of shop drawings in connection therewith;
- (4) Owners or contractors under chapter 18.27 RCW from engaging persons who are not landscape architects to observe and supervise site construction of a project;
- (5) Qualified professional biologists as referenced in chapter 36.70 RCW from providing services for natural site

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areas that also fall within the definition of the practice of landscape architecture without a violation of this chapter;

(6) The preparation of construction documents including planting plans, landscape materials, or other horticulture-related elements;

(7) Individuals from making plans, drawings, or specifications for any property owned by them and for their own personal use;

(8) The design of irrigation systems; and

(9) Landscape design on residential properties. [2009 c 370 § 18.]

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** See note following RCW 18.96.010.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**18.96.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 48.]

## Chapter 18.106 RCW PLUMBERS

### Sections

- 18.106.020 Certificate or permit required—Photo identification—Written warning, penalty—Trainee supervision required—Medical gas piping installer endorsement—Penalty—Notice of infraction.
- 18.106.070 Certificates of competency, installer endorsement—Issuance—Renewal—Rights of holder—Training certificates—Supervision—Training, certified plumber.
- 18.106.090 Temporary permits.
- 18.106.170 Violations—Inspections—Production of credentials.

**18.106.020 Certificate or permit required—Photo identification—Written warning, penalty—Trainee supervision required—Medical gas piping installer endorsement—Penalty—Notice of infraction.** (1) No person may engage in or offer to engage in the trade of plumbing without having a journeyman certificate, specialty certificate, temporary permit, or trainee certificate and photo identification in his or her possession. The department may establish by rule a requirement that the person also wear and visibly display his or her certificate or permit. A trainee must be supervised by a person who has a journeyman certificate, specialty certificate, or temporary permit, as specified in RCW 18.106.070. No contractor may employ a person to engage in or offer to engage in the trade of plumbing unless



the person employed has a journeyman certificate, specialty certificate, temporary permit, or trainee certificate. This section does not apply to a contractor who is contracting for work on his or her own residence. Until July 1, 2007, the department shall issue a written warning to any specialty plumber defined by RCW 18.106.010(10)(c) not having a valid plumber certification. The warning will state that the individual must apply for a plumber training certificate or be qualified for and apply for plumber certification under the requirements in RCW 18.106.040 within thirty calendar days of the warning. Only one warning will be issued to any individual. If the individual fails to comply with this section, the department shall issue a penalty or penalties as authorized by this chapter.

(2) No person may engage in or offer to engage in medical gas piping installation without having a certificate of competency as a journeyman plumber and a medical gas piping installer endorsement and photo identification in his or her possession. The department may establish by rule a requirement that the person also wear and visibly display his or her endorsement. A trainee may engage in medical gas piping installation if he or she has a training certificate and is supervised by a person with a medical gas piping installer endorsement. No contractor may employ a person to engage in or offer to engage in medical gas piping installation unless the person employed has a certificate of competency as a journeyman plumber and a medical gas piping installer endorsement.

(3) No contractor may advertise, offer to do work, submit a bid, or perform any work under this chapter without being registered as a contractor under chapter 18.27 RCW.

(4) Violation of this section is an infraction. Each day in which a person engages in the trade of plumbing in violation of this section or employs a person in violation of this section is a separate infraction. Each worksite at which a person engages in the trade of plumbing in violation of this section or at which a person is employed in violation of this section is a separate infraction.

(5) Notices of infractions for violations of this section may be issued to:

(a) The person engaging in or offering to engage in the trade of plumbing in violation of this section;

(b) The contractor in violation of this section; and

(c) The contractor's employee who authorized the work assignment of the person employed in violation of this section. [2009 c 36 § 2; 2006 c 185 § 11; 2002 c 82 § 2; 1997 c 326 § 3; 1994 c 174 § 2; 1983 c 124 § 4; 1977 ex.s. c 149 § 2; 1975 1st ex.s. c 71 § 2; 1973 1st ex.s. c 175 § 2.]

**Finding—Intent—2009 c 36:** "(1) The legislature finds that dishonest construction contractors sometimes hire workers without proper licenses, certificates, permits, and endorsements to do electrical, plumbing, and conveyance work. This practice gives these contractors an unfair competitive advantage and leaves workers and customers vulnerable.

(2) The legislature intends that electricians, plumbers, and conveyance workers be required to have their licenses, certificates, permits, and endorsements and photo identification in their possession while working. The legislature further intends that the department of labor and industries be authorized to require electricians, plumbers, and conveyance workers to wear and visibly display their licenses, certificates, permits, and endorsements while working, and to include photo identification on these documents. These requirements will help address the problems of the underground economy in the construction industry, level the playing field for honest contractors, and protect workers and consumers." [2009 c 36 § 1.]

**Effective date—1997 c 326:** See note following RCW 18.106.010.

**Effective date—1994 c 174:** "This act shall take effect July 1, 1994." [1994 c 174 § 10.]

**Effective date—1983 c 124:** "Sections 4 through 16 of this act shall take effect on January 1, 1984." [1983 c 124 § 21.]

**18.106.070 Certificates of competency, installer endorsement—Issuance—Renewal—Rights of holder—Training certificates—Supervision—Training, certified plumber.** (1) The department shall issue a certificate of competency to all applicants who have passed the examination and have paid the fee for the certificate. The certificate may include a photograph of the holder. The certificate shall bear the date of issuance, and shall expire on the birthdate of the holder immediately following the date of issuance. The certificate shall be renewable every other year, upon application, on or before the birthdate of the holder, except for specialty plumbers defined by RCW 18.106.010(10)(c) who also have an electrical certification issued jointly as provided by RCW 18.106.050(3) in which case their certificate shall be renewable every three years on or before the birthdate of the holder. The department shall renew a certificate of competency if the applicant: (a) Pays the renewal fee assessed by the department; and (b) during the past two years has completed sixteen hours of continuing education approved by the department with the advice of the advisory board, including four hours related to electrical safety. For holders of the specialty plumber certificate under RCW 18.106.010(10)(c), the continuing education may comprise both electrical and plumbing education with a minimum of twelve of the required twenty-four hours of continuing education in plumbing. If a person fails to renew the certificate by the renewal date, he or she must pay a doubled fee. If the person does not renew the certificate within ninety days of the renewal date, he or she must retake the examination and pay the examination fee.

The journeyman plumber and specialty plumber certificates of competency, the medical gas piping installer endorsement, and the temporary permit provided for in this chapter grant the holder the right to engage in the work of plumbing as a journeyman plumber, specialty plumber, or medical gas piping installer, in accordance with their provisions throughout the state and within any of its political subdivisions on any job or any employment without additional proof of competency or any other license or permit or fee to engage in the work. This section does not preclude employees from adhering to a union security clause in any employment where such a requirement exists.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the plumbing construction trade or who is learning the plumbing construction trade may work in the plumbing construction trade if supervised by a certified journeyman plumber or a certified specialty plumber in that plumber's specialty. All apprentices and individuals learning the plumbing construction trade shall obtain a plumbing training certificate from the department. The certificate shall authorize the holder to learn the plumbing construction trade while under the direct supervision of a journeyman plumber or a specialty plumber working in his or her specialty. The certificate may include a photograph of the holder. The holder of the plumbing training

certificate shall renew the certificate annually. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the plumbing construction industry for the previous year and the number of hours worked for each employer. An annual fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter.

(3) Any person who has been issued a plumbing training certificate under this chapter may work if that person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a journeyman plumber or an appropriate specialty plumber who has an applicable certificate of competency issued under this chapter. Either a journeyman plumber or an appropriate specialty plumber shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter. The ratio of noncertified individuals to certified journeymen or specialty plumbers working on a job site shall be: (a) Not more than two noncertified plumbers working on any one job site for every certified specialty plumber or journeyman plumber working as a specialty plumber; and (b) not more than one noncertified plumber working on any one job site for every certified journeyman plumber working as a journeyman plumber.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in a technical school program in the plumbing construction trade in a school approved by the workforce training and education coordinating board, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter.

(4) An individual who has a current training certificate and who has successfully completed or is currently enrolled in a medical gas piping installer training course approved by the department may work on medical gas piping systems if the individual is under the direct supervision of a certified medical gas piping installer who holds a medical gas piping installer endorsement one hundred percent of a working day on a one-to-one ratio.

(5) The training to become a certified plumber must include not less than sixteen hours of classroom training established by the director with the advice of the advisory board. The classroom training must include, but not be limited to, electrical wiring safety, grounding, bonding, and other related items plumbers need to know to work under RCW 19.28.091.

(6) All persons who are certified plumbers before January 1, 2003, are deemed to have received the classroom training required in subsection (5) of this section. [2009 c 36 § 3; 2006 c 185 § 10; 2003 c 399 § 801; 1997 c 326 § 6; 1985 c 465 § 1; 1983 c 124 § 3; 1977 ex.s. c 149 § 7; 1973 1st ex.s. c 175 § 7.]

**Finding—Intent—2009 c 36:** See note following RCW 18.106.020.

**Part headings not law—2003 c 399:** See note following RCW 19.28.006.

**Effective date—1997 c 326:** See note following RCW 18.106.010.

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**18.106.090 Temporary permits.** The department is authorized to grant and issue temporary permits in lieu of certificates of competency whenever a plumber coming into the state of Washington from another state requests the department for a temporary permit to engage in the trade of plumbing as a journeyman plumber or as a specialty plumber during the period of time between filing of an application for a certificate as provided in RCW 18.106.030 as now or hereafter amended and taking the examination provided for in RCW 18.106.050. The temporary permit may include a photograph of the plumber. No temporary permit shall be issued to:

(1) Any person who has failed to pass the examination for a certificate of competency;

(2) Any applicant under this section who has not furnished the department with such evidence required under RCW 18.106.030;

(3) To any [Any] apprentice plumber. [2009 c 36 § 4; 1985 c 7 § 78; 1977 ex.s. c 149 § 8; 1973 1st ex.s. c 175 § 9.]

**Finding—Intent—2009 c 36:** See note following RCW 18.106.020.

**18.106.170 Violations—Inspections—Production of credentials.** An authorized representative of the department may investigate alleged or apparent violations of this chapter. An authorized representative of the department upon presentation of credentials may inspect sites at which a person is doing plumbing work for the purpose of determining whether that person has a certificate or permit issued by the department in accordance with this chapter. Upon request of the authorized representative of the department, a person doing plumbing work shall produce his or her certificate or permit and photo identification. [2009 c 36 § 5; 1983 c 124 § 6.]

**Finding—Intent—2009 c 36:** See note following RCW 18.106.020.

**Effective date—1983 c 124:** See note following RCW 18.106.020.

## Chapter 18.118 RCW

### REGULATION OF BUSINESS PROFESSIONS

#### Sections

18.118.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**18.118.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 49.]

**Chapter 18.120 RCW**  
**REGULATION OF**  
**HEALTH PROFESSIONS—CRITERIA**

## Sections

18.120.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**18.120.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 50.]

**Chapter 18.122 RCW**

**REGULATION OF HEALTH PROFESSIONS—**  
**UNIFORM ADMINISTRATIVE PROVISIONS**

## Sections

18.122.165 Health care administration work groups—Secretary's participation.

**18.122.165 Health care administration work groups—Secretary's participation.** Pursuant to RCW 48.165.030 and 48.165.035, the secretary or his or her designee shall participate in the work groups and, within funds appropriated specifically for this purpose, implement the standards to enable the department to transmit data to and receive data from the uniform process. [2009 c 298 § 7.]

**Chapter 18.130 RCW**

**REGULATION OF HEALTH PROFESSIONS—**  
**UNIFORM DISCIPLINARY ACT**

## Sections

18.130.040 Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules. (*Effective until July 1, 2010.*)

18.130.040 Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules. (*Effective July 1, 2010, until August 1, 2010.*)

18.130.040 Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules. (*Effective August 1, 2010.*)

18.130.250 Retired active license status.

18.130.310 Biennial report—Contents—Format.

**18.130.040 Application to certain professions—Authority of secretary—Grant or denial of licenses—Pro-**

**cedural rules. (*Effective until July 1, 2010.*)** (1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(ix) Respiratory care practitioners licensed under chapter 18.89 RCW;

(x) Counselors, hypnotherapists, and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;

(xi) Persons licensed as mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social work associates—advanced, and social work associates—*independent clinical* under chapter 18.225 RCW;

(xii) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

(xiv) Health care assistants certified under chapter 18.135 RCW;

(xv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xvi) Chemical dependency professionals and chemical dependency professional trainees certified under chapter 18.205 RCW;

(xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists;

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW;

(xxiv) Athletic trainers licensed under chapter 18.250 RCW;

(xxv) Home care aides certified under chapter 18.88B RCW; and

(xxvi) Speech-language pathology assistants certified under chapter 18.35 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section. [2009 c 301 § 8; 2009 c 52 § 1; 2009 c 2 § 16 (Initiative Measure No. 1029, approved November 4, 2008); 2008 c 134 § 18; (2008 c 134 § 17 expired July 1, 2008). Prior: 2007 c 269 § 17; 2007 c 253 § 13; 2007 c 70 § 11; 2004 c 38 § 2; prior: 2003 c 275 § 2; 2003 c 258 § 7; prior: 2002 c 223 § 6; 2002 c 216 § 11; 2001 c 251 § 27; 1999 c 335 § 10; 1998 c 243 § 16; prior: 1997 c 392 § 516; 1997 c 334 § 14; 1997 c 285 § 13; 1997 c 275 § 2; prior: 1996 c 200 § 32; 1996 c 81 § 5; prior: 1995 c 336 § 2; 1995 c 323 § 16; 1995 c 260 § 11; 1995 c 1 § 19 (Initiative Measure No. 607, approved November 8, 1994); prior: 1994 sp.s. c 9 § 603; 1994 c 17 § 19; 1993 c 367 § 4; 1992 c 128 § 6; 1990 c 3 § 810; prior: 1988 c 277 § 13; 1988 c 267 § 22; 1988 c 243 § 7; prior: 1987 c 512 § 22; 1987 c 447 § 18; 1987 c 415 § 17; 1987 c 412 § 15; 1987 c 150 § 1; prior: 1986 c 259 § 3; 1985 c 326 § 29; 1984 c 279 § 4.]

**Reviser's note:** This section was amended by 2009 c 52 § 1 and by 2009 c 301 § 8, 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—Implementation—2009 c 301:** See notes following RCW 18.35.010.

**Speech-language pathology assistants—Certification requirements—2009 c 301:** See note following RCW 18.35.040.

**Effective date—2009 c 52 § 1:** "Section 1 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 takes effect July 1, 2009." [2009 c 52 § 3.]

**Contingent effective date—2009 c 2 (Initiative Measure No. 1029) § 16:** "Section 16 of this act takes effect if section 18, chapter 134, Laws of 2008 is signed into law by April 6, 2008." [2009 c 2 § 24 (Initiative Measure No. 1029, approved November 4, 2008).]

**Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029):** See notes following RCW 18.88B.020.

**Effective date—2008 c 134 § 18:** "Section 18 of this act takes effect July 1, 2008." [2008 c 134 § 37.]

**Expiration date—2008 c 134 § 17:** "Section 17 of this act expires July 1, 2008." [2008 c 134 § 36.]

**Finding—Intent—Severability—2008 c 134:** See notes following RCW 18.130.020.

**Application—Implementation—2007 c 269:** See RCW 18.260.900 and 18.260.901.

**Severability—Effective date—Implementation—2007 c 253:** See RCW 18.250.900 through 18.250.902.

**Effective date—2004 c 38:** See note following RCW 18.155.075.

**Effective date—2003 c 275 § 2:** "Section 2 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 takes effect July 1, 2003." [2003 c 275 § 4.]

**Severability—Effective date—2003 c 258:** See notes following RCW 18.79.330.

**Severability—Effective date—2002 c 216:** See RCW 18.230.900 and 18.230.901.

**Severability—2001 c 251:** See RCW 18.225.900.

**Effective dates—1998 c 243:** See RCW 18.205.900.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Effective dates—1997 c 334:** See note following RCW 18.89.010.

**Intent—Purpose—1997 c 285:** See RCW 18.200.005.

**Severability—1997 c 285:** See RCW 18.200.901.

**Severability—1996 c 200:** See RCW 18.35.902.

**Effective date—1996 c 81:** See note following RCW 70.128.120.

**Effective date—1995 c 336 §§ 2 and 3:** "Sections 2 and 3 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 11, 1995]." [1995 c 336 § 11.]

**Effective date—1995 c 260 §§ 7-11:** "Sections 7 through 11 of this act shall take effect July 1, 1996." [1995 1st sp.s. c 18 § 116; 1995 c 260 § 12.]

**Short title—Severability—1995 c 1 (Initiative Measure No. 607):** See RCW 18.30.900 and 18.30.901.

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**Severability—1987 c 512:** See RCW 18.19.901.

**Severability—1987 c 447:** See RCW 18.36A.901.

**Severability—1987 c 415:** See RCW 18.89.901.

**Effective date—Severability—1987 c 412:** See RCW 18.84.901 and 18.84.902.

**Severability—1987 c 150:** See RCW 18.122.901.

**Severability—1986 c 259:** See note following RCW 18.130.010.

**18.130.040 Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules. (Effective July 1, 2010, until August 1, 2010.)**

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(ix) Respiratory care practitioners licensed under chapter 18.89 RCW;

(x) Hypnotherapists and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;

(xi) Persons licensed as mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social work associates—advanced, and social work associates—dependent clinical under chapter 18.225 RCW;

(xii) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

(xiv) Health care assistants certified under chapter 18.135 RCW;

(xv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xvi) Chemical dependency professionals and chemical dependency professional trainees certified under chapter 18.205 RCW;

(xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists;

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW;

(xxiv) Athletic trainers licensed under chapter 18.250 RCW;

(xxv) Home care aides certified under chapter 18.88B RCW; and

(xxvi) Speech-language pathology assistants certified under chapter 18.35 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section. [2009 c 301 § 8; 2009 c 52 § 2; 2009 c 52 § 1; 2009 c 2 § 16 (Initiative Measure No. 1029, approved November 4, 2008); 2008 c 134 § 18; (2008 c 134 § 17 expired July 1, 2008). Prior: 2007 c 269 § 17; 2007 c 253 § 13; 2007 c 70 § 11; 2004 c 38 § 2; prior: 2003 c 275 § 2; 2003 c 258 § 7; prior: 2002 c 223 § 6; 2002 c 216 § 11; 2001 c 251 § 27; 1999 c 335 § 10; 1998 c 243 § 16; prior: 1997 c 392 § 516; 1997 c 334 § 14; 1997 c 285 § 13; 1997 c 275 § 2; prior: 1996 c 200 § 32; 1996 c 81 § 5; prior: 1995 c 336 § 2; 1995 c 323 § 16; 1995 c 260 § 11; 1995 c 1 § 19 (Initiative Measure No. 607, approved November 8, 1994); prior: 1994 sp.s. c 9 § 603; 1994 c 17 § 19; 1993 c 367 § 4; 1992 c 128 § 6; 1990 c 3 § 810; prior: 1988 c 277 § 13; 1988 c 267 § 22; 1988 c 243 § 7; prior: 1987 c 512 § 22; 1987 c 447 § 18; 1987 c 415 § 17; 1987 c 412 § 15; 1987 c 150 § 1; prior: 1986 c 259 § 3; 1985 c 326 § 29; 1984 c 279 § 4.]

**Reviser's note:** This section was amended by 2009 c 52 § 2 and by 2009 c 301 § 8, 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—Implementation—2009 c 301:** See notes following RCW 18.35.010.

**Speech-language pathology assistants—Certification requirements—2009 c 301:** See note following RCW 18.35.040.

**Effective date—2009 c 52 § 1:** "Section 1 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 takes effect July 1, 2009." [2009 c 52 § 3.]

**Effective date—2009 c 52 § 2:** "Section 2 of this act takes effect July 1, 2010." [2009 c 52 § 4.]

**Contingent effective date—2009 c 2 (Initiative Measure No. 1029) § 16:** "Section 16 of this act takes effect if section 18, chapter 134, Laws of 2008 is signed into law by April 6, 2008." [2009 c 2 § 24 (Initiative Measure No. 1029, approved November 4, 2008).]

**Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029):** See notes following RCW 18.88B.020.

**Effective date—2008 c 134 § 18:** "Section 18 of this act takes effect July 1, 2008." [2008 c 134 § 37.]

**Expiration date—2008 c 134 § 17:** "Section 17 of this act expires July 1, 2008." [2008 c 134 § 36.]

**Finding—Intent—Severability—2008 c 134:** See notes following RCW 18.130.020.

**Application—Implementation—2007 c 269:** See RCW 18.260.900 and 18.260.901.

**Severability—Effective date—Implementation—2007 c 253:** See RCW 18.250.900 through 18.250.902.

**Effective date—2004 c 38:** See note following RCW 18.155.075.

**Effective date—2003 c 275 § 2:** "Section 2 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 takes effect July 1, 2003." [2003 c 275 § 4.]

**Severability—Effective date—2003 c 258:** See notes following RCW 18.79.330.

**Severability—Effective date—2002 c 216:** See RCW 18.230.900 and 18.230.901.

**Severability—2001 c 251:** See RCW 18.225.900.

**Effective dates—1998 c 243:** See RCW 18.205.900.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Effective dates—1997 c 334:** See note following RCW 18.89.010.

**Intent—Purpose—1997 c 285:** See RCW 18.200.005.

**Severability—1997 c 285:** See RCW 18.200.901.

**Severability—1996 c 200:** See RCW 18.35.902.

**Effective date—1996 c 81:** See note following RCW 70.128.120.

**Effective date—1995 c 336 §§ 2 and 3:** "Sections 2 and 3 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 11, 1995]." [1995 c 336 § 11.]

**Effective date—1995 c 260 §§ 7-11:** "Sections 7 through 11 of this act shall take effect July 1, 1996." [1995 1st sp.s. c 18 § 116; 1995 c 260 § 12.]

**Short title—Severability—1995 c 1 (Initiative Measure No. 607):** See RCW 18.30.900 and 18.30.901.

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**Severability—1987 c 512:** See RCW 18.19.901.

**Severability—1987 c 447:** See RCW 18.36A.901.

**Severability—1987 c 415:** See RCW 18.89.901.

**Effective date—Severability—1987 c 412:** See RCW 18.84.901 and 18.84.902.

**Severability—1987 c 150:** See RCW 18.122.901.

**Severability—1986 c 259:** See note following RCW 18.130.010.

**18.130.040 Application to certain professions—Authority of secretary—Grant or denial of licenses—Procedural rules. (Effective August 1, 2010.)** (1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(ix) Respiratory care practitioners licensed under chapter 18.89 RCW;

(x) Hypnotherapists and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;

(xi) Persons licensed as mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social work associates—advanced, and social work associates—-independent clinical under chapter 18.225 RCW;

(xii) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

(xiv) Health care assistants certified under chapter 18.135 RCW;

(xv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xvi) Chemical dependency professionals and chemical dependency professional trainees certified under chapter 18.205 RCW;

(xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists;

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW;

(xxiv) Athletic trainers licensed under chapter 18.250 RCW;

(xxv) Home care aides certified under chapter 18.88B RCW;

(xxvi) Speech-language pathology assistants certified under chapter 18.35 RCW; and

(xxvii) Genetic counselors licensed under chapter 18.290 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section. [2009 c 302 § 14; 2009 c 301 § 8; 2009 c 52 § 2; 2009 c 52 § 1; 2009 c 2 § 16 (Initiative Measure No. 1029, approved November 4, 2008); 2008 c 134 § 18; (2008 c 134 § 17 expired July 1, 2008). Prior: 2007 c 269 § 17; 2007 c 253 § 13; 2007 c 70 § 11; 2004 c 38 § 2; prior: 2003 c 275 § 2; 2003 c 258 § 7; prior: 2002 c 223 § 6; 2002 c 216 § 11; 2001 c 251 § 27; 1999 c 335 § 10; 1998 c 243 § 16; prior: 1997 c 392 § 516; 1997 c 334 § 14; 1997 c 285 § 13; 1997 c 275 § 2; prior: 1996 c 200 § 32; 1996 c 81 § 5; prior: 1995 c 336 § 2; 1995 c 323 § 16; 1995 c 260 § 11;

1995 c 1 § 19 (Initiative Measure No. 607, approved November 8, 1994); prior: 1994 sp.s. c 9 § 603; 1994 c 17 § 19; 1993 c 367 § 4; 1992 c 128 § 6; 1990 c 3 § 810; prior: 1988 c 277 § 13; 1988 c 267 § 22; 1988 c 243 § 7; prior: 1987 c 512 § 22; 1987 c 447 § 18; 1987 c 415 § 17; 1987 c 412 § 15; 1987 c 150 § 1; prior: 1986 c 259 § 3; 1985 c 326 § 29; 1984 c 279 § 4.]

**Reviser's note:** This section was amended by 2009 c 52 § 2, 2009 c 301 § 8, and by 2009 c 302 § 14, 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 date—Implementation—2009 c 302:** See RCW 18.290.900 and 18.290.901.

**Intent—Implementation—2009 c 301:** See notes following RCW 18.35.010.

**Speech-language pathology assistants—Certification requirements—2009 c 301:** See note following RCW 18.35.040.

**Effective date—2009 c 52 § 1:** "Section 1 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 takes effect July 1, 2009." [2009 c 52 § 3.]

**Effective date—2009 c 52 § 2:** "Section 2 of this act takes effect July 1, 2010." [2009 c 52 § 4.]

**Contingent effective date—2009 c 2 (Initiative Measure No. 1029) § 16:** "Section 16 of this act takes effect if section 18, chapter 134, Laws of 2008 is signed into law by April 6, 2008." [2009 c 2 § 24 (Initiative Measure No. 1029, approved November 4, 2008).]

**Intent—Findings—Construction—Severability—Short title—2009 c 2 (Initiative Measure No. 1029):** See notes following RCW 18.88B.020.

**Effective date—2008 c 134 § 18:** "Section 18 of this act takes effect July 1, 2008." [2008 c 134 § 37.]

**Expiration date—2008 c 134 § 17:** "Section 17 of this act expires July 1, 2008." [2008 c 134 § 36.]

**Finding—Intent—Severability—2008 c 134:** See notes following RCW 18.130.020.

**Application—Implementation—2007 c 269:** See RCW 18.260.900 and 18.260.901.

**Severability—Effective date—Implementation—2007 c 253:** See RCW 18.250.900 through 18.250.902.

**Effective date—2004 c 38:** See note following RCW 18.155.075.

**Effective date—2003 c 275 § 2:** "Section 2 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 takes effect July 1, 2003." [2003 c 275 § 4.]

**Severability—Effective date—2003 c 258:** See notes following RCW 18.79.330.

**Severability—Effective date—2002 c 216:** See RCW 18.230.900 and 18.230.901.

**Severability—2001 c 251:** See RCW 18.225.900.

**Effective dates—1998 c 243:** See RCW 18.205.900.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Effective dates—1997 c 334:** See note following RCW 18.89.010.

**Intent—Purpose—1997 c 285:** See RCW 18.200.005.

**Severability—1997 c 285:** See RCW 18.200.901.

**Severability—1996 c 200:** See RCW 18.35.902.

**Effective date—1996 c 81:** See note following RCW 70.128.120.

**Effective date—1995 c 336 §§ 2 and 3:** "Sections 2 and 3 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 11, 1995]." [1995 c 336 § 11.]

**Effective date—1995 c 260 §§ 7-11:** "Sections 7 through 11 of this act shall take effect July 1, 1996." [1995 1st sp.s. c 18 § 116; 1995 c 260 § 12.]

**Short title—Severability—1995 c 1 (Initiative Measure No. 607):** See RCW 18.30.900 and 18.30.901.

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**Severability—1987 c 512:** See RCW 18.19.901.

**Severability—1987 c 447:** See RCW 18.36A.901.

**Severability—1987 c 415:** See RCW 18.89.901.

**Effective date—Severability—1987 c 412:** See RCW 18.84.901 and 18.84.902.

**Severability—1987 c 150:** See RCW 18.122.901.

**Severability—1986 c 259:** See note following RCW 18.130.010.

**18.130.250 Retired active license status.** The disciplining authority may adopt rules pursuant to this section authorizing a retired active license status. An individual credentialed by a disciplining authority regulated in the state under RCW 18.130.040, who is practicing only in emergent or intermittent circumstances as defined by rule established by the disciplining authority, may hold a retired active license at a reduced renewal fee established by the secretary under RCW 43.70.250 or, for a physician regulated pursuant to chapter 18.71 RCW who resides and practices in Washington and holds a retired active license, at no renewal fee. Except as provided in RCW 18.71.080, such a license shall meet the continuing education or continued competency requirements, if any, established by the disciplining authority for renewals, and is subject to the provisions of this chapter. Individuals who have entered into retired status agreements with the disciplinary authority in any jurisdiction shall not qualify for a retired active license under this section. [2009 c 403 § 3; 1991 c 229 § 1.]

**Finding—Intent—2009 c 403:** See note following RCW 18.71.080.

**18.130.310 Biennial report—Contents—Format.** (1) Subject to RCW 40.07.040, the disciplinary authority shall submit a biennial report to the legislature on its proceedings during the biennium, detailing the number of complaints made, investigated, and adjudicated and manner of disposition. In addition, the report must provide data on the department's background check activities conducted under RCW 18.130.064 and the effectiveness of those activities in identifying potential license holders who may not be qualified to practice safely. The report must summarize the distribution of the number of cases assigned to each attorney and investigator for each profession. The identity of the attorney and investigator must remain anonymous. The report may include recommendations for improving the disciplinary process, including proposed legislation. The department shall develop a uniform report format.

(2) Each disciplining authority identified in RCW 18.130.040(2)(b) may submit a biennial report to complement the report required under subsection (1) of this section. Each report may provide additional information about the disciplinary activities, rule-making and policy activities, and receipts and expenditures for the individual disciplining authority. [2009 c 518 § 22; 2008 c 134 § 13; 1989 1st ex.s. c 9 § 313; 1987 c 505 § 5; 1984 c 279 § 23.]

**Finding—Intent—Severability—2008 c 134:** See notes following RCW 18.130.020.

[2009 RCW Supp—page 200]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

## Chapter 18.135 RCW HEALTH CARE ASSISTANTS

### Sections

- 18.135.010 Practices authorized.
- 18.135.020 Definitions.
- 18.135.065 Delegation—Duties of delegator and delegatee.
- 18.135.130 Administration of drugs. (*Expires July 1, 2013.*)

**18.135.010 Practices authorized.** It is in this state's public interest that limited authority to: (1) Administer skin tests and subcutaneous, intradermal, intramuscular, and intravenous injections; (2) perform minor invasive procedures to withdraw blood; (3) administer vaccines in accordance with RCW 18.135.120; and (4) administer certain drugs, in accordance with RCW 18.135.130 be granted to health care assistants who are not so authorized under existing licensing statutes, subject to such regulations as will ensure the protection of the health and safety of the patient. [2009 c 43 § 2; 2008 c 58 § 1; 1984 c 281 § 1.]

**Intent—2009 c 43:** "(1) It is the intent of the legislature to enhance the delivery of health care to the citizens of the state.

(a) For many years health care assistants, certified with the state and supervised by a licensed health care practitioner, have been an integral and often overlooked part of the state's health care delivery system. It is not surprising then that as the demand for health care services has exploded over the past twenty years, so too have the demands on licensed health care practitioners, and in turn those that assist those practitioners.

(b) In an attempt to manage this skyrocketing demand, a highly complex integrated health delivery system characterized by greater specialization has evolved. Health care assistants, including medical assistants, have responded to these changes by developing greater training and education opportunities through nationally accredited programs. This additional training, when appropriately supervised, can be of great assistance to our licensed health care practitioners.

(c) It is important for the legislature to look for new ways to harness the training of our health care practitioners, and those that assist them, in order to alleviate the stress on our current health care delivery system. With this in mind, the legislature encourages some minor expansions to the scope of practice of registered health care assistants, so long as there are clearly defined limitations to their scope expressly linked to education, training, and supervision.

(2) Within the existing resources, the department of health shall conduct a review under chapter 18.120 regarding the regulation and the scope of practice of medical assistants." [2009 c 43 § 1.]

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

(1) "Delegation" means direct authorization granted by a licensed health care practitioner to a health care assistant to perform the functions authorized in this chapter which fall within the scope of practice of the delegator and which are not within the scope of practice of the delegatee.

(2) "Health care assistant" means an unlicensed person who assists a licensed health care practitioner in providing health care to patients pursuant to this chapter. However, persons trained by a federally approved end-stage renal disease facility who perform end-stage renal dialysis in the home setting are exempt from certification under this chapter.

(3) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46



RCW, federally qualified health maintenance organization, renal dialysis center or facility federally approved under 42 C.F.R. 405.2100, blood bank federally licensed under 21 C.F.R. 607, or clinical laboratory certified under 20 C.F.R. 405.1301-16.

(4) "Health care practitioner" means:

(a) A physician licensed under chapter 18.71 RCW;

(b) An osteopathic physician or surgeon licensed under chapter 18.57 RCW; or

(c) Acting within the scope of their respective licensure, a podiatric physician and surgeon licensed under chapter 18.22 RCW, a registered nurse or advanced registered nurse practitioner licensed under chapter 18.79 RCW, a naturopath licensed under chapter 18.36A RCW, a physician assistant licensed under chapter 18.71A RCW, or an osteopathic physician assistant licensed under chapter 18.57A RCW.

(5) "Secretary" means the secretary of health.

(6) "Supervision" means supervision of procedures permitted pursuant to this chapter by a health care practitioner who is physically present and is immediately available in the facility during the administration of injections or vaccines, as defined in this chapter, or certain drugs as provided in RCW 18.135.130, but need not be present during procedures to withdraw blood. [2009 c 43 § 4; 2008 c 58 § 2; 2001 c 22 § 2; 1997 c 133 § 1. Prior: 1994 sp.s. c 9 § 719; 1994 c 76 § 1; 1991 c 3 § 272; 1986 c 115 § 2; 1984 c 281 § 2.]

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

**Intent—2009 c 43:** See note following RCW 18.135.010.

**Effective date—2001 c 22 § 2:** "Section 2 of this act takes effect March 1, 2002." [2001 c 22 § 5.]

**Finding—2001 c 22:** See note following RCW 18.135.062.

**Severability—Headings and captions not law—Effective date—1994 sp.s. c 9:** See RCW 18.79.900 through 18.79.902.

**18.135.065 Delegation—Duties of delegator and delegatee.** (1) Each delegator, as defined under RCW 18.135.020(6), shall maintain a list of specific drugs, diagnostic agents, and vaccines, and the route of administration of each drug, diagnostic agent, and vaccine that the delegatee is authorized to administer under this chapter. Both the delegator and delegatee shall sign the above list, indicating the date of each signature. The signed list shall be forwarded to the secretary of the department of health and shall be available for review.

(2) Delegatees are prohibited from administering any controlled substance as defined in RCW 69.50.101(d), any experimental drug, and any cancer chemotherapy agent unless a delegator is physically present in the immediate area where the drug is administered. [2009 c 43 § 5; 2008 c 58 § 3; 1991 c 3 § 276; 1986 c 216 § 4.]

**Intent—2009 c 43:** See note following RCW 18.135.010.

**18.135.130 Administration of drugs. (Expires July 1, 2013.)** (1)(a) The administration of drugs by a health care assistant is restricted to oral, topical, rectal, otic, ophthalmic, or inhaled routes administered pursuant to a written order of a supervising health care practitioner. The drugs authorized for administration under this section are limited to the following:

(i) Over-the-counter drugs that may be administered to a patient while in the care of a health care practitioner are: Benadryl, acetaminophen, ibuprofen, aspirin, neosporin, polysporin, normal saline, colace, kenalog, and hydrocortisone cream;

(ii) Nonover-the-counter unit dose legend drugs that may be administered to a patient while in the care of a health care practitioner are: Kenalog, hydrocortisone cream, reglan, compazine, zofran, bactroban, albuterol, xopenex, silvadene, gastrointestinal cocktail, fluoride, lmx cream, emla, lat, optic dyes, oral contrast, and oxygen.

(b) Only health care assistants who are certified as category C or E assistants by the department of health may administer the oral drugs specified in (a) of this subsection.

(c) Health care assistants authorized to administer certain over-the-counter and legend drugs under (a) of this subsection must demonstrate initial and ongoing competency to administer specific drugs as determined by the health care practitioner.

(2) A health care practitioner must administer a medication if:

(a) A patient is unable to physically ingest or safely apply a medication independently or with assistance; or

(b) A patient is unable to indicate an awareness that he or she is taking a medication.

(3) This section expires July 1, 2013. [2009 c 43 § 3.]

**Intent—2009 c 43:** See note following RCW 18.135.010.

## Chapter 18.155 RCW

### SEX OFFENDER TREATMENT PROVIDERS

Sections

18.155.050 Repealed.

**18.155.050 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 18.225 RCW

### MENTAL HEALTH COUNSELORS, MARRIAGE AND FAMILY THERAPISTS, SOCIAL WORKERS

Sections

18.225.040 Secretary's authority.

**18.225.040 Secretary's authority.** In addition to any other authority provided by law, the secretary has the authority to:

(1) Adopt rules under chapter 34.05 RCW necessary to implement this chapter. Any rules adopted shall be in consultation with the committee;

(2) Establish all licensing, examination, and renewal fees in accordance with RCW 43.70.250;

(3) Establish forms and procedures necessary to administer this chapter;

(4) Issue licenses to applicants who have met the education, training, and examination requirements for licensure and to deny a license to applicants who do not meet the requirements;

(5) Hire clerical, administrative, investigative, and other staff as needed to implement this chapter, and hire individuals licensed under this chapter to serve as examiners for any practical examinations;

(6) Administer and supervise the grading and taking of examinations for applicants for licensure;

(7) Determine which states have credentialing requirements substantially equivalent to those of this state, and issue licenses to individuals credentialed in those states without examinations;

(8) Implement and administer a program for consumer education in consultation with the committee;

(9) Adopt rules implementing a continuing education program in consultation with the committee;

(10) The office of crime victims advocacy shall supply the committee with information on methods of recognizing victims of human trafficking, what services are available for these victims, and where to report potential trafficking situations. The information supplied must be culturally sensitive and must include information relating to minor victims. The committee shall disseminate this information to licensees by: Providing the information on the committee's web site; including the information in newsletters; holding trainings at meetings attended by organization members; or through another distribution method determined by the committee. The committee shall report to the office of crime victims advocacy on the method or methods it uses to distribute information under this subsection;

(11) Maintain the official record of all applicants and licensees; and

(12) Establish by rule the procedures for an appeal of an examination failure. [2009 c 492 § 7; 2001 c 251 § 4.]

### Chapter 18.235 RCW

## UNIFORM REGULATION OF BUSINESS AND PROFESSIONS ACT

#### Sections

- 18.235.020 Application of chapter—Director's authority—Disciplinary authority. (*Effective until July 1, 2010.*)  
 18.235.020 Application of chapter—Director's authority—Disciplinary authority. (*Effective July 1, 2010.*)

**18.235.020 Application of chapter—Director's authority—Disciplinary authority. (*Effective until July 1, 2010.*)** (1) This chapter applies only to the director and the boards and commissions having jurisdiction in relation to the businesses and professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The director has authority under this chapter in relation to the following businesses and professions:

- (i) Auctioneers under chapter 18.11 RCW;
- (ii) Bail bond agents and bail bond recovery agents under chapter 18.185 RCW;
- (iii) Camping resorts' operators and salespersons under chapter 19.105 RCW;
- (iv) Commercial telephone solicitors under chapter 19.158 RCW;

(v) Cosmetologists, barbers, manicurists, and estheticians under chapter 18.16 RCW;

(vi) Court reporters under chapter 18.145 RCW;

(vii) Driver training schools and instructors under chapter 46.82 RCW;

(viii) Employment agencies under chapter 19.31 RCW;

(ix) For hire vehicle operators under chapter 46.72 RCW;

(x) Limousines under chapter 46.72A RCW;

(xi) Notaries public under chapter 42.44 RCW;

(xii) Private investigators under chapter 18.165 RCW;

(xiii) Professional boxing, martial arts, and wrestling under chapter 67.08 RCW;

(xiv) Real estate appraisers under chapter 18.140 RCW;

(xv) Real estate brokers and salespersons under chapters 18.85 and 18.86 RCW;

(xvi) Security guards under chapter 18.170 RCW;

(xvii) Sellers of travel under chapter 19.138 RCW;

(xviii) Timeshares and timeshare salespersons under chapter 64.36 RCW;

(xix) Whitewater river outfitters under chapter 79A.60 RCW; and

(xx) Home inspectors under chapter 18.280 RCW; and

(xxi) Body artists, body piercers, and tattoo artists, and body art, body piercing, and tattooing shops and businesses, under chapter 18.300 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The state board of registration for architects established in chapter 18.08 RCW;

(ii) The Washington state collection agency board established in chapter 19.16 RCW;

(iii) The state board of registration for professional engineers and land surveyors established in chapter 18.43 RCW governing licenses issued under chapters 18.43 and 18.210 RCW;

(iv) The funeral and cemetery board established in chapter 18.39 RCW governing licenses issued under chapters 18.39 and 68.05 RCW;

(v) The state board of registration for landscape architects established in chapter 18.96 RCW; and

(vi) The state geologist licensing board established in chapter 18.220 RCW.

(3) In addition to the authority to discipline license holders, the disciplinary authority may grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered under RCW 18.235.110 by the disciplinary authority. [2009 c 412 § 22; 2009 c 102 § 5; 2008 c 119 § 21; 2007 c 256 § 12; 2006 c 219 § 13; 2002 c 86 § 103.]

**Reviser's note:** This section was amended by 2009 c 102 § 5 and by 2009 c 412 § 22, 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).

**Short title—Implementation—2009 c 412:** See RCW 18.300.900 and 18.300.902.

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**Effective date—2006 c 219:** See note following RCW 46.82.285.

**18.235.020 Application of chapter—Director’s authority—Disciplinary authority. (Effective July 1, 2010.)** (1) This chapter applies only to the director and the boards and commissions having jurisdiction in relation to the businesses and professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The director has authority under this chapter in relation to the following businesses and professions:

- (i) Auctioneers under chapter 18.11 RCW;
  - (ii) Bail bond agents and bail bond recovery agents under chapter 18.185 RCW;
  - (iii) Camping resorts’ operators and salespersons under chapter 19.105 RCW;
  - (iv) Commercial telephone solicitors under chapter 19.158 RCW;
  - (v) Cosmetologists, barbers, manicurists, and estheticians under chapter 18.16 RCW;
  - (vi) Court reporters under chapter 18.145 RCW;
  - (vii) Driver training schools and instructors under chapter 46.82 RCW;
  - (viii) Employment agencies under chapter 19.31 RCW;
  - (ix) For hire vehicle operators under chapter 46.72 RCW;
  - (x) Limousines under chapter 46.72A RCW;
  - (xi) Notaries public under chapter 42.44 RCW;
  - (xii) Private investigators under chapter 18.165 RCW;
  - (xiii) Professional boxing, martial arts, and wrestling under chapter 67.08 RCW;
  - (xiv) Real estate appraisers under chapter 18.140 RCW;
  - (xv) Real estate brokers and salespersons under chapters 18.85 and 18.86 RCW;
  - (xvi) Security guards under chapter 18.170 RCW;
  - (xvii) Sellers of travel under chapter 19.138 RCW;
  - (xviii) Timeshares and timeshare salespersons under chapter 64.36 RCW;
  - (xix) Whitewater river outfitters under chapter 79A.60 RCW; and
  - (xx) Home inspectors under chapter 18.280 RCW; and
  - (xxi) Body artists, body piercers, and tattoo artists, and body art, body piercing, and tattooing shops and businesses, under chapter 18.300 RCW.
- (b) The boards and commissions having authority under this chapter are as follows:
- (i) The state board of registration for architects established in chapter 18.08 RCW;
  - (ii) The Washington state collection agency board established in chapter 19.16 RCW;
  - (iii) The state board of registration for professional engineers and land surveyors established in chapter 18.43 RCW governing licenses issued under chapters 18.43 and 18.210 RCW;
  - (iv) The funeral and cemetery board established in chapter 18.39 RCW governing licenses issued under chapters 18.39 and 68.05 RCW;
  - (v) The state board of licensure for landscape architects established in chapter 18.96 RCW; and

(vi) The state geologist licensing board established in chapter 18.220 RCW.

(3) In addition to the authority to discipline license holders, the disciplinary authority may grant or deny licenses based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant’s compliance with an order entered under RCW 18.235.110 by the disciplinary authority. [2009 c 412 § 22; 2009 c 370 § 20; 2009 c 102 § 5; 2008 c 119 § 21; 2007 c 256 § 12; 2006 c 219 § 13; 2002 c 86 § 103.]

**Reviser’s note:** This section was amended by 2009 c 102 § 5, 2009 c 370 § 20, and by 2009 c 412 § 22, 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).

**Short title—Implementation—2009 c 412:** See RCW 18.300.900 and 18.300.902.

**Effective date—2009 c 370 §§ 1-16, 18, 20, and 21:** See note following RCW 18.96.010.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**Funeral directors and embalmers account and cemetery account abolished, moneys transferred to funeral and cemetery account—2009 c 102:** See note following RCW 18.39.810.

**Effective date—2006 c 219:** See note following RCW 46.82.285.

## Chapter 18.290 RCW GENETIC COUNSELORS

### Sections

18.290.010	Definitions. ( <i>Effective August 1, 2010.</i> )
18.290.020	Secretary—Authority. ( <i>Effective August 1, 2010.</i> )
18.290.030	Construction. ( <i>Effective August 1, 2010.</i> )
18.290.040	Licensing requirements. ( <i>Effective August 1, 2010.</i> )
18.290.050	Examinations. ( <i>Effective August 1, 2010.</i> )
18.290.060	Applications for licensing. ( <i>Effective August 1, 2010.</i> )
18.290.070	License renewals. ( <i>Effective August 1, 2010.</i> )
18.290.080	Provisional licenses. ( <i>Effective August 1, 2010.</i> )
18.290.090	Reciprocity. ( <i>Effective August 1, 2010.</i> )
18.290.100	Prohibited practices. ( <i>Effective August 1, 2010.</i> )
18.290.110	Application of uniform disciplinary act. ( <i>Effective August 1, 2010.</i> )
18.290.900	Effective date—2009 c 302.
18.290.901	Implementation—2009 c 302.

### **18.290.010 Definitions. (Effective August 1, 2010.)**

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

(1) "Advisory committee" means the advisory committee on genetic counseling established in \*section 5 of this act.

(2) "Collaborative agreement" means a written document that memorializes a relationship between a genetic counselor and a physician licensed under chapter 18.71 RCW or an osteopathic physician licensed under chapter 18.57 RCW, who is board certified in medical genetics or who is board certified in a specialty relevant to the practice of the genetic counselor that authorizes a genetic counselor to perform the functions specified in subsection (5)(d) of this section as applied to the practice of genetic counseling.

(3) "Department" means the department of health.

(4) "Genetic counselor" means an individual who is licensed to engage in the practice of genetic counseling under this chapter.

(5) "Practice of genetic counseling" means a communication process, conducted by one or more appropriately trained individuals that includes:

(a) Estimating the likelihood of occurrence or recurrence of a birth defect or of any potentially inherited or genetically influenced condition. This assessment may involve:

(i) Obtaining and analyzing a complete health history of the person and family;

(ii) Reviewing pertinent medical records;

(iii) Evaluating the risks from exposure to possible mutagens or teratogens; and

(iv) Providing recommendations for genetic testing or other evaluations to diagnose a condition or determine the carrier status of one or more family members;

(b) Helping the individual, family, or health care provider:

(i) Appreciate the medical and psychosocial implications of a disorder, including its features, variability, usual course, and management options;

(ii) Learn how genetic factors contribute to the disorder and affect the chance for recurrence of the condition in other family members;

(iii) Understand available options for coping with, preventing, or reducing the chance of occurrence or recurrence of a condition;

(iv) Understand genetic or prenatal tests, coordinate testing for inherited disorders, and interpret complex genetic test results;

(c) Facilitating an individual's or family's:

(i) Exploration of the perception of risk and burden associated with the disorder;

(ii) Decision making regarding testing or medical interventions consistent with their beliefs, goals, needs, resources, and cultural, ethical, and moral views; and

(iii) Adjustment and adaptation to the condition or their genetic risk by addressing needs for psychosocial and medical support; and

(d) Pursuant to a collaborative agreement:

(i) Ordering genetic tests or other evaluations to diagnose a condition or determine the carrier status of one or more family members, including testing for inherited disorders; and

(ii) Selecting the most appropriate, accurate, and cost-effective methods of diagnosis.

(6) "Secretary" means the secretary of health. [2009 c 302 § 1.]

\*Reviser's note: Section 5, chapter 302, Laws of 2009 was vetoed by the governor.

**18.290.020 Secretary—Authority. (Effective August 1, 2010.)** In addition to any other authority, the secretary has the authority to:

(1) Adopt rules under chapter 34.05 RCW necessary to implement this chapter;

(2) Establish all licensing, examination, and renewal fees in accordance with RCW 43.70.110 and 43.70.250;

(3) Establish forms and procedures necessary to administer this chapter;

(4) Issue licenses to applicants who have met the education, training, and examination requirements for obtaining a

license and to deny a license to applicants who do not meet the requirements;

(5) Hire clerical, administrative, investigative, and other staff as needed to implement this chapter to serve as examiners for any practical examinations;

(6) Determine minimum education requirements and evaluate and designate those educational programs from which graduation will be accepted as proof of eligibility to take a qualifying examination for applicants for obtaining a license;

(7) Establish practice parameters consistent with the practice of genetic counseling as defined in RCW 18.290.010 and considering developments in the field, with the advice and recommendations of the \*advisory committee;

(8) Prepare, grade, and administer, or determine the nature of, and supervise the grading and administration of examinations for obtaining a license;

(9) Determine which states have licensing requirements equivalent to those of this state, and issue licenses to applicants licensed in those states without examination;

(10) Define and approve any experience requirement for licensing;

(11) Adopt rules implementing a continuing competency program;

(12) Maintain the official department record of all applicants and license holders; and

(13) Establish by rule the procedures for an appeal of an examination failure. [2009 c 302 § 2.]

\*Reviser's note: Section 5 of this act, which established the advisory committee, was vetoed by the governor.

**18.290.030 Construction. (Effective August 1, 2010.)** Nothing in this chapter shall be construed to prohibit or restrict:

(1) An individual who holds a credential issued by this state, other than as a genetic counselor, to engage in the practice of that occupation or profession without obtaining an additional credential from the state. The individual may not use the title genetic counselor unless licensed as such in this state;

(2) The practice of genetic counseling by a person who is employed by the government of the United States while engaged in the performance of duties prescribed by the laws of the United States;

(3) The practice of genetic counseling by a person who is a regular student in an educational program approved by the secretary, and whose performance of services is pursuant to a regular course of instruction or assignments from an instructor and under the general supervision of the instructor; or

(4) The practice of genetic counseling by a person who is practicing under the general supervision of a genetic counselor in a genetic counseling training site while gathering log-book cases for the purpose of meeting licensing requirements. [2009 c 302 § 3.]

**18.290.040 Licensing requirements. (Effective August 1, 2010.)** The secretary shall issue a license to any applicant who demonstrates to the satisfaction of the secretary that the applicant meets the following requirements:

(1) Graduation from a master's or doctorate program in genetic counseling or medical genetics approved by the secretary;

(2) Successful completion of any clinical experience requirements established by the secretary; and

(3) Successful completion of an examination administered or approved by the secretary. [2009 c 302 § 4.]

**18.290.050 Examinations. (Effective August 1, 2010.)**

(1) The date and location of examinations must be established by the secretary. Applicants who have been found by the secretary to meet the other requirements for obtaining a license must be scheduled for the next examination following the filing of the application. The secretary shall establish by rule the examination application deadline.

(2) The secretary or the secretary's designees shall examine each applicant, by means determined most effective, on subjects appropriate to the scope of practice, as applicable. The examinations must be limited to the purpose of determining whether the applicant possesses the minimum skill and knowledge necessary to practice competently.

(3) The examination papers, all grading of the papers, and the grading of any practical work shall be preserved for a period of not less than one year after the secretary has made and published the decisions. All examinations must be conducted under fair and wholly impartial methods.

(4) Any applicant failing to make the required grade in the first examination may take up to two subsequent examinations as the applicant desires upon prepaying a fee determined by the secretary under RCW 43.70.250 for each subsequent examination. Upon failing four examinations, the secretary may invalidate the original application and require remedial education before the person may take future examinations.

(5) The secretary may approve an examination prepared or administered by a private organization that certifies and recertifies genetic counselors, or an association of licensing agencies, for use by an applicant in meeting the credentialing requirements. [2009 c 302 § 6.]

**18.290.060 Applications for licensing. (Effective August 1, 2010.)** Applications for licensing must be submitted on forms provided by the secretary. The secretary may require any information and documentation that reasonably relates to the need to determine whether the applicant meets the criteria for licensing provided for in this chapter and chapter 18.130 RCW. Each applicant shall pay a fee determined by the secretary under RCW 43.70.250. The fee must accompany the application. [2009 c 302 § 7.]

**18.290.070 License renewals. (Effective August 1, 2010.)** The secretary shall establish by rule the requirements and fees for renewal of a license. Failure to renew the license invalidates the license and all privileges granted by the license. If a license has lapsed for a period longer than three years, the person shall demonstrate competence to the satisfaction of the secretary by completing continuing competency requirements or meeting other standards determined by the secretary. [2009 c 302 § 8.]

**18.290.080 Provisional licenses. (Effective August 1, 2010.)** The secretary may grant a provisional license to a person who has met all of the requirements for obtaining a license except for the successful completion of an examination. A provisional license must be renewed annually. The secretary may grant a provisional license to a person up to four times. A provisional license holder may only practice genetic counseling under the supervision of either a licensed genetic counselor, a physician licensed under chapter 18.71 RCW, or osteopathic physician licensed under chapter 18.57 RCW, with a current certification in clinical genetics issued by an organization approved by the secretary. [2009 c 302 § 9.]

**18.290.090 Reciprocity. (Effective August 1, 2010.)** An applicant holding a license in another state may be licensed to practice in this state without examination if the secretary determines that the licensing standards of the other state are substantially equivalent to the licensing standards of this state. [2009 c 302 § 10.]

**18.290.100 Prohibited practices. (Effective August 1, 2010.)** (1) Except as provided in RCW 18.290.030, no person shall engage in the practice of genetic counseling unless he or she is licensed, or provisionally licensed, under this chapter.

(2) A person not licensed with the secretary to practice genetic counseling may not represent himself or herself as a "licensed genetic counselor or a genetic counselor." [2009 c 302 § 11.]

**18.290.110 Application of uniform disciplinary act. (Effective August 1, 2010.)** The uniform disciplinary act, chapter 18.130 RCW, governs unlicensed practice, the issuance and denial of a license, and the discipline of persons licensed under this chapter. The secretary shall be the disciplining authority under this chapter. [2009 c 302 § 12.]

**18.290.900 Effective date—2009 c 302.** This act takes effect August 1, 2010. [2009 c 302 § 15.]

**18.290.901 Implementation—2009 c 302.** The secretary of health may adopt such rules as authorized under RCW 18.290.020 to ensure that chapter 302, Laws of 2009 is implemented on its effective date. [2009 c 302 § 16.]

## Chapter 18.300 RCW

### BODY ART, BODY PIERCING, AND TATTOOING

#### Sections

18.300.005	Finding. (Effective July 1, 2010.)
18.300.010	Definitions. (Effective July 1, 2010.)
18.300.020	Authority of director. (Effective July 1, 2010.)
18.300.030	License required to be in good standing. (Effective July 1, 2010.)
18.300.040	Requirements for issuance of license. (Effective July 1, 2010.)
18.300.050	Licensing fees—Penalties for late renewal—Reinstatement—Duplicates. (Effective July 1, 2010.)
18.300.060	Expiration of licenses. (Effective July 1, 2010.)
18.300.070	Shop or business requirements—Director authority—Inspections. (Effective July 1, 2010.)
18.300.080	Notice to consumers. (Effective July 1, 2010.)
18.300.090	Violation—Shop or business license and individual license required. (Effective July 1, 2010.)

- 18.300.100 Disciplinary action—Grounds. (*Effective July 1, 2010.*)
- 18.300.110 Penalties for violation. (*Effective July 1, 2010.*)
- 18.300.120 Appeal—Procedure. (*Effective July 1, 2010.*)
- 18.300.130 License suspension—Noncompliance with support order—Reissuance. (*Effective July 1, 2010.*)
- 18.300.140 Application of consumer protection act. (*Effective July 1, 2010.*)
- 18.300.150 Uniform regulation of business and professions act. (*Effective July 1, 2010.*)
- 18.300.900 Short title—2009 c 412. (*Effective July 1, 2010.*)
- 18.300.901 Effective date—2009 c 412 §§ 1-21.
- 18.300.902 Implementation—2009 c 412.

**18.300.005 Finding.** (*Effective July 1, 2010.*) The legislature finds and declares that the practices of body piercing, tattooing, and other forms of body art involve an invasive procedure with the use of needles, sharps, instruments, and jewelry. These practices may be dangerous when improper sterilization techniques are used, presenting a risk of infecting the client with bloodborne pathogens including, but not limited to, HIV, hepatitis B, and hepatitis C. It is in the interests of the public health, safety, and welfare to establish requirements in the commercial practice of these activities in this state. [2009 c 412 § 1.]

**18.300.010 Definitions.** (*Effective July 1, 2010.*) The definitions in this section apply throughout this chapter and RCW 5.40.050 and 70.54.340 unless the context clearly requires otherwise.

(1) "Body art" means the practice of invasive cosmetic adornment including the use of branding and scarification. "Body art" also includes the intentional production of scars upon the body. "Body art" does not include any health-related procedures performed by licensed health care practitioners under their scope of practice.

(2) "Body piercing" means the process of penetrating the skin or mucous membrane to insert an object, including jewelry, for cosmetic purposes. "Body piercing" also includes any scar tissue resulting from or relating to the piercing. "Body piercing" does not include the use of stud and clasp piercing systems to pierce the earlobe in accordance with the manufacturer's directions and applicable United States food and drug administration requirements. "Body piercing" does not include any health-related procedures performed by licensed health care practitioners under their scope of practice, nor does anything in chapter 412, Laws of 2009 authorize a person registered to engage in the business of body piercing to implant or embed foreign objects into the human body or otherwise engage in the practice of medicine.

(3) "Director" means the director of the department of licensing.

(4) "Individual license" means a body art, body piercing, or tattoo practitioner license issued under this chapter.

(5) "Location license" means a license issued under this chapter for a shop or business.

(6) "Shop or business" means a body art, body piercing, or tattooing shop or business.

(7) "Tattoo artist" means a person who pierces or punctures the human skin with a needle or other instrument for the purpose of implanting an indelible mark, or pigment, into the skin for a fee.

(8) "Tattooing" means to pierce or puncture the human skin with a needle or other instrument for the purpose of

implanting an indelible mark, or pigment, into the skin. [2009 c 412 § 2.]

**18.300.020 Authority of director.** (*Effective July 1, 2010.*) In addition to any other duties imposed by law, including RCW 18.235.030 and 18.235.040, the director has the following powers and duties:

(1) To set all license, examination, and renewal fees in accordance with RCW 43.24.086;

(2) To adopt rules necessary to implement this chapter;

(3) To prepare and administer or approve the preparation and administration of licensing;

(4) To establish minimum safety and sanitation standards for practitioners of body art, body piercing, or tattooing as determined by the department of health;

(5) To maintain the official department record of applicants and licensees;

(6) To set license expiration dates and renewal periods for all licenses consistent with this chapter;

(7) To ensure that all informational notices produced and mailed by the department regarding statutory and regulatory changes affecting any particular class of licensees are mailed to each licensee in good standing in the affected class whose mailing address on record with the department has not resulted in mail being returned as undeliverable for any reason; and

(8) To make information available to the department of revenue to assist in collecting taxes from persons and businesses required to be licensed under this chapter. [2009 c 412 § 3.]

**18.300.030 License required to be in good standing.** (*Effective July 1, 2010.*) (1) It is unlawful for any person to engage in a practice listed in subsection (2) of this section unless the person has a license in good standing as required by this chapter. A license issued under this chapter is considered to be "in good standing" except when:

(a) The license has expired or has been canceled and has not been renewed in accordance with RCW 18.300.050;

(b) The license has been denied, revoked, or suspended under RCW 18.300.110 or 18.300.130, and has not been reinstated; or

(c) The license is held by a person who has not fully complied with an order of the director issued under RCW 18.300.110 requiring the licensee to pay restitution or a fine, or to acquire additional training.

(2) The director may take action under RCW 18.235.150 and 18.235.160 against any person who does any of the following without first obtaining, and maintaining in good standing, the license required by this chapter:

(a) Engages in the practice of body art, body piercing, or tattooing; or

(b) Operates a shop or business. [2009 c 412 § 4.]

**18.300.040 Requirements for issuance of license.** (*Effective July 1, 2010.*) Upon completion of an application approved by the department and payment of the proper fee, the director shall issue the appropriate location license to any person who completes an application approved by the depart-

ment, provides certification of insurance, and provides payment of the proper fee. [2009 c 412 § 5.]

**18.300.050 Licensing fees—Penalties for late renewal—Reinstatement—Duplicates. (Effective July 1, 2010.)** (1) The director shall issue the appropriate license to any applicant who meets the requirements as outlined in this chapter. The director has the authority to set appropriate licensing fees for body art, body piercing, and tattooing shops and businesses and body art, body piercing, and tattooing individual practitioners. Licensing fees for individual practitioners must be set in an amount less than licensing fees for shops and businesses.

(2) Failure to renew a license by its expiration date subjects the holder to a penalty fee and payment of each year's renewal fee, at the current rate.

(3) A person whose license has not been renewed within one year after its expiration date must have his or her license canceled and must be required to submit an application, pay the license fee, meet current licensing requirements, and pass any applicable examination or examinations, in addition to the other requirements of this chapter, before the license may be reinstated.

(4) Nothing in this section authorizes a person whose license has expired to engage in a practice prohibited under RCW 18.300.030 until the license is renewed or reinstated.

(5) Upon request and payment of an additional fee to be established by rule by the director, the director shall issue a duplicate license to an applicant. [2009 c 412 § 6.]

**18.300.060 Expiration of licenses. (Effective July 1, 2010.)** (1) Subject to subsection (2) of this section, licenses issued under this chapter expire as follows:

(a) A body art, body piercing, or tattooing shop or business location license expires one year from issuance or when the insurance required by RCW 18.300.070(1)(g) expires, whichever occurs first; and

(b) Body art, body piercing, or tattooing practitioner individual licenses expire one year from issuance.

(2) The director may provide for expiration dates other than those set forth in subsection (1) of this section for the purpose of establishing staggered renewal periods. [2009 c 412 § 7.]

**18.300.070 Shop or business requirements—Director authority—Inspections. (Effective July 1, 2010.)** (1) A body art, body piercing, or tattooing shop or business shall meet the following minimum requirements:

(a) Maintain an outside entrance separate from any rooms used for sleeping or residential purposes;

(b) Provide and maintain for the use of its customers adequate toilet facilities located within or adjacent to the shop or business;

(c) Any room used wholly or in part as a shop or business may not be used for residential purposes, except that toilet facilities may be used for both residential and business purposes;

(d) Meet the zoning requirements of the county, city, or town, as appropriate;

(e) Provide for safe storage and labeling of equipment and substances used in the practices under this chapter;

(f) Meet all applicable local and state fire codes; and

(g) Certify that the shop or business is covered by a public liability insurance policy in an amount not less than one hundred thousand dollars for combined bodily injury and property damage liability.

(2) The director may by rule determine other requirements that are necessary for safety and sanitation of shops or businesses. The director may consult with the state board of health and the department of labor and industries in establishing minimum shop and business safety requirements.

(3) Upon receipt of a written complaint that a shop or business has violated any provisions of this chapter, chapter 18.235 RCW, or the rules adopted under either chapter, or at least once every two years for an existing shop or business, the director or the director's designee shall inspect each shop or business. If the director determines that any shop or business is not in compliance with this chapter, the director shall send written notice to the shop or business. A shop or business which fails to correct the conditions to the satisfaction of the director within a reasonable time is, upon due notice, subject to the penalties imposed by the director under RCW 18.235.110. The director may enter any shop or business during business hours for the purpose of inspection. The director may contract with health authorities of local governments to conduct the inspections under this subsection.

(4) A shop or business shall obtain a certificate of registration from the department of revenue.

(5) Shop or business location licenses issued by the department must be posted in the shop or business's reception area.

(6) Body art, body piercing, and tattooing practitioner individual licenses issued by the department must be posted at the licensed person's work station. [2009 c 412 § 8.]

**18.300.080 Notice to consumers. (Effective July 1, 2010.)** The director shall prepare and provide to all licensed shops or businesses a notice to consumers. At a minimum, the notice must state that body art, body piercing, and tattooing shops or businesses are required to be licensed, that shops or businesses are required to maintain minimum safety and sanitation standards, that customer complaints regarding shops or businesses may be reported to the department, and a telephone number and address where complaints may be made. [2009 c 412 § 9.]

**18.300.090 Violation—Shop or business license and individual license required. (Effective July 1, 2010.)** It is a violation of this chapter for any person to engage in the commercial practice of body art, body piercing, or tattooing except in a licensed shop or business with the appropriate individual body art, body piercing, or tattooing license. [2009 c 412 § 10.]

**18.300.100 Disciplinary action—Grounds. (Effective July 1, 2010.)** In addition to the unprofessional conduct described in RCW 18.235.130, the director may take disciplinary action against any applicant or licensee under this chapter if the licensee or applicant:

(1) Has been found to have violated any provisions of chapter 19.86 RCW;

(2) Has engaged in a practice prohibited under RCW 18.300.030 without first obtaining, and maintaining in good standing, the license required by this chapter;

(3) Has failed to display licenses required in this chapter; or

(4) Has violated any provision of this chapter or any rule adopted under it. [2009 c 412 § 11.]

**18.300.110 Penalties for violation. (Effective July 1, 2010.)** If, following a hearing, the director finds that any person or an applicant or licensee has violated any provision of this chapter or any rule adopted under it, the director may impose one or more of the following penalties:

(1) Denial of a license or renewal;

(2) Revocation or suspension of a license;

(3) A fine of not more than five hundred dollars per violation;

(4) Issuance of a reprimand or letter of censure;

(5) Placement of the licensee on probation for a fixed period of time;

(6) Restriction of the licensee's authorized scope of practice;

(7) Requiring the licensee to make restitution or a refund as determined by the director to any individual injured by the violation; or

(8) Requiring the licensee to obtain additional training or instruction. [2009 c 412 § 12.]

**18.300.120 Appeal—Procedure. (Effective July 1, 2010.)** Any person aggrieved by the refusal of the director to issue any license provided for in this chapter, or to renew the same, or by the revocation or suspension of any license issued under this chapter or by the application of any penalty under RCW 18.300.110 has the right to appeal the decision of the director to the superior court of the county in which the person maintains his or her place of business. The appeal must be filed within thirty days of the director's decision. [2009 c 412 § 13.]

**18.300.130 License suspension—Noncompliance with support order—Reissuance. (Effective July 1, 2010.)** The department shall immediately suspend the license of a person who has been certified under \*RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license is automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [2009 c 412 § 14.]

\*Reviser's note: RCW 74.20A.320 was amended by 2009 c 408 § 1, deleting language referring to certification. RCW 74.20A.324 appears to be the more appropriate reference.

**18.300.140 Application of consumer protection act. (Effective July 1, 2010.)** The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is

not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2009 c 412 § 15.]

**18.300.150 Uniform regulation of business and professions act. (Effective July 1, 2010.)** The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2009 c 412 § 16.]

**18.300.900 Short title—2009 c 412. (Effective July 1, 2010.)** This act shall be known and may be cited as the "Washington body art, body piercing, and tattooing act." [2009 c 412 § 17.]

**18.300.901 Effective date—2009 c 412 §§ 1-21.** Sections 1 through 21 of this act take effect July 1, 2010. [2009 c 412 § 25.]

**18.300.902 Implementation—2009 c 412.** The director of licensing and the department of health, beginning on July 26, 2009, may take such steps as are necessary to ensure that chapter 412, Laws of 2009 is implemented July 1, 2010. [2009 c 412 § 23.]

## Title 19

### BUSINESS REGULATIONS— MISCELLANEOUS

#### Chapters

- 19.06 Blind made products—Services.
- 19.09 Charitable solicitations.
- 19.16 Collection agencies.
- 19.25 Reproduced sound recordings.
- 19.27 State building code.
- 19.27A Energy-related building standards.
- 19.28 Electricians and electrical installations.
- 19.36 Contracts and credit agreements requiring writings.
- 19.40 Uniform fraudulent transfer act.
- 19.72 Suretyship.
- 19.86 Unfair business practices—Consumer protection.
- 19.98 Farm implements, machinery, parts.
- 19.112 Motor fuel quality act.
- 19.118 Motor vehicle warranties.
- 19.120 Gasoline dealer bill of rights act.
- 19.126 Wholesale distributors and suppliers of malt beverages.
- 19.146 Mortgage broker practices act.
- 19.200 Automated financial transactions.
- 19.205 Structured settlement protection.
- 19.210 Unused property merchants.
- 19.220 International matchmaking organizations.
- 19.225 Uniform athlete agent act.
- 19.250 Disclosure of personal wireless numbers.
- 19.260 Energy efficiency.
- 19.280 Electric utility resource plans.
- 19.285 Energy independence act.



- 19.295 Estate distribution documents.
- 19.300 Electronic communication devices.
- 19.310 Exchange facilitators.
- 19.315 Consumer rebates.
- 19.320 Human trafficking.

### Chapter 19.06 RCW

#### BLIND MADE PRODUCTS—SERVICES

##### Sections

- 19.06.010 Labels—Contents—Requirements—Prohibited acts.

**19.06.010 Labels—Contents—Requirements—Prohibited acts.** Products made by blind persons and sold or distributed in this state as blind made may bear a label affixed directly to the product reading "MADE BY THE BLIND" and shall show the distributor's or manufacturer's name. Any product bearing such label shall have been made by blind people to the extent of at least seventy-five percent of the labor hours required for its manufacture. No other label, trade name or sales device tending to create the impression that a product is made by blind persons shall be used in connection with the sale or distribution of such product unless the product shall have been made by blind people to the extent of at least seventy-five percent of the labor hours required for its manufacture. [2009 c 549 § 1009; 1961 c 56 § 1; 1959 c 100 § 1.]

### Chapter 19.09 RCW

#### CHARITABLE SOLICITATIONS

##### Sections

- 19.09.916 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**19.09.916 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 51.]

### Chapter 19.16 RCW

#### COLLECTION AGENCIES

##### Sections

- 19.16.960 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**19.16.960 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 52.]

### Chapter 19.25 RCW

#### REPRODUCED SOUND RECORDINGS

##### Sections

- 19.25.100 Truth in music advertising.

**19.25.100 Truth in music advertising.** (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Performing group" means a vocal or instrumental group seeking to use the name of another group that has previously released a commercial sound recording under that name.

(b) "Recording group" means a vocal or instrumental group, at least one of whose members has previously released a commercial sound recording under that group's name and in which the member or members have a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation with the group.

(c) "Sound recording" means a work that results from the fixation on a material object of a series of musical, spoken, or other sounds regardless of the nature of the material object, such as a disk, tape, or other phonorecord, in which the sounds are embodied.

(2) A person shall not advertise or conduct a live musical performance or production through the use of a false, deceptive, or misleading affiliation, connection, or association between a performing group and a recording group unless any of the following apply:

(a) The performing group is the authorized registrant and owner of a federal service mark for the group registered in the United States patent and trademark office;

(b) At least one member of the performing group was previously a member of the recording group and has a legal right by virtue of use or operation under the group name without having abandoned the name or affiliation of the group;

(c) The live musical performance or production is identified in all advertising and promotion as a salute or tribute;

(d) The advertising does not relate to a live musical performance or production taking place in this state; or

(e) The performance or production is expressly authorized by the recording group.

(3)(a) A person who violates this section is subject to a civil penalty not less than five thousand dollars or more than fifteen thousand dollars per violation. An action for a civil penalty may be brought by the attorney general or a county or city prosecutor and is enforceable as a civil judgment.

(b) A person who violates this section is subject to the equitable remedies described in chapter 19.86 RCW.

(c) Each performance or production declared unlawful under subsection (2) of this section constitutes a separate violation.

(d) This section does not preclude prosecution of a violation of this section under any other provision of law. [2009 c 109 § 1.]

**Short title—2009 c 109:** "This act may be known and cited as the truth in music advertising act." [2009 c 109 § 2.]

## Chapter 19.27 RCW STATE BUILDING CODE

### Sections

19.27.015	Definitions.
19.27.087	Building permit and plan review fees—Agricultural structures.
19.27.100	Cities, towns, counties may impose fees different from state building code.
19.27.530	Carbon monoxide alarms—Requirements—Exemptions—Adoption of rules.
19.27.540	Electric vehicle infrastructure requirements.

### **19.27.015 Definitions.** As used in this chapter:

(1) "Agricultural structure" means a structure designed and constructed to house farm implements, hay, grain, poultry, livestock, or other horticultural products. This structure may not be a place of human habitation or a place of employment where agricultural products are processed, treated, or packaged, nor may it be a place used by the public;

(2) "City" means a city or town;

(3) "Multifamily residential building" means common wall residential buildings that consist of four or fewer units, that do not exceed two stories in height, that are less than five thousand square feet in area, and that have a one-hour fire-resistive occupancy separation between units; and

(4) "Temporary growing structure" means a structure that has the sides and roof covered with polyethylene, polyvinyl, or similar flexible synthetic material and is used to provide plants with either frost protection or increased heat retention. [2009 c 362 § 2; 1996 c 157 § 1; 1985 c 360 § 1.]

**Finding—Performance audit—2009 c 362:** See notes following RCW 19.27.087.

**Effective date—1996 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 shall take effect immediately [March 25, 1996]." [1996 c 157 § 3.]

[2009 RCW Supp—page 210]

**19.27.087 Building permit and plan review fees—Agricultural structures.** Permitting and plan review fees under this chapter for agricultural structures may only cover the costs to counties, cities, towns, and other municipal corporations of processing applications, inspecting and reviewing plans, preparing detailed statements required by chapter 43.21C RCW, and performing necessary inspections under this chapter. [2009 c 362 § 3.]

**Finding—2009 c 362:** "The legislature finds that permit and inspection fees for new agricultural structures should not exceed the direct and indirect costs associated with reviewing permit applications, conducting inspections, and preparing specific environmental documents." [2009 c 362 § 1.]

**Performance audit—2009 c 362:** "(1) The state auditor, in accordance with RCW 43.09.470, must conduct a performance audit of the reasonableness of building and inspection fees permitted under RCW 82.02.020 that are imposed by eight counties, as determined by the auditor. In selecting counties for the audit, the auditor must choose four counties located west of the crest of the Cascade mountain range, and four counties located east of the crest of the Cascade mountain range. The selected counties must represent a diversity of agricultural economies. In completing the audit, the state auditor must include guidance on determining allowable costs, and methodologies for allocating costs to specific projects. The state auditor, when developing written cost allocation guidance, must consider variances in the sizes of local government entities.

(2) In completing the audit report required by this section, the state auditor must establish and consult with a county government advisory committee. The advisory committee must consist of members from county and city governments and other interested parties, as determined by the auditor.

(3) The state auditor must provide a final audit report to the appropriate committees of the house of representatives and the senate by December 31, 2009.

(4) Revenues from the performance audits of the government account created in RCW 43.09.475 must be used for the audit required by this section.

(5) This section expires July 1, 2011." [2009 c 362 § 5.]

**19.27.100 Cities, towns, counties may impose fees different from state building code.** Except for permitting fees for agricultural structures under RCW 19.27.087, nothing in this chapter shall prohibit a city, town, or county of the state from imposing fees different from those set forth in the state building code. [2009 c 362 § 4; 1975 1st ex.s. c 8 § 1.]

**Finding—Performance audit—2009 c 362:** See notes following RCW 19.27.087.

**19.27.530 Carbon monoxide alarms—Requirements—Exemptions—Adoption of rules.** (1) By July 1, 2010, the building code council shall adopt rules requiring that all buildings classified as residential occupancies, as defined in the state building code in chapter 51-54 WAC, but excluding owner-occupied single-family residences legally occupied before July 26, 2009, be equipped with carbon monoxide alarms.

(2)(a) The building code council may phase in the carbon monoxide alarm requirements on a schedule that it determines reasonable, provided that the rules require that by January 1, 2011, all newly constructed buildings classified as residential occupancies will be equipped with carbon monoxide alarms, and all other buildings classified as residential occupancies will be equipped with carbon monoxide alarms by January 1, 2013.

(b) Owner-occupied single-family residences legally occupied before July 26, 2009, are exempt from the requirements of this subsection (2). However, for any owner-occupied single-family residence that is sold on or after July 26, 2009, the seller must equip the residence with carbon monox-

ide alarms in accordance with the requirements of the state building code before the buyer or any other person may legally occupy the residence following such sale.

(3) The building code council may exempt categories of buildings classified as residential occupancies if it determines that requiring carbon monoxide alarms are unnecessary to protect the health and welfare of the occupants.

(4) The rules adopted by the building code council under this section must (a) consider applicable nationally accepted standards and (b) require that the maintenance of a carbon monoxide alarm in a building where a tenancy exists, including the replacement of batteries, is the responsibility of the tenant, who shall maintain the alarm as specified by the manufacturer. [2009 c 313 § 2.]

**Intent—2009 c 313:** "The legislature recognizes that carbon monoxide poses a serious threat. According to national statistics from the centers for disease control, carbon monoxide kills more than five hundred people and accounts for an estimated twenty thousand emergency department visits annually. Specifically, Washington state has experienced the dire effects of carbon monoxide poisoning. In the storms that struck Washington in December 2006, it was estimated that over one thousand people in the state were seen at hospital emergency rooms with symptoms of carbon monoxide poisoning, and eight people reportedly died of carbon monoxide exposure. It is the intent of the legislature to implement policies to prevent similar tragedies from occurring in the future." [2009 c 313 § 1.]

**19.27.540 Electric vehicle infrastructure requirements.** The building code council shall adopt rules for electric vehicle infrastructure requirements. Rules adopted by the state building code council must consider applicable national and international standards and be consistent with rules adopted under RCW 19.28.281. [2009 c 459 § 16.]

**Finding—Purpose—2009 c 459:** See note following RCW 47.80.090. *Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.*

## Chapter 19.27A RCW

### ENERGY-RELATED BUILDING STANDARDS

#### Sections

19.27A.020	State energy code—Adoption by state building code council—Preemption of local residential energy codes.
19.27A.130	Finding—2009 c 423.
19.27A.140	Definitions.
19.27A.150	Strategic plan—Development and implementation.
19.27A.160	Residential and nonresidential construction—Energy consumption reduction—Council report.
19.27A.170	Qualifying utilities—Maintenance of records of energy consumption data—Disclosure.
19.27A.180	Energy performance score—Implementation strategy—Department development and recommendations.
19.27A.190	Qualifying public agency duties—Energy benchmark—Performance rating—Reports.

**19.27A.020 State energy code—Adoption by state building code council—Preemption of local residential energy codes.** (1) The state building code council shall adopt rules to be known as the Washington state energy code as part of the state building code.

(2) The council shall follow the legislature's standards set forth in this section to adopt rules to be known as the Washington state energy code. The Washington state energy code shall be designed to:

(a) Construct increasingly energy efficient homes and buildings that help achieve the broader goal of building zero

fossil-fuel greenhouse gas emission homes and buildings by the year 2031;

(b) Require new buildings to meet a certain level of energy efficiency, but allow flexibility in building design, construction, and heating equipment efficiencies within that framework; and

(c) Allow space heating equipment efficiency to offset or substitute for building envelope thermal performance.

(3) The Washington state energy code shall take into account regional climatic conditions. Climate zone 1 shall include all counties not included in climate zone 2. Climate zone 2 includes: Adams, Chelan, Douglas, Ferry, Grant, Kittitas, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, and Whitman counties.

(4) The Washington state energy code for residential buildings shall be the 2006 edition of the Washington state energy code, or as amended by rule by the council.

(5) The minimum state energy code for new nonresidential buildings shall be the Washington state energy code, 2006 edition, or as amended by the council by rule.

(6)(a) Except as provided in (b) of this subsection, the Washington state energy code for residential structures shall preempt the residential energy code of each city, town, and county in the state of Washington.

(b) The state energy code for residential structures does not preempt a city, town, or county's energy code for residential structures which exceeds the requirements of the state energy code and which was adopted by the city, town, or county prior to March 1, 1990. Such cities, towns, or counties may not subsequently amend their energy code for residential structures to exceed the requirements adopted prior to March 1, 1990.

(7) The state building code council shall consult with the department of community, trade, and economic development as provided in RCW 34.05.310 prior to publication of proposed rules. The director of the department of community, trade, and economic development shall recommend to the state building code council any changes necessary to conform the proposed rules to the requirements of this section.

(8) The state building code council shall evaluate and consider adoption of the international energy conservation code in Washington state in place of the existing state energy code.

(9) The definitions in RCW 19.27A.140 apply throughout this section. [2009 c 423 § 4; 1998 c 245 § 8; 1996 c 186 § 502; 1994 c 226 § 1; 1990 c 2 § 3; 1985 c 144 § 2; 1979 ex.s. c 76 § 3. Formerly RCW 19.27.075.]

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**Effective date—1994 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 [April 1, 1994]." [1994 c 226 § 2.]

**Effective dates—1990 c 2:** See note following RCW 19.27.040.

**Findings—Severability—1990 c 2:** See notes following RCW 19.27A.015.

**Severability—1985 c 144:** "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 144 § 7.]

**19.27A.130 Finding—2009 c 423.** The legislature finds that energy efficiency is the cheapest, quickest, and cleanest way to meet rising energy needs, confront climate change, and boost our economy. More than thirty percent of Washington's greenhouse gas emissions come from energy use in buildings. Making homes, businesses, and public institutions more energy efficient will save money, create good local jobs, enhance energy security, reduce pollution that causes global warming, and speed economic recovery while reducing the need to invest in costly new generation. Washington can spur its economy and assert its regional and national clean energy leadership by putting efficiency first. Washington can accomplish this by: Promoting super efficient, low-energy use building codes; requiring disclosure of buildings' energy use to prospective buyers; making public buildings models of energy efficiency; financing energy saving upgrades to existing buildings; and reducing utility bills for low-income households. [2009 c 423 § 1.]

**19.27A.140 Definitions.** The definitions in this section apply to RCW 19.27A.130 through 19.27A.190 and 19.27A.020 unless the context clearly requires otherwise.

(1) "Benchmark" means the energy used by a facility as recorded monthly for at least one year and the facility characteristics information inputs required for a portfolio manager.

(2) "Conditioned space" means conditioned space, as defined in the Washington state energy code.

(3) "Consumer-owned utility" includes a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, a port district formed under Title 53 RCW, or a water-sewer district formed under Title 57 RCW, that is engaged in the business of distributing electricity to one or more retail electric customers in the state.

(4) "Cost-effectiveness" means that a project or resource is forecast:

(a) To be reliable and available within the time it is needed; and

(b) To meet or reduce the power demand of the intended consumers at an estimated incremental system cost no greater than that of the least-cost similarly reliable and available alternative project or resource, or any combination thereof.

(5) "Council" means the state building code council.

(6) "Department" means the department of community, trade, and economic development.

(7) "Embodied energy" means the total amount of fossil fuel energy consumed to extract raw materials and to manufacture, assemble, transport, and install the materials in a building and the life-cycle cost benefits including the recyclability and energy efficiencies with respect to building materials, taking into account the total sum of current values for the costs of investment, capital, installation, operating, maintenance, and replacement as estimated for the lifetime of the product or project.

(8) "Energy consumption data" means the monthly amount of energy consumed by a customer as recorded by the applicable energy meter for the most recent twelve-month period.

(9) "Energy service company" has the same meaning as in RCW 43.19.670.

(10) "General administration" means the department of general administration.

(11) "Greenhouse gas" and "greenhouse gases" includes carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.

(12) "Investment grade energy audit" means an intensive engineering analysis of energy efficiency and management measures for the facility, net energy savings, and a cost-effectiveness determination.

(13) "Investor-owned utility" means a corporation owned by investors that meets the definition of "corporation" as defined in RCW 80.04.010 and is engaged in distributing either electricity or natural gas, or both, to more than one retail electric customer in the state.

(14) "Major facility" means any publicly owned or leased building, or a group of such buildings at a single site, having ten thousand square feet or more of conditioned floor space.

(15) "National energy performance rating" means the score provided by the energy star program, to indicate the energy efficiency performance of the building compared to similar buildings in that climate as defined in the United States environmental protection agency "ENERGY STAR® Performance Ratings Technical Methodology."

(16) "Net zero energy use" means a building with net energy consumption of zero over a typical year.

(17) "Portfolio manager" means the United States environmental protection agency's energy star portfolio manager or an equivalent tool adopted by the department.

(18) "Preliminary energy audit" means a quick evaluation by an energy service company of the energy savings potential of a building.

(19) "Qualifying public agency" includes all state agencies, colleges, and universities.

(20) "Qualifying utility" means a consumer-owned or investor-owned gas or electric utility that serves more than twenty-five thousand customers in the state of Washington.

(21) "Reporting public facility" means any of the following:

(a) A building or structure, or a group of buildings or structures at a single site, owned by a qualifying public agency, that exceed ten thousand square feet of conditioned space;

(b) Buildings, structures, or spaces leased by a qualifying public agency that exceeds ten thousand square feet of conditioned space, where the qualifying public agency purchases energy directly from the investor-owned or consumer-owned utility;

(c) A wastewater treatment facility owned by a qualifying public agency; or

(d) Other facilities selected by the qualifying public agency.

(22) "State portfolio manager master account" means a portfolio manager account established to provide a single shared portfolio that includes reports for all the reporting public facilities. [2009 c 423 § 2.]

**19.27A.150 Strategic plan—Development and implementation.** (1) To the extent that funding is appropriated

specifically for the purposes of this section, the department shall develop and implement a strategic plan for enhancing energy efficiency in and reducing greenhouse gas emissions from homes, buildings, districts, and neighborhoods. The strategic plan must be used to help direct the future code increases in RCW 19.27A.020, with targets for new buildings consistent with RCW 19.27A.160. The strategic plan will identify barriers to achieving net zero energy use in homes and buildings and identify how to overcome these barriers in future energy code updates and through complementary policies.

(2) The department must complete and release the strategic plan to the legislature and the council by December 31, 2010, and update the plan every three years.

(3) The strategic plan must include recommendations to the council on energy code upgrades. At a minimum, the strategic plan must:

(a) Consider development of aspirational codes separate from the state energy code that contain economically and technically feasible optional standards that could achieve higher energy efficiency for those builders that elected to follow the aspirational codes in lieu of or in addition to complying with the standards set forth in the state energy code;

(b) Determine the appropriate methodology to measure achievement of state energy code targets using the United States environmental protection agency's target finder program or equivalent methodology;

(c) Address the need for enhanced code training and enforcement;

(d) Include state strategies to support research, demonstration, and education programs designed to achieve a seventy percent reduction in annual net energy consumption as specified in RCW 19.27A.160 and enhance energy efficiency and on-site renewable energy production in buildings;

(e) Recommend incentives, education, training programs and certifications, particularly state-approved training or certification programs, joint apprenticeship programs, or labor-management partnership programs that train workers for energy-efficiency projects to ensure proposed programs are designed to increase building professionals' ability to design, construct, and operate buildings that will meet the seventy percent reduction in annual net energy consumption as specified in RCW 19.27A.160;

(f) Address barriers for utilities to serve net zero energy homes and buildings and policies to overcome those barriers;

(g) Address the limits of a prescriptive code in achieving net zero energy use homes and buildings and propose a transition to performance-based codes;

(h) Identify financial mechanisms such as tax incentives, rebates, and innovative financing to motivate energy consumers to take action to increase energy efficiency and their use of on-site renewable energy. Such incentives, rebates, or financing options may consider the role of government programs as well as utility-sponsored programs;

(i) Address the adequacy of education and technical assistance, including school curricula, technical training, and peer-to-peer exchanges for professional and trade audiences;

(j) Develop strategies to develop and install district and neighborhood-wide energy systems that help meet net zero energy use in homes and buildings;

(k) Identify costs and benefits of energy efficiency measures on residential and nonresidential construction; and

(l) Investigate methodologies and standards for the measurement of the amount of embodied energy used in building materials.

(4) The department and the council shall convene a work group with the affected parties to inform the initial development of the strategic plan. [2009 c 423 § 3.]

**19.27A.160 Residential and nonresidential construction—Energy consumption reduction—Council report.**

(1) Except as provided in subsection (2) of this section, residential and nonresidential construction permitted under the 2031 state energy code must achieve a seventy percent reduction in annual net energy consumption, using the adopted 2006 Washington state energy code as a baseline.

(2) The council shall adopt state energy codes from 2013 through 2031 that incrementally move towards achieving the seventy percent reduction in annual net energy consumption as specified in subsection (1) of this section. The council shall report its progress by December 31, 2012, and every three years thereafter. If the council determines that economic, technological, or process factors would significantly impede adoption of or compliance with this subsection, the council may defer the implementation of the proposed energy code update and shall report its findings to the legislature by December 31st of the year prior to the year in which those codes would otherwise be enacted. [2009 c 423 § 5.]

**19.27A.170 Qualifying utilities—Maintenance of records of energy consumption data—Disclosure.**

(1) On and after January 1, 2010, qualifying utilities shall maintain records of the energy consumption data of all nonresidential and qualifying public agency buildings to which they provide service. This data must be maintained for at least the most recent twelve months in a format compatible for uploading to the United States environmental protection agency's energy star portfolio manager.

(2) On and after January 1, 2010, upon the written authorization or secure electronic authorization of a nonresidential building owner or operator, a qualifying utility shall upload the energy consumption data for the accounts specified by the owner or operator for a building to the United States environmental protection agency's energy star portfolio manager in a form that does not disclose personally identifying information.

(3) In carrying out the requirements of this section, a qualifying utility shall use any method for providing the specified data in order to maximize efficiency and minimize overall program cost. Qualifying utilities are encouraged to consult with the United States environmental protection agency and their customers in developing reasonable reporting options.

(4) Disclosure of nonpublic nonresidential benchmarking data and ratings required under subsection (5) of this section will be phased in as follows:

(a) By January 1, 2011, for buildings greater than fifty thousand square feet; and

(b) By January 1, 2012, for buildings greater than ten thousand square feet.

(5) Based on the size guidelines in subsection (4) of this section, a building owner or operator, or their agent, of a non-residential building shall disclose the United States environmental protection agency's energy star portfolio manager benchmarking data and ratings to a prospective buyer, lessee, or lender for the most recent continuously occupied twelve-month period. A building owner or operator, or their agent, who delivers United States environmental protection agency's energy star portfolio manager benchmarking data and ratings to a prospective buyer, lessee, or lender is not required to provide additional information regarding energy consumption, and the information is deemed to be adequate to inform the prospective buyer, lessee, or lender regarding the United States environmental protection agency's energy star portfolio manager benchmarking data and ratings for the most recent twelve-month period for the building that is being sold, leased, financed, or refinanced.

(6) Notwithstanding subsections (4) and (5) of this section, nothing in this section increases or decreases the duties, if any, of a building owner, operator, or their agent under this chapter or alters the duty of a seller, agent, or broker to disclose the existence of a material fact affecting the real property. [2009 c 423 § 6.]

**19.27A.180 Energy performance score—Implementation strategy—Department development and recommendations.** By December 31, 2009, to the extent that funding is appropriated specifically for the purposes of this section, the department shall develop and recommend to the legislature a methodology to determine an energy performance score for residential buildings and an implementation strategy to use such information to improve the energy efficiency of the state's existing housing supply. In developing its strategy, the department shall seek input from providers of residential energy audits, utilities, building contractors, mixed use developers, the residential real estate industry, and real estate listing and form providers. [2009 c 423 § 7.]

**19.27A.190 Qualifying public agency duties—Energy benchmark—Performance rating—Reports.** (1) The requirements of this section apply to the department of general administration and other qualifying state agencies only to the extent that specific appropriations are provided to those agencies referencing chapter 423, Laws of 2009 or chapter number and this section.

(2) By July 1, 2010, each qualifying public agency shall:

(a) Create an energy benchmark for each reporting public facility using a portfolio manager;

(b) Report to general administration, the environmental protection agency national energy performance rating for each reporting public facility included in the technical requirements for this rating; and

(c) Link all portfolio manager accounts to the state portfolio manager master account to facilitate public reporting.

(3) By January 1, 2010, general administration shall establish a state portfolio manager master account. The account must be designed to provide shared reporting for all reporting public facilities.

(4) By July 1, 2010, general administration shall select a standardized portfolio manager report for reporting public

facilities. General administration, in collaboration with the United States environmental protection agency, shall make the standard report of each reporting public facility available to the public through the portfolio manager web site.

(5) General administration shall prepare a biennial report summarizing the statewide portfolio manager master account reporting data. The first report must be completed by December 1, 2012. Subsequent reporting shall be completed every two years thereafter.

(6) By July 1, 2010, general administration shall develop a technical assistance program to facilitate the implementation of a preliminary audit and the investment grade energy audit. General administration shall design the technical assistance program to utilize audit services provided by utilities or energy services contracting companies when possible.

(7) For a reporting public facility that is leased by the state with a national energy performance rating score below seventy-five, a qualifying public agency may not enter into a new lease or lease renewal on or after January 1, 2010, unless:

(a) A preliminary audit has been conducted within the last two years; and

(b) The owner or lessor agrees to perform an investment grade audit and implement any cost-effective energy conservation measures within the first two years of the lease agreement if the preliminary audit has identified potential cost-effective energy conservation measures.

(8)(a) Except as provided in (b) of this subsection, for each reporting public facility with a national energy performance rating score below fifty, the qualifying public agency, in consultation with general administration, shall undertake a preliminary energy audit by July 1, 2011. If potential cost-effective energy savings are identified, an investment grade energy audit must be completed by July 1, 2013. Implementation of cost-effective energy conservation measures are required by July 1, 2016. For a major facility that is leased by a state agency, college, or university, energy audits and implementation of cost-effective energy conservation measures are required only for that portion of the facility that is leased by the state agency, college, or university.

(b) A reporting public facility that is leased by the state is deemed in compliance with (a) of this subsection if the qualifying public agency has already complied with the requirements of subsection (7) of this section.

(9) Schools are strongly encouraged to follow the provisions in subsections (2) through (8) of this section.

(10) The director of the department of general administration, in consultation with the affected state agencies and the office of financial management, shall review the cost and delivery of agency programs to determine the viability of relocation when a facility leased by the state has a national energy performance rating score below fifty. The department of general administration shall establish a process to determine viability.

(11) General administration, in consultation with the office of financial management, shall develop a waiver process for the requirements in subsection (7) of this section. The director of the office of financial management, in consultation with general administration, may waive the requirements in subsection (7) of this section if the director determines that compliance is not cost-effective or feasible. The

director of the office of financial management shall consider the review conducted by the department of general administration on the viability of relocation as established in subsection (10) of this section, if applicable, prior to waiving the requirements in subsection (7) of this section.

(12) By July 1, 2011, general administration shall conduct a review of facilities not covered by the national energy performance rating. Based on this review, general administration shall develop a portfolio of additional facilities that require preliminary energy audits. For these facilities, the qualifying public agency, in consultation with general administration, shall undertake a preliminary energy audit by July 1, 2012. If potential cost-effective energy savings are identified, an investment grade energy audit must be completed by July 1, 2013. [2009 c 423 § 8.]

### Chapter 19.28 RCW ELECTRICIANS AND ELECTRICAL INSTALLATIONS

#### Sections

19.28.161	Certificate of competency required—Written warning, penalty—Electrical training certificate—Fee—Verification and attestation of training hours.
19.28.211	Certificate of competency—Issuance—Renewal—Continuing education—Fees—Effect.
19.28.231	Temporary permits.
19.28.271	Violations of RCW 19.28.161 through 19.28.271—Schedule of penalties—Appeal.
19.28.281	Electric vehicle infrastructure—Rule adoption.

**19.28.161 Certificate of competency required—Written warning, penalty—Electrical training certificate—Fee—Verification and attestation of training hours.** (1) No person may engage in the electrical construction trade without having a valid master journeyman electrician certificate of competency, journeyman electrician certificate of competency, master specialty electrician certificate of competency, or specialty electrician certificate of competency issued by the department in accordance with this chapter. Electrician certificate of competency specialties include, but are not limited to: Residential, pump and irrigation, limited energy system, signs, nonresidential maintenance, restricted nonresidential maintenance, and appliance repair. Until July 1, 2007, the department of labor and industries shall issue a written warning to any specialty pump and irrigation or domestic pump electrician not having a valid electrician certification. The warning will state that the individual must apply for an electrical training certificate or be qualified for and apply for electrician certification under the requirements in RCW 19.28.191(1)(g) within thirty calendar days of the warning. Only one warning will be issued to any individual. If the individual fails to comply with this section, the department shall issue a penalty as defined in RCW 19.28.271 to the individual.

(2) A person who is indentured in an apprenticeship program approved under chapter 49.04 RCW for the electrical construction trade or who is learning the electrical construction trade may work in the electrical construction trade if supervised by a certified master journeyman electrician, journeyman electrician, master specialty electrician in that electrician's specialty, or specialty electrician in that electrician's specialty. All apprentices and individuals learning the elec-

trical construction trade shall obtain an electrical training certificate from the department. The certificate shall authorize the holder to learn the electrical construction trade while under the direct supervision of a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. The certificate may include a photograph of the holder. The holder of the electrical training certificate shall renew the certificate biennially. At the time of renewal, the holder shall provide the department with an accurate list of the holder's employers in the electrical construction industry for the previous biennial period and the number of hours worked for each employer, and proof of sixteen hours of approved classroom electrical continuing education courses covering this chapter, the national electrical code, or electrical theory, or the equivalent electrical training courses taken as part of an approved apprenticeship program under chapter 49.04 RCW or an approved electrical training program under RCW 19.28.191(1)(h). This education requirement is effective July 1, 2007. A biennial fee shall be charged for the issuance or renewal of the certificate. The department shall set the fee by rule. The fee shall cover but not exceed the cost of administering and enforcing the trainee certification and supervision requirements of this chapter. Apprentices and individuals learning the electrical construction trade shall have their electrical training certificates in their possession at all times that they are performing electrical work. They shall show their certificates to an authorized representative of the department at the representative's request.

(3) Any person who has been issued an electrical training certificate under this chapter may work if that person is under supervision. Supervision shall consist of a person being on the same job site and under the control of either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty. Either a certified master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty shall be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day unless otherwise provided in this chapter.

(4) The ratio of noncertified individuals to certified master journeymen electricians, journeymen electricians, master specialty electricians, or specialty electricians on any one job site is as follows:

(a) When working as a specialty electrician, not more than two noncertified individuals for every certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journeyman electrician, or journeyman electrician, except that the ratio requirements are one certified master specialty electrician working in that electrician's specialty, specialty electrician working in that electrician's specialty, master journeyman electrician, or journeyman electrician working as a specialty electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical

schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board; and

(b) When working as a journeyman electrician, not more than one noncertified individual for every certified master journeyman electrician or journeyman electrician, except that the ratio requirements shall be one certified master journeyman electrician or journeyman electrician to no more than four students enrolled in and working as part of an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited trade or technical schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW. In meeting the ratio requirements for students enrolled in an electrical construction program at a trade school, a trade school may receive input and advice from the electrical board.

An individual who has a current training certificate and who has successfully completed or is currently enrolled in an approved apprenticeship program or in an electrical construction program at public community or technical colleges, or not-for-profit nationally accredited technical or trade schools licensed by the workforce training and education coordinating board under chapter 28C.10 RCW, may work without direct on-site supervision during the last six months of meeting the practical experience requirements of this chapter.

(5) For the residential (as specified in WAC 296-46B-920(2)(a)), pump and irrigation (as specified in WAC 296-46B-920(2)(b)), sign (as specified in WAC 296-46B-920(2)(d)), limited energy (as specified in WAC 296-46B-920(2)(e)), nonresidential maintenance (as specified in WAC 296-46B-920(2)(g)), restricted nonresidential maintenance as determined by the department in rule, or other new nonresidential specialties, not including appliance repair, as determined by the department in rule, either a master journeyman electrician, journeyman electrician, master specialty electrician working in that electrician's specialty, or specialty electrician working in that electrician's specialty must be on the same job site as the noncertified individual for a minimum of seventy-five percent of each working day. Other specialties must meet the requirements specified in RCW 19.28.191(1)(g)(ii). When the ratio of certified electricians to noncertified individuals on a job site is one certified electrician to three or four noncertified individuals, the certified electrician must:

(a) Directly supervise and instruct the noncertified individuals and the certified electrician may not directly make or engage in an electrical installation; and

(b) Be on the same job site as the noncertified individual for a minimum of one hundred percent of each working day.

(6) The electrical contractor shall accurately verify and attest to the electrical trainee hours worked by electrical trainees on behalf of the electrical contractor. [2009 c 36 § 7. Prior: 2006 c 224 § 2; 2006 c 185 § 6; 2002 c 249 § 4; 1997 c 309 § 1; 1996 c 241 § 6; 1983 c 206 § 13; 1980 c 30 § 2. Formerly RCW 19.28.510.]

**Finding—Intent—2009 c 36:** See note following RCW 18.106.020.

**19.28.211 Certificate of competency—Issuance—Renewal—Continuing education—Fees—Effect.** (1) The department shall issue a certificate of competency to all applicants who have passed the examination provided in RCW 19.28.201, and who have complied with RCW 19.28.161 through 19.28.271 and the rules adopted under this chapter. The certificate may include a photograph of the holder. The certificate shall bear the date of issuance, and shall expire on the holder's birthday. The certificate shall be renewed every three years, upon application, on or before the holder's birthdate. A fee shall be assessed for each certificate and for each annual renewal.

(2) If the certificate holder demonstrates to the department that he or she has satisfactorily completed an annual eight-hour continuing education course, the certificate may be renewed without examination by appropriate application unless the certificate has been revoked, suspended, or not renewed within ninety days after the expiration date. For pump and irrigation or domestic pump specialty electricians, the continuing education course may combine both electrical and plumbing education provided that there is a minimum of four hours of electrical training in the course.

(a) The contents and requirements for satisfactory completion of the continuing education course shall be determined by the director and approved by the board.

(b) The department shall accept proof of a certificate holder's satisfactory completion of a continuing education course offered in another state as meeting the requirements for maintaining a current Washington state certificate of competency if the department is satisfied the course is comparable in nature to that required in Washington state for maintaining a current certificate of competency.

(3) If the certificate is not renewed before the expiration date, the individual shall pay twice the usual fee. The department shall set the fees by rule for issuance and renewal of a certificate of competency. The fees shall cover but not exceed the costs of issuing the certificates and of administering and enforcing the electrician certification requirements of this chapter.

(4) The certificates of competency and temporary permits provided for in this chapter grant the holder the right to work in the electrical construction trade as a master electrician, journeyman electrician, or specialty electrician in accordance with their provisions throughout the state and within any of its political subdivisions without additional proof of competency or any other license, permit, or fee to engage in such work. [2009 c 36 § 8; 2006 c 185 § 12; 2002 c 249 § 7; 2001 c 211 § 14; 1996 c 241 § 7; 1993 c 192 § 1; 1986 c 156 § 14; 1983 c 206 § 16; 1980 c 30 § 6. Formerly RCW 19.28.550.]

**Finding—Intent—2009 c 36:** See note following RCW 18.106.020.

**19.28.231 Temporary permits.** The department is authorized to grant and issue temporary permits in lieu of certificates of competency whenever an electrician coming into the state of Washington from another state requests the department for a temporary permit to engage in the electrical construction trade as an electrician during the period of time between filing of an application for a certificate as provided in RCW 19.28.181 and the date the results of taking the examination provided for in RCW 19.28.201 are furnished to



the applicant. The temporary permit may include a photograph of the holder. The department is authorized to enter into reciprocal agreements with other states providing for the acceptance of such states' journeyman and speciality electrician certificate of competency or its equivalent when such states requirements are equal to the standards set by this chapter. No temporary permit shall be issued to:

(1) Any person who has failed to pass the examination for a certificate of competency, except that any person who has failed the examination for competency under this section shall be entitled to continue to work under a temporary permit for ninety days if the person is enrolled in a journeyman electrician refresher course and shows evidence to the department that he or she has not missed any classes. The person, after completing the journeyman electrician refresher course, shall be eligible to retake the examination for competency at the next scheduled time.

(2) Any applicant under this section who has not furnished the department with such evidence required under RCW 19.28.181.

(3) To any [Any] apprentice electrician. [2009 c 36 § 9; 2001 c 211 § 16; 1986 c 156 § 15; 1983 c 206 § 17; 1980 c 30 § 8. Formerly RCW 19.28.570.]

**Finding—Intent—2009 c 36:** See note following RCW 18.106.020.

**19.28.271 Violations of RCW 19.28.161 through 19.28.271—Schedule of penalties—Appeal.** (1) It is unlawful for any person, firm, partnership, corporation, or other entity to employ an individual for purposes of RCW 19.28.161 through 19.28.271 who has not been issued a certificate of competency, a temporary permit, or a training certificate. It is unlawful for any individual to engage in the electrical construction trade or to maintain or install any electrical equipment or conductors without having in his or her possession a certificate of competency, a temporary permit, or a training certificate under RCW 19.28.161 through 19.28.271, and photo identification. The department may establish by rule a requirement that the individual also wear and visibly display his or her certificate or permit.

(2) Any person, firm, partnership, corporation, or other entity found in violation of RCW 19.28.161 through 19.28.271 shall be assessed a penalty of not less than fifty dollars or more than five hundred dollars. The department shall set by rule a schedule of penalties for violating RCW 19.28.161 through 19.28.271. An appeal may be made to the board as is provided in RCW 19.28.131. The appeal shall be filed within twenty days after the notice of the penalty is given to the assessed party by certified mail, return receipt requested, sent to the last known address of the assessed party and shall be made by filing a written notice of appeal with the department. Any equipment maintained or installed by any person who does not possess a certificate of competency under RCW 19.28.161 through 19.28.271 shall not receive an electrical work permit and electrical service shall not be connected or maintained to operate the equipment. Each day that a person, firm, partnership, corporation, or other entity violates RCW 19.28.161 through 19.28.271 is a separate violation.

(3) A civil penalty shall be collected in a civil action brought by the attorney general in the county wherein the

alleged violation arose at the request of the department if any of RCW 19.28.161 through 19.28.271 or any rules adopted under RCW 19.28.161 through 19.28.271 are violated. [2009 c 36 § 6; 2001 c 211 § 20; 1996 c 147 § 9; 1988 c 81 § 16; 1986 c 156 § 17; 1983 c 206 § 22; 1980 c 30 § 13. Formerly RCW 19.28.620.]

**Finding—Intent—2009 c 36:** See note following RCW 18.106.020.

**19.28.281 Electric vehicle infrastructure—Rule adoption.** The director shall adopt by rule standards for the installation of electric vehicle infrastructure, including all wires and equipment that convey electric current and any equipment to be operated by electric current, in, on, or about buildings or structures. The rules must be consistent with rules adopted under RCW 19.27.540. [2009 c 459 § 17.]

**Finding—Purpose—2009 c 459:** See note following RCW 47.80.090.

*Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.*

## Chapter 19.36 RCW

### CONTRACTS AND CREDIT AGREEMENTS REQUIRING WRITINGS

#### Sections

19.36.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**19.36.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 53.]

## Chapter 19.40 RCW

### UNIFORM FRAUDULENT TRANSFER ACT

#### Sections

19.40.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**19.40.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this

chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 54.]

### Chapter 19.72 RCW SURETYSHIP

#### Sections

19.72.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**19.72.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 55.]

### Chapter 19.86 RCW UNFAIR BUSINESS PRACTICES— CONSUMER PROTECTION

#### Sections

19.86.090 Civil action for damages—Treble damages authorized—Action by governmental entities.

19.86.093 Civil action—Unfair or deceptive act or practice—Claim elements.

**19.86.090 Civil action for damages—Treble damages authorized—Action by governmental entities.** Any person who is injured in his or her business or property by a violation of RCW 19.86.020, 19.86.030, 19.86.040, 19.86.050, or 19.86.060, or any person so injured because he or she refuses to accede to a proposal for an arrangement which, if consummated, would be in violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, may bring a civil action in superior court to enjoin further violations, to recover the actual dam-

ages sustained by him or her, or both, together with the costs of the suit, including a reasonable attorney's fee. In addition, the court may, in its discretion, increase the award of damages up to an amount not to exceed three times the actual damages sustained: PROVIDED, That such increased damage award for violation of RCW 19.86.020 may not exceed twenty-five thousand dollars: PROVIDED FURTHER, That such person may bring a civil action in the district court to recover his or her actual damages, except for damages which exceed the amount specified in RCW 3.66.020, and the costs of the suit, including reasonable attorney's fees. The district court may, in its discretion, increase the award of damages to an amount not more than three times the actual damages sustained, but such increased damage award shall not exceed twenty-five thousand dollars. For the purpose of this section, "person" includes the counties, municipalities, and all political subdivisions of this state.

Whenever the state of Washington is injured, directly or indirectly, by reason of a violation of RCW 19.86.030, 19.86.040, 19.86.050, or 19.86.060, it may sue therefor in superior court to recover the actual damages sustained by it, whether direct or indirect, and to recover the costs of the suit including a reasonable attorney's fee. [2009 c 371 § 1; 2007 c 66 § 2; 1987 c 202 § 187; 1983 c 288 § 3; 1970 ex.s. c 26 § 2; 1961 c 216 § 9.]

**Application—2009 c 371:** "This act applies to all causes of action that accrue on or after July 26, 2009." [2009 c 371 § 3.]

**Effective date—2007 c 66:** See note following RCW 19.86.080.

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

**Short title—Purposes—1983 c 288:** "This act may be cited as the anti-trust/consumer protection improvements act. Its purposes are to strengthen public and private enforcement of the unfair business practices-consumer protection act, chapter 19.86 RCW, and to repeal the unfair practices act, chapter 19.90 RCW, in order to eliminate a statute which is unnecessary in light of the provisions and remedies of chapter 19.86 RCW. In repealing chapter 19.90 RCW, it is the intent of the legislature that chapter 19.86 RCW should continue to provide appropriate remedies for predatory pricing and other pricing practices which constitute violations of federal antitrust law." [1983 c 288 § 1.]

**19.86.093 Civil action—Unfair or deceptive act or practice—Claim elements.** In a private action in which an unfair or deceptive act or practice is alleged under RCW 19.86.020, a claimant may establish that the act or practice is injurious to the public interest because it:

- (1) Violates a statute that incorporates this chapter;
- (2) Violates a statute that contains a specific legislative declaration of public interest impact; or
- (3)(a) Injured other persons; (b) had the capacity to injure other persons; or (c) has the capacity to injure other persons. [2009 c 371 § 2.]

**Application—2009 c 371:** See note following RCW 19.86.090.

### Chapter 19.98 RCW FARM IMPLEMENTS, MACHINERY, PARTS

#### Sections

19.98.913 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**19.98.913 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 56.]

### Chapter 19.112 RCW MOTOR FUEL QUALITY ACT

#### Sections

- 19.112.010 Definitions.  
19.112.110 Special fuel licensees—Required sales of biodiesel or renewable diesel fuel—Rules.

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

(1) "Alcohol fuel" means any alcohol made from a product other than petroleum or natural gas that is used alone or in combination with gasoline or other petroleum products for use as a fuel in self-propelled motor vehicles.

(2) "Alternative fuel" means all products or energy sources used to propel motor vehicles, other than conventional gasoline, diesel, or reformulated gasoline. Alternative fuel includes, but is not limited to, liquefied petroleum gas, liquefied natural gas, compressed natural gas, biodiesel fuel, E85 motor fuel, fuels containing seventy percent or more by volume of alcohol fuel, fuels that are derived from biomass, hydrogen fuel, anhydrous ammonia fuel, nonhazardous motor fuel, or electricity, excluding onboard electric generation.

(3) "Biodiesel fuel" means the monoalkyl esters of long chain fatty acids derived from plant or animal matter that meet the registration requirements for fuels and fuel additives established by the federal environmental protection agency and standards established by the American society of testing and materials.

(4) "Diesel" means special fuel as defined in RCW 82.38.020, and diesel fuel dyed in accordance with the regulations in 26 C.F.R. Sec. 48.4082-IT as of October 24, 2005.

(5) "Director" means the director of agriculture.

(6) "E85 motor fuel" means an alternative fuel that is a blend of ethanol and hydrocarbon of which the ethanol portion is nominally seventy-five to eighty-five percent denatured fuel ethanol by volume that complies with the most recent version of American society of testing and materials specification D 5798.

(7) "Motor fuel" means any liquid product used for the generation of power in an internal combustion engine used for the propulsion of a motor vehicle upon the highways of this state, and any biodiesel fuel. Motor fuels containing ethanol may be marketed if either (a) the base motor fuel meets the applicable standards before the addition of the ethanol or (b) the resultant blend meets the applicable standards after the addition of the ethanol.

(8) "Nonhazardous motor fuel" means any fuel of a type distributed for use in self-propelled motor vehicles that does not contain a hazardous liquid as defined in RCW 19.122.020.

(9) "Renewable diesel" means a diesel fuel substitute produced from nonpetroleum renewable sources, including vegetable oils and animal fats, that meets the registration requirements for fuels and fuel additives established by the federal environmental protection agency in 40 C.F.R. Part 79 (2008) and meets the requirements of American society of testing and materials specification D 975. [2009 c 132 § 1; 2007 c 309 § 1; 2006 c 338 § 15; 1991 c 145 § 1; 1990 c 102 § 2.]

**Findings—Intent—2006 c 338:** See note following RCW 19.112.110.

**19.112.110 Special fuel licensees—Required sales of biodiesel or renewable diesel fuel—Rules.** (1) Special fuel licensees under chapter 82.38 RCW, other than international fuel tax agreement licensees, dyed special fuel users, and special fuel distributors, shall provide evidence to the department of licensing that at least two percent of the total annual diesel fuel sold in Washington is biodiesel or renewable diesel fuel, following the earlier of: (a) November 30, 2008; or (b) when a determination is made by the director, published in the Washington State Register, that feedstock grown in Washington state can satisfy a two-percent requirement.

(2) Special fuel licensees under chapter 82.38 RCW, other than international fuel tax agreement licensees, dyed special fuel users, and special fuel distributors, shall provide evidence to the department of licensing that at least five percent of total annual diesel fuel sold in Washington is biodiesel or renewable diesel fuel, when the director determines, and publishes this determination in the Washington State Register, that both in-state oil seed crushing capacity and feedstock grown in Washington state can satisfy a three-percent requirement.

(3) The requirements of subsections (1) and (2) of this section shall take effect no sooner than one hundred eighty days after the determination has been published in the Washington State Register.

(4) The director and the director of licensing shall each adopt rules, in coordination with each other, for enforcing and carrying out the purposes of this section. [2009 c 132 § 2; 2006 c 338 § 2.]

**Findings—Intent—2006 c 338:** "The legislature finds that it is in the public interest to establish a market for alternative fuels in Washington. By requiring a growing percentage of our fuel supply to be renewable biofuel that meets appropriate fuel quality standards, we will reduce our dependence on imports of foreign oil, improve the health and quality of life for Washingtonians, and stimulate the creation of a new industry in Washington that benefits our farmers and rural communities. The legislature finds that it is in the public interest for the state to play a central role in spurring the market by purchasing an increasing amount of alternative fuels produced in Washington. The legislature finds that we must act now and that the time available

before the requirements of this act take effect is sufficient for feedstock and fuel providers to prepare for successful implementation.

The legislature intends for consumers to have a choice of fuels and to encourage and promote the development, availability, and use of a diversity of renewable fuels and fuel blends ranging from fuels composed of no renewable content to completely renewable fuels." [2006 c 338 § 1.]

### Chapter 19.118 RCW

#### MOTOR VEHICLE WARRANTIES

##### Sections

19.118.021	Definitions.
19.118.031	Manufacturers and new motor vehicle dealers—Responsibilities to consumers—Extension of eligibility period.
19.118.041	Replacement or repurchase of nonconforming new motor vehicle—Reasonable number of attempts—Notice by consumer regarding motor home nonconformity—Liabilities and rights of parties—Application of consumer protection act.
19.118.061	Vehicle with nonconformities or out of service—Notification of correction—Resale or transfer of title—Issuance of new title—Disclosure to buyer—Intervening transferor.
19.118.080	New motor vehicle arbitration boards—Arbitration proceedings—Prerequisite to filing action in superior court.
19.118.090	Request for arbitration—Eligibility—Manufacturer's response—Defenses—Remedies—Acceptance or appeal.
19.118.095	Arbitration decision—Compliance—Accomplishment—Dispute—Failure—Fine—Costs—Attorneys' fees.
19.118.120	Application of consumer protection act.
19.118.160	Arbitration program—When established by attorney general.

**19.118.021 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means new motor vehicle arbitration board.

(2) "Collateral charges" means any sales or lease related charges including but not limited to sales tax, use tax, arbitration service fees, unused license fees, unused registration fees, unused title fees, finance charges, prepayment penalties, credit disability and credit life insurance costs not otherwise refundable, any other insurance costs prorated for time out of service, transportation charges, dealer preparation charges, or any other charges for service contracts, undercoating, rust-proofing, or factory or dealer installed options.

(3) "Condition" means a general problem that results from a defect or malfunction of one or more parts, or their improper installation by the manufacturer, its agents, or the new motor vehicle dealer.

(4) "Consumer" means any person who has entered into an agreement or contract for the transfer, lease, or purchase of a new motor vehicle, other than for purposes of resale or sublease, during the duration of the eligibility period defined under this section.

(5) "Court" means the superior court in the county where the consumer resides, except if the consumer does not reside in this state, then the superior court in the county where an arbitration hearing or determination was conducted or made pursuant to this chapter.

(6) "Eligibility period" means the period ending two years after the date of the original delivery to the consumer of a new motor vehicle, or the first twenty-four thousand miles of operation, whichever occurs first.

(7) "Incidental costs" means any reasonable expenses incurred by the consumer in connection with the repair of the new motor vehicle, including any towing charges and the costs of obtaining alternative transportation.

(8) "Manufacturer" means any person engaged in the business of constructing or assembling new motor vehicles or engaged in the business of importing new motor vehicles into the United States for the purpose of selling or distributing new motor vehicles to new motor vehicle dealers. "Manufacturer" includes to the extent the modification affects the use, value, or safety of a new motor vehicle, a postmanufacturing modifier of a new motor vehicle that modifies or has a modification done to a new motor vehicle before the initial retail sale or lease of a new motor vehicle, except as provided in this chapter. "Manufacturer" does not include any person engaged in the business of set-up of motorcycles as an agent of a new motor vehicle dealer if the person does not otherwise construct or assemble motorcycles.

(9) "Motorcycle" means any motorcycle as defined in RCW 46.04.330 which has an engine displacement of at least seven hundred fifty cubic centimeters.

(10) "Motor home" means a vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use, built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle.

(11) "Motor home manufacturer" means the first stage manufacturer, the component manufacturer, and the final stage manufacturer.

(a) "First stage manufacturer" means a person who manufactures incomplete new motor vehicles such as chassis, chassis cabs, or vans, that are directly warranted by the first stage manufacturer to the consumer, and are completed by a final stage manufacturer into a motor home.

(b) "Component manufacturer" means a person who manufactures components used in the manufacture or assembly of a chassis, chassis cab, or van that is completed into a motor home and whose components are directly warranted by the component manufacturer to the consumer.

(c) "Final stage manufacturer" means a person who assembles, installs, or permanently affixes a body, cab, or equipment to an incomplete new motor vehicle such as a chassis, chassis cab, or van provided by a first stage manufacturer, to complete the vehicle into a motor home.

(12) "New motor vehicle" means any new self-propelled vehicle, including a new motorcycle, primarily designed for the transportation of persons or property over the public highways that was originally purchased or leased at retail from a new motor vehicle dealer or leasing company in this state, but does not include vehicles purchased or leased by a business as part of a fleet of ten or more vehicles at one time or under a single purchase or lease agreement. This chapter shall apply to a motor vehicle purchased or leased with a manufacturer written warranty by a member of the armed forces regardless of in which state the vehicle was purchased or leased, if the vehicle otherwise meets the definition of a new motor vehicle and the consumer is a member of the armed forces stationed or residing in this state at the time the consumer submits a request for arbitration to the attorney general. If the motor vehicle is a motor home, this chapter shall apply to the self-propelled vehicle and chassis, but does not include those portions of the vehicle designated, used, or maintained primarily as a mobile dwelling, office, or commercial space. The term "new motor vehicle" does not include trucks with nineteen thousand pounds or more gross

vehicle weight rating. The term "new motor vehicle" includes a demonstrator or lease-purchase vehicle as long as a manufacturer's warranty was issued as a condition of sale.

(13) "New motor vehicle dealer" means a person who holds a dealer agreement with a manufacturer for the sale of new motor vehicles, who is engaged in the business of purchasing, selling, servicing, exchanging, or dealing in new motor vehicles, and who is licensed or required to be licensed as a vehicle dealer by the state of Washington.

(14) "Nonconformity" means a defect, serious safety defect, or condition that substantially impairs the use, value, or safety of a new motor vehicle, but does not include a defect or condition that is the result of abuse, neglect, or unauthorized modification or alteration of the new motor vehicle.

(15) "Purchase price" means the cash price of the new motor vehicle appearing in the sales agreement or contract.

(a) "Purchase price" in the instance of a lease means the actual written capitalized cost disclosed to the consumer contained in the lease agreement. If there is no disclosed capitalized cost in the lease agreement the "purchase price" is the manufacturer's suggested retail price including manufacturer installed accessories or items of optional equipment displayed on the manufacturer label, required by 15 U.S.C. Sec. 1232.

(b) "Purchase price" in the instance of both a vehicle purchase or lease agreement includes any allowance for a trade-in vehicle but does not include any manufacturer-to-consumer rebate appearing in the agreement or contract that the consumer received or that was applied to reduce the purchase or lease cost.

Where the consumer is a subsequent transferee and the consumer selects repurchase of the motor vehicle, "purchase price" means the consumer's subsequent purchase price. Where the consumer is a subsequent transferee and the consumer selects replacement of the motor vehicle, "purchase price" means the original purchase price.

(16) "Reasonable offset for use" means the definition provided in RCW 19.118.041(1)(c).

(17) "Reasonable number of attempts" means the definition provided in RCW 19.118.041.

(18) "Replacement motor vehicle" means a new motor vehicle that is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options.

(19) "Serious safety defect" means a life-threatening malfunction or nonconformity that impedes the consumer's ability to control or operate the new motor vehicle for ordinary use or reasonable intended purposes or creates a risk of fire or explosion.

(20) "Subsequent transferee" means a consumer who acquires a motor vehicle, within the eligibility period, as defined in this section, with an applicable manufacturer's written warranty and where the vehicle otherwise met the definition of a new motor vehicle at the time of original retail sale or lease.

(21) "Substantially impair" means to render the new motor vehicle unreliable, or unsafe for ordinary use, or to diminish the resale value of the new motor vehicle below the average resale value for comparable motor vehicles.

(22) "Warranty" means any implied warranty, any written warranty of the manufacturer, or any affirmation of fact or promise made by the manufacturer in connection with the sale of a new motor vehicle that becomes part of the basis of the bargain. The term "warranty" pertains to the obligations of the manufacturer in relation to materials, workmanship, a modification by a new motor vehicle dealer installing the new motor vehicle manufacturer's authorized parts or their equivalent for the specific new motor vehicle pursuant to the manufacturer approved specifications, and fitness of a new motor vehicle for ordinary use or reasonably intended purposes throughout the duration of the eligibility period as defined under this section. [2009 c 351 § 1; 2007 c 425 § 1; 1998 c 298 § 2; 1995 c 254 § 1; 1990 c 239 § 1; 1989 c 347 § 1; 1987 c 344 § 2.]

**Application—2009 c 351:** "This act is remedial in nature and applies retroactively to July 26, 2009." [2009 c 351 § 10.]

**Severability—1998 c 298:** "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." [1998 c 298 § 7.]

**Effective date—1995 c 254:** "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 254 § 11.]

**Severability—1995 c 254:** "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 254 § 12.]

**19.118.031 Manufacturers and new motor vehicle dealers—Responsibilities to consumers—Extension of eligibility period.** (1) The manufacturer shall publish an owner's manual and provide it to the new motor vehicle dealer or leasing company. The owner's manual shall include a list of the addresses and phone numbers for the manufacturer's customer assistance division, or zone or regional offices. A manufacturer shall provide to the new motor vehicle dealer or leasing company all applicable manufacturer's written warranties. The dealer or leasing company shall transfer to the consumer, at the time of original retail sale or lease, the owner's manual and applicable written warranties as provided by a manufacturer.

(2) At the time of purchase, the new motor vehicle dealer shall provide the consumer with a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared and supplied by the attorney general and shall contain a toll-free number that the consumer can contact for information regarding the procedures and remedies under this chapter. In the event a consumer requests modification of the new motor vehicle in a manner which may partially or completely void the manufacturer's implied or express warranty, and which becomes part of the basis of the bargain of the initial retail sale or lease of the vehicle, a new motor vehicle dealer shall provide a clear and conspicuous written disclosure, independently signed and dated by the consumer, stating "Your requested modification may void all or part of a manufacturer warranty and a resulting defect or condition may not be subject to remedies afforded by the motor vehicle warranties act, chapter 19.118 RCW." A dealer who obtains a signed written disclosure under circumstances where the warranty may be void is not

subject to this chapter as a manufacturer to the extent the modification affects the use, value, or safety of a new motor vehicle. Failure to provide the disclosure specified in this subsection does not constitute a violation of chapter 19.86 RCW.

(3) For the purposes of this chapter, if a new motor vehicle does not conform to the warranty and the consumer reports the nonconformity during the term of the eligibility period or the period of coverage of the applicable manufacturer's written warranty, whichever is less, to the manufacturer, its agent, or the new motor vehicle dealer who sold the new motor vehicle, the manufacturer, its agent, or the new motor vehicle dealer shall make repairs as are necessary to conform the vehicle to the warranty, regardless of whether such repairs are made after the expiration of the eligibility period. Any corrections or attempted repairs undertaken by a new motor vehicle dealer under this chapter shall be treated as warranty work and billed by the dealer to the manufacturer in the same manner as other work under the manufacturer's written warranty is billed. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(4) Upon request from the consumer, the manufacturer or new motor vehicle dealer shall provide a copy of any report or computer reading compiled by the manufacturer's field or zone representative regarding inspection, diagnosis, or test-drive of the consumer's new motor vehicle, or shall provide a copy of any technical service bulletin issued by the manufacturer regarding the year and model of the consumer's new motor vehicle as it pertains to any material, feature, component, or the performance thereof.

(5) The new motor vehicle dealer shall provide to the consumer each time the consumer's vehicle is returned from being diagnosed or repaired under the warranty, a fully itemized, legible statement or repair order indicating any diagnosis made, and all work performed on the vehicle including but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date and the odometer reading when the vehicle was submitted for repair, and the date when the vehicle was made available to the consumer.

(6) No manufacturer, its agent, or the new motor vehicle dealer may refuse to diagnose or repair any nonconformity covered by the warranty for the purpose of avoiding liability under this chapter.

(7) For purposes of this chapter, consumers shall have the rights and remedies, including a cause of action, against manufacturers as provided in this chapter.

(8) The eligibility period and thirty-day out-of-service period, and sixty-day out-of-service period in the case of a motor home, shall be extended by any time that repair services are not available to the consumer as a direct result of a strike, war, invasion, fire, flood, or other natural disaster. [2009 c 351 § 2; 1998 c 298 § 3; 1995 c 254 § 2; 1987 c 344 § 3.]

**Application—2009 c 351:** See note following RCW 19.118.021.

**Severability—1998 c 298:** See note following RCW 19.118.021.

**Effective date—Severability—1995 c 254:** See notes following RCW 19.118.021.

**19.118.041 Replacement or repurchase of nonconforming new motor vehicle—Reasonable number of attempts—Notice by consumer regarding motor home nonconformity—Liabilities and rights of parties—Application of consumer protection act.** (1) If the manufacturer, its agent, or the new motor vehicle dealer is unable to conform the new motor vehicle to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer, within forty calendar days of a consumer's written request to the manufacturer's corporate, dispute resolution, zone, or regional office address shall, at the option of the consumer, replace or repurchase the new motor vehicle.

(a) The replacement motor vehicle shall be identical or reasonably equivalent to the motor vehicle to be replaced as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options. Where the manufacturer supplies a replacement motor vehicle, the manufacturer shall be responsible for sales tax, license, registration fees, and refund of any incidental costs. Compensation for a reasonable offset for use shall be paid by the consumer to the manufacturer in the event that the consumer accepts a replacement motor vehicle.

(b) When repurchasing the new motor vehicle, the manufacturer shall refund to the consumer the purchase price, all collateral charges, and incidental costs, less a reasonable offset for use. When repurchasing the new motor vehicle, in the instance of a lease, the manufacturer shall refund to the consumer all payments made by the consumer under the lease including but not limited to all lease payments, trade-in value or inception payment, security deposit, all collateral charges and incidental costs less a reasonable offset for use. The manufacturer shall make such payment to the lessor and/or lienholder of record as necessary to obtain clear title to the motor vehicle and upon the lessor's and/or lienholder's receipt of that payment and payment by the consumer of any late payment charges, the consumer shall be relieved of any future obligation to the lessor and/or lienholder.

(c) The reasonable offset for use shall be computed by multiplying the number of miles that the vehicle traveled directly attributable to use by the consumer during the time between the original purchase, lease, or in-service date and the date beginning the first attempt to diagnose or repair a nonconformity which ultimately results in the repurchase or replacement of the vehicle multiplied times the purchase price, and dividing the product by one hundred twenty thousand, except in the case of a motor home, in which event it shall be divided by ninety thousand or in the case of a motorcycle, it shall be divided by twenty-five thousand. However, the reasonable offset for use calculation total for a motor home is subject to modification by the board by decreasing or increasing the offset total up to a maximum of one-third of the offset total. The board may modify the offset total in those circumstances where the board determines that the wear and tear on those portions of the motor home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space are significantly greater or significantly less than that which could be reasonably expected based on the mileage attributable to the consumer's use of the motor home. Except in the case of a motor home, where a

manufacturer repurchases or replaces a vehicle solely due to accumulated days out of service by reason of diagnosis or repair of one or more nonconformities, "the number of miles that the vehicle traveled directly attributable to use by the consumer" shall be limited to the period between the original purchase, lease, or in-service date and the date of the fifteenth cumulative calendar day out of service. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects repurchase of the motor vehicle, "the number of miles that the vehicle traveled" directly attributable to use by the consumer shall be limited to the period between the date of purchase, lease by, or transfer to the consumer and the date of the consumer's initial attempt to obtain diagnosis or repair of a nonconformity which ultimately results in the repurchase or replacement of the vehicle or which adds to thirty or more cumulative calendar days out of service. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects replacement of the motor vehicle, "the number of miles that the vehicle traveled" directly attributable to use by the consumer shall be calculated from the date of the original purchase, lease, or in-service date and the first attempt to diagnose or repair a nonconformity which ultimately results in the replacement of the vehicle. Except in the case of a motor home, where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the manufacturer replaces the vehicle solely due to accumulated days out of service by reason of diagnosis or repair of one or more nonconformities, "the number of miles that the vehicle traveled" directly attributable to use by the consumer shall be calculated from the date of the original purchase, lease, or in service date and the date of the fifteenth cumulative calendar day out of service.

(d) In the case of a motor vehicle that is a motor home, where a manufacturer repurchases or replaces a motor home from the first purchaser, lessee, or transferee or from the second or subsequent purchaser, lessee, or transferee solely due to accumulated days out of service by reason of diagnosis or repair of one or more nonconformities, "the number of miles that a motor home traveled directly attributable to use by the consumer" shall be limited to the period between the original purchase, lease, or in-service date and the date of the thirtieth cumulative calendar day out-of-service.

(2) Reasonable number of attempts, except in the case of a new motor vehicle that is a motor home, shall be deemed to have been undertaken by the manufacturer, its agent, or the new motor vehicle dealer to conform the new motor vehicle to the warranty within the eligibility period, if: (a) The same serious safety defect has been subject to diagnosis or repair two or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the serious safety defect continues to exist; (b) the same nonconformity has been subject to diagnosis or repair four or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the nonconformity continues to exist; (c) the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of thirty calendar days, at least fifteen of them during the period of the applicable manufacturer's written warranty; or (d) within a twelve-month period, two or more different serious safety

defects, each of which have been subject to diagnosis or repair one or more times, where at least one attempt for each serious safety defect occurs during the period of coverage of the applicable manufacturer's written warranty and within the eligibility period. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first. A new motor vehicle is deemed to have been "subject to diagnose or repair" when a consumer presents the new motor vehicle for warranty service at a service and repair facility authorized, designated, or maintained by a manufacturer to provide warranty services or a facility to which the manufacturer or an authorized facility has directed the consumer to obtain warranty service. A new motor vehicle has not been "subject to diagnose or repair" if the consumer refuses to allow the facility to attempt or complete a recommended warranty repair, or demands return of the vehicle to the consumer before an attempt to diagnose or repair can be completed.

(3)(a) In the case of a new motor vehicle that is a motor home, a reasonable number of attempts shall be deemed to have been undertaken by the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers to conform the new motor vehicle to the warranty within the eligibility period, if: (i) The same serious safety defect has been subject to diagnosis or repair one or more times during the period of coverage of the applicable motor home manufacturer's written warranty, plus a final attempt to repair the vehicle as provided for in (b) of this subsection, and the serious safety defect continues to exist; (ii) the same nonconformity has been subject to repair three or more times, at least one of which is during the period of coverage of the applicable motor home manufacturer's written warranty, plus a final attempt to repair the vehicle as provided for in (b) of this subsection, and the nonconformity continues to exist; (iii) the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities, including a safety evaluation, for a cumulative total of sixty calendar days aggregating all motor home manufacturer days out of service, and the motor home manufacturers have had at least one opportunity to coordinate and complete an inspection and any repairs of the vehicle's nonconformities after receipt of notification from the consumer as provided for in (c) of this subsection; or (iv) within a twelve-month period, two or more different serious safety defects covered by the same manufacturer warranty have been each subject to diagnosis or repair one or more times, where at least one attempt for each serious safety defect occurs during the period of coverage of the applicable manufacturer's written warranty and within the eligibility period. Notice of manifestation of one or more serious safety defects to a manufacturer must be provided in writing by the consumer to the motor home manufacturer whose warranty covers the defect or all manufacturers of the motor home. The consumer shall send notices to the manufacturers in writing at their respective corporate, zone, or regional office addresses to allow the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers an opportunity to coordinate and complete a comprehensive safety evaluation of the motor home. Notice of the manifestation of one or more serious safety defects

should be made by the consumer as a unique notice to the manufacturers. The notice may be met by any written notification under this subsection of the need to repair a defect or condition identified by the consumer as relating to the safety of the motor home with or without a consumer's specific reference to whether the defect is a serious safety defect. Any notice of the manifestation of one or more serious safety defects shall be considered by a manufacturer as a consumer's request for a safety evaluation of the motor home. If the manufacturer, at its option, performs a safety evaluation, the manufacturers must provide a written report to the consumer of the evaluation of the motor home's safety in a timely manner. For purposes of this subsection, each motor home manufacturer's written warranty must be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(b) In the case of a new motor vehicle that is a motor home, after one attempt has been made to repair a serious safety defect, or after three attempts have been made to repair the same nonconformity, the consumer shall give written notification of the need to repair the nonconformity to each of the motor home manufacturers at their respective corporate, zone, or regional office addresses to allow the motor home manufacturers to coordinate and complete a final attempt to cure the nonconformity. The motor home manufacturers each have fifteen days, commencing upon receipt of a notification under this subsection (3)(b), to respond and inform the consumer of the location of the facility where the vehicle will be repaired or evaluated. If the vehicle is unsafe to drive due to a serious safety defect, or to the extent the repair facility is more than one hundred miles from the motor home location, the motor home manufacturers are responsible for the cost of transporting the vehicle to and from the repair facility. The motor home manufacturers have a cumulative total of thirty days, commencing upon delivery of the vehicle to the designated repair facility by the consumer, to conform the vehicle to the applicable motor home manufacturer's written warranty. This time period may be extended if the consumer agrees in writing. If a motor home manufacturer fails to respond to the consumer or perform the repairs within the time period prescribed, that motor home manufacturer is not entitled to a final attempt to cure the nonconformity.

(c) In the case of a new motor vehicle that is a motor home, if the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities, including any safety evaluation, by the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers for a cumulative total of thirty or more days aggregating all motor home manufacturer days out of service, the consumer shall so notify each motor home manufacturer in writing at their respective corporate, zone, or regional office addresses to allow the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers an opportunity to coordinate and complete an inspection and any repairs of the vehicle's nonconformities. The motor home manufacturers have fifteen days, commencing upon receipt of the notification, to respond and inform the consumer of the location of the facility where the vehicle will be repaired or evaluated. If the vehicle is unsafe to drive due to a serious safety defect, or to the extent the repair facility is more than

one hundred miles from the motor home location, the motor home manufacturers are responsible for the cost of transporting the vehicle to and from the repair facility. Once the buyer delivers the vehicle to the designated repair facility, the inspection and repairs must be completed by the motor home manufacturers either (i) within ten days or (ii) before the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities for sixty days, whichever time period is longer. This time period may be extended if the consumer agrees in writing. If a motor home manufacturer fails to respond to the consumer or perform the repairs within the time period prescribed, that motor home manufacturer is not entitled to at least one opportunity to inspect and repair the vehicle's nonconformities after receipt of notification from the buyer as provided for in this subsection (3)(c).

(4) No new motor vehicle dealer may be held liable by the manufacturer for any collateral charges, incidental costs, purchase price refunds, or vehicle replacements. Manufacturers shall not have a cause of action against dealers under this chapter. A violation of any responsibilities expressly imposed upon dealers under this chapter is a per se violation of chapter 19.86 RCW. Except in the limited circumstances of a dealer becoming a manufacturer due to a postmanufacturing modification of a new motor vehicle as defined in RCW 19.118.021(8), consumers shall not have a cause of action against dealers under this chapter. Consumers may pursue rights and remedies against dealers under any other law, including chapters 46.70 and 46.71 RCW. Manufacturers and consumers may not make dealers parties to arbitration board proceedings under this chapter. [2009 c 351 § 3; 2007 c 426 § 1; 1998 c 298 § 4; 1995 c 254 § 3; 1989 c 347 § 2; 1987 c 344 § 4.]

**Application—2009 c 351:** See note following RCW 19.118.021.

**Severability—1998 c 298:** See note following RCW 19.118.021.

**Effective date—Severability—1995 c 254:** See notes following RCW 19.118.021.

**19.118.061 Vehicle with nonconformities or out of service—Notification of correction—Resale or transfer of title—Issuance of new title—Disclosure to buyer—Intervening transferor.** (1) A manufacturer shall be prohibited from reselling any motor vehicle determined or adjudicated as having a serious safety defect unless the serious safety defect has been corrected and the manufacturer warrants upon the first subsequent resale that the defect has been corrected.

(2) Before any sale or transfer of a vehicle that has been replaced or repurchased by the manufacturer after a determination, adjudication, or settlement of a claim under this chapter, the manufacturer shall:

(a) Notify the attorney general upon receipt of the motor vehicle and submit a title application to the department of licensing in this state for title to the motor vehicle in the name of the manufacturer within sixty days;

(b) Attach a resale disclosure notice to the vehicle in a manner and form to be specified by the attorney general. Only the retail purchaser may remove the resale disclosure notice after execution of the disclosure form required under subsection (3) of this section; and



(c) Notify the attorney general and the department of licensing if the nonconformity in the motor vehicle is corrected.

(3) Upon the first subsequent resale, either at wholesale or retail, or transfer of title of a motor vehicle and which was previously returned after a final determination, adjudication, or settlement under this chapter or under a similar statute of any other state, the manufacturer, its agent, or the new motor vehicle dealer who has actual knowledge of said final determination, adjudication or settlement, shall execute and deliver to the buyer before sale an instrument in writing setting forth information identifying the nonconformity in a manner to be specified by the attorney general, and the department of licensing shall place on the certificate of title information indicating the vehicle was returned under this chapter.

(4) Upon receipt of the manufacturer's notification under subsection (2) of this section that the nonconformity has been corrected and the manufacturer's application for title in the name of the manufacturer under this section, the department of licensing shall issue a new title with a title brand indicating the vehicle was returned under this chapter and information that the nonconformity has been corrected. Upon the first subsequent resale, either at wholesale or retail, or transfer of title of a motor vehicle, as provided under this section, the manufacturer shall warrant upon the resale that the nonconformity has been corrected, and the manufacturer, its agent, or the new motor vehicle dealer who has actual knowledge of the corrected nonconformity, shall execute and deliver to the buyer before sale an instrument in writing setting forth information identifying the nonconformity and indicating that it has been corrected in a manner to be specified by the attorney general.

(5) After repurchase or replacement and following a manufacturer's receipt of a vehicle under this section and prior to a vehicle's first subsequent retail transfer by resale or lease, any intervening transferor of a vehicle subject to the requirements of this section who has received the disclosure, correction and warranty documents, as specified by the attorney general and required under this chapter, shall deliver the documents with the vehicle to the next transferor, purchaser or lessee to ensure proper and timely notice and disclosure. Any intervening transferor who fails to comply with this subsection shall, at the option of the subsequent transferor or first subsequent retail purchaser or lessee: (a) Indemnify any subsequent transferor or first subsequent retail purchaser for all damages caused by such violation; or (b) repurchase the vehicle at the full purchase price including all fees, taxes and costs incurred for goods and services which were included in the subsequent transaction. [2009 c 351 § 4; 1998 c 298 § 5; 1995 c 254 § 4; 1989 c 347 § 3; 1987 c 344 § 5.]

**Application—2009 c 351:** See note following RCW 19.118.021.

**Severability—1998 c 298:** See note following RCW 19.118.021.

**Effective date—Severability—1995 c 254:** See notes following RCW 19.118.021.

**19.118.080 New motor vehicle arbitration boards—Arbitration proceedings—Prerequisite to filing action in superior court.** (1) Except as provided in RCW 19.118.160, the attorney general shall contract with one or more entities to conduct arbitration proceedings in order to settle disputes

between consumers and manufacturers as provided in this chapter, and each entity shall constitute a new motor vehicle arbitration board for purposes of this chapter. The entities shall not be affiliated with any manufacturer or new motor vehicle dealer and shall have available the services of persons with automotive technical expertise to assist in resolving disputes under this chapter. No entity or its officers or employees conducting board proceedings and no arbitrator presiding at such proceedings shall be directly involved in the manufacture, distribution, sale, or warranty service of any motor vehicle. Payment to the entities for the arbitration services shall be made from the new motor vehicle arbitration account.

(2) The attorney general shall adopt rules for the uniform conduct of the arbitrations by the boards whether conducted by an entity or by the attorney general pursuant to RCW 19.118.160, which rules shall include but not be limited to the following procedures:

(a) At all arbitration proceedings, the parties are entitled to present oral and written testimony, to present witnesses and evidence relevant to the dispute, to cross-examine witnesses, and to be represented by counsel.

(b) A dealer, manufacturer, or other persons shall produce records and documents requested by a party which are reasonably related to the dispute. If a dealer, manufacturer, or other person refuses to comply with such a request, a party may present a request for the attorney general to issue a subpoena.

The subpoena shall be issued only for the production of records and documents which the attorney general has determined are reasonably related to the dispute, including but not limited to documents described in RCW 19.118.031 (4) or (5).

If a party fails to comply with the subpoena, the arbitrator may at the outset of the arbitration hearing impose any of the following sanctions: (i) Find that the matters which were the subject of the subpoena, or any other designated facts, shall be taken to be established for purposes of the hearing in accordance with the claim of the party which requested the subpoena; (ii) refuse to allow the disobedient party to support or oppose the designated claims or defenses, or prohibit that party from introducing designated matters into evidence; (iii) strike claims or defenses, or parts thereof; or (iv) render a decision by default against the disobedient party.

If a nonparty fails to comply with a subpoena and upon an arbitrator finding that without such compliance there is insufficient evidence to render a decision in the dispute, the attorney general may enforce such subpoena in superior court and the arbitrator shall continue the arbitration hearing until such time as the nonparty complies with the subpoena or the subpoena is quashed.

(c) A party may obtain written affidavits from employees and agents of a dealer, a manufacturer or other party, or from other potential witnesses, and may submit such affidavits for consideration by the board.

(d) Records of the board proceedings shall be open to the public. The hearings shall be open to the public to the extent practicable.

(e) A single arbitrator may be designated to preside at such proceedings.

(3) A consumer shall exhaust the new motor vehicle arbitration board remedy or informal dispute resolution settlement procedure under RCW 19.118.150 before filing any superior court action.

(4) The attorney general shall maintain records of each dispute submitted to the new motor vehicle arbitration board, including an index of new motor vehicles by year, make, and model.

(5) The attorney general shall compile aggregate annual statistics for all disputes submitted to, and decided by, the new motor vehicle arbitration board, as well as annual statistics for each manufacturer that include, but shall not be limited to, the number and percent of: (a) Replacement motor vehicle requests; (b) purchase price refund requests; (c) replacement motor vehicles obtained in prehearing settlements; (d) purchase price refunds obtained in prehearing settlements; (e) replacement motor vehicles awarded in arbitration; (f) purchase price refunds awarded in arbitration; (g) board decisions neither complied with during the forty calendar day period nor petitioned for appeal within the thirty calendar day period; (h) board decisions appealed categorized by consumer or manufacturer; (i) the nature of the court decisions and who the prevailing party was; (j) appeals that were held by the court to be brought without good cause; and (k) appeals that were held by the court to be brought solely for the purpose of harassment. The statistical compilations shall be public information.

(6) The attorney general shall adopt rules to implement this chapter. Such rules shall include uniform standards by which the boards shall make determinations under this chapter, including but not limited to rules which provide:

(a) A board shall find that a nonconformity exists if it determines that the consumer's new motor vehicle has a defect, serious safety defect, or condition that substantially impairs the use, value, or safety of the vehicle.

(b) A board shall find that a reasonable number of attempts to repair a nonconformity have been undertaken if the history of attempts to diagnose or repair defects or conditions in the new motor vehicle meets or exceeds those identified in RCW 19.118.041.

(c) A board shall find that a manufacturer has failed to comply with RCW 19.118.041 if it finds that the manufacturer, its agent, or the new motor vehicle dealer has failed to correct a nonconformity after a reasonable number of attempts and the manufacturer has failed, within forty days of the consumer's written request, to repurchase the vehicle or replace the vehicle with a vehicle identical or reasonably equivalent to the vehicle being replaced.

(7) The attorney general shall provide consumers with information regarding the procedures and remedies under this chapter. [2009 c 351 § 5; 1998 c 245 § 7; 1995 c 254 § 5; 1989 c 347 § 4; 1987 c 344 § 6.]

**Application—2009 c 351:** See note following RCW 19.118.021.

**Effective date—Severability—1995 c 254:** See notes following RCW 19.118.021.

**19.118.090 Request for arbitration—Eligibility—Manufacturer's response—Defenses—Remedies—Acceptance or appeal.** (1) A consumer may request arbitration under this chapter by submitting the request to the attorney general. Within ten days after receipt of an arbitration

request, the attorney general shall make a reasonable determination of the cause of the request for arbitration and provide necessary information to the consumer regarding the consumer's rights and remedies under this chapter. The attorney general shall accept a request for arbitration, except where it clearly appears from the materials submitted by the consumer that the dispute is not eligible because it is lacking a statement of a claim, incomplete, untimely, frivolous, fraudulent, filed in bad faith, res judicata, or beyond the authority established in this chapter. A dispute found to be ineligible for arbitration because it lacks a statement of a claim or is incomplete may be reconsidered by the attorney general upon the submission of other information or documents regarding the dispute.

(2) After a dispute is accepted, the attorney general shall assign the dispute to the board. From the date the consumer's request for arbitration is assigned by the attorney general, the board shall have forty-five calendar days to have an arbitrator hear the dispute and sixty days for the board to submit a decision to the attorney general. If the board determines that additional information is necessary to make a fair and reasoned decision, the arbitrator may continue the arbitration proceeding on a subsequent date within ten calendar days of the initial hearing. The board may require a party to submit additional information or request that the attorney general issue a subpoena to a nonparty for documents and records for a continued hearing.

(3) Manufacturers shall submit to arbitration if such arbitration is requested by the consumer within thirty months from the date of the original delivery of the new motor vehicle to a consumer at retail and if the consumer's dispute is accepted for arbitration by the attorney general. In the case of a motor home, the thirty-month period will be extended by the amount of time it takes the motor home manufacturers to complete the final repair attempt at the designated repair facility as provided for in RCW 19.118.041(3)(b).

(4) The manufacturer shall complete a written manufacturer response to the consumer's request for arbitration. The manufacturer shall provide a response to the consumer and the attorney general within ten calendar days from the date of the manufacturer's receipt of notice of the attorney general's assignment of a dispute for arbitration. The manufacturer response shall include all issues and affirmative defenses related to the nonconformities identified in the consumer's request for arbitration that the manufacturer intends to raise at the arbitration hearing.

(5) It is an affirmative defense to any claim under this chapter that: (a) The alleged nonconformity does not substantially impair the use, value, or safety of the new motor vehicle; or (b) the alleged nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the new motor vehicle.

(6) The arbitration decision must contain a written finding of whether the new motor vehicle should be repurchased or replaced pursuant to the standards set forth under this chapter.

(a) The board shall award the remedies under this chapter if a finding is made pursuant to RCW 19.118.041 that one or more nonconformities have been subject to a reasonable number of attempts.

(b) If the board awards remedies under this chapter after a finding is made pursuant to RCW 19.118.041 that one or more nonconformities have been subject to a reasonable number of attempts, the board shall award reasonable costs and attorneys' fees incurred by the consumer where the manufacturer has been directly represented by counsel: (i) In dealings with the consumer in response to a request to repurchase or replace under RCW 19.118.041; (ii) in settlement negotiations; (iii) in preparation of the manufacturer's statement; or (iv) at an arbitration hearing or other arbitration proceeding. In the case of an arbitration involving a motor home, the board may allocate liability among the motor home manufacturers.

(c) The decision of the board shall be submitted to the attorney general who shall deliver it by certified mail, electronic mail confirmed by an electronic notice of delivery status or similar confirmation, or personal service to the consumer and the manufacturer.

(7) The consumer may accept or reject the arbitration board decision. Upon acceptance by the consumer, the arbitration board decision shall become final. The consumer shall send written notification of acceptance or rejection to the attorney general within sixty days of receiving the decision and the attorney general shall immediately deliver a copy of the consumer's acceptance to the manufacturer by certified mail, return receipt requested, electronic mail confirmed by an electronic notice of delivery status or similar confirmation, or by personal service. Failure of the consumer to respond to the attorney general within sixty calendar days of receiving the decision shall be considered a rejection of the decision by the consumer.

(8) Where a consumer rejects an arbitration decision, the consumer may appeal to superior court pursuant to RCW 19.118.100. The consumer shall have one hundred twenty calendar days from the date of rejection to file a petition of appeal in superior court. At the time the petition of appeal is filed, the consumer shall deliver, by certified mail or personal service, a conformed copy of such petition to the attorney general.

(9) Upon receipt of the consumer's acceptance, the manufacturer shall have forty calendar days to comply with the arbitration board decision or thirty calendar days to file a petition of appeal in superior court. At the time the petition of appeal is filed, the manufacturer shall deliver, by certified mail or personal service, a conformed copy of such petition to the attorney general. If the attorney general receives no notice of petition of appeal after forty calendar days, the attorney general shall contact the consumer to verify compliance. [2009 c 351 § 6; 1998 c 298 § 6; 1995 c 254 § 6; 1989 c 347 § 5; 1987 c 344 § 7.]

**Application—2009 c 351:** See note following RCW 19.118.021.

**Severability—1998 c 298:** See note following RCW 19.118.021.

**Effective date—Severability—1995 c 254:** See notes following RCW 19.118.021.

**19.118.095 Arbitration decision—Compliance—Accomplishment—Dispute—Failure—Fine—Costs—Attorneys' fees.** (1) Compliance with an arbitration board decision under this chapter must be accomplished at a time, place, and in a manner to be determined by the mutual agreement of the consumer and manufacturer.

(a) The consumer shall make the motor vehicle available to the manufacturer free of damage other than that related to any nonconformity, defect, or condition to which a warranty applied, or that can reasonably be expected in the use of the vehicle for ordinary or reasonably intended purposes and in consideration of the miles traveled by the vehicle. Any insurance claims or settlement proceeds for repair of damage to the vehicle due to fire, theft, vandalism, or collision must be assigned to the manufacturer or, at the consumer's option, the repair must be completed before return of the vehicle to the manufacturer.

The consumer may not remove any equipment or option that was included in the original purchase or lease of the vehicle or that is otherwise included in the repurchase or replacement award. In removing any equipment not included in the original purchase or lease, the consumer shall exercise reasonable care to avoid further damage to the vehicle but is not required to return the vehicle to original condition.

(b) At the time of compliance with an arbitration board decision that awards repurchase, the manufacturer shall make full payment to the consumers and either the lessor or lienholder, or both, or provide verification to the consumer of prior payment to either the lessor or lienholder, or both.

At the time of compliance with an arbitration board decision that awards replacement, the manufacturer shall provide the replacement vehicle together with any refund of incidental costs.

(c) At any time before compliance a party may request the attorney general to resolve disputes regarding compliance with the arbitration board decision including but not limited to time and place for compliance, condition of the vehicle to be returned, clarification or recalculation of refund amounts under the award, or a determination if an offered vehicle is reasonably equivalent to the vehicle being replaced. The attorney general may resolve the dispute or refer compliance-related disputes to the board pursuant to RCW 19.118.160 for a compliance dispute hearing and decision. In resolving compliance disputes the attorney general or board may not review, alter, or otherwise change the findings of a decision or extend the time for compliance beyond the time necessary to resolve the dispute.

(d) Failure of the consumer to make the vehicle available within sixty calendar days in response to a manufacturer's unconditional tender of compliance is considered a rejection of the arbitration decision by the consumer, except as provided in (c) of this subsection or subsection (2) of this section.

(2) If, at the end of the forty calendar day period, neither compliance with nor a petition to appeal the board's decision has occurred, the attorney general may impose a fine of up to one thousand dollars per day until compliance occurs or a maximum penalty of one hundred thousand dollars accrues unless the manufacturer can provide clear and convincing evidence that any delay or failure was beyond its control or was acceptable to the consumer as evidenced by a written statement signed by the consumer. If the manufacturer fails to provide the evidence or fails to pay the fine, the attorney general may initiate proceedings against the manufacturer for failure to pay any fine that accrues until compliance with the board's decision occurs or the maximum penalty of one hundred thousand dollars results. If the attorney general prevails

in an enforcement action regarding any fine imposed under this subsection, the attorney general is entitled to reasonable costs and attorneys' fees. Fines and recovered costs and fees shall be returned to the new motor vehicle arbitration account. [2009 c 351 § 7; 1995 c 254 § 8.]

**Application—2009 c 351:** See note following RCW 19.118.021.

**Effective date—Severability—1995 c 254:** See notes following RCW 19.118.021.

#### 19.118.120 Application of consumer protection act.

The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2009 c 351 § 8; 1987 c 344 § 10.]

**Application—2009 c 351:** See note following RCW 19.118.021.

**19.118.160 Arbitration program—When established by attorney general.** If the attorney general is unable to contract with one or more entities to conduct arbitrations, the attorney general shall establish an arbitration program and conduct arbitrations under the procedures and standards established in this chapter. [2009 c 351 § 9; 1989 c 347 § 9; 1987 c 344 § 15.]

**Application—2009 c 351:** See note following RCW 19.118.021.

### Chapter 19.120 RCW

#### GASOLINE DEALER BILL OF RIGHTS ACT

##### Sections

19.120.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

**19.120.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 57.]

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### Chapter 19.126 RCW

#### WHOLESALE DISTRIBUTORS AND SUPPLIERS OF MALT BEVERAGES

##### Sections

19.126.020 Definitions.  
19.126.030 Suppliers' protections.  
19.126.040 Distributors' protections.  
19.126.060 Attorney's fees—Costs.  
19.126.080 Civil actions—Injunctive relief.

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

(1) "Agreement of distributorship" means any contract, agreement, commercial relationship, license, association, or any other arrangement, for a definite or indefinite period, between a supplier and distributor.

(2) "Authorized representative" has the same meaning as "authorized representative" as defined in RCW 66.04.010.

(3) "Brand" means any word, name, group of letters, symbol, or combination thereof, including the name of the brewer if the brewer's name is also a significant part of the product name, adopted and used by a supplier to identify a specific malt beverage product and to distinguish that product from other malt beverages produced by that supplier or other suppliers.

(4) "Distributor" means any person, including but not limited to a component of a supplier's distribution system constituted as an independent business, importing or causing to be imported into this state, or purchasing or causing to be purchased within this state, any malt beverage for sale or resale to retailers licensed under the laws of this state, regardless of whether the business of such person is conducted under the terms of any agreement with a malt beverage manufacturer.

(5) "Importer" means any distributor importing beer into this state for sale to retailer accounts or for sale to other distributors designated as "subjobbers" for resale.

(6) "Malt beverage manufacturer" means every brewer, fermenter, processor, bottler, or packager of malt beverages located within or outside this state, or any other person, whether located within or outside this state, who enters into an agreement of distributorship for the resale of malt beverages in this state with any wholesale distributor doing business in the state of Washington.

(7) "Person" means any natural person, corporation, partnership, trust, agency, or other entity, as well as any individual officers, directors, or other persons in active control of the activities of such entity.

(8) "Successor distributor" means any distributor who enters into an agreement, whether oral or written, to distribute a brand of malt beverages after the supplier with whom such agreement is made or the person from whom that supplier acquired the right to manufacture or distribute the brand has terminated, canceled, or failed to renew an agreement of distributorship, whether oral or written, with another distributor to distribute that same brand of malt beverages.

(9) "Supplier" means any malt beverage manufacturer or importer who enters into or is a party to any agreement of distributorship with a wholesale distributor. "Supplier" does not include: (a) Any domestic brewery or microbrewery licensed

under RCW 66.24.240 and producing less than two hundred thousand barrels of malt liquor annually; (b) any brewer or manufacturer of malt liquor producing less than two hundred thousand barrels of malt liquor annually and holding a certificate of approval issued under RCW 66.24.270; or (c) any authorized representative of malt liquor manufacturers who holds an appointment from one or more malt liquor manufacturers which, in the aggregate, produce less than two hundred thousand barrels of malt liquor.

(10) "Terminated distribution rights" means distribution rights with respect to a brand of malt beverages which are lost by a terminated distributor as a result of termination, cancellation, or nonrenewal of an agreement of distributorship for that brand.

(11) "Terminated distributor" means a distributor whose agreement of distributorship with respect to a brand of malt beverages, whether oral or written, has been terminated, canceled, or not renewed. [2009 c 155 § 1; 2004 c 160 § 19; 2003 c 59 § 2; 1997 c 321 § 41; 1984 c 169 § 2.]

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

**Effective date—2004 c 160:** See note following RCW 66.04.010.

**Effective date—2003 c 59:** See note following RCW 19.126.010.

**Effective date—1997 c 321:** See note following RCW 66.24.010.

**19.126.030 Suppliers' protections.** Suppliers are entitled to the following protections which are deemed to be incorporated into every agreement of distributorship:

(1) Agreements between suppliers and wholesale distributors shall be in writing;

(2) A wholesale distributor shall maintain the financial and competitive capability necessary to achieve efficient and effective distribution of the supplier's products;

(3) A wholesale distributor shall maintain the quality and integrity of the supplier's product in the manner set forth by the supplier;

(4) A wholesale distributor shall exert its best efforts to sell the product of the supplier and shall merchandise such products in the stores of its retail customers as agreed between the wholesale distributor and supplier;

(5) The supplier may cancel or otherwise terminate any agreement with a wholesale distributor immediately and without notice if the reason for such termination is fraudulent conduct in any of the wholesale distributor's dealings with the supplier or its products, insolvency, the occurrence of an assignment for the benefit of creditors, bankruptcy, or suspension in excess of fourteen days or revocation of a license issued by the state liquor board;

(6) A wholesale distributor shall give the supplier prior written notice, of not less than ninety days, of any material change in its ownership or management and the supplier has the right to reasonable prior approval of any such change; and

(7) A wholesale distributor shall give the supplier prior written notice, of not less than ninety days, of the wholesale distributor's intent to cancel or otherwise terminate the distributorship agreement. [2009 c 155 § 2; 1984 c 169 § 3.]

**19.126.040 Distributors' protections.** Wholesale distributors are entitled to the following protections which are

deemed to be incorporated into every agreement of distributorship:

(1) Agreements between wholesale distributors and suppliers shall be in writing;

(2) A supplier shall give the wholesale distributor at least sixty days prior written notice of the supplier's intent to cancel or otherwise terminate the agreement, unless such termination is based on a reason set forth in RCW 19.126.030(5) or results from a supplier acquiring the right to manufacture or distribute a particular brand and electing to have that brand handled by a different distributor. The notice shall state all the reasons for the intended termination or cancellation. Upon receipt of notice, the wholesale distributor shall have sixty days in which to rectify any claimed deficiency. If the deficiency is rectified within this sixty-day period, the proposed termination or cancellation is null and void and without legal effect;

(3) The wholesale distributor may sell or transfer its business, or any portion thereof, including the agreement, to successors in interest upon prior approval of the transfer by the supplier. No supplier may unreasonably withhold or delay its approval of any transfer, including wholesaler's rights and obligations under the terms of the agreement, if the person or persons to be substituted meet reasonable standards imposed by the supplier;

(4) If an agreement of distributorship is terminated, canceled, or not renewed for any reason other than for cause, failure to live up to the terms and conditions of the agreement, or a reason set forth in RCW 19.126.030(5), the wholesale distributor is entitled to compensation from the successor distributor for the laid-in cost of inventory and for the fair market value of the terminated distribution rights. For purposes of this section, termination, cancellation, or nonrenewal of a distributor's right to distribute a particular brand constitutes termination, cancellation, or nonrenewal of an agreement of distributorship whether or not the distributor retains the right to continue distribution of other brands for the supplier. In the case of terminated distribution rights resulting from a supplier acquiring the right to manufacture or distribute a particular brand and electing to have that brand handled by a different distributor, the affected distribution rights will not transfer until such time as the compensation to be paid to the terminated distributor has been finally determined by agreement or arbitration;

(5) When a terminated distributor is entitled to compensation under subsection (4) of this section, a successor distributor must compensate the terminated distributor for the fair market value of the terminated distributor's rights to distribute the brand, less any amount paid to the terminated distributor by a supplier or other person with respect to the terminated distribution rights for the brand. If the terminated distributor's distribution rights to a brand of malt beverages are divided among two or more successor distributors, each successor distributor must compensate the terminated distributor for the fair market value of the distribution rights assumed by that successor distributor, less any amount paid to the terminated distributor by a supplier or other person with respect to the terminated distribution rights assumed by the successor distributor. A terminated distributor may not receive total compensation under this subsection that exceeds the fair market value of the terminated distributor's distribu-

tion rights with respect to the affected brand. Nothing in this section shall be construed to require any supplier or other third person to make any payment to a terminated distributor;

(6) For purposes of this section, the "fair market value" of distribution rights as to a particular brand means the amount that a willing buyer would pay and a willing seller would accept for such distribution rights when neither is acting under compulsion and both have knowledge of all facts material to the transaction. "Fair market value" is determined as of the date on which the distribution rights are to be transferred in accordance with subsection (4) of this section;

(7) In the event the terminated distributor and the successor distributor do not agree on the fair market value of the affected distribution rights within thirty days after the terminated distributor is given notice of termination, the matter must be submitted to binding arbitration. Unless the parties agree otherwise, such arbitration must be conducted in accordance with the American arbitration association commercial arbitration rules with each party to bear its own costs and attorneys' fees;

(8) Unless the parties otherwise agree, or the arbitrator for good cause shown orders otherwise, an arbitration conducted pursuant to subsection (7) of this section must proceed as follows: (a) The notice of intent to arbitrate must be served within forty days after the terminated distributor receives notice of terminated distribution rights; (b) the arbitration must be conducted within ninety days after service of the notice of intent to arbitrate; and (c) the arbitrator or arbitrators must issue an order within thirty days after completion of the arbitration;

(9) In the event of a material change in the terms of an agreement of distribution, the revised agreement must be considered a new agreement for purposes of determining the law applicable to the agreement after the date of the material change, whether or not the agreement of distribution is or purports to be a continuing agreement and without regard to the process by which the material change is effected. [2009 c 155 § 3; 1984 c 169 § 4.]

**19.126.060 Attorney's fees—Costs.** In any action or arbitration brought by a wholesale distributor or a supplier pursuant to this chapter, other than an arbitration to determine the compensation due to a terminated distributor under RCW 19.126.040(4), the prevailing party shall be awarded its reasonable attorney's fees and costs. [2009 c 155 § 4; 1984 c 169 § 6.]

**19.126.080 Civil actions—Injunctive relief.** A person injured by a violation of this chapter, other than a person seeking only a determination of the compensation due to a terminated distributor under RCW 19.126.040(4), may bring a civil action in a court of competent jurisdiction to enjoin further violations. Injunctive relief may be granted in an action brought under this chapter without the injured party being required to post bond if, in the opinion of the court, there exists a likelihood that the injured party will prevail on the merits. [2009 c 155 § 5; 1985 c 440 § 3.]

## Chapter 19.146 RCW

### MORTGAGE BROKER PRACTICES ACT

#### Sections

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**19.146.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affiliate" means any person who directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with another person.

(2) "Application" means the same as in Regulation X, Real Estate Settlement Procedures, 24 C.F.R. Sec. 3500.

(3) "Borrower" means any person who consults with or retains a mortgage broker or loan originator in an effort to obtain or seek advice or information on obtaining or applying to obtain a residential mortgage loan for himself, herself, or persons including himself or herself, regardless of whether the person actually obtains such a loan.

(4) "Computer loan information systems" or "CLI system" means a real estate mortgage financing information system that facilitates the provision of information to consumers by a mortgage broker, loan originator, lender, real estate agent, or other person regarding interest rates and other loan terms available from different lenders.

(5) "Department" means the department of financial institutions.

(6) "Designated broker" means a natural person designated as the person responsible for activities of the licensed mortgage broker in conducting the business of a mortgage broker under this chapter and who meets the experience and examination requirements set forth in RCW 19.146.210(1)(e).

(7) "Director" means the director of financial institutions.

(8) "Employee" means an individual who has an employment relationship with a mortgage broker, and the individual

is treated as an employee by the mortgage broker for purposes of compliance with federal income tax laws.

(9) "Federal banking agencies" means the board of governors of the federal reserve system, comptroller of the currency, director of the office of thrift supervision, national credit union administration, and federal deposit insurance corporation.

(10) "Independent contractor" or "person who independently contracts" means any person that expressly or impliedly contracts to perform mortgage brokering services for another and that with respect to its manner or means of performing the services is not subject to the other's right of control, and that is not treated as an employee by the other for purposes of compliance with federal income tax laws.

(11)(a) "Loan originator" means a natural person who for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain (i) takes a residential mortgage loan application for a mortgage broker, or (ii) offers or negotiates terms of a mortgage loan. "Loan originator" also includes a person who holds themselves out to the public as able to perform any of these activities. "Loan originator" does not mean persons performing purely administrative or clerical tasks for a mortgage broker. For the purposes of this subsection, "administrative or clerical tasks" means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a borrower to obtain information necessary for the processing of a loan. A person who holds himself or herself out to the public as able to obtain a loan is not performing administrative or clerical tasks.

(b) "Loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For purposes of this chapter, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction;

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in (b)(i) through (iv) of this subsection.

(c) "Loan originator" does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code.

(12) "Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a per-

son licensed, or exempt from licensing, under chapter 19.146 RCW.

(13) "Lock-in agreement" means an agreement with a borrower made by a mortgage broker or loan originator, in which the mortgage broker or loan originator agrees that, for a period of time, a specific interest rate or other financing terms will be the rate or terms at which it will make a loan available to that borrower.

(14) "Mortgage broker" means any person who for compensation or gain, or in the expectation of compensation or gain (a) assists a person in obtaining or applying to obtain a residential mortgage loan or (b) holds himself or herself out as being able to assist a person in obtaining or applying to obtain a residential mortgage loan.

(15) "Mortgage loan originator" has the same meaning as "loan originator."

(16) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage loan originators.

(17) "Person" means a natural person, corporation, company, limited liability corporation, partnership, or association.

(18) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, or alone or in concert with others, a ten percent or greater interest in a partnership, company, association, or corporation, and the owner of a sole proprietorship.

(19) "Residential mortgage loan" means any loan primarily for personal, family, or household use secured by a mortgage or deed of trust on residential real estate upon which is constructed or intended to be constructed a single family dwelling or multiple family dwelling of four or less units.

(20) "S.A.F.E. act" means the secure and fair enforcement for mortgage licensing act of 2008, or Title V of the housing and economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008.

(21) "Third-party provider" means any person other than a mortgage broker or lender who provides goods or services to the mortgage broker in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, or escrow companies.

(22) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry. [2009 c 528 § 1; 2008 c 78 § 3; 2006 c 19 § 2; 1997 c 106 § 1; 1994 c 33 § 3; 1993 c 468 § 2; 1987 c 391 § 3.]

**Effective date—License requirement—2009 c 528:** "(1) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, sections 4, 6 through 9, 11, 12, 14, and 17 [of this act] are effective January 1, 2010.

(2) In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, mortgage loan originators who were previously exempt as exclusive agents under RCW 19.146.020(1)(a)(ii) must obtain a mortgage loan originator license under this chapter before July 1, 2010." [2009 c 528 § 19.]

**Implementation—2009 c 528:** "The director of financial institutions or the director's designee may take the actions necessary to ensure this act is implemented on July 1, 2010." [2009 c 528 § 20.]

**Severability—2008 c 78:** See note following RCW 31.04.025.

**Severability—1997 c 106:** "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 106 § 22.]

**Adoption of rules—Severability—1993 c 468:** See notes following RCW 19.146.0201.

**Effective dates—1993 c 468:** See note following RCW 19.146.200.

**19.146.020 Exemptions from chapter.** (1) The following are exempt from all provisions of this chapter:

(a) Any person doing business under the laws of the state of Washington or the United States, and any federally insured depository institution doing business under the laws of any other state, relating to commercial banks, bank holding companies, savings banks, trust companies, savings and loan associations, credit unions, insurance companies, or real estate investment trusts as defined in 26 U.S.C. Sec. 856 and the affiliates, subsidiaries, and service corporations thereof;

(b) Any person doing business under the consumer loan act is exempt from this chapter only for that business conducted under the authority and coverage of the consumer loan act;

(c) An attorney licensed to practice law in this state who is not principally engaged in the business of negotiating residential mortgage loans when such attorney renders services in the course of his or her practice as an attorney;

(d) Any person doing any act under order of any court, except for a person subject to an injunction to comply with any provision of this chapter or any order of the director issued under this chapter;

(e) A real estate broker or salesperson licensed by the state who obtains financing for a real estate transaction involving a bona fide sale of real estate in the performance of his or her duties as a real estate broker and who receives only the customary real estate broker's or salesperson's commission in connection with the transaction;

(f) The United States of America, the state of Washington, any other state, and any Washington city, county, or other political subdivision, and any agency, division, or corporate instrumentality of any of the entities in this subsection (1)(f);

(g) A real estate broker who provides only information regarding rates, terms, and lenders in connection with a CLI system, who receives a fee for providing such information, who conforms to all rules of the director with respect to the providing of such service, and who discloses on a form approved by the director that to obtain a loan the borrower must deal directly with a mortgage broker or lender. However, a real estate broker shall not be exempt if he or she does any of the following:

(i) Holds himself or herself out as able to obtain a loan from a lender;

(ii) Accepts a loan application, or submits a loan application to a lender;

(iii) Accepts any deposit for third-party services or any loan fees from a borrower, whether such fees are paid before, upon, or after the closing of the loan;

(iv) Negotiates rates or terms with a lender on behalf of a borrower; or

(v) Provides the disclosure required by RCW 19.146.030(1);

(h) Registered mortgage loan originators, or any individual required to be registered; and

(i) A manufactured or modular home retailer employee who performs purely administrative or clerical tasks and who receives only the customary salary or commission from the employer in connection with the transaction.

(2) Any person otherwise exempted from the licensing provisions of this chapter may voluntarily submit an application to the director for a mortgage broker's license. The director shall review such application and may grant or deny licenses to such applicants upon the same grounds and with the same fees as may be applicable to persons required to be licensed under this chapter.

(a) Upon receipt of a license under this subsection, the licensee is required to continue to maintain a valid license, is subject to all provisions of this chapter, and has no further right to claim exemption from the provisions of this chapter except as provided in (b) of this subsection.

(b) Any licensee under this subsection who would otherwise be exempted from the requirements of licensing by this section may apply to the director for exemption from licensing. The director shall adopt rules for reviewing such applications and shall grant exemptions from licensing to applications which are consistent with those rules and consistent with the other provisions of this chapter. [2009 c 528 § 2; 2006 c 19 § 3; 1997 c 106 § 2; 1994 c 33 § 5; 1994 c 33 § 4; 1993 c 468 § 3; 1987 c 391 § 4.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

**Severability—1997 c 106:** See note following RCW 19.146.010.

**Adoption of rules—Severability—1993 c 468:** See notes following RCW 19.146.0201.

**Effective dates—1993 c 468:** See note following RCW 19.146.200.

**19.146.0201 Loan originator, mortgage broker—Prohibitions—Requirements.** It is a violation of this chapter for a loan originator or mortgage broker required to be licensed under this chapter to:

(1) Directly or indirectly employ any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;

(2) Engage in any unfair or deceptive practice toward any person;

(3) Obtain property by fraud or misrepresentation;

(4) Solicit or enter into a contract with a borrower that provides in substance that the mortgage broker may earn a fee or commission through the mortgage broker's "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;

(5) Solicit, advertise, or enter into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of soliciting, advertising, or contracting from a person exempt from licensing under RCW 19.146.020(1)(f) or a lender with whom the mortgage broker maintains a written correspondent or loan broker agreement under RCW 19.146.040;

(6) Fail to make disclosures to loan applicants and non-institutional investors as required by RCW 19.146.030 and any other applicable state or federal law;

(7) Make, in any manner, any false or deceptive statement or representation with regard to the rates, points, or



other financing terms or conditions for a residential mortgage loan or engage in bait and switch advertising;

(8) Negligently make any false statement or knowingly and willfully make any omission of material fact in connection with any reports filed by a mortgage broker or in connection with any investigation conducted by the department;

(9) Make any payment, directly or indirectly, to any appraiser of a property, for the purposes of influencing the independent judgment of the appraiser with respect to the value of the property;

(10) Advertise any rate of interest without conspicuously disclosing the annual percentage rate implied by such rate of interest;

(11) Fail to comply with any requirement of the truth-in-lending act, 15 U.S.C. Sec. 1601 and Regulation Z, 12 C.F.R. Sec. 226; the real estate settlement procedures act, 12 U.S.C. Sec. 2601 and Regulation X, 24 C.F.R. Sec. 3500; the equal credit opportunity act, 15 U.S.C. Sec. 1691 and Regulation B, Sec. 202.9, 202.11, and 202.12; Title V, Subtitle A of the financial modernization act of 1999 (known as the "Gramm-Leach-Bliley act"), 12 U.S.C. Secs. 6801-6809; the federal trade commission's privacy rules, 16 C.F.R. Parts 313-314, mandated by the Gramm-Leach-Bliley act; the home mortgage disclosure act, 12 U.S.C. Sec. 2801 et seq. and Regulation C, home mortgage disclosure; the federal trade commission act, 12 C.F.R. Part 203, 15 U.S.C. Sec. 45(a); the telemarketing and consumer fraud and abuse act, 15 U.S.C. Secs. 6101 to 6108; and the federal trade commission telephone sales rule, 16 C.F.R. Part 310, as these acts existed on January 1, 2007, or such subsequent date as may be provided by the department by rule, in any advertising of residential mortgage loans, or any other applicable mortgage broker or loan originator activities covered by the acts. The department may adopt by rule requirements that mortgage brokers and loan originators comply with other applicable federal statutes and regulations in any advertising of residential mortgage loans, or any other mortgage broker or loan originator activity;

(12) Fail to pay third-party providers no later than thirty days after the recording of the loan closing documents or ninety days after completion of the third-party service, whichever comes first, unless otherwise agreed or unless the third-party service provider has been notified in writing that a bona fide dispute exists regarding the performance or quality of the third-party service;

(13) Collect, charge, attempt to collect or charge or use or propose any agreement purporting to collect or charge any fee prohibited by RCW 19.146.030 or 19.146.070;

(14)(a) Except when complying with (b) and (c) of this subsection, act as a loan originator in any transaction (i) in which the loan originator acts or has acted as a real estate broker or salesperson or (ii) in which another person doing business under the same licensed real estate broker acts or has acted as a real estate broker or salesperson;

(b) Prior to providing mortgage services to the borrower, a loan originator, in addition to other disclosures required by this chapter and other laws, shall provide to the borrower the following written disclosure:

THIS IS TO GIVE YOU NOTICE THAT I OR ONE OF MY ASSOCIATES HAVE/HAS ACTED

AS A REAL ESTATE BROKER OR SALESPERSON REPRESENTING THE BUYER/SELLER IN THE SALE OF THIS PROPERTY TO YOU. I AM ALSO A LOAN ORIGINATOR, AND WOULD LIKE TO PROVIDE MORTGAGE SERVICES TO YOU IN CONNECTION WITH YOUR LOAN TO PURCHASE THE PROPERTY.

YOU ARE NOT REQUIRED TO USE ME AS A LOAN ORIGINATOR IN CONNECTION WITH THIS TRANSACTION. YOU ARE FREE TO COMPARISON SHOP WITH OTHER MORTGAGE BROKERS AND LENDERS, AND TO SELECT ANY MORTGAGE BROKER OR LENDER OF YOUR CHOOSING; and

(c) A real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker shall carry on such mortgage broker business activities and shall maintain such person's mortgage broker business records separate and apart from the real estate broker activities conducted pursuant to chapter 18.85 RCW. Such activities shall be deemed separate and apart even if they are conducted at an office location with a common entrance and mailing address, so long as each business is clearly identified by a sign visible to the public, each business is physically separated within the office facility, and no deception of the public as to the separate identities of the broker business firms results. This subsection (14)(c) shall not require a real estate broker or salesperson licensed under chapter 18.85 RCW who also acts as a mortgage broker to maintain a physical separation within the office facility for the conduct of its real estate and mortgage broker activities where the director determines that maintaining such physical separation would constitute an undue financial hardship upon the mortgage broker and is unnecessary for the protection of the public; or

(15) Fail to comply with any provision of RCW 19.146.030 through 19.146.080 or any rule adopted under those sections. [2009 c 528 § 3; 2006 c 19 § 4; 1997 c 106 § 3; 1994 c 33 § 6; 1993 c 468 § 4.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

**Severability—1997 c 106:** See note following RCW 19.146.010.

**Adoption of rules—1993 c 468:** "The director shall take steps and adopt rules necessary to implement the sections of this act by their effective dates." [1993 c 468 § 22.]

**Severability—1993 c 468:** "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 468 § 23.]

**Effective dates—1993 c 468:** See note following RCW 19.146.200.

**19.146.205 License—Application—Applicant to furnish information establishing identity—Background check—Fee—Bond or alternative. (Effective January 1, 2010.)** (1) Application for a mortgage broker license under this chapter must be made to the nationwide mortgage licensing system and registry and in the form prescribed by the director. The application shall contain at least the following information:

(a) The name, address, date of birth, and social security number of the applicant, and any other names, dates of birth,

or social security numbers previously used by the applicant, unless waived by the director;

(b) If the applicant is a partnership or association, the name, address, date of birth, and social security number of each general partner or principal of the association, and any other names, dates of birth, or social security numbers previously used by the members, unless waived by the director;

(c) If the applicant is a corporation, the name, address, date of birth, and social security number of each officer, director, registered agent, and each principal stockholder, and any other names, dates of birth, or social security numbers previously used by the officers, directors, registered agents, and principal stockholders unless waived by the director;

(d) The street address, county, and municipality where the principal business office is to be located;

(e) The name, address, date of birth, and social security number of the applicant's designated broker, and any other names, dates of birth, or social security numbers previously used by the designated broker and a complete set of the designated broker's fingerprints taken by an authorized law enforcement officer; and

(f) Such other information regarding the applicant's or designated broker's background, financial responsibility, experience, character, and general fitness as the director may require by rule.

(2) As a part of or in connection with an application for any license under this section, or periodically upon license renewal, the applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, the nationwide mortgage licensing system and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

(3) In order to reduce the points of contact which the federal bureau of investigation may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(4) In order to reduce the points of contact which the director may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.

(5) At the time of filing an application for a license under this chapter, each applicant shall pay to the director through the nationwide mortgage licensing system and registry the appropriate application fee in an amount determined by rule of the director in accordance with RCW 43.24.086 to cover, but not exceed, the cost of processing and reviewing the

application. The director shall deposit the moneys in the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case the director shall deposit the moneys in the consumer services account.

(6)(a) Except as provided in (b) of this subsection, each applicant for a mortgage broker's license shall file and maintain a surety bond, in an amount which the director deems adequate to protect the public interest, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety. The bonding requirement as established by the director shall take the form of a range of bond amounts which shall vary according to the annual loan origination volume of the licensee. The bond shall run to the state of Washington as obligee, and shall run first to the benefit of the borrower and then to the benefit of the state and any person or persons who suffer loss by reason of the applicant's or its loan originator's violation of any provision of this chapter or rules adopted under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all rules adopted under this chapter, and shall reimburse all persons who suffer loss by reason of a violation of this chapter or rules adopted under this chapter. Borrowers shall be given priority over the state and other persons. The state and other third parties shall be allowed to receive distribution pursuant to a valid claim against the remainder of the bond. In the case of claims made by any person or entity who is not a borrower, no final judgment may be entered prior to one hundred eighty days following the date the claim is filed. The bond shall be continuous and may be canceled by the surety upon the surety giving written notice to the director of its intent to cancel the bond. The cancellation shall be effective thirty days after the notice is received by the director. Whether or not the bond is renewed, continued, reinstated, reissued, or otherwise extended, replaced, or modified, including increases or decreases in the penal sum, it shall be considered one continuous obligation, and the surety upon the bond shall not be liable in an aggregate or cumulative amount exceeding the penal sum set forth on the face of the bond. In no event shall the penal sum, or any portion thereof, at two or more points in time be added together in determining the surety's liability. The bond shall not be liable for any penalties imposed on the licensee, including, but not limited to, any increased damages or attorneys' fees, or both, awarded under RCW 19.86.090. The applicant may obtain the bond directly from the surety or through a group bonding arrangement involving a professional organization comprised of mortgage brokers if the arrangement provides at least as much coverage as is required under this subsection.

(b) If the director determines that the bond required in (a) of this subsection is not reasonably available, the director shall waive the requirements for such a bond. The mortgage recovery fund account is created in the custody of the state treasurer. The director is authorized to charge fees to fund the account. All fees charged under this section, except those retained by the director for administration of the fund [account], must be deposited into the mortgage recovery fund account. Expenditures from the account may be used only for the same purposes as the surety bond as described in (a) of this subsection. Only the director or the director's designee

may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. A person entitled to receive payment from the mortgage recovery fund [account] may only receive reimbursement after a court of competent jurisdiction has determined the actual damages caused by the licensee. The director may determine by rule the procedure for recovery; the amount each mortgage broker must pay through the nationwide mortgage licensing system and registry for deposit in the mortgage recovery fund [account]; and the amount necessary to administer the fund [account]. [2009 c 528 § 4; 2006 c 19 § 10; 2001 c 177 § 4; 1997 c 106 § 9; 1994 c 33 § 8; 1993 c 468 § 6.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

**Effective date—2001 c 177:** See note following RCW 43.320.080.

**Severability—1997 c 106:** See note following RCW 19.146.010.

**Adoption of rules—Severability—1993 c 468:** See notes following RCW 19.146.0201.

**Effective dates—1993 c 468:** See note following RCW 19.146.200.

**19.146.226 Director—Licensing rules and interim procedures.** For the purposes of implementing an orderly and efficient licensing process, the director may establish licensing rules and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals, the director may establish expedited review and licensing procedures. [2009 c 528 § 13.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

**19.146.228 Fees—Exception.** The director shall establish fees sufficient to cover, but not exceed, the costs of administering this chapter. These fees may include:

- (1) An annual assessment paid by each licensee on or before a date specified by rule;
- (2) An investigation fee to cover the costs of any investigation of the books and records of a licensee or other person subject to this chapter; and
- (3) An application fee to cover the costs of processing applications made to the director under this chapter.

Mortgage brokers and loan originators shall not be charged investigation fees for the processing of complaints when the investigation determines that no violation of this chapter occurred or when the mortgage broker or loan originator provides a remedy satisfactory to the complainant and the director and no order of the director is issued. All moneys, fees, and penalties collected under the authority of this chapter shall be deposited into the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all moneys, fees, and penalties collected under this chapter shall be deposited in the consumer services account. [2009 c 528 § 5; 2006 c 19 § 15; 2001 c 177 § 5; 1997 c 106 § 13; 1994 c 33 § 9.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

**Effective date—2001 c 177:** See note following RCW 43.320.080.

**Severability—1997 c 106:** See note following RCW 19.146.010.

**19.146.235 Director's authority to conduct investigations and examinations—Rules—Penalty.** (*Effective January 1, 2010.*) The director or a designee has authority to conduct investigations and examinations as provided in this section.

(1) For the purposes of investigating violations or complaints arising under this chapter, the director or his or her designee may make an investigation of the operations of any mortgage broker or loan originator as often as necessary in order to carry out the purposes of this chapter.

(2) Every mortgage broker shall make available to the director or a designee its books and records relating to its operations.

(a) For the purpose of examinations, the director or his or her designee may have access to such books and records during normal business hours and interview the officers, principals, loan originators, employees, independent contractors, and agents of the licensee concerning their business.

(b) For the purposes of investigating violations or complaints arising under this chapter, the director may at any time, either personally or by a designee, investigate the business, including but not limited to the books, accounts, records, and files used therein, of every licensee and of every person engaged in the business of mortgage brokering, whether such a person acts or claims to act under, or without the authority of, this chapter.

(c) The director or designated person may direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any such examination or investigation, and may direct, subpoena, or order such person to produce books, accounts, records, files, and any other documents the director or designated person deems relevant to the inquiry.

(3) The director may visit, either personally or by designee, the licensee's place or places of business to conduct an examination. The scope of the examination is limited to documents and information necessary to determine compliance with this chapter and attendant rules. In general, the examination scope may include:

(a) A review for trust accounting compliance;

(b) Loan file review to determine the mortgage broker's compliance with this chapter and applicable federal regulations covering the business of mortgage brokering and lending;

(c) Interviews for the purpose of understanding business and solicitation practices, transactional events, disclosure compliance, complaint resolution, or determining specific compliance with this chapter and the attendant rules; and

(d) A review of general business books and records, including employee records, for the purpose of determining specific compliance with this chapter and the attendant rules.

(4) The purpose of an examination is to make certain that licensees are conducting business in compliance with the law. Therefore, protocols for examination findings and corrective action directed from an examination must be established by rule of the director. To accomplish this purpose, these protocols must include the following:

(a) A reporting mechanism from the director to the licensee;

(b) A process for clear notification of violations and an opportunity for response by the licensee; and

(c) The criteria by which the frequency of examinations will be determined.

(5) If the examination findings clearly identify the need to expand the scope of the examination, the director or a designee, upon five days' written notification to the licensee with an explanation of the need, may:

(a) Expand the examination review to locations other than the examined location regardless of the number of years a location has held a license; or

(b) Expand the time period of the examination beyond the five-year period of licensing, provided the expansion of time does not exceed a date certain identified in the written notification in this subsection.

(6) The director or a designee may consider reports made by independent certified professionals for the mortgage broker covering the same general subject matter as the examination. The director or a designee may incorporate all or part of the report in the report of the examination.

(7) The director may retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations. The cost of these services for investigations only must be billed in accordance with RCW 19.146.228.

(8) The director may establish by rule travel costs for examination of out-of-state entities.

(9)(a) No person subject to examination or investigation under this chapter may knowingly withhold, abstract, remove, mutilate, destroy, or secrete any books, records, computer records, or other information.

(b) A person who commits an act under (a) of this subsection is guilty of a class B felony punishable under RCW 9A.20.021(1)(b) or punishable by a fine of not more than twenty thousand dollars, or both. [2009 c 528 § 6; 2006 c 19 § 16; 1997 c 106 § 14; 1994 c 33 § 17; 1993 c 468 § 11.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

**Severability—1997 c 106:** See note following RCW 19.146.010.

**Adoption of rules—Severability—1993 c 468:** See notes following RCW 19.146.0201.

**Effective dates—1993 c 468:** See note following RCW 19.146.200.

**19.146.280 Mortgage broker commission—Code of conduct—Complaint review.** (1) There is established the mortgage broker commission consisting of seven commission members who shall act in an advisory capacity to the director on mortgage broker issues.

(2) The director shall appoint the members of the commission, weighing the recommendations from professional organizations representing mortgage brokers and loan originators. At least three of the commission members shall be mortgage brokers licensed under this chapter, at least one shall be exempt from licensure under \*RCW 19.146.020(1)(g), and at least two of the commission members shall be licensed loan originators under this chapter. No commission member shall be appointed who has had less than five years' experience in the business of residential mortgage lending. In addition, the director or a designee shall serve as an ex officio, nonvoting member of the com-

mission. Voting members of the commission shall serve for two-year terms. The department shall provide staff support to the commission.

(3) The commission may establish a code of conduct for its members. Any commissioner may bring a motion before the commission to remove a commissioner for failing to conduct themselves in a manner consistent with the code of conduct. The motion shall be in the form of a recommendation to the director to dismiss a specific commissioner and shall enumerate causes for doing so. The commissioner in question shall recuse himself or herself from voting on any such motion. Any such motion must be approved unanimously by the remaining six commissioners. Approved motions shall be immediately transmitted to the director for review and action.

(4) Members of the commission shall be reimbursed for their travel expenses incurred in carrying out the provisions of this chapter in accordance with RCW 43.03.050 and 43.03.060. All costs and expenses associated with the commission shall be paid from the financial services regulation fund, unless the consumer services account is created as a dedicated, nonappropriated account, in which case all costs and expenses shall be paid from the consumer services account.

(5) The commission shall advise the director on the characteristics and needs of the mortgage broker profession.

(6) The department, in consultation with other applicable agencies of state government, shall conduct a continuing review of the number and type of consumer complaints arising from residential mortgage lending in the state. [2009 c 518 § 1; 2006 c 19 § 17; 2001 c 177 § 6; 1997 c 106 § 20; 1994 c 33 § 26; 1993 c 468 § 21.]

**\*Reviser's note:** RCW 19.146.020 was amended by 2009 c 528 § 2, deleting subsection (1)(g).

**Effective date—2001 c 177:** See note following RCW 43.320.080.

**Severability—1997 c 106:** See note following RCW 19.146.010.

**Adoption of rules—Severability—1993 c 468:** See notes following RCW 19.146.0201.

**Effective dates—1993 c 468:** See note following RCW 19.146.200.

**19.146.300 Loan originator license—Application—Applicant to furnish information establishing identification—Background check—Fees—Rules.** (*Effective January 1, 2010.*) (1) Application for a loan originator license under this chapter must be made to the nationwide mortgage licensing system and registry and in the form prescribed by the director. The application shall contain at least the following information:

(a) The name, address, date of birth, and social security number of the loan originator applicant, and any other names, dates of birth, or social security numbers previously used by the loan originator applicant, unless waived by the director; and

(b) Such other information regarding the loan originator applicant's background, experience, character, and general fitness as the director may require by rule.

(2)(a) As part of or in connection with an application for any license under this section, or periodically upon license renewal, the loan originator applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, the nationwide mortgage licensing system

and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, or periodically upon license renewal, the director is authorized to receive criminal history record information that includes non-conviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

(b) In order to reduce the points of contact which the federal bureau of investigation may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(c) In order to reduce the points of contact which the director may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.

(d) As part of or in connection with an application for a license under this section, the loan originator applicant must furnish to the nationwide mortgage licensing system and registry personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including the submission of authorization for the nationwide mortgage licensing system and registry and the director to obtain:

(i) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the federal fair credit reporting act; and

(ii) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) At the time of filing an application for a license under this chapter, each loan originator applicant shall pay to the director the appropriate application fee in an amount determined by rule of the director in accordance with RCW 19.146.228 to cover the cost of processing and reviewing the application. The director shall deposit the moneys in the financial services regulation fund.

(4) The director must establish by rule procedures for accepting and processing incomplete applications. [2009 c 528 § 9; 2006 c 19 § 19.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

**19.146.310 Loan originator license—Requirements for issuance—Denial—Validity—Expiration—Surrender—Interim license.** (1) The director shall issue and deliver a loan originator license if, after investigation, the director makes the following findings:

(a) The loan originator applicant has paid the required license fees;

(b) The loan originator applicant has met the requirements of RCW 19.146.300;

(c) The loan originator applicant has never had a license issued under this chapter or any similar state statute revoked

except that, for the purposes of this subsection, a subsequent formal vacation of a revocation is not a revocation;

(d)(i) The loan originator applicant has not been convicted of a gross misdemeanor involving dishonesty or financial misconduct or has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court within seven years of the filing of the present application; and

(ii) The loan originator applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court at any time preceding the date of application if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering;

(e) The loan originator applicant has passed a written examination whose content shall be established by rule of the director;

(f) The loan originator applicant has not been found to be in violation of this chapter or rules;

(g) The loan originator applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a belief that the business will be operated honestly and fairly within the purposes of this chapter. For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years; and

(h) The loan originator licensee has completed, during the calendar year preceding a licensee's annual license renewal date, a minimum of eight hours of continuing education as established by rule of the director.

(2) If the director does not find the conditions of subsection (1) of this section have been met, the director shall not issue the loan originator license. The director shall notify the loan originator applicant of the denial and return to the loan originator applicant any remaining portion of the license fee that exceeds the department's actual cost to investigate the license.

(3) The director shall issue a new loan originator license under this chapter to any licensee that has a valid license and is otherwise in compliance with this chapter.

(4) A loan originator license issued under this section expires on the date one year from the date of issuance which, for license renewal purposes, is also the renewal date. The director shall establish rules regarding the loan originator license renewal process created under this chapter.

(5) A loan originator licensee may surrender a license by delivering to the director written notice of surrender, but the surrender does not affect the loan originator licensee's civil or criminal liability or any administrative actions arising from acts or omissions occurring before such surrender.

(6) To prevent undue delay in the issuance of a loan originator license and to facilitate the business of a loan originator, an interim loan originator license with a fixed date of expiration may be issued when the director determines that

the loan originator has substantially fulfilled the requirements for loan originator licensing as defined by rule. [2009 c 528 § 10; 2006 c 19 § 20.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

**19.146.325 Loan originator license—Test. (Effective January 1, 2010.)** (1) To obtain a loan originator license, an individual must pass a test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.

(2) An individual is not considered to have passed a test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(a) An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test.

(b) After failing three consecutive tests, an individual must wait at least six months before taking the test again.

(c) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer must retake the test, not taking into account any time during which that individual is a registered mortgage loan originator.

(3) This section does not prohibit a test provider approved by the nationwide mortgage licensing system and registry from providing a test at the location of the employer of the loan originator applicant or any subsidiary or affiliate of the employer of the applicant, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator. [2009 c 528 § 8.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

**19.146.340 Loan originator applicants. (Effective January 1, 2010.)** (1) Each loan originator applicant shall complete at least twenty hours of preclicensing education approved by the nationwide mortgage licensing system and registry. The preclicensing education shall include at least three hours of federal law and regulations; three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; two hours of training related to lending standards for the nontraditional mortgage product marketplace; and at least two hours of training specifically related to Washington law.

(2) A loan originator applicant having successfully completed the preclicensing education requirements approved by the nationwide mortgage licensing system and registry for any state shall be accepted as credit towards completion of preclicensing education requirements in this state.

(3) This chapter does not preclude any preclicensing education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the loan originator applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such an employer or entity. Preclicensing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry. [2009 c 528 § 7.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

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**19.146.350 Loan originators—Continuing education—Requirements. (Effective January 1, 2010.)** (1) A licensed mortgage loan originator must complete a minimum of eight hours of continuing education, eight of which is approved by the nationwide mortgage licensing system and registry which must include at least three hours of federal law and regulations; two hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; and two hours of training related to lending standards for the nontraditional mortgage product marketplace. Additionally, the director may require at least one hour of continuing education on Washington law provided by and administered through an approved provider.

(2) The nationwide mortgage licensing system and registry must review and approve continuing education courses. Review and approval of a continuing education course must include review and approval of the course provider.

(3) A licensed mortgage loan originator may only receive credit for a continuing education course in the year in which the course is taken, and may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(5) A person having successfully completed the education requirements approved by the nationwide mortgage licensing system and registry for any state must have their credits accepted as credit towards completion of continuing education requirements in this state.

(6) This section does not preclude any education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity. Continuing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry. [2009 c 528 § 11.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

**19.146.360 Director's duty—Process to challenge information—Nationwide mortgage licensing system and registry. (Effective January 1, 2010.)** The director shall establish a process whereby mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the director. [2009 c 528 § 12.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

**19.146.370 Disclosure of information—Privilege—Confidentiality—Exceptions.** (1) Except as otherwise provided in section 1512 of the S.A.F.E. act, the requirements under any federal law or chapter 42.56 RCW regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law,

including the rules of any federal or state court, with respect to that information or material, continues to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

(2) For the purposes under subsection (1) of this section, the director is authorized to enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations representing governmental agencies as established by rule, regulation, or order of the director.

(3) Information or material that is subject to a privilege or confidentiality under subsection (1) of this section is not subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process unless, with respect to any privilege held by the nationwide mortgage licensing system and registry with respect to that information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of that person, that privilege.

(4) Chapter 42.56 RCW relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) of this section is superseded by the requirements of this section.

(5) This section does not apply to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the nationwide mortgage licensing system and registry for access by the public. [2009 c 528 § 15.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

**19.146.380 Director's authority to contract—Records and fees.** In order to fulfill the purposes of chapter 528, Laws of 2009, the director is authorized to establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter. [2009 c 528 § 16.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

**19.146.390 Mortgage brokers—Licensing system and registry reports of condition. (Effective January 1, 2010.)** Each mortgage broker licensee shall submit to the nationwide mortgage licensing system and registry reports of condition, which must be in the form and must contain the

information as the nationwide mortgage licensing system and registry may require. [2009 c 528 § 17.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

**19.146.400 Director's authority—Violation and enforcement reporting.** The director is authorized to regularly report violations of chapter 528, Laws of 2009, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry. [2009 c 528 § 18.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

## Chapter 19.200 RCW

### AUTOMATED FINANCIAL TRANSACTIONS

#### Sections

19.200.010 Findings—Intent—Restrictions on credit and debit card receipts—Application—Definitions.

**19.200.010 Findings—Intent—Restrictions on credit and debit card receipts—Application—Definitions.** (1) The legislature finds that credit and debit cards are important tools for consumers in today's economy. The legislature also finds that unscrupulous persons often fraudulently use the card accounts of others by stealing the card itself or by obtaining the necessary information to fraudulently charge the purchase of goods and services to another person's account. The legislature intends to provide some protection for consumers from the latter by limiting the information that can appear on a card receipt.

(2) No person that accepts credit or debit cards for the transaction of business shall print more than the last five digits of the card account number or print the card expiration date on a credit or debit card receipt. This includes all receipts kept by the person or provided to the cardholder.

(3) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the sole means of recording the card number is by handwriting or by an imprint or copy of the credit or debit card.

(4) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(a) "Credit card" means a card or device existing for the purpose of obtaining money, property, labor, or services on credit.

(b) "Debit card" means a card or device used to obtain money, property, labor, or services by a transaction that debits a cardholder's account, rather than extending credit. [2009 c 382 § 1; 2000 c 163 § 1.]

## Chapter 19.205 RCW

### STRUCTURED SETTLEMENT PROTECTION

#### Sections

19.205.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)

**19.205.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 58.]

### Chapter 19.210 RCW

#### UNUSED PROPERTY MERCHANTS

##### Sections

19.210.010 Definitions.

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

(1) "Baby food" or "infant formula" means any food manufactured, packaged, and labeled specifically for sale for consumption by a child under the age of two years.

(2) "Medical device" means any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, tool, or other similar or related article, including any component part or accessory, which is required under federal law to bear the label "caution: federal law requires dispensing by or on the order of a physician"; or which is defined by federal law as a medical device and is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease in human beings or animals or is intended to affect the structure or any function of the body of human beings or animals, which does not achieve any of its principal intended purposes through chemical action within or on the body of human beings or animals and which is not dependent upon being metabolized for achievement of any of its principal intended purposes.

(3) "Nonprescription drug," which may also be referred to as an over-the-counter drug, means any nonnarcotic medicine or drug that may be sold without a prescription and is prepackaged for use by the consumer, prepared by the manufacturer or producer for use by the consumer, and required to be properly labeled and unadulterated in accordance with the requirements of the state food and drug laws and the federal food, drug, and cosmetic act. "Nonprescription drug" does not include herbal products, dietary supplements, botanical extracts, or vitamins.

(4)(a) "Unused property market" means any event:

(i) At which two or more persons offer personal property for sale or exchange and at which (A) these persons are charged a fee for sale or exchange of personal property or (B)

prospective buyers are charged a fee for admission to the area at which personal property is offered or displayed for sale or exchange; or

(ii) Regardless of the number of persons offering or displaying personal property or the absence of fees, at which personal property is offered or displayed for sale or exchange if the event is held more than six times in any twelve-month period.

(b) "Unused property market" is interchangeable with and applicable to swap meet, indoor swap meet, flea market, or other similar terms, regardless of whether these events are held inside a building or outside in the open. The primary characteristic is that these activities involve a series of sales sufficient in number, scope, and character to constitute a regular course of business.

(c) "Unused property market" does not include:

(i) An event that is organized for the exclusive benefit of any community chest, fund, foundation, association, or corporation organized and operated for religious, educational, or charitable purposes, provided that no part of any admission fee or parking fee charged vendors or prospective purchasers or the gross receipts or net earnings from the sale or exchange of personal property, whether in the form of a percentage of the receipts or earnings, as salary, or otherwise, inures to the benefit of any private shareholder or person participating in the organization or conduct of the event; or

(ii) An event at which all of the personal property offered for sale or displayed is new, and all persons selling or exchanging personal property, or offering or displaying personal property for sale or exchange, are manufacturers or authorized representatives of manufacturers or distributors.

(5) "Unused property merchant" means any person, other than a vendor or merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other unused property market location and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail, except a person who offers five or fewer items of the same new and unused merchandise for sale or exchange at an unused property market. [2009 c 549 § 1010; 2001 c 160 § 1.]

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

### Chapter 19.220 RCW

#### INTERNATIONAL MATCHMAKING ORGANIZATIONS

##### Sections

19.220.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)

**19.220.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partner-



ships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 59.]

## Chapter 19.225 RCW

### UNIFORM ATHLETE AGENT ACT

#### Sections

19.225.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**19.225.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 60.]

## Chapter 19.250 RCW

### DISCLOSURE OF PERSONAL WIRELESS NUMBERS

#### Sections

19.250.005 Definitions.  
 19.250.030 Removal from directory—Reverse phone number search services.  
 19.250.050 Violations—Penalties—Attorney general may enforce—Limitation of liability.  
 19.250.060 Repealed.  
 19.250.070 Application of chapter—Limitations.

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

(1) "Directory" or "directory form" means a categorized list or compilation of phone numbers, or a single phone number, in written, audio, electronic, digital, or any other format.

(2) "Directory provider" means any person in the business of marketing, selling, or sharing the phone number of any subscriber in directory form for commercial purposes.

(3) "Radio communications service company" has the same meaning as in RCW 80.04.010.

(4) "Reverse phone number search services" means a service that provides the name of a subscriber associated with a phone number when the phone number is supplied.

(5) "Subscriber" means a person who resides in the state of Washington and subscribes to radio communications services, radio paging, or cellular communications service with a Washington state area code.

(6) "Wireless phone number" means a phone number unique to the subscriber that permits the subscriber to receive radio communications, radio paging, or cellular communications from others. [2009 c 401 § 1; 2008 c 271 § 2.]

**Findings—2008 c 271:** "The legislature finds that the right to privacy is a personal and fundamental right protected by Article I, section 7 of the state Constitution. The legislature also finds that, in the vast majority of cases, subscribers pay for both incoming and outgoing calls, and that subscribers purchase cell phone service with an expectation that their numbers will not be made public. Therefore, the legislature recognizes that a subscriber's cell phone number should be kept private, unless that subscriber knowingly provides their express, opt-in consent to have that number made available in a public directory." [2008 c 271 § 1.]

**19.250.030 Removal from directory—Reverse phone number search services.** (1) A subscriber may request that a directory provider or a radio communications service company remove their wireless phone number from a directory of any form at any time. A radio communications service company or a directory provider shall, at no cost to the subscriber, comply with the subscriber's request to remove their wireless phone number from a directory of any form within a reasonable period of time, not to exceed sixty days for printed directories and not to exceed thirty days for online or other directories.

(2) At the subscriber's request, a provider of a reverse phone number search service must allow a subscriber to perform a reverse phone number search free of charge to determine whether the subscriber's wireless phone number is listed in the reverse phone number search service. If the subscriber finds that his or her wireless phone number is contained in the reverse phone number search service, the subscriber may request that his or her wireless phone number be removed from the reverse phone number search service at any time. The provider of the reverse phone number search service must, at no cost to the subscriber, comply with the subscriber's request within a reasonable period of time, not to exceed thirty days. [2009 c 401 § 2; 2008 c 271 § 5.]

**Findings—2008 c 271:** See note following RCW 19.250.005.

**19.250.050 Violations—Penalties—Attorney general may enforce—Limitation of liability.** (1) Every knowing violation of RCW 19.250.010 is punishable by a fine of not less than two thousand dollars and no more than fifty thousand dollars for each violation.

(2) Including a wireless phone number in a directory without a subscriber's express, opt-in consent pursuant to RCW 19.250.020 is a violation of this chapter and is punishable by a fine of up to fifty thousand dollars unless the directory provider first conducted a reasonable investigation as required in RCW 19.250.020 and was unable to determine if the published number was a wireless phone number.

(3) Failure to remove a wireless phone number from a directory of any form within a reasonable period of time as required in RCW 19.250.030 is a violation of this chapter and is punishable by a fine of up to fifty thousand dollars.

(4) The attorney general may bring actions to enforce compliance with this section. For the first violation by any company, organization, or person under this chapter, the attorney general may notify the company, organization, or person with a letter of warning that this chapter has been violated.

(5) A telecommunications company or directory provider, or any official or employee of a telecommunications company or directory provider, is not subject to criminal or civil liability for the release of customer information as authorized by this chapter. [2009 c 401 § 4; 2008 c 271 § 7.]

**Findings—2008 c 271:** See note following RCW 19.250.005.

**19.250.060 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**19.250.070 Application of chapter—Limitations.** (1) The provision or maintenance of a subscriber's wireless phone number is not prohibited by this chapter when the number is provided or maintained by:

(a) Any law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or corporation operating under contract with, and at the direction of, one or more of these agencies, when carrying out official duties;

(b) A person carrying out a lawful order or process issued under state or federal law;

(c) A telecommunications company providing service between service areas for the provision of telephone services to the subscriber between service areas, or to third parties for the limited purpose of providing billing services;

(d) A telecommunications company to effectuate a customer's request to transfer the customer's assigned telephone number from the customer's existing provider of telecommunications services to a new provider of telecommunications services;

(e) The utilities and transportation commission pursuant to its jurisdiction and control over telecommunications companies;

(f) A sales agent to provide the subscriber's wireless phone numbers to the radio communications service company for the limited purpose of billing and customer service;

(g) A directory provider via a directory that is obtained directly from a radio communications service company and that radio communications service company has obtained the required express, opt-in consent for including in any directory the subscriber's wireless phone number as specified in RCW 19.250.010;

(h) A person via a directory where the subscriber pays a fee to have the number published for commercial purposes;

(i) A person who ported the number from listed wireline service to wireless service within the previous fifteen months;

(j) A person for uses permitted or authorized under the federal fair credit reporting act (15 U.S.C. Sec. 1681(b)), or

for uses permitted or authorized under Title V of the Gramm-Leach-Bliley Act (15 U.S.C. Sec. 6801, et seq.); and

(k) A person in comprehensive reports or public records when the public record is not altered from its original form. For purposes of this subsection, a comprehensive report means law enforcement investigations, risk and security analysis for employment or vendor evaluation, legal research and case management, legal compliance analysis, and academic research.

(2) The provision of a subscriber's wireless phone number is not prohibited by this chapter when the number is provided to any law enforcement agency, fire protection agency, public health agency, public environmental health agency, city or county emergency services planning agency, or corporation operating under contract with, and at the direction of, one or more of these agencies, when carrying out official duties. Information or records provided to a corporation pursuant to this section must be held in confidence by that corporation and by any individual employed by or associated with that corporation. Such information or records are not open to examination for any purpose not directly connected with carrying out an agency's official duties. [2009 c 401 § 3; 2008 c 271 § 9.]

**Findings—2008 c 271:** See note following RCW 19.250.005.

## Chapter 19.260 RCW ENERGY EFFICIENCY

### Sections

19.260.020	Definitions.
19.260.030	Application of chapter.
19.260.040	Minimum efficiency standards.
19.260.050	Limit on sale or installation of products required to meet or exceed standards in RCW 19.260.040.

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

(1) "Automatic commercial ice cube machine" means a factory-made assembly, not necessarily shipped in one package, consisting of a condensing unit and ice-making section operating as an integrated unit with means for making and harvesting ice cubes. It may also include integrated components for storing or dispensing ice, or both.

(2) "Bottle-type water dispenser" means a water dispenser that uses a bottle or reservoir as the source of potable water.

(3) "Commercial hot food holding cabinet" means a heated, fully enclosed compartment, with one or more solid or partial glass doors, that is designed to maintain the temperature of hot food that has been cooked in a separate appliance. "Commercial hot food holding cabinet" does not include heated glass merchandising cabinets, drawer warmers, or cook and hold appliances.

(4)(a) "Commercial refrigerators and freezers" means refrigerators, freezers, or refrigerator-freezers designed for use by commercial or institutional facilities for the purpose of storing or merchandising food products, beverages, or ice at specified temperatures that: (i) Incorporate most components involved in the vapor-compression cycle and the refrigerated compartment in a single cabinet; and (ii) may be configured

with either solid or transparent doors as a reach-in cabinet, pass-through cabinet, roll-in cabinet, or roll-through cabinet.

(b) "Commercial refrigerators and freezers" does not include: (i) Products with 85 cubic feet or more of internal volume; (ii) walk-in refrigerators or freezers; (iii) consumer products that are federally regulated pursuant to 42 U.S.C. Sec. 6291 et seq.; (iv) products without doors; or (v) freezers specifically designed for ice cream.

(5) "Compensation" means money or any other valuable thing, regardless of form, received or to be received by a person for services rendered.

(6) "Cook and hold appliance" means a multiple mode appliance intended for cooking food that may be used to hold the temperature of the food that has been cooked in the same appliance.

(7) "Department" means the department of commerce.

(8) "Drawer warmer" means an appliance that consists of one or more heated drawers and that is designed to hold hot food that has been cooked in a separate appliance at a specified temperature.

(9) "Heated glass merchandising cabinet" means an appliance with a heated cabinet constructed of glass or clear plastic doors which, with seventy percent or more clear area, is designed to display and maintain the temperature of hot food that has been cooked in a separate appliance.

(10) "Hot water dispenser" means a small electric water heater that has a measured storage volume of no greater than one gallon.

(11) "Mini-tank electric water heater" means a small electric water heater that has a measured storage volume of more than one gallon and a rated storage volume of less than twenty gallons.

(12) "Pass-through cabinet" means a commercial refrigerator or freezer with hinged or sliding doors on both the front and rear of the unit.

(13) "Point-of-use water dispenser" means a water dispenser that uses a pressurized water utility connection as the source of potable water.

(14) "Pool heater" means an appliance designed for heating nonpotable water contained at atmospheric pressure for swimming pools, spas, hot tubs, and similar applications.

(15) "Portable electric spa" means a factory-built electric spa or hot tub, supplied with equipment for heating and circulating water.

(16) "Reach-in cabinet" means a commercial refrigerator or freezer with hinged or sliding doors or lids, but does not include roll-in or roll-through cabinets or pass-through cabinets.

(17) "Residential pool pump" means a pump used to circulate and filter pool water in order to maintain clarity and sanitation.

(18)(a) "Roll-in cabinet" means a commercial refrigerator or freezer with hinged or sliding doors that allow wheeled racks of product to be rolled into the unit.

(b) "Roll-through cabinet" means a commercial refrigerator or freezer with hinged or sliding doors on two sides of the cabinet that allow wheeled racks of product to be rolled through the unit.

(19) "Showerhead" means a device through which water is discharged for a shower bath.

(20) "Showerhead tub spout diverter combination" means a group of plumbing fittings sold as a matched set and consisting of a control valve, a tub spout diverter, and a showerhead.

(21) "State-regulated incandescent reflector lamp" means a lamp that is not colored or designed for rough or vibration service applications, has an inner reflective coating on the outer bulb to direct the light, an E26 medium screw base, a rated voltage or voltage range that lies at least partially within 115 to 130 volts, and falls into one of the following categories:

(a) A bulged reflector or elliptical reflector bulb shape and which has a diameter which equals or exceeds 2.25 inches; or

(b) A reflector, parabolic aluminized reflector, or similar bulb shape and which has a diameter of 2.25 to 2.75 inches.

(22) "Tub spout diverter" means a device designed to stop the flow of water into a bathtub and to divert it so that the water discharges through a showerhead.

(23) "Wine chillers designed and sold for use by an individual" means refrigerators designed and sold for the cooling and storage of wine by an individual. [2009 c 565 § 18; 2009 c 501 § 1; 2006 c 194 § 1; 2005 c 298 § 2.]

**Reviser's note:** This section was amended by 2009 c 501 § 1 and by 2009 c 565 § 18, 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).

**19.260.030 Application of chapter.** (1) This chapter applies to the following types of new products sold, offered for sale, or installed in the state:

- (a) Automatic commercial ice cube machines;
- (b) Commercial refrigerators and freezers;
- (c) State-regulated incandescent reflector lamps;
- (d) Wine chillers designed and sold for use by an individual;
- (e) Hot water dispensers and mini-tank electric water heaters;
- (f) Bottle-type water dispensers and point-of-use water dispensers;
- (g) Pool heaters, residential pool pumps, and portable electric spas;
- (h) Tub spout diverters; and
- (i) Commercial hot food holding cabinets.

(2) This chapter applies equally to products whether they are sold, offered for sale, or installed as stand-alone products or as components of other products.

(3) This chapter does not apply to:

- (a) New products manufactured in the state and sold outside the state;
- (b) New products manufactured outside the state and sold at wholesale inside the state for final retail sale and installation outside the state;
- (c) Products installed in mobile manufactured homes at the time of construction; or
- (d) Products designed expressly for installation and use in recreational vehicles. [2009 c 501 § 2; 2006 c 194 § 2; 2005 c 298 § 3.]

**19.260.040 Minimum efficiency standards.** The minimum efficiency standards specified in this section apply to the types of new products set forth in RCW 19.260.030.

(1)(a) Automatic commercial ice cube machines must have daily energy use and daily water use no greater than the applicable values in the following table:

Equipment type	Type of cooling	Harvest rate (lbs. ice/24 hrs.)	Maximum energy use (kWh/100 lbs.)	Maximum condenser water use (gallons/100 lbs. ice)
Ice-making head	water	<500	7.80 - .0055H	200 - .022H
		>=500<1436	5.58 - .0011H	200 - .022H
		>=1436	4.0	200 - .022H
Ice-making head	air	450	10.26 - .0086H	Not applicable
		>=450	6.89 - .0011H	Not applicable
Remote condensing but not remote compressor	air	<1000	8.85 - .0038	Not applicable
		>=1000	5.10	Not applicable
Remote condensing and remote compressor	air	<934	8.85 - .0038H	Not applicable
		>=934	5.3	Not applicable
Self-contained models	water	<200	11.40 - .0190H	191 - .0315H
		>=200	7.60	191 - .0315H
Self-contained models	air	<175	18.0 - .0469H	Not applicable
		>=175	9.80	Not applicable

Where H= harvest rate in pounds per twenty-four hours which must be reported within 5% of the tested value. "Maximum water use" applies only to water used for the condenser.

(b) For purposes of this section, automatic commercial ice cube machines shall be tested in accordance with the ARI 810-2003 test method as published by the air-conditioning and refrigeration institute. Ice- making heads include all automatic commercial ice cube machines that are not split system ice makers or self-contained models as defined in ARI 810-2003.

(2)(a) Commercial refrigerators and freezers must meet the applicable requirements listed in the following table:

Equipment Type	Doors	Maximum Daily Energy Consumption (kWh)
Reach-in cabinets, pass-through cabinets, and roll-in or roll-through cabinets that are refrigerators	Solid	0.10V+ 2.04
	Transparent	0.12V+ 3.34
Reach-in cabinets, pass-through cabinets, and roll-in or roll-through cabinets that are "pull-down" refrigerators	Transparent	.126V+ 3.51
Reach-in cabinets, pass-through cabinets, and roll-in or roll-through cabinets that are freezers	Solid	0.40V+ 1.38
	Transparent	0.75V+ 4.10
Reach-in cabinets that are refrigerator-freezers with an AV of 5.19 or higher	Solid	0.27AV - 0.71

kWh= kilowatt hours

V= total volume (ft<sup>3</sup>)

AV= adjusted volume= [1.63 x freezer volume (ft<sup>3</sup>)]+ refrigerator volume (ft<sup>3</sup>)

(b) For purposes of this section, "pulldown" designates products designed to take a fully stocked refrigerator with beverages at 90 degrees Fahrenheit and cool those beverages to a stable temperature of 38 degrees Fahrenheit within 12 hours or less. Daily energy consumption shall be measured in accordance with the American national standards institute/American society of heating, refrigerating and air-conditioning engineers test method 117-2002, except that the back-loading doors of pass-through and roll-through refrigerators and freezers must remain closed throughout the test, and except that the controls of all appliances must be adjusted to obtain the following product temperatures.

Product or compartment type	Integrated average product temperature in degrees Fahrenheit
Refrigerator	38± 2
Freezer	0± 2

(3)(a) The lamp electrical power input of state-regulated incandescent reflector lamps shall meet the minimum average lamp efficacy requirements for federally regulated incandescent reflector lamps specified in 42 U.S.C. Sec. 6295(i)(1)(A)-(B).

(b) The following types of incandescent lamps are exempt from these requirements:

- (i) Lamps rated at fifty watts or less of the following types: BR 30, ER 30, BR 40, and ER 40;
- (ii) Lamps rated at sixty-five watts of the following types: BR 30, BR 40, and ER 40; and
- (iii) R 20 lamps of forty-five watts or less.

(4)(a) Wine chillers designed and sold for use by an individual must meet requirements specified in the California Code of Regulations, Title 20, section 1605.3 in effect as of July 26, 2009.

(b) Wine chillers designed and sold for use by an individual shall be tested in accordance with the method specified in the California Code of Regulations, Title 20, section 1604 in effect as of July 26, 2009.

(5)(a) The standby energy consumption of bottle-type water dispensers, and point-of-use water dispensers, dispensing both hot and cold water, manufactured on or after January 1, 2010, shall not exceed 1.2 kWh/day.

(b) The test method for water dispensers shall be the environmental protection agency energy star program requirements for bottled water coolers version 1.1.

(6)(a) The standby energy consumption of hot water dispensers and mini-tank electric water heaters manufactured on or after January 1, 2010, shall be not greater than 35 watts.

(b) This subsection does not apply to any water heater:

- (i) That is within the scope of 42 U.S.C. Sec. 6292(a)(4) or 6311(1);
- (ii) That has a rated storage volume of less than 20 gallons; and
- (iii) For which there is no federal test method applicable to that type of water heater.

(c) Hot water dispensers shall be tested in accordance with the method specified in the California Code of Regulations, Title 20, section 1604 in effect as of July 26, 2009.

(d) Mini-tank electric water heaters shall be tested in accordance with the method specified in the California Code of Regulations, Title 20, section 1604 in effect as of July 26, 2009.

(7) The following standards are established for pool heaters, residential pool pumps, and portable electric spas:

(a) Natural gas pool heaters shall not be equipped with constant burning pilots.

(b) Residential pool pump motors manufactured on or after January 1, 2010, must meet requirements specified in the California Code of Regulations, Title 20, section 1605.3 in effect as of July 26, 2009.

(c) Portable electric spas manufactured on or after January 1, 2010, must meet requirements specified in the California Code of Regulations, Title 20, section 1605.3 in effect as of July 26, 2009.

(d) Portable electric spas must be tested in accordance with the method specified in the California Code of Regulations, Title 20, section 1604 in effect as of July 26, 2009.

(8)(a) The leakage rate of tub spout diverters shall be no greater than the applicable requirements shown in the following table:

Appliance	Testing Conditions	Maximum Leakage Rate
		Effective January 1, 2009
Tub spout diverters	When new	0.01 gpm
	After 15,000 cycles of diverting	0.05 gpm

(b) Showerhead tub spout diverter combinations shall meet both the federal standard for showerheads established pursuant to 42 U.S.C. Sec. 6291 et seq. and the standard for tub spout diverters specified in this section.

(9)(a) The idle energy rate of commercial hot food holding cabinets manufactured on or after January 1, 2010, shall be no greater than 40 watts per cubic foot of measured interior volume.

(b) The idle energy rate of commercial hot food holding cabinets shall be determined using ANSI/ASTM F2140-01 standard test method for the performance of hot food holding cabinets (test for idle energy rate dry test). Commercial hot food holding cabinet interior volume shall be calculated using straight line segments following the gross interior dimensions of the appliance and using the following equation: Interior height x interior width x interior depth. Interior volume shall not account for racks, air plenums, or other interior parts. [2009 c 501 § 3; 2006 c 194 § 3; 2005 c 298 § 4.]

**19.260.050 Limit on sale or installation of products required to meet or exceed standards in RCW 19.260.040.**

(1) No new commercial refrigerator or freezer or state-regulated incandescent reflector lamp manufactured on or after January 1, 2007, may be sold or offered for sale in the state unless the efficiency of the new product meets or exceeds the

efficiency standards set forth in RCW 19.260.040. No new automatic commercial ice cube machine manufactured on or after January 1, 2008, may be sold or offered for sale in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040.

(2) On or after January 1, 2008, no new commercial refrigerator or freezer or state-regulated incandescent reflector lamp manufactured on or after January 1, 2007, may be installed for compensation in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040. On or after January 1, 2009, no new automatic commercial ice cube machine manufactured on or after January 1, 2008, may be installed for compensation in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040.

(3) Standards for state-regulated incandescent reflector lamps are effective on the dates specified in subsections (1) and (2) of this section.

(4) The following products, if manufactured on or after January 1, 2010, may not be sold or offered in the state unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040:

(a) Wine chillers designed and sold for use by an individual;

(b) Hot water dispensers and mini-tank electric water heaters;

(c) Bottle-type water dispensers and point-of-use water dispensers;

(d) Pool heaters, residential pool pumps, and portable electric spas;

(e) Tub spout diverters; and

(f) Commercial hot food holding cabinets.

(5) The following products, if manufactured on or after January 1, 2010, may not be installed for compensation in the state on or after January 1, 2011, unless the efficiency of the new product meets or exceeds the efficiency standards set forth in RCW 19.260.040:

(a) Wine chillers designed and sold for use by an individual;

(b) Hot water dispensers and mini-tank electric water heaters;

(c) Bottle-type water dispensers and point-of-use water dispensers;

(d) Pool heaters, residential pool pumps, and portable electric spas;

(e) Tub spout diverters; and

(f) Commercial hot food holding cabinets. [2009 c 501 § 4; 2006 c 194 § 4; 2005 c 298 § 5.]

(3) "Consumer-owned utility" includes a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, a mutual corporation or association formed under chapter 24.06 RCW, a port district formed under Title 53 RCW, or a water-sewer district formed under Title 57 RCW, that is engaged in the business of distributing electricity to one or more retail electric customers in the state.

(4) "Department" means the department of commerce.

(5) "Electric utility" means a consumer-owned or investor-owned utility.

(6) "Full requirements customer" means an electric utility that relies on the Bonneville power administration for all power needed to supply its total load requirement other than that served by nondispatchable generating resources totaling no more than six megawatts or renewable resources.

(7) "Governing body" means the elected board of directors, city council, commissioners, or board of any consumer-owned utility.

(8) "High efficiency cogeneration" means the sequential production of electricity and useful thermal energy from a common fuel source, where, under normal operating conditions, the facility has a useful thermal energy output of no less than thirty-three percent of the total energy output.

(9) "Integrated resource plan" means an analysis describing the mix of generating resources and conservation and efficiency resources that will meet current and projected needs at the lowest reasonable cost to the utility and its ratepayers and that complies with the requirements specified in RCW 19.280.030(1).

(10) "Investor-owned utility" means a corporation owned by investors that meets the definition in RCW 80.04.010 and is engaged in distributing electricity to more than one retail electric customer in the state.

(11) "Lowest reasonable cost" means the lowest cost mix of generating resources and conservation and efficiency resources determined through a detailed and consistent analysis of a wide range of commercially available resources. At a minimum, this analysis must consider resource cost, market-volatility risks, demand-side resource uncertainties, resource dispatchability, resource effect on system operation, the risks imposed on the utility and its ratepayers, public policies regarding resource preference adopted by Washington state or the federal government, and the cost of risks associated with environmental effects including emissions of carbon dioxide.

(12) "Plan" means either an "integrated resource plan" or a "resource plan."

(13) "Renewable resources" means electricity generation facilities fueled by: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) biomass energy utilizing animal waste, solid organic fuels from wood, forest, or field residues or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (g) byproducts of pulping or wood manufacturing processes, including but not limited to bark, wood chips, sawdust, and lignin in spent pulping liquors; (h) ocean thermal, wave, or tidal power; or (i) gas from sewage treatment facilities.

## Chapter 19.280 RCW

### ELECTRIC UTILITY RESOURCE PLANS

#### Sections

19.280.020 Definitions.

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

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

(2) "Conservation and efficiency resources" means any reduction in electric power consumption that results from increases in the efficiency of energy use, production, transmission, or distribution.

(14) "Resource plan" means an assessment that estimates electricity loads and resources over a defined period of time and complies with the requirements in RCW 19.280.030(2). [2009 c 565 § 19; 2006 c 195 § 2.]

### Chapter 19.285 RCW ENERGY INDEPENDENCE ACT

#### Sections

19.285.030 Definitions.

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

(1) "Attorney general" means the Washington state office of the attorney general.

(2) "Auditor" means: (a) The Washington state auditor's office or its designee for qualifying utilities under its jurisdiction that are not investor-owned utilities; or (b) an independent auditor selected by a qualifying utility that is not under the jurisdiction of the state auditor and is not an investor-owned utility.

(3) "Commission" means the Washington state utilities and transportation commission.

(4) "Conservation" means any reduction in electric power consumption resulting from increases in the efficiency of energy use, production, or distribution.

(5) "Cost-effective" has the same meaning as defined in RCW 80.52.030.

(6) "Council" means the Washington state apprenticeship and training council within the department of labor and industries.

(7) "Customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(8) "Department" means the department of commerce or its successor.

(9) "Distributed generation" means an eligible renewable resource where the generation facility or any integrated cluster of such facilities has a generating capacity of not more than five megawatts.

(10) "Eligible renewable resource" means:

(a) Electricity from a generation facility powered by a renewable resource other than fresh water that commences operation after March 31, 1999, where: (i) The facility is located in the Pacific Northwest; or (ii) the electricity from the facility is delivered into Washington state on a real-time basis without shaping, storage, or integration services; or

(b) Incremental electricity produced as a result of efficiency improvements completed after March 31, 1999, to hydroelectric generation projects owned by a qualifying utility and located in the Pacific Northwest or to hydroelectric generation in irrigation pipes and canals located in the Pacific Northwest, where the additional generation in either case does not result in new water diversions or impoundments.

(11) "Investor-owned utility" has the same meaning as defined in RCW 19.29A.010.

(12) "Load" means the amount of kilowatt-hours of electricity delivered in the most recently completed year by a qualifying utility to its Washington retail customers.

(13) "Nonpower attributes" means all environmentally related characteristics, exclusive of energy, capacity reliability, and other electrical power service attributes, that are associated with the generation of electricity from a renewable resource, including but not limited to the facility's fuel type, geographic location, vintage, qualification as an eligible renewable resource, and avoided emissions of pollutants to the air, soil, or water, and avoided emissions of carbon dioxide and other greenhouse gases.

(14) "Pacific Northwest" has the same meaning as defined for the Bonneville power administration in section 3 of the Pacific Northwest electric power planning and conservation act (94 Stat. 2698; 16 U.S.C. Sec. 839a).

(15) "Public facility" has the same meaning as defined in RCW 39.35C.010.

(16) "Qualifying utility" means an electric utility, as the term "electric utility" is defined in RCW 19.29A.010, that serves more than twenty-five thousand customers in the state of Washington. The number of customers served may be based on data reported by a utility in form 861, "annual electric utility report," filed with the energy information administration, United States department of energy.

(17) "Renewable energy credit" means a tradable certificate of proof of at least one megawatt-hour of an eligible renewable resource where the generation facility is not powered by fresh water, the certificate includes all of the nonpower attributes associated with that one megawatt-hour of electricity, and the certificate is verified by a renewable energy credit tracking system selected by the department.

(18) "Renewable resource" means: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; (f) wave, ocean, or tidal power; (g) gas from sewage treatment facilities; (h) biodiesel fuel as defined in RCW 82.29A.135 that is not derived from crops raised on land cleared from old growth or first-growth forests where the clearing occurred after December 7, 2006; and (i) biomass energy based on animal waste or solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include (i) wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; (ii) black liquor byproduct from paper production; (iii) wood from old growth forests; or (iv) municipal solid waste.

(19) "Rule" means rules adopted by an agency or other entity of Washington state government to carry out the intent and purposes of this chapter.

(20) "Year" means the twelve-month period commencing January 1st and ending December 31st. [2009 c 565 § 20; 2007 c 1 § 3 (Initiative Measure No. 937, approved November 7, 2006).]

### Chapter 19.295 RCW ESTATE DISTRIBUTION DOCUMENTS

#### Sections

19.295.005 Findings—Intent.

19.295.010 Definitions.

19.295.020 Marketing of estate distribution documents—Exemptions from chapter.

**19.295.005 Findings—Intent.** The legislature finds the practice of using "living trusts" as a marketing tool by persons who are not authorized to practice law, who are not acting directly under the supervision of a person authorized to practice law, who are not a financial institution, or who are not properly credentialed and regulated professionals as specified under RCW 19.295.020 (5) and (6) for purposes of gathering information for the preparation of an estate distribution document to be a deceptive means of obtaining personal asset information and of developing and generating leads for sales to senior citizens. The legislature further finds that this practice endangers the financial security of consumers and may frustrate their estate planning objectives. Therefore, the legislature intends to prohibit the marketing of services related to preparation of estate distribution documents by persons who are not authorized to practice law or who are not a financial institution.

This chapter is not intended to limit consumers from obtaining legitimate estate planning documents, including "living trusts," from those authorized to practice law; but is intended to prohibit persons not licensed to engage in the practice of law from the unscrupulous practice of marketing legal documents as a means of targeting senior citizens for financial exploitation. [2009 c 113 § 1; 2007 c 67 § 1.]

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

(1) "Estate distribution document" means any one or more of the following documents, instruments, or writings prepared, or intended to be prepared, for a specific person or as marketing materials for distribution to any person, other than documents, instruments, writings, or marketing materials relating to a payable on death account established under RCW 30.22.040(9) or a transfer on death account established under chapter 21.35 RCW:

(a) Last will and testament or any writing, however designated, that is intended to have the same legal effect as a last will and testament, and any codicil thereto;

(b) Revocable and irrevocable inter vivos trusts and any instrument which purports to transfer any of the trustor's current and/or future interest in real or personal property thereto;

(c) Agreement that fixes the terms and provisions of the sale of a decedent's interest in any real or personal property at or following the date of the decedent's death.

(2) "Financial institution" means a bank holding company registered under federal law, a bank, trust company, mutual savings bank, savings bank, savings and loan association or credit union organized under state or federal law, or any affiliate, subsidiary, officer, or employee of a financial institution.

(3) "Gathering information for the preparation of an estate distribution document" means collecting data, facts, figures, records, and other particulars about a specific person or persons for the preparation of an estate distribution document, but does not include the collection of such information for clients in the customary and usual course of financial, tax, and associated planning by a certificate holder or licensee regulated under chapter 18.04 RCW.

(4) "Market" or "marketing" includes every offer, contract, or agreement to prepare or gather information for the

preparation of, or to provide, individualized advice about an estate distribution document.

(5) "Person" means any natural person, corporation, partnership, limited liability company, firm, or association. [2009 c 113 § 2; 2008 c 161 § 1; 2007 c 67 § 2.]

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

**19.295.020 Marketing of estate distribution documents—Exemptions from chapter.** (1) Except as provided in subsection (2) of this section, it is unlawful for a person to market estate distribution documents, directly or indirectly, in or from this state unless the person is authorized to practice law in this state.

(2) A person employed by someone authorized to practice law in this state may gather information for, or assist in the preparation of, estate distribution documents as long as that person does not provide any legal advice.

(3) This chapter applies to any person who markets estate distribution documents in or from this state. Marketing occurs in this state, whether or not either party is then present in this state, if the offer originates in this state or is directed into this state or is received or accepted in this state.

(4) This chapter does not apply to any financial institution.

(5) This chapter does not apply to a certificate holder or licensee regulated under chapter 18.04 RCW for purposes of gathering information for the preparation of an estate distribution document.

(6) This chapter does not apply to an individual who is an enrolled agent enrolled to practice before the internal revenue service pursuant to Treasury Department Circular No. 230 for purposes of gathering information for the preparation of an estate distribution document. [2009 c 113 § 3; 2007 c 67 § 3.]

## Chapter 19.300 RCW

### ELECTRONIC COMMUNICATION DEVICES

#### Sections

19.300.010 Definitions.

19.300.030 Prohibited practices—Exceptions—Application of consumer protection act.

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

(1) "Affiliate" means any company that controls, is controlled by, or is under common control with another company. Affiliate may also include a supplier, distributor, business partner, or any entity that effects, administers, or enforces a government or business transaction.

(2) "Identification device" means an item that uses radio frequency identification technology or facial recognition technology.

(3) "Issued" means either:

(a) To have provided the identification device to a person; or

(b) To have placed, requested the placement, or be the intended beneficiary of the placement of, the identification device in a product, product packaging, or product inventory mechanism.



(4) "Person" means a natural person who resides in Washington.

(5) "Personal information" has the same meaning as in RCW 19.255.010.

(6) "Radio frequency identification" means the use of electromagnetic radiating waves or reactive field coupling in the radio frequency portion of the spectrum to communicate to or from a tag through a variety of modulation and encoding schemes to uniquely read the identity of a radio frequency tag or other data stored on it.

(7) "Remotely reading" means that no physical contact is required between the identification device and the mechanical device that captures data.

(8) "Unique personal identifier number" means a randomly assigned string of numbers or symbols that is encoded on the identification device and is intended to identify the identification device. [2009 c 66 § 1; 2008 c 138 § 2.]

**Severability—2009 c 66:** "If any provision of this act is found to be in conflict with federal law or regulations, the conflicting provision of this act is declared to be inoperative solely to the extent of the conflict, and that finding or determination shall not affect the operation of the remainder of this act." [2009 c 66 § 4.]

**Findings—2008 c 138:** "The legislature finds that Washington state, from its inception, has recognized the importance of maintaining individual privacy. The legislature further finds that protecting the confidentiality and privacy of an individual's personal information, especially when collected from the individual without his or her knowledge or consent, is critical to maintaining the safety and well-being of its citizens. The legislature recognizes that inclusion of identification devices that broadcast data or enable data or information to be collected or scanned either secretly or remotely, or both, may greatly magnify the potential risk to individual privacy, safety, and economic well-being that can occur from unauthorized interception and use of personal information. The legislature further recognizes that these types of technologies, whether offered by the private sector or issued by the government, can be pervasive." [2008 c 138 § 1.]

**Severability—2008 c 138:** "If any provision of this act is found to be in conflict with federal law or regulations, the conflicting provision of this act is declared to be inoperative solely to the extent of the conflict, and that finding or determination shall not affect the operation of the remainder of this act." [2008 c 138 § 4.]

**19.300.030 Prohibited practices—Exceptions—Application of consumer protection act.** (1) Except as provided in subsection (2) of this section, a governmental or business entity may not remotely read an identification device using radio frequency identification technology for commercial purposes, unless that governmental or business entity, or one of their affiliates, is the same governmental or business entity that issued the identification device.

(2) This section does not apply to the following:

(a) Remotely reading or storing data from an identification device as part of a commercial transaction initiated by the person in possession of the identification device;

(b) Remotely reading or storing data from an identification device for triage or medical care during a disaster and immediate hospitalization or immediate outpatient care directly relating to a disaster;

(c) Remotely reading or storing data from an identification device by an emergency responder or health care professional for reasons relating to the health or safety of that person;

(d) Remotely reading or storing data from a person's identification device issued to a patient for emergency purposes;

(e) Remotely reading or storing data from an identification device of a person pursuant to court-ordered electronic monitoring;

(f) Remotely reading or storing data from an identification device of a person who is incarcerated in a correctional institution, juvenile detention facility, or mental health facility;

(g) Remotely reading or storing data from an identification device by law enforcement or government personnel who need to read a lost identification device when the owner is unavailable for notice, knowledge, or consent, or those parties specifically authorized by law enforcement or government personnel for the limited purpose of reading a lost identification device when the owner is unavailable for notice, knowledge, or consent;

(h) Remotely reading or storing data from an identification device by law enforcement personnel who need to read a person's identification device after an accident in which the person is unavailable for notice, knowledge, or consent;

(i) Remotely reading or storing data from an identification device by a person or entity that in the course of operating its own identification device system collects data from another identification device, provided that the inadvertently received data comports with all of the following:

(i) The data is not disclosed to any other party;

(ii) The data is not used for any purpose; and

(iii) The data is not stored or is promptly destroyed;

(j) Remotely reading or storing data from a person's identification device in the course of an act of good faith security research, experimentation, or scientific inquiry including, but not limited to, activities useful in identifying and analyzing security flaws and vulnerabilities;

(k) Remotely reading or storing data from an identification device by law enforcement personnel who need to scan a person's identification device pursuant to a search warrant; and

(l) Remotely reading or storing data from an identification device by a business if it is necessary to complete a transaction.

(3) The legislature finds that the practices covered by this section are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2009 c 66 § 2.]

**Severability—2009 c 66:** See note following RCW 19.300.010.

## Chapter 19.310 RCW EXCHANGE FACILITATORS

### Sections

19.310.005	Finding—Purpose.
19.310.010	Definitions.
19.310.020	Actions for collection of compensation—Requirements.
19.310.030	Notice of change in control—Exceptions.
19.310.040	Duties of exchange facilitator—Fidelity bonds.
19.310.050	Claims on fidelity bonds—Remedies.
19.310.060	Duties of exchange facilitator—Errors and omissions policies.
19.310.070	Claims on errors and omissions policies—Remedies.

19.310.080	Exchange funds—Prudent investor standard—Violations— Not subject to execution or attachment.
19.310.090	Administration of places of business—Direct management.
19.310.100	Prohibited practices.
19.310.110	Deposit of client funds—Written notice.
19.310.120	Violations—Class B felony.
19.310.130	Violations—Misdemeanor.
19.310.140	Report of exchange facilitation activity. ( <i>Expires June 1, 2010.</i> )
19.310.150	Violation of chapter—Civil suit.
19.310.160	Application of consumer protection act.
19.310.900	Application of chapter 21.20 RCW.

**19.310.005 Finding—Purpose.** The legislature finds that there are no statutory requirements pertaining to persons who facilitate like-kind exchanges pursuant to section 1031 of the internal revenue code and associated treasury regulations. The purpose of this chapter is to create a statutory framework that provides some consumer protections to those who entrust money or property to persons acting as exchange facilitators. [2009 c 70 § 1.]

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

(1) A person or entity "affiliated" with a specific person or entity, means a person or entity who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, the person or entity specified.

(2) "Client" means the taxpayer with whom the exchange facilitator enters into an agreement as described in subsection (3)(a)(i) of this section.

(3)(a) "Exchange facilitator" means a person who:

(i)(A) Facilitates, for a fee, an exchange of like-kind property by entering into an agreement with a taxpayer by which the exchange facilitator acquires from the taxpayer the contractual rights to sell the taxpayer's relinquished property located in this state and transfer a replacement property to the taxpayer as a qualified intermediary, as defined under treasury regulation section 1.1031(k)-1(g)(4); (B) enters into an agreement with a taxpayer to take title to a property in this state as an exchange accommodation titleholder, as defined in internal revenue service revenue procedure 2000-37; or (C) enters into an agreement with a taxpayer to act as a qualified trustee or qualified escrow holder, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3); or

(ii) Maintains an office in this state for the purpose of soliciting business as an exchange facilitator.

(b) "Exchange facilitator" does not include:

(i) A taxpayer or a disqualified person, as defined under treasury regulation section 1.1031(k)-1(k), seeking to qualify for the nonrecognition provisions of section 1031 of the internal revenue code of 1986, as amended;

(ii) A financial institution that is (A) acting as a depository for exchange funds and is not facilitating an exchange or (B) acting solely as a qualified escrow holder or qualified trustee, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), and is not facilitating an exchange;

(iii) A title insurance company, underwritten title company, or escrow company that is acting solely as a qualified escrow holder or qualified trustee, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), and is not facilitating an exchange;

(iv) A person that advertises for and teaches seminars or classes, or otherwise makes a presentation, to attorneys, accountants, real estate professionals, tax professionals, or other professionals, when the primary purpose is to teach the professionals about tax-deferred exchanges or to train them to act as exchange facilitators;

(v) A qualified intermediary, as defined under treasury regulation section 1.1031(k)-1(g)(4), who holds exchange funds from the disposition of relinquished property located outside of this state; or

(vi) An affiliated entity that is used by the exchange facilitator to facilitate exchanges or to take title to property in this state as an exchange accommodation titleholder.

(c) For the purposes of this subsection, "fee" means compensation of any nature, direct or indirect, monetary or in kind, that is received by a person or related person, as defined in section 267(b) or 707(b) of the internal revenue code, for any services relating to or incidental to the exchange of like-kind property.

(4) "Financial institution" means a bank, credit union, savings and loan association, savings bank, or trust company chartered under the laws of this state or the United States whose accounts are insured by the full faith and credit of the United States, the federal deposit insurance corporation, the national credit union share insurance fund, or other similar or successor programs.

(5) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, joint stock company, trust, or any other form of a legal entity, and includes the agents and employees of that person.

(6) "Prudent investor standard" means the standard for investment as described under RCW 11.100.020. [2009 c 70 § 2.]

**19.310.020 Actions for collection of compensation—Requirements.** An exchange facilitator may not bring a suit or action for the collection of compensation in connection with duties performed as an exchange facilitator unless the exchange facilitator alleges and proves that he or she was fully in compliance with this chapter at the time of the offering to perform or performing an act or service regulated under this chapter. [2009 c 70 § 3.]

**19.310.030 Notice of change in control—Exceptions.** (1) Except as provided under subsection (2) of this section, a person who engages in business as an exchange facilitator shall notify all existing exchange clients whose relinquished property is located in this state, or whose replacement property held under a qualified exchange accommodation agreement is located in this state, of any change in control of the exchange facilitator. Notification must be provided within ten business days of the effective date of the change in control by hand delivery, facsimile, electronic mail, overnight mail, or first-class mail, and must be posted on the exchange facilitator's internet web site for at least ninety days following the change in control. The notification must set forth the name, address, and other contact information of the transferees.

(2) If an exchange facilitator is a publicly traded company or wholly owned subsidiary of the publicly traded com-

pany and remains a publicly traded company or wholly owned subsidiary of the publicly traded company after a change in control, the publicly traded company or wholly owned subsidiary of the publicly traded company is not required to notify its existing clients of the change in control.

(3) For purposes of this section, "change in control" means any transfer of more than fifty percent of the assets or ownership interests, directly or indirectly, of the exchange facilitator. [2009 c 70 § 4.]

**19.310.040 Duties of exchange facilitator—Fidelity bonds.** (1) A person who engages in business as an exchange facilitator shall:

(a) Maintain a fidelity bond or bonds in an amount of not less than one million dollars executed by an insurer authorized to do business in this state; or

(b) Deposit an amount of cash or securities or irrevocable letters of credit in an amount of not less than one million dollars into an interest-bearing deposit account or a money market account with the financial institution of the exchange facilitator's choice. Interest on that amount accrues to the exchange facilitator; or

(c) Deposit all exchange funds in a qualified escrow account or qualified trust, as both terms are defined under treasury regulation section 1.1031(k)-1(g)(3), with a financial institution and provide that a withdrawal from that escrow account or trust requires the exchange facilitator's and the client's written authorization.

(2) A person who engages in business as an exchange facilitator may maintain a bond or bonds or deposit an amount of cash or securities or irrevocable letters of credit in excess of the minimum required amounts under this section.

(3) The requirements under subsection (1)(a) of this section are satisfied if the person engaging in business as an exchange facilitator is listed as a named insured on one or more fidelity bonds that have an aggregate total of at least one million dollars.

(4) An exchange facilitator must provide evidence to each client that the requirements of this section are satisfied before entering into an exchange agreement.

(5) Upon request of a current or prospective client, or the attorney general under chapter 19.86 RCW, the exchange facilitator must offer evidence proving that the requirements of this section are satisfied at the time of the request. [2009 c 70 § 5.]

**19.310.050 Claims on fidelity bonds—Remedies.** (1) A person who claims to have sustained damages by reason of the fraudulent or dishonest acts of an exchange facilitator or an exchange facilitator's employee may file a claim on the fidelity bond or approved alternative described in RCW 19.310.040 to recover the damages.

(2) The remedies provided under this section are cumulative and nonexclusive and do not affect any other remedy available at law. [2009 c 70 § 6.]

**19.310.060 Duties of exchange facilitator—Errors and omissions policies.** (1) A person who engages in business as an exchange facilitator shall:

(a) Maintain a policy of errors and omissions insurance in an amount of not less than two hundred fifty thousand dollars executed by an insurer authorized to do business in this state; or

(b) Deposit an amount of cash or securities or irrevocable letters of credit in an amount of not less than two hundred fifty thousand dollars into an interest-bearing deposit account or a money market account with the financial institution of the exchange facilitator's choice. Interest on that amount accrues to the exchange facilitator.

(2) A person who engages in business as an exchange facilitator may maintain insurance or deposit an amount of cash or securities or irrevocable letters of credit in excess of the minimum required amounts under this section.

(3) The requirements under subsection (1)(a) of this section are satisfied if the person engaging in business as an exchange facilitator is listed as a named insured on one or more errors and omissions policies that have an aggregate total of at least two hundred fifty thousand dollars.

(4) An exchange facilitator must provide evidence to each client that the requirements of this section are satisfied before entering into an exchange agreement.

(5) Upon request of a current or prospective client, or the attorney general under chapter 19.86 RCW, the exchange facilitator must offer evidence proving that the requirements of this section are satisfied at the time of the request. [2009 c 70 § 7.]

**19.310.070 Claims on errors and omissions policies—Remedies.** (1) A person who claims to have sustained damages by reason of an unintentional error or omission of an exchange facilitator or an exchange facilitator's employee may file a claim on the errors and omissions insurance policy or approved alternative described in RCW 19.310.060 to recover the damages.

(2) The remedies provided under this section are cumulative and nonexclusive and do not affect any other remedy available at law. [2009 c 70 § 8.]

**19.310.080 Exchange funds—Prudent investor standard—Violations—Not subject to execution or attachment.** (1) A person who engages in business as an exchange facilitator shall act as a custodian for all exchange funds, including money, property, other consideration, or instruments received by the exchange facilitator from, or on behalf of, the client, except funds received as the exchange facilitator's compensation. The exchange facilitator shall hold the exchange funds in a manner that provides liquidity and preserves principal, and if invested, shall invest those exchange funds in investments that meet a prudent investor standard and satisfy investment goals of liquidity and preservation of principal. For purposes of this section, a violation of the prudent investor standard includes, but is not limited to, a transaction in which:

(a) Exchange funds are knowingly commingled by the exchange facilitator with the operating accounts of the exchange facilitator, except that the exchange facilitator's fee may be deposited as part of the exchange transaction into the same account as that containing exchange funds, in which

event the exchange facilitator must promptly withdraw the fee;

(b) Exchange funds are loaned or otherwise transferred to any person or entity, other than a financial institution, that is affiliated with or related to the exchange facilitator, except that this subsection (1)(b) does not apply to the transfer of funds from an exchange facilitator to an exchange accommodation titleholder in accordance with an exchange contract;

(c) Exchange funds are invested in a manner that does not provide sufficient liquidity to meet the exchange facilitator's contractual obligations to its clients, unless insufficient liquidity occurs as the result of: (i) Events beyond the prediction or control of the exchange facilitator including, but not limited to, failure of a financial institution; or (ii) an investment specifically requested by the client; or

(d) Exchange funds are invested in a manner that does not preserve the principal of the exchange funds, unless loss of principal occurs as the result of: (i) Events beyond the prediction or control of the exchange facilitator; or (ii) an investment specifically requested by the client.

(2) Exchange funds are not subject to execution or attachment on any claim against the exchange facilitator. [2009 c 70 § 9.]

**19.310.090 Administration of places of business—Direct management.** A person who engages in business as an exchange facilitator must administer each of his, her, or its places of business under the direct management of an officer or an employee who is either:

(1) An attorney or certified public accountant admitted to practice in any state or territory of the United States; or

(2) A person who has passed a test specific to the subject matter of exchange facilitation. [2009 c 70 § 10.]

**19.310.100 Prohibited practices.** A person who engages in business as an exchange facilitator shall not, with respect to a like-kind exchange transaction, knowingly or with criminal negligence:

(1) Make a false, deceptive, or misleading material representation, directly or indirectly, concerning a like-kind transaction;

(2) Make a false, deceptive, or misleading material representation, directly or indirectly, in advertising or by any other means, concerning a like-kind transaction;

(3) Engage in any unfair or deceptive practice toward any person;

(4) Obtain property by fraud or misrepresentation;

(5) Fail to account for any moneys or property belonging to others that may be in the possession or under the control of the exchange facilitator;

(6) Commingle funds held for a client in any account that holds the exchange facilitator's own funds, except as provided in RCW 19.310.080(1)(a);

(7) Loan or otherwise transfer exchange funds to any person or entity, other than a financial institution, that is affiliated with or related to the exchange facilitator, except for the transfer of funds from an exchange facilitator to an exchange accommodation title holder in accordance with an exchange contract;

(8) Keep, or cause to be kept, any money in any bank, credit union, or other financial institution under a name designating the money as belonging to the client of any exchange facilitator, unless that money belongs to that client and was entrusted to the exchange facilitator by that client;

(9) Fail to fulfill its contractual duties to the client to deliver property or funds to the taxpayer in a material way unless such a failure is due to circumstances beyond the control of the exchange facilitator;

(10) Commit, including commission by its owners, officers, directors, employees, agents, or independent contractors, any crime involving fraud, misrepresentation, deceit, embezzlement, misappropriation of funds, robbery, or other theft of property;

(11) Fail to make disclosures required by any applicable state law; or

(12) Make any false statement or omission of material fact in connection with any reports filed by an exchange facilitator or in connection with any investigation conducted by the department of financial institutions. [2009 c 70 § 11.]

**19.310.110 Deposit of client funds—Written notice.**

(1) An exchange facilitator must deposit all client funds in:

(a) For accounts with a value of five hundred thousand dollars or more, a separately identified account, as defined in treasury regulation section 1.468B-6(c)(ii), for the particular client or client's matter, and the client must receive all the earnings credited to the separately identified account; or

(b) For accounts with a value less than five hundred thousand dollars, (i) a pooled interest-bearing trust account if the client agrees to pooling in writing; or (ii) if the client does not agree to pooling, in a separately identified account, as defined in treasury regulation section 1.468B-6(c)(ii).

(2) An exchange facilitator must provide the client with written notification of how the exchange proceeds have been invested or deposited. [2009 c 70 § 12.]

**19.310.120 Violations—Class B felony.** A person who engages in business as an exchange facilitator and who violates RCW 19.310.100 (1) through (8) is guilty of a class B felony under chapter 9A.20 RCW. [2009 c 70 § 13.]

**19.310.130 Violations—Misdemeanor.** A person who engages in business as an exchange facilitator and who violates RCW 19.310.100 (11) or (12) is guilty of a misdemeanor under chapter 9A.20 RCW. [2009 c 70 § 14.]

**19.310.140 Report of exchange facilitation activity. (Expires June 1, 2010.)** (1) Exchange facilitators must provide the director of financial institutions with a report of exchange facilitator activity by December 31, 2009. The director may by rule create a format for the report, which must cover the period of January 1, 2009, through December 31, 2009. The report may only include the following information for exchange facilitation activity in Washington state:

(a) The total number of property exchanges facilitated by the exchange facilitator;

(b) The total dollar volume of property exchanges facilitated by the exchange facilitator;

(c) The primary type of business the exchange facilitator engages in if the primary type of business is not exchange facilitation, including a description of any required licenses; and

(d) The percentage of the exchange facilitator's business that is exchange facilitation, both by client and by gross income.

Any information provided by an exchange facilitator in this report that constitutes a trade secret as defined in RCW 19.108.010 is exempt from the disclosure requirements in chapters 42.17 and 42.56 RCW, unless aggregated with information supplied by other exchange facilitators in such a manner that the individual information of an exchange facilitator is not identifiable.

(2) Any information produced or obtained in examining an exchange facilitator under this section is exempt from disclosure as provided in RCW 42.56.270.

(3) The director must compile the reports from exchange facilitators and report to the financial institutions and insurance committee of the house of representatives and the financial institutions, housing and insurance committee of the senate by January 15, 2010.

(4) This section expires June 1, 2010. [2009 c 70 § 15.]

**19.310.150 Violation of chapter—Civil suit.** A person who violates this chapter is subject to civil suit in a court of competent jurisdiction. [2009 c 70 § 16.]

**19.310.160 Application of consumer protection act.** The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for purposes of applying the consumer protection act, chapter 19.86 RCW. [2009 c 70 § 17.]

**19.310.900 Application of chapter 21.20 RCW.** This chapter does not affect the application of chapter 21.20 RCW. [2009 c 70 § 18.]

## Chapter 19.315 RCW CONSUMER REBATES

### Sections

- 19.315.010 Definitions.  
19.315.020 Time for redemption—Transmittal of rebate—Application.  
19.315.030 Application of the consumer protection act.

**19.315.010 Definitions.** As used in this chapter:

(1) "Person" has the same meaning as in RCW 19.86.010.

(2) "Rebate" means an offer to provide cash, credit, or credit towards future purchases, that is offered to consumers who acquire or purchase a specified product or service and that is conditioned upon the customer submitting a request for redemption after satisfying the terms and conditions of the offer. "Rebate" does not include: Any discount from the purchase price that is taken at the time of purchase; any dis-

count, cash, credit, or credit towards a future purchase that is automatically provided to a consumer without the need to submit a request for redemption; or any refund that may be given to a consumer in accordance with a company's return, guarantee, adjustment, or warranty policies, or any company's frequent shopper customer reward program. [2009 c 374 § 1.]

**19.315.020 Time for redemption—Transmittal of rebate—Application.** (1) Any person who offers a consumer rebate shall allow a minimum of fourteen days from the date the consumer purchases the product, or becomes eligible for the rebate upon satisfying the terms and conditions of the offer, for the submission of a request for redemption by the customer.

(2) Upon receipt of a request for redemption meeting the terms and conditions of the rebate offer, the person offering the rebate shall transmit the rebate funds to the consumer within ninety days.

(3) If a rebate is sent to a consumer as a check, the check must be mailed in a manner that identifies the piece of mail as the expected rebate check.

(4) This section applies only to the person offering the rebate, which is the person who provides the cash, credit, or credit towards future purchases to the consumer. This section does not apply to a person who processes a rebate or who provides consumers with instructions or materials related to a rebate. [2009 c 374 § 2.]

**19.315.030 Application of the consumer protection act.** The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2009 c 374 § 3.]

## Chapter 19.320 RCW HUMAN TRAFFICKING

### Sections

- 19.320.010 Definitions.  
19.320.020 Disclosure statement.  
19.320.030 Personal jurisdiction.

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

(1) "Domestic employers of foreign workers" means a person or persons residing in the state of Washington who recruit or employ a foreign worker to perform work in Washington state.

(2) "Foreign worker" or "worker" means a person who is not a citizen of the United States and who comes to Washington state based on an offer of employment. "Foreign worker" or "worker" does not include persons who hold an H-1B visa and come to work in the state.

(3) "International labor recruitment agency" means a corporation, partnership, business, or other legal entity, whether or not organized under the laws of the United States or any state, that does business in the United States and offers Washington state entities engaged in the employment or recruitment of foreign workers, employment referral services involving citizens of a foreign country or countries by acting as an intermediary between these foreign workers and Washington employers. [2009 c 492 § 1.]

**19.320.020 Disclosure statement.** (1) Domestic employers of foreign workers and international labor recruitment agencies must provide a disclosure statement as described in this section to foreign workers who have been referred to or hired by a Washington employer.

(2) The disclosure statement must:

(a) Be provided in English or, if the worker is not fluent or literate in English, another language that is understood by the worker;

(b) State that the worker may be considered an employee under the laws of the state of Washington and is subject to state worker health and safety laws and may be eligible for workers' compensation insurance and unemployment insurance;

(c) State that the worker may be subject to both state and federal laws governing overtime and work hours, including the minimum wage act under chapter 49.46 RCW;

(d) Include an itemized listing of any deductions the employer intends to make from the worker's pay for food and housing;

(e) Include an itemized listing of the international labor recruitment agency's fees;

(f) State that the worker has the right to control over his or her travel and labor documents, including his or her visa, at all times and that the employer may not require the employee to surrender those documents to the employer or to the international labor recruitment agency while the employee is working in the United States, except as otherwise required by law or regulation or for use as supporting documentation in visa applications;

(g) Include a list of services or a hot line a worker may contact if he or she thinks that he or she may be a victim of trafficking.

(3) The department of labor and industries may create a model disclosure form and post the model form on its web site so that domestic employers of foreign workers and international labor recruitment agencies may download the form, or mail the form upon request. The disclosure statement must be given to the worker no later than the date that the worker arrives at the place of employment in Washington. [2009 c 492 § 2.]

**19.320.030 Personal jurisdiction.** For purposes of establishing personal jurisdiction under this chapter, an international labor recruitment agency or a domestic employer of a foreign worker is deemed to be doing business in Washington and is subject to the jurisdiction of the courts of Washington state if the agency or employer contracts for employment services with a Washington resident or is considered to be

doing business under any other provision or rule of law. [2009 c 492 § 3.]

## Title 21

### SECURITIES AND INVESTMENTS

#### Chapters

**21.20 Securities act of Washington.**

**21.35 Uniform transfer on death security registration act.**

#### Chapter 21.20 RCW

#### SECURITIES ACT OF WASHINGTON

##### Sections

21.20.550 Repealed.

21.20.560 Repealed.

21.20.570 Repealed.

21.20.580 Repealed.

21.20.590 Repealed.

21.20.860 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**21.20.550 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**21.20.560 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**21.20.570 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**21.20.580 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**21.20.590 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**21.20.860 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 61.]

**Chapter 21.35 RCW**  
**UNIFORM TRANSFER ON**  
**DEATH SECURITY REGISTRATION ACT**

## Sections

21.35.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**21.35.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 62.]

**Title 23B**

**WASHINGTON BUSINESS**  
**CORPORATION ACT**

## Chapters

**23B.01 General provisions.**  
**23B.02 Incorporation.**  
**23B.06 Shares and distributions.**  
**23B.07 Shareholders.**  
**23B.08 Directors and officers.**  
**23B.10 Amendment of articles of incorporation and bylaws.**  
**23B.11 Merger and share exchange.**  
**23B.12 Sale of assets.**  
**23B.13 Dissenters' rights.**  
**23B.14 Dissolution.**  
**23B.16 Records and reports.**  
**23B.19 Significant business transactions.**

**Chapter 23B.01 RCW**  
**GENERAL PROVISIONS**

## Sections

23B.01.400 Definitions.  
23B.01.410 Notice.

**23B.01.400 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) "Articles of incorporation" include amended and restated articles of incorporation and articles of merger.

(2) "Authorized shares" means the shares of all classes a domestic or foreign corporation is authorized to issue.

(3) "Conspicuous" means so prepared that a reasonable person against whom the record is to operate should have noticed it. For example, printing in italics or boldface or contrasting color, or typing in capitals or underlined, is conspicuous.

(4) "Corporate action" means any resolution, act, policy, contract, transaction, plan, adoption or amendment of articles of incorporation or bylaws, or other matter approved by or submitted for approval to a corporation's incorporators, board of directors or a committee thereof, or shareholders.

(5) "Corporation" or "domestic corporation" means a corporation for profit, which is not a foreign corporation, incorporated under or subject to the provisions of this title.

(6) "Deliver" includes (a) mailing, (b) for purposes of delivering a demand, consent, notice, or waiver to the corporation or one of its officers, directors, or shareholders, transmission by facsimile equipment, and (c) for purposes of delivering a demand, consent, notice, or waiver to the corporation or one of its officers, directors, or shareholders under RCW 23B.01.410 or chapter 23B.07, 23B.08, 23B.11, 23B.13, 23B.14, or 23B.16 RCW delivery by electronic transmission.

(7) "Distribution" means a direct or indirect transfer of money or other property, except its own shares, or incurrence of indebtedness by a corporation to or for the benefit of its shareholders in respect to any of its shares. A distribution may be in the form of a declaration or payment of a dividend; a distribution in partial or complete liquidation, or upon voluntary or involuntary dissolution; a purchase, redemption, or other acquisition of shares; a distribution of indebtedness; or otherwise.

(8) "Effective date of notice" has the meaning provided in RCW 23B.01.410.

(9) "Electronic transmission" means an electronic communication (a) not directly involving the physical transfer of a record in a tangible medium and (b) that may be retained, retrieved, and reviewed by the sender and the recipient thereof, and that may be directly reproduced in a tangible medium by such a sender and recipient.

(10) "Electronically transmitted" means the initiation of an electronic transmission.

(11) "Employee" includes an officer but not a director. A director may accept duties that make the director also an employee.

(12) "Entity" includes a corporation and foreign corporation, not-for-profit corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, two or more persons having a joint or common economic interest, the state, United States, and a foreign governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(13) "Execute," "executes," or "executed" means (a) signed with respect to a written record or (b) electronically transmitted along with sufficient information to determine the sender's identity with respect to an electronic transmission, or (c) with respect to a record to be filed with the secretary of state, in compliance with the standards for filing with the office of the secretary of state as prescribed by the secretary of state.

(14) "Foreign corporation" means a corporation for profit incorporated under a law other than the law of this state.

(15) "Foreign limited partnership" means a partnership formed under laws other than of this state and having as partners one or more general partners and one or more limited partners.

(16) "Governmental subdivision" includes authority, county, district, and municipality.

(17) "Includes" denotes a partial definition.

(18) "Individual" includes the estate of an incompetent or deceased individual.

(19) "Limited partnership" or "domestic limited partnership" means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(20) "Means" denotes an exhaustive definition.

(21) "Notice" has the meaning provided in RCW 23B.01.410.

(22) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(23) "Principal office" means the office, in or out of this state, so designated in the annual report where the principal executive offices of a domestic or foreign corporation are located.

(24) "Proceeding" includes civil suit and criminal, administrative, and investigatory action.

(25) "Public company" means a corporation that has a class of shares registered with the federal securities and exchange commission pursuant to section 12 or 15 of the securities exchange act of 1934, or section 8 of the investment company act of 1940, or any successor statute.

(26) "Record" means information inscribed on a tangible medium or contained in an electronic transmission.

(27) "Record date" means the date established under chapter 23B.07 RCW on which a corporation determines the identity of its shareholders and their shareholdings for purposes of this title. The determinations shall be made as of the close of business on the record date unless another time for doing so is specified when the record date is fixed.

(28) "Secretary" means the corporate officer to whom the board of directors has delegated responsibility under RCW 23B.08.400(3) for custody of the minutes of the meetings of the board of directors and of the shareholders and for authenticating records of the corporation.

(29) "Shares" means the units into which the proprietary interests in a corporation are divided.

(30) "Shareholder" means the person in whose name shares are registered in the records of a corporation or the beneficial owner of shares to the extent of the rights granted by a nominee certificate on file with a corporation.

(31) "State," when referring to a part of the United States, includes a state and commonwealth, and their agencies and governmental subdivisions, and a territory and insular possession, and their agencies and governmental subdivisions, of the United States.

(32) "Subscriber" means a person who subscribes for shares in a corporation, whether before or after incorporation.

(33) "Tangible medium" means a writing, copy of a writing, or facsimile, or a physical reproduction, each on paper or on other tangible material.

(34) "United States" includes a district, authority, bureau, commission, department, and any other agency of the United States.

(35) "Voting group" means all shares of one or more classes or series that under the articles of incorporation or this title are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this title to vote generally on the matter are for that purpose a single voting group.

(36) "Writing" does not include an electronic transmission.

(37) "Written" means embodied in a tangible medium. [2009 c 189 § 1. Prior: 2002 c 297 § 9; 2002 c 296 § 1; 2000 c 168 § 1; 1996 c 155 § 4; 1995 c 47 § 1; prior: 1991 c 269 § 35; 1991 c 72 § 28; 1989 c 165 § 14.]

**23B.01.410 Notice.** (1) Notice under this title must be provided in the form of a record, except that oral notice of any meeting of the board of directors may be given if expressly authorized by the articles of incorporation or bylaws.

(2) Permissible means of transmission.

(a) Oral notice. Oral notice may be communicated in person, by telephone, wire, or wireless equipment which does not transmit a facsimile of the notice, or by any electronic means which does not create a record. If these forms of oral notice are impracticable, oral notice may be communicated by radio, television, or other form of public broadcast communication.

(b) Notice provided in a tangible medium. Notice may be provided in a tangible medium and be transmitted by mail, private carrier, or personal delivery; telegraph or teletype; or telephone, wire, or wireless equipment which transmits a facsimile of the notice. If these forms of notice in a tangible medium are impracticable, notice in a tangible medium may be transmitted by an advertisement in a newspaper of general circulation in the area where published.

(c) Notice provided in an electronic transmission.

(i) Notice may be provided in an electronic transmission and be electronically transmitted.

(ii) Notice to shareholders or directors in an electronic transmission is effective only with respect to shareholders and directors that have consented, in the form of a record, to receive electronically transmitted notices under this title and designated in the consent the address, location, or system to which these notices may be electronically transmitted and with respect to a notice that otherwise complies with any other requirements of this title and applicable federal law.

(A) Notice to shareholders or directors for this purpose includes material that this title requires to accompany the notice.

(B) A shareholder or director who has consented to receipt of electronically transmitted notices may revoke this consent by delivering a revocation to the corporation in the form of a record.

(C) The consent of any shareholder or director is revoked if (I) the corporation is unable to electronically transmit two consecutive notices given by the corporation in accordance



with the consent, and (II) this inability becomes known to the secretary of the corporation, the transfer agent, or any other person responsible for giving the notice. The inadvertent failure by the corporation to treat this inability as a revocation does not invalidate any meeting or other corporate action.

(iii) Notice to shareholders or directors who have consented to receipt of electronically transmitted notices may be provided by (A) posting the notice on an electronic network and (B) delivering to the shareholder or director a separate record of the posting, together with comprehensible instructions regarding how to obtain access to the posting on the electronic network.

(iv) Notice to a domestic or foreign corporation, authorized to transact business in this state, in an electronic transmission is effective only with respect to a corporation that has designated in a record an address, location, or system to which the notices may be electronically transmitted.

(d) Materials accompanying notice to shareholders of public companies. Notwithstanding anything to the contrary in this section or any other section of this title, if this title requires that a notice to shareholders be accompanied by certain material, a public company may satisfy such a requirement, whether or not a shareholder has consented to receive electronically transmitted notice, by (i) posting the material on an electronic network (either separate from, or in combination or as part of, any other materials the public company has posted on the electronic network in compliance with applicable federal law) at or prior to the time that the notice is delivered to the public company's shareholders entitled to receive the notice, and (ii) delivering to the public company's shareholders entitled to receive the notice a separate record of the posting (which record may accompany, or be contained in, the notice), together with comprehensible instructions regarding how to obtain access to the posting on the electronic network. In such a case, the material is deemed to have been delivered to the public company's shareholders at the time the notice to the shareholders is effective under this section. A public company that elects pursuant to this section to post on an electronic network any material required by this title to accompany a notice to shareholders is required, at its expense, to provide a copy of the material in a tangible medium (alone or in combination or as part of any other materials the public company has posted on the electronic network in compliance with federal law) to any shareholder entitled to such a notice who so requests.

(3) Effective time and date of notice.

(a) Oral notice. Oral notice is effective when received.

(b) Notice provided in a tangible medium.

(i) Notice in a tangible medium, if in a comprehensible form, is effective at the earliest of the following:

(A) If expressly authorized by the articles of incorporation or bylaws, and if notice is sent to the person's address, telephone number, or other number appearing on the records of the corporation, when dispatched by telegraph, teletype, or facsimile equipment;

(B) When received;

(C) Except as provided in (b)(ii) of this subsection, five days after its deposit in the United States mail, as evidenced by the postmark, if mailed with first-class postage, prepaid and correctly addressed; or

(D) On the date shown on the return receipt, if sent by registered or certified mail, return receipt requested, and the receipt is signed by or on behalf of the addressee.

(ii) Notice in a tangible medium by a domestic or foreign corporation to its shareholder, if in a comprehensible form and correctly addressed to the shareholder's address shown in the corporation's current record of shareholders, is effective:

(A) When mailed, if mailed with first-class postage prepaid; and

(B) When dispatched, if prepaid, by air courier.

(ii) Notice in a tangible medium to a domestic or foreign corporation, authorized to transact business in this state, may be addressed to the corporation's registered agent at its registered office or to the corporation or its secretary at its principal office shown in its most recent annual report, or in the case of a foreign corporation that has not yet delivered its annual report in its application for a certificate of authority.

(c) Notice provided in an electronic transmission. Notice provided in an electronic transmission, if in comprehensible form, is effective when it: (i) Is electronically transmitted to an address, location, or system designated by the recipient for that purpose; or (ii) has been posted on an electronic network and a separate record of the posting has been delivered to the recipient together with comprehensible instructions regarding how to obtain access to the posting on the electronic network.

(4) If this title prescribes notice requirements for particular circumstances, those requirements govern. If articles of incorporation or bylaws prescribe notice requirements, not inconsistent with this section or other provisions of this title, those requirements govern. [2009 c 189 § 2; 2008 c 59 § 1; 2002 c 297 § 10; 1991 c 72 § 29; 1990 c 178 § 2; 1989 c 165 § 15.]

**Effective date—1990 c 178:** See note following RCW 23B.01.220.

## Chapter 23B.02 RCW INCORPORATION

### Sections

- 23B.02.020 Articles of incorporation.
- 23B.02.050 Organization of corporation.
- 23B.02.060 Bylaws.

**23B.02.020 Articles of incorporation.** (1) The articles of incorporation must set forth:

(a) A corporate name for the corporation that satisfies the requirements of RCW 23B.04.010;

(b) The number of shares the corporation is authorized to issue in accordance with RCW 23B.06.010 and 23B.06.020;

(c) The street address of the corporation's initial registered office and the name of its initial registered agent at that office in accordance with RCW 23B.05.010; and

(d) The name and address of each incorporator in accordance with RCW 23B.02.010.

(2) The articles of incorporation or bylaws must either specify the number of directors or specify the process by which the number of directors will be fixed, unless the articles of incorporation dispense with a board of directors pursuant to RCW 23B.08.010.

(3) Unless its articles of incorporation provide otherwise, a corporation is governed by the following provisions:

(a) The board of directors may adopt bylaws to be effective only in an emergency as provided by RCW 23B.02.070;

(b) A corporation has the purpose of engaging in any lawful business under RCW 23B.03.010;

(c) A corporation has perpetual existence and succession in its corporate name under RCW 23B.03.020;

(d) A corporation has the same powers as an individual to do all things necessary or convenient to carry out its business and affairs, including itemized powers under RCW 23B.03.020;

(e) All shares are of one class and one series, have unlimited voting rights, and are entitled to receive the net assets of the corporation upon dissolution under RCW 23B.06.010 and 23B.06.020;

(f) If more than one class of shares is authorized, all shares of a class must have preferences, limitations, and relative rights identical to those of other shares of the same class under RCW 23B.06.010;

(g) If the board of directors is authorized to designate the number of shares in a series, the board may, after the issuance of shares in that series, reduce the number of authorized shares of that series under RCW 23B.06.020;

(h) The board of directors must approve any issuance of shares under RCW 23B.06.210;

(i) Shares may be issued pro rata and without consideration to shareholders under RCW 23B.06.230;

(j) Shares of one class or series may not be issued as a share dividend with respect to another class or series, unless there are no outstanding shares of the class or series to be issued, or a majority of votes entitled to be cast by such class or series approve as provided in RCW 23B.06.230;

(k) A corporation may issue rights, options, or warrants for the purchase of shares of the corporation under RCW 23B.06.240;

(l) A shareholder has, and may waive, a preemptive right to acquire the corporation's unissued shares as provided in RCW 23B.06.300;

(m) Shares of a corporation acquired by it may be reissued under RCW 23B.06.310;

(n) The board may authorize and the corporation may make distributions not prohibited by statute under RCW 23B.06.400;

(o) The preferential rights upon dissolution of certain shareholders will be considered a liability for purposes of determining the validity of a distribution under RCW 23B.06.400;

(p) Corporate action may be approved by shareholders by unanimous consent of all shareholders entitled to vote on the corporate action, unless the approval of a lesser number of shareholders is permitted as provided in RCW 23B.07.040, which shareholder consent shall be in the form of a record;

(q) Unless this title requires otherwise, the corporation is required to give notice only to shareholders entitled to vote at a meeting and the notice for an annual meeting need not include the purpose for which the meeting is called under RCW 23B.07.050;

(r) A corporation that is a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

(s) Subject to statutory exceptions, each outstanding share, regardless of class, is entitled to one vote on each matter voted on at a shareholders' meeting under RCW 23B.07.210;

(t) A majority of the votes entitled to be cast on a matter by a voting group constitutes a quorum, unless the title provides otherwise under RCW 23B.07.250 and 23B.07.270;

(u) Corporate action on a matter, other than election of directors, by a voting group is approved if the votes cast within the voting group favoring the corporate action exceed the votes cast opposing the corporate action, unless this title requires a greater number of affirmative votes under RCW 23B.07.250;

(v) All shares of one or more classes or series that are entitled to vote will be counted together collectively on any matter at a meeting of shareholders under RCW 23B.07.260;

(w) Directors are elected by cumulative voting under RCW 23B.07.280;

(x) Directors are elected by a plurality of votes cast by shares entitled to vote under RCW 23B.07.280, except as otherwise provided in the articles of incorporation or a bylaw adopted pursuant to RCW 23B.10.205;

(y) A corporation must have a board of directors under RCW 23B.08.010;

(z) All corporate powers must be exercised by or under the authority of, and the business and affairs of the corporation managed under the direction of, its board of directors under RCW 23B.08.010;

(aa) The shareholders may remove one or more directors with or without cause under RCW 23B.08.080;

(bb) A vacancy on the board of directors may be filled by the shareholders or the board of directors under RCW 23B.08.100;

(cc) A corporation shall indemnify a director who was wholly successful in the defense of any proceeding to which the director was a party because the director is or was a director of the corporation against reasonable expenses incurred by the director in connection with the proceeding under RCW 23B.08.520;

(dd) A director of a corporation who is a party to a proceeding may apply for indemnification of reasonable expenses incurred by the director in connection with the proceeding to the court conducting the proceeding or to another court of competent jurisdiction under RCW 23B.08.540;

(ee) An officer of the corporation who is not a director is entitled to mandatory indemnification under RCW 23B.08.520, and is entitled to apply for court-ordered indemnification under RCW 23B.08.540, in each case to the same extent as a director under RCW 23B.08.570;

(ff) The corporation may indemnify and advance expenses to an officer, employee, or agent of the corporation who is not a director to the same extent as to a director under RCW 23B.08.570;

(gg) A corporation may indemnify and advance expenses to an officer, employee, or agent who is not a director to the extent, consistent with law, that may be provided by its articles of incorporation, bylaws, general or specific approval of its board of directors, or contract under RCW 23B.08.570;

(hh) A corporation's board of directors may adopt certain amendments to the corporation's articles of incorporation without shareholder approval under RCW 23B.10.020;

(ii) Unless this title or the board of directors requires a greater vote or a vote by voting groups, an amendment to the corporation's articles of incorporation must be approved by each voting group entitled to vote on the proposed amendment by two-thirds, or, in the case of a public company, a majority, of all the votes entitled to be cast by that voting group under RCW 23B.10.030;

(jj) A corporation's board of directors may amend or repeal the corporation's bylaws unless this title reserves this power exclusively to the shareholders in whole or in part, or unless the shareholders in amending or repealing a bylaw provide expressly that the board of directors may not amend or repeal that bylaw under RCW 23B.10.200;

(kk) Unless this title or the board of directors require a greater vote or a vote by voting groups, a plan of merger or share exchange must be approved by each voting group entitled to vote on the merger or share exchange by two-thirds of all the votes entitled to be cast by that voting group under RCW 23B.11.030;

(ll) Approval by the shareholders of the sale, lease, exchange, or other disposition of all, or substantially all, the corporation's property in the usual and regular course of business is not required under RCW 23B.12.010;

(mm) Approval by the shareholders of the mortgage, pledge, dedication to the repayment of indebtedness, or other encumbrance of any or all of the corporation's property, whether or not in the usual and regular course of business, is not required under RCW 23B.12.010;

(nn) Unless the board of directors requires a greater vote or a vote by voting groups, a sale, lease, exchange, or other disposition of all or substantially all of the corporation's property, other than in the usual and regular course of business, must be approved by each voting group entitled to vote on such transaction by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.12.020; and

(oo) Unless the board of directors requires a greater vote or a vote by voting groups, a proposal to dissolve must be approved by each voting group entitled to vote on the dissolution by two-thirds of all votes entitled to be cast by that voting group under RCW 23B.14.020.

(4) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:

(a) The board of directors may approve the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;

(b) A corporation that is not a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

(c) A director need not be a resident of this state or a shareholder of the corporation under RCW 23B.08.020;

(d) The board of directors may fix the compensation of directors under RCW 23B.08.110;

(e) Members of the board of directors may participate in a meeting of the board by any means of similar communica-

tion by which all directors participating can hear each other during the meeting under RCW 23B.08.200;

(f) Corporate action permitted or required by this title to be taken at a board of directors' meeting may be approved without a meeting if approved by all members of the board under RCW 23B.08.210;

(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under RCW 23B.08.220;

(h) Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, and the notice need not describe the purpose of the special meeting under RCW 23B.08.220;

(i) A quorum of a board of directors consists of a majority of the number of directors under RCW 23B.08.240;

(j) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors under RCW 23B.08.240;

(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under RCW 23B.08.250; and

(l) Unless approved by the shareholders, a corporation may indemnify, or make advances to, a director for reasonable expenses incurred in the defense of any proceeding to which the director was a party because of being a director only to the extent such action is consistent with RCW 23B.08.500 through 23B.08.580.

(5) The articles of incorporation may contain the following provisions:

(a) The names and addresses of the individuals who are to serve as initial directors;

(b) The par value of any authorized shares or classes of shares;

(c) Provisions not inconsistent with law related to the management of the business and the regulation of the affairs of the corporation;

(d) Any provision that under this title is required or permitted to be set forth in the bylaws;

(e) Provisions not inconsistent with law defining, limiting, and regulating the powers of the corporation, its board of directors, and shareholders;

(f) Provisions authorizing corporate action to be approved by consent of less than all of the shareholders entitled to vote on the corporate action, in accordance with RCW 23B.07.040;

(g) If the articles of incorporation authorize dividing shares into classes, the election of all or a specified number of directors may be effected by the holders of one or more authorized classes of shares under RCW 23B.08.040;

(h) The terms of directors may be staggered under RCW 23B.08.060;

(i) Shares may be redeemable or convertible (i) at the option of the corporation, the shareholder, or another person, or upon the occurrence of a designated event; (ii) for cash, indebtedness, securities, or other property; or (iii) in a designated amount or in an amount determined in accordance with a designated formula or by reference to extrinsic data or events under RCW 23B.06.010; and

(j) A director's personal liability to the corporation or its shareholders for monetary damages for conduct as a director may be eliminated or limited under RCW 23B.08.320.

(6) The articles of incorporation or the bylaws may contain the following provisions:

(a) A restriction on the transfer or registration of transfer of the corporation's shares under RCW 23B.06.270;

(b) Shareholders may participate in a meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other under RCW 23B.07.080;

(c) A quorum of the board of directors may consist of as few as one-third of the number of directors under RCW 23B.08.240;

(d) If the corporation is registered as an investment company under the investment company act of 1940, a provision limiting the requirement to hold an annual meeting of shareholders as provided in RCW 23B.07.010(2); and

(e) If the corporation is registered as an investment company under the investment company act of 1940, a provision establishing terms of directors which terms may be longer than one year as provided in RCW 23B.05.050.

(7) The articles of incorporation need not set forth any of the corporate powers enumerated in this title. [2009 c 189 § 3; 2002 c 297 § 11; 1997 c 19 § 1; 1996 c 155 § 5; 1994 c 256 § 27; 1989 c 165 § 27.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**23B.02.050 Organization of corporation.** (1) After incorporation:

(a) If initial directors are named in the articles of incorporation, the initial directors shall hold an organizational meeting, at the call of a majority of the directors, to complete the organization of the corporation by appointing officers, adopting bylaws, and carrying on any other business brought before the meeting;

(b) If initial directors are not named in the articles, the incorporator or incorporators shall hold an organizational meeting at the call of a majority of the incorporators:

(i) To elect directors and complete the organization of the corporation; or

(ii) To elect a board of directors who shall complete the organization of the corporation.

(2) Corporate action required or permitted by this title to be approved by incorporators at an organizational meeting may be approved without a meeting if the approval is evidenced by the consent of each of the incorporators in the form of a record describing the corporate action so approved and executed by each incorporator.

(3) An organizational meeting may be held in or out of this state.

(4) A corporation's initial report containing the information described in RCW 23B.16.220(1) must be delivered to the secretary of state within one hundred twenty days of the date on which the corporation's articles of incorporation were filed. [2009 c 189 § 4; 2002 c 297 § 13; 1991 c 72 § 31; 1989 c 165 § 30.]

**23B.02.060 Bylaws.** (1) The incorporators or board of directors of a corporation shall adopt initial bylaws for the corporation.

(2) The articles of incorporation or bylaws must either specify the number of directors or specify the process by

which the number of directors will be fixed, unless the articles of incorporation dispense with a board of directors pursuant to RCW 23B.08.010.

(3) Unless its articles of incorporation or its bylaws provide otherwise, a corporation is governed by the following provisions:

(a) The board of directors may approve the issuance of some or all of the shares of any or all of the corporation's classes or series without certificates under RCW 23B.06.260;

(b) A corporation that is not a public company shall hold a special meeting of shareholders if the holders of at least ten percent of the votes entitled to be cast on any issue proposed to be considered at the meeting demand a meeting under RCW 23B.07.020;

(c) A director need not be a resident of this state or a shareholder of the corporation under RCW 23B.08.020;

(d) The board of directors may fix the compensation of directors under RCW 23B.08.110;

(e) Members of the board of directors may participate in a meeting of the board by means of a conference telephone or similar communication equipment under RCW 23B.08.200;

(f) Corporate action permitted or required by this title to be approved at a board of directors' meeting may be approved without a meeting if the corporate action is approved by all members of the board under RCW 23B.08.210;

(g) Regular meetings of the board of directors may be held without notice of the date, time, place, or purpose of the meeting under RCW 23B.08.220;

(h) Special meetings of the board of directors must be preceded by at least two days' notice of the date, time, and place of the meeting, and the notice need not describe the purpose of the special meeting under RCW 23B.08.220;

(i) A quorum of a board of directors consists of a majority of the number of directors under RCW 23B.08.240;

(j) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors under RCW 23B.08.240;

(k) A board of directors may create one or more committees and appoint members of the board of directors to serve on them under RCW 23B.08.250; and

(l) Unless approved by shareholders, a corporation may indemnify, or make advances to, a director only for reasonable expenses incurred in the defense of any proceeding to which the director was a party because of being a director to the extent such action is consistent with RCW 23B.08.500 through 23B.08.580 under RCW 23B.08.590.

(4) The bylaws of a corporation may contain any provision, not in conflict with law or the articles of incorporation, for managing the business and regulating the affairs of the corporation, including but not limited to the following:

(a) A restriction on the transfer or registration of transfer of the corporation's shares under RCW 23B.06.270;

(b) Shareholders may participate in a meeting of shareholders by any means of communication by which all persons participating in the meeting can hear each other under RCW 23B.07.080; and

(c) A quorum of the board of directors may consist of as few as one-third of the number of directors under RCW 23B.08.240. [2009 c 189 § 5; 1989 c 165 § 31.]

**Chapter 23B.06 RCW**  
**SHARES AND DISTRIBUTIONS**

## Sections

23B.06.020	Terms of class or series.
23B.06.040	Fractional shares.
23B.06.210	Issuance of shares.
23B.06.220	Liability of shareholders.
23B.06.260	Shares without certificates.
23B.06.310	Corporation's acquisition of its own shares.
23B.06.400	Distributions to shareholders.

**23B.06.020 Terms of class or series.** (1) If the articles of incorporation so provide, the board of directors may determine, in whole or part, the preferences, limitations, voting powers, and relative rights, within the limits set forth in RCW 23B.06.010(1)(b) and this section of (a) any class of shares before the issuance of any shares of that class, or (b) one or more series within a class, and designate the number of shares within that series, before the issuance of any shares of that series.

(2) Each series of a class must be given a distinguishing designation.

(3) All shares of a series must have preferences, limitations, voting powers, and relative rights identical with those of other shares of the same series, except to the extent otherwise permitted by RCW 23B.06.010(1)(b). All shares of a series must have preferences, limitations, voting powers, and relative rights identical with those of shares of other series of the same class, except to the extent otherwise provided in the description of the series.

(4) Before issuing any shares of a class or series created under this section, the corporation must deliver to the secretary of state for filing articles of amendment, which are effective without shareholder approval, that set forth:

- (a) The name of the corporation;
- (b) The text of the amendment determining the terms of the class or series of shares;
- (c) The date it was adopted; and
- (d) The statement that the amendment was duly adopted by the board of directors.

(5) Unless the articles of incorporation provide otherwise, the board of directors may, after the issuance of shares of a series whose number it is authorized to designate, amend the resolution establishing the series to decrease, but not below the number of shares of such series then outstanding, the number of authorized shares of that series, by filing articles of amendment, which are effective without shareholder approval, in the manner provided in subsection (4) of this section. [2009 c 189 § 6; 1998 c 104 § 2; 1989 c 165 § 45.]

**23B.06.040 Fractional shares.** (1) A corporation may:

- (a) Issue fractions of a share or pay in money the value of fractions of a share;
- (b) Arrange for disposition of fractional shares by the shareholders;
- (c) Issue scrip in registered or bearer form entitling the holder to receive a full share upon surrendering enough scrip to equal a full share.

(2) Each certificate representing scrip must be conspicuously labeled "scrip" and must contain the information required by RCW 23B.06.250(2).

(3) The holder of a fractional share is entitled to exercise the rights of a shareholder, including the right to vote, to receive dividends, and to participate in the assets of the corporation upon liquidation. The holder of scrip is not entitled to any of these rights unless the scrip provides for them.

(4) The board of directors may approve the issuance of scrip subject to any condition considered desirable, including:

(a) That the scrip will become void if not exchanged for full shares before a specified date; and

(b) That the shares for which the scrip is exchangeable may be sold and the proceeds paid to the scripholders. [2009 c 189 § 7; 1989 c 165 § 47.]

**23B.06.210 Issuance of shares.** (1) The powers granted in this section to the board of directors may be reserved to the shareholders by the articles of incorporation.

(2) Any issuance of shares must be approved by the board of directors. Shares may be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation.

(3) A good faith determination by the board of directors that the consideration received or to be received for the shares to be issued is adequate is conclusive insofar as the adequacy of consideration relates to whether the shares are validly issued, fully paid and nonassessable. When the board of directors has made such a determination and the corporation has received the consideration, the shares issued therefor are fully paid and nonassessable.

(4) The corporation may place in escrow shares issued for a contract for future services or benefits or a promissory note, or make other arrangements to restrict the transfer of the shares, and may credit distributions in respect to the shares against their purchase price, until the services are performed, the benefits are received, or the note is paid. If the services are not performed, the benefits are not received, or the note is not paid, the shares escrowed or restricted and the distributions credited may be canceled in whole or part.

(5) Where it cannot be determined that outstanding shares are fully paid and nonassessable, there shall be a conclusive presumption that such shares are fully paid and nonassessable if the board of directors makes a good faith determination that there is no substantial evidence that the full consideration for such shares has not been paid. [2009 c 189 § 8; 1989 c 165 § 49.]

**23B.06.220 Liability of shareholders.** A purchaser from a corporation of its own shares is not liable to the corporation or its creditors with respect to the shares except to pay the consideration for which the shares were approved to be issued under RCW 23B.06.210 or specified in the subscription agreement under RCW 23B.06.200. [2009 c 189 § 9; 1989 c 165 § 50.]

**23B.06.260 Shares without certificates.** (1) Unless the articles of incorporation or bylaws provide otherwise, the board of directors of a corporation may approve the issue of some or all of the shares of any or all of its classes or series

without certificates. The approval does not affect shares already represented by certificates until they are surrendered to the corporation.

(2) Within a reasonable time after the issue or transfer of shares without certificates, the corporation shall send the shareholder a record containing the information required on certificates by RCW 23B.06.250 (2) and (3), and, if applicable, RCW 23B.06.270. [2009 c 189 § 10; 2002 c 297 § 18; 1989 c 165 § 54.]

**23B.06.310 Corporation's acquisition of its own shares.** (1) A corporation may acquire its own shares and shares so acquired constitute authorized but unissued shares.

(2) If the articles of incorporation prohibit the reissue of acquired shares, the number of authorized shares is reduced by the number of shares acquired, effective upon amendment of the articles of incorporation.

(3) The board of directors may adopt articles of amendment under this section without shareholder approval and deliver them to the secretary of state for filing. The articles must set forth:

- (a) The name of the corporation;
- (b) The reduction in the number of authorized shares, itemized by class and series; and
- (c) The total number of authorized shares, itemized by class and series, remaining after reduction of the shares. [2009 c 189 § 11; 1989 c 165 § 58.]

**23B.06.400 Distributions to shareholders.** (1) A board of directors may approve and the corporation may make distributions to its shareholders subject to restriction by the articles of incorporation and the limitation in subsection (2) of this section.

(2) No distribution may be made if, after giving it effect:

- (a) The corporation would not be able to pay its liabilities as they become due in the usual course of business; or
- (b) The corporation's total assets would be less than the sum of its total liabilities plus, unless the articles of incorporation permit otherwise, the amount that would be needed, if the corporation were to be dissolved at the time of the distribution, to satisfy the preferential rights upon dissolution of shareholders whose preferential rights are superior to those receiving the distribution.

(3) For purposes of determinations under subsection (2) of this section:

(a) The board of directors may base a determination that a distribution is not prohibited under subsection (2) of this section either on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances; and

(b) Indebtedness of a corporation, including indebtedness issued as a distribution, is not considered a liability if its terms provide that payment of principal and interest are made only if and to the extent that payment of a distribution to shareholders could then be made under this section.

(4) The effect of a distribution under subsection (2) of this section is measured:

(a) In the case of a distribution of indebtedness, the terms of which provide that payment of principal and interest are

made only if and to the extent that payment of a distribution to shareholders could then be made under this section, each payment of principal or interest is treated as a distribution, the effect of which is measured on the date the payment is actually made; or

(b) In the case of any other distribution:

(i) If the distribution is by purchase, redemption, or other acquisition of the corporation's shares, the effect of the distribution is measured as of the earlier of the date any money or other property is transferred or debt incurred by the corporation, or the date the shareholder ceases to be a shareholder with respect to the acquired shares;

(ii) If the distribution is of indebtedness other than that described in subsection (4) (a) and (b)(i) of this section, the effect of the distribution is measured as of the date the indebtedness is distributed; and

(iii) In all other cases, the effect of the distribution is measured as of the date the distribution is approved if payment occurs within one hundred twenty days after the date of approval, or the date the payment is made if it occurs more than one hundred twenty days after the date of approval.

(5) A corporation's indebtedness to a shareholder incurred by reason of a distribution made in accordance with this section is at parity with the corporation's indebtedness to its general, unsecured creditors except to the extent provided otherwise by agreement.

(6) In circumstances to which this section and related sections of this title are applicable, such provisions supersede the applicability of any other statutes of this state with respect to the legality of distributions.

(7) A transfer of the assets of a dissolved corporation to a trust or other successor entity of the type described in RCW 23B.14.030(4) constitutes a distribution subject to subsection (2) of this section only when and to the extent that the trust or successor entity distributes assets to shareholders. [2009 c 189 § 12; 2006 c 52 § 2; 1990 c 178 § 10; 1989 c 165 § 59.]

**Effective date—1990 c 178:** See note following RCW 23B.01.220.

## Chapter 23B.07 RCW SHAREHOLDERS

### Sections

23B.07.030	Court-ordered meeting.
23B.07.040	Corporate action without meeting.
23B.07.060	Waiver of notice.
23B.07.070	Record date.
23B.07.200	Shareholders' list for meeting.
23B.07.250	Quorum and voting requirements.
23B.07.260	Corporate action by single and multiple voting groups.
23B.07.270	Greater or lesser quorum or voting requirements.
23B.07.280	Voting for directors—Cumulative voting.
23B.07.320	Agreements among shareholders—Acquisition of shares after agreement.

**23B.07.030 Court-ordered meeting.** (1) The superior court of the county in which the corporation's registered office is located may, after notice to the corporation, summarily order a meeting to be held:

(a) On application of any shareholder of the corporation entitled to vote in the election of directors at an annual meeting, if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen

months after its last annual meeting or approval of corporate action by shareholder consent in lieu of such a meeting; or

(b) On application of a shareholder who executed a demand for a special meeting valid under RCW 23B.07.020, if:

(i) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary; or

(ii) The special meeting was not held in accordance with the notice.

(2) The court may, after notice to the corporation, fix the time and place of the meeting, determine the shares and shareholders entitled to participate in the meeting, specify a record date for determining shareholders entitled to notice of and to vote at the meeting, prescribe the manner, form, and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting, or direct that the votes represented at the meeting constitute a quorum for approval of those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting. [2009 c 189 § 13; 2002 c 297 § 22; 1989 c 165 § 62.]

**23B.07.040 Corporate action without meeting.** (1)(a) Corporate action required or permitted by this title to be approved by a shareholder vote at a meeting may be approved without a meeting or a vote if either:

(i) The corporate action is approved by all shareholders entitled to vote on the corporate action; or

(ii) The corporate action is approved by shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes that would be necessary to approve such corporate action at a meeting at which all shares entitled to vote on the corporate action were present and voted, and at the time the corporate action is approved the corporation is not a public company and is authorized to approve such corporate action under this subsection (1)(a)(ii) by a general or limited authorization contained in its articles of incorporation.

(b) Corporate action may be approved by shareholders without a meeting or a vote by means of execution of a single consent or multiple counterpart consents by shareholders holding of record or otherwise entitled to vote in the aggregate not less than the minimum number of votes necessary under (a)(i) or (ii) of this subsection. Any such shareholder consent must: (i) Be in the form of an executed record; (ii) indicate the date of execution of the consent by each shareholder who executes it, which date must be on or after the applicable record date determined in accordance with subsection (2) of this section; (iii) describe the corporate action being approved; (iv) when delivered to each shareholder for execution, include or be accompanied by the same material that would have been required by this title to be delivered to shareholders in or accompanying a notice of meeting at which the proposed corporate action would have been submitted for shareholder approval; and (v) be delivered to the corporation for inclusion in the minutes or filing with the corporate records in accordance with subsection (4) of this section. A shareholder may withdraw an executed shareholder consent by delivering a notice of withdrawal in the form of an executed record to the corporation prior to the time when

shareholder consents sufficient to approve the corporate action have been delivered to the corporation.

(2) The record date for determining shareholders entitled to approve a corporate action without a meeting may be fixed under RCW 23B.07.030 or 23B.07.070, but if not so fixed shall be the date of execution indicated on the earliest dated shareholder consent executed under subsection (1) of this section, even though such shareholder consent may not have been delivered to the corporation on that date.

(3)(a) Notice that shareholder consents are being sought under subsection (1)(a) of this section shall be given, by the corporation or by another person soliciting such consents, on or promptly after the record date, to all shareholders entitled to vote on the record date who have not yet executed the shareholder consent and, if this title would otherwise require that notice of a meeting of shareholders to consider the proposed corporate action be given to nonvoting shareholders, to all nonvoting shareholders as of the record date. Notice given under this subsection (3)(a) shall include or be accompanied by the same information required to be included in or to accompany the shareholder consent under subsection (1)(b)(iii) and (iv) of this section.

(b) Notice that sufficient shareholder consents have been executed to approve the proposed corporate action under either of subsection (1)(a)(i) or (ii) of this section shall be given by the corporation, promptly after delivery to the corporation of shareholder consents sufficient to approve the corporate action in accordance with subsection (4) of this section, to all shareholders entitled to vote on the record date and, if this title would otherwise require that notice of a meeting of shareholders to consider the proposed corporate action be given to nonvoting shareholders, to all nonvoting shareholders as of the record date.

(4) Unless the consent executed by shareholders specifies a later effective date, shareholder approval obtained under this section is effective when: (a) Executed shareholder consents sufficient to approve the proposed corporate action have been delivered to the corporation, either at an address designated by the corporation for delivery of such shareholder consents or at the corporation's registered office, or to such electronic address, location, or system as the corporation may have designated for delivery of such shareholder consents; and (b) any period of advance notice required by the corporation's articles of incorporation to be given to any nonconsenting shareholders has been satisfied. Executed shareholder consents are not effective to approve a proposed corporate action unless, within sixty days after the date of the earliest dated shareholder consent delivered to the corporation, consents executed by a sufficient number of shareholders to approve the corporate action are delivered to the corporation.

(5) Approval of corporate action by execution of shareholder consents under this section has the effect of a meeting vote and may be described as such in any record, except that, if the corporate action requires the filing of a certificate under any other section of this title, the certificate so filed shall state, in lieu of any statement required by that section concerning any vote of shareholders, that shareholder approval has been obtained in accordance with this section and that notice to any nonconsenting shareholders has been given to

the extent required by this section. [2009 c 189 § 14; 2002 c 297 § 23; 1997 c 19 § 2; 1991 c 72 § 33; 1989 c 165 § 63.]

**23B.07.060 Waiver of notice.** (1) A shareholder may waive any notice required by this title, the articles of incorporation, or bylaws before or after the date and time of the meeting that is the subject of such notice, or in the case of notice required by RCW 23B.07.040(3), before or after the corporate action to be approved by executed consent becomes effective. Except as provided by subsections (2) and (3) of this section, the waiver must be delivered by the shareholder entitled to notice to the corporation for inclusion in the minutes or filing with the corporate records, which waiver shall be set forth either (a) in an executed and dated record or (b) if the corporation has designated an address, location, or system to which the waiver may be electronically transmitted and the waiver is electronically transmitted to the designated address, location, or system, in an executed and dated electronically transmitted record.

(2) A shareholder's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the shareholder at the beginning of the meeting objects to holding the meeting or transacting business at the meeting.

(3) A shareholder waives objection to consideration of a particular matter at a meeting that is not within the purpose or purposes described in the meeting notice, unless the shareholder objects to considering the matter when it is presented. [2009 c 189 § 15; 2002 c 297 § 24; 1991 c 72 § 34; 1989 c 165 § 65.]

**23B.07.070 Record date.** (1) The bylaws may fix or provide the manner of fixing the record date for one or more voting groups in order to determine the shareholders entitled to notice of a shareholders' meeting, to demand a special meeting, to vote, or to approve any other corporate action. If the bylaws do not fix or provide for fixing a record date, the board of directors of the corporation may fix a future date as the record date.

(2) If not otherwise fixed under subsection (1) of this section or RCW 23B.07.030, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the day before the first notice is delivered to shareholders.

(3) If the board of directors does not fix the record date for determining shareholders entitled to a share dividend, it is the date the board of directors authorizes the share dividend.

(4) If the board of directors does not fix the record date for determining shareholders entitled to a distribution, other than one involving a purchase, redemption, or other acquisition of the corporation's shares, it is the date the board of directors authorizes the distribution.

(5) A record date fixed under this section may not be more than seventy days before the meeting of shareholders or more than ten days prior to the date on which the first shareholder consent is executed under RCW 23B.07.040(1)(b).

(6) A determination of shareholders entitled to notice of or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record date, which it must do if the meeting is

adjourned to a date more than one hundred twenty days after the date fixed for the original meeting.

(7) If a court orders a meeting adjourned to a date more than one hundred twenty days after the date fixed for the original meeting, it may provide that the original record date continues in effect or it may fix a new record date. [2009 c 189 § 16; 1989 c 165 § 66.]

**23B.07.200 Shareholders' list for meeting.** (1) After fixing a record date for a meeting, a corporation shall prepare an alphabetical list of the names of all its shareholders on the record date who are entitled to notice of a shareholders' meeting. The list must be arranged by voting group, and within each voting group by class or series of shares, and show the address of and number of shares held by each shareholder.

(2) The shareholders' list must be available for inspection by any shareholder, beginning ten days prior to the meeting and continuing through the meeting, at the corporation's principal office or at a place identified in the meeting notice in the city where the meeting will be held. A shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list, during regular business hours and at the shareholder's expense, during the period it is available for inspection.

(3) The corporation shall make the shareholders' list available at the meeting, and any shareholder, the shareholder's agent, or the shareholder's attorney is entitled to inspect the list at any time during the meeting or any adjournment.

(4) If the corporation refuses to allow a shareholder, the shareholder's agent, or the shareholder's attorney to inspect the shareholders' list before or at the meeting, the superior court of the county where a corporation's principal office, or, if none in this state, its registered office, is located, on application of the shareholder, may summarily order the inspection at the corporation's expense and may postpone the meeting for which the list was prepared until the inspection is complete.

(5) A shareholder's right to copy the shareholders' list, and a shareholder's right to otherwise inspect and copy the record of shareholders, is governed by RCW 23B.16.020(3).

(6) Refusal or failure to prepare or make available the shareholders' list does not affect the validity of corporate action approved at the meeting. [2009 c 189 § 17; 1989 c 165 § 68.]

**23B.07.250 Quorum and voting requirements.** (1) Shares entitled to vote as a separate voting group may approve a corporate action at a meeting only if a quorum of those shares exists with respect to that corporate action. Unless the articles of incorporation or this title provide otherwise, a majority of the votes entitled to be cast on the corporate action by the voting group constitutes a quorum of that voting group for approval of that corporate action.

(2) Once a share is represented for any purpose at a meeting other than solely to object to holding the meeting or transacting business at the meeting, it is deemed present for quorum purposes for the remainder of the meeting and for any adjournment of that meeting unless a new record date is or must be set for that adjourned meeting.



(3) If a quorum exists, a corporate action, other than the election of directors, is approved by a voting group if the votes cast within the voting group favoring the corporate action exceed the votes cast within the voting group opposing the corporate action, unless the articles of incorporation or this title require a greater number of affirmative votes.

(4) An amendment of articles of incorporation adding, changing, or deleting either (i) [(a)] a quorum for a voting group greater or lesser than specified in subsection (1) of this section, or (ii) [(b)] a voting requirement for a voting group greater than specified in subsection (3) of this section, is governed by RCW 23B.07.270.

(5) The election of directors is governed by RCW 23B.07.280. [2009 c 189 § 18; 1989 c 165 § 73.]

**23B.07.260 Corporate action by single and multiple voting groups.** (1) If the articles of incorporation or this title provide for voting on a corporate action by all shares entitled to vote thereon, voting together as a single voting group and do not provide for separate voting by any other voting group or groups with respect to that corporate action, that corporate action is approved when voted upon by that single voting group as provided in RCW 23B.07.250.

(2) If the articles of incorporation or this title provide for voting by two or more voting groups on a corporate action, that corporate action is approved only when voted upon by each of those voting groups as provided in RCW 23B.07.250. [2009 c 189 § 19; 2003 c 35 § 2; 1989 c 165 § 74.]

**23B.07.270 Greater or lesser quorum or voting requirements.** (1) The articles of incorporation may provide for a greater or lesser quorum, but not less than one-third of the votes entitled to be cast, for shareholders, or voting groups of shareholders, than is provided for by this title.

(2) The articles of incorporation may provide for a greater voting requirement for shareholders, or voting groups of shareholders, than is provided for by this title.

(3) Under RCW 23B.10.030, 23B.11.030, 23B.12.020, and 23B.14.020, the articles of incorporation may provide for a lesser vote than is otherwise prescribed in those sections or for a lesser vote by separate voting groups, so long as the vote provided for each voting group entitled to vote separately on the plan or transaction is not less than a majority of all the votes entitled to be cast on the plan or transaction by that voting group.

(4) Except as provided in subsection (5) of this section, an amendment to the articles of incorporation that adds, changes, or deletes a greater or lesser quorum or voting requirement for a particular corporate action must meet the same quorum requirement and be adopted by the same vote and voting groups as are required under the quorum and voting requirements then in effect for approval of the corporate action.

(5) An amendment to the articles of incorporation that adds, changes, or deletes a greater or lesser quorum or voting requirement for a merger, share exchange, sale of substantially all assets, or dissolution must be adopted by the same vote and voting groups as are required under the quorum and voting requirements then in effect for approval of the particular corporate action, or the quorum and voting requirements

then in effect for amendments to articles of incorporation, whichever is greater. [2009 c 189 § 20; 1990 c 178 § 11; 1989 c 165 § 75.]

**Effective date—1990 c 178:** See note following RCW 23B.01.220.

**23B.07.280 Voting for directors—Cumulative voting.** (1) Unless otherwise provided in the articles of incorporation, shareholders entitled to vote at any election of directors are entitled to cumulate votes by multiplying the number of votes they are entitled to cast by the number of directors for whom they are entitled to vote and to cast the product for a single candidate or distribute the product among two or more candidates.

(2) Unless otherwise provided in the articles of incorporation or in a bylaw adopted under RCW 23B.10.205, in any election of directors the candidates elected are those receiving the largest numbers of votes cast by the shares entitled to vote in the election, up to the number of directors to be elected by such shares. [2009 c 189 § 21; 1989 c 165 § 76.]

**23B.07.320 Agreements among shareholders—Acquisition of shares after agreement.** (1) An agreement among the shareholders of a corporation that is not contrary to public policy and that complies with this section is effective among the shareholders and the corporation even though it is inconsistent with one or more other provisions of this title in that it:

(a) Eliminates the board of directors or restricts the discretion or powers of the board of directors;

(b) Governs the approval or making of distributions whether or not in proportion to ownership of shares, subject to the limitations in RCW 23B.06.400;

(c) Establishes who shall be directors or officers of the corporation, or their terms of office or manner of selection or removal;

(d) Governs, in general or in regard to specific matters, the exercise or division of voting power by or between the shareholders and directors or by or among any of them, including use of weighted voting rights or director proxies;

(e) Establishes the terms and conditions of any agreement for the transfer or use of property or the provision of services between the corporation and any shareholder, director, officer, or employee of the corporation or among any of them;

(f) Transfers to one or more shareholders or other persons all or part of the authority to exercise the corporate powers or to manage the business and affairs of the corporation;

(g) Provides a process by which a deadlock among directors or shareholders may be resolved;

(h) Requires dissolution of the corporation at the request of one or more shareholders or upon the occurrence of a specified event or contingency; or

(i) Otherwise governs the exercise of the corporate powers or the management of the business and affairs of the corporation or the relationship among the shareholders, the directors, and the corporation, or among any of them.

(2) An agreement authorized by this section shall be:

(a) Set forth in a written agreement that is signed by all persons who are shareholders at the time of the agreement and is made known to the corporation;

(b) Subject to amendment only by all persons who are shareholders at the time of the amendment, unless the agreement provides otherwise; and

(c) Valid for ten years, unless the agreement provides otherwise.

(3) The existence of an agreement authorized by this section shall be noted conspicuously on the front or back of each certificate for outstanding shares or on the information statement required by RCW 23B.06.260(2). If at the time of the agreement the corporation has shares outstanding represented by certificates, the corporation shall recall the outstanding certificates and issue substitute certificates that comply with this subsection. The failure to note the existence of the agreement on the certificate or information statement shall not affect the validity of the agreement or any action taken pursuant to it. Unless the agreement provides otherwise, any person who acquires outstanding or newly issued shares in the corporation after an agreement authorized by this section has been effected, whether by purchase, gift, operation of law, or otherwise, is deemed to have assented to the agreement and to be a party to the agreement. A purchaser of shares who is aggrieved because he or she at the time of purchase did not have actual or constructive knowledge of the existence of the agreement may either: (a) Bring an action to rescind the purchase within the earlier of ninety days after discovery of the existence of the agreement or two years after the purchase of the shares; or (b) continue to hold the shares subject to the agreement but with a right of action for any damages resulting from nondisclosure of the existence of the agreement. A purchaser shall be deemed to have constructive knowledge of the existence of the agreement if its existence is noted on the certificate or information statement for the shares in compliance with this subsection and, if the shares are not represented by a certificate, the information statement is delivered to the purchaser at or prior to the time of purchase of the shares.

(4) An agreement authorized by this section shall cease to be effective when shares of the corporation are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

(5) An agreement authorized by this section that limits the discretion or powers of the board of directors shall relieve the directors of, and impose upon the person or persons in whom such discretion or powers are vested, liability for acts or omissions imposed by law on directors to the extent that the discretion or powers of the directors are limited by the agreement.

(6) The existence or performance of an agreement authorized by this section shall not be a ground for imposing personal liability on any shareholder for the acts or debts of the corporation even if the agreement or its performance treats the corporation as if it were a partnership or results in failure to observe the corporate formalities otherwise applicable to the matters governed by the agreement.

(7) Incorporators or subscribers for shares may act as shareholders with respect to an agreement authorized by this section if no shares have been issued when the agreement is made. [2009 c 189 § 22; 1995 c 47 § 6; 1993 c 290 § 4.]

## Chapter 23B.08 RCW

### DIRECTORS AND OFFICERS

#### Sections

23B.08.030	Number and election of directors.
23B.08.210	Corporate action without meeting.
23B.08.230	Waiver of notice.
23B.08.240	Quorum and voting.
23B.08.250	Committees.
23B.08.500	Indemnification definitions.
23B.08.550	Determination and authorization of indemnification.
23B.08.700	Definitions.
23B.08.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )

**23B.08.030 Number and election of directors.** (1) A board of directors must consist of one or more individuals, with the number specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) Directors are elected at the first annual shareholders' meeting and at each annual meeting thereafter unless (a) their terms are staggered under RCW 23B.08.060, or (b) their terms are otherwise governed by RCW 23B.05.050. Directors also may be elected by execution of a shareholder consent under RCW 23B.07.040. [2009 c 189 § 23; 2007 c 467 § 1; 2002 c 297 § 27; 1994 c 256 § 29; 1989 c 165 § 82.]

**Findings—Construction—1994 c 256:** See RCW 43.320.007.

**23B.08.210 Corporate action without meeting.** (1) Unless the articles of incorporation or bylaws provide otherwise, corporate action required or permitted by this title to be approved at a board of directors' meeting may be approved without a meeting if the corporate action is approved by all members of the board. The approval of the corporate action must be evidenced by one or more consents describing the corporate action being approved, executed by each director either before or after the corporate action becomes effective, and delivered to the corporation for inclusion in the minutes or filing with the corporate records, each of which consents shall be set forth either (a) in an executed record or (b) if the corporation has designated an address, location, or system to which the consents may be electronically transmitted and the consent is electronically transmitted to the designated address, location, or system, in an executed electronically transmitted record.

(2) Corporate action is approved under this section when the last director executes the consent.

(3) A consent under this section has the effect of a meeting vote and may be described as such in any record. [2009 c 189 § 24; 2002 c 297 § 29; 1989 c 165 § 92.]

**23B.08.230 Waiver of notice.** (1) A director may waive any notice required by this title, the articles of incorporation, or bylaws before or after the date and time stated in the notice, and such waiver shall be equivalent to the giving of such notice. Except as provided by subsection (2) of this section, the waiver must be delivered by the director entitled to the notice to the corporation for inclusion in the minutes or filing with the corporate records, which waiver shall be set forth either (a) in an executed record or (b) if the corporation has designated an address, location, or system to which the waiver may be electronically transmitted and the waiver has

been electronically transmitted to the designated address, location, or system, in an executed electronically transmitted record.

(2) A director's attendance at or participation in a meeting waives any required notice to the director of the meeting unless the director at the beginning of the meeting, or promptly upon the director's arrival, objects to holding the meeting or transacting business at the meeting and does not thereafter vote for or assent to any corporate action approved at the meeting. [2009 c 189 § 25; 2002 c 297 § 30; 1989 c 165 § 94.]

**23B.08.240 Quorum and voting.** (1) Unless the articles of incorporation or bylaws require a greater or lesser number, a quorum of a board of directors consists of a majority of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(2) Notwithstanding subsection (1) of this section, a quorum of a board of directors may in no event be less than one-third of the number of directors specified in or fixed in accordance with the articles of incorporation or bylaws.

(3) If a quorum is present when a vote is taken, the affirmative vote of a majority of directors present is the act of the board of directors unless the articles of incorporation or bylaws require the vote of a greater number of directors.

(4) A director who is present at a meeting of the board of directors when corporate action is approved is deemed to have assented to the corporate action unless: (a) The director objects at the beginning of the meeting, or promptly upon the director's arrival, to holding it or transacting business at the meeting; (b) the director's dissent or abstention as to the corporate action is entered in the minutes of the meeting; or (c) the director delivers notice of the director's dissent or abstention as to the corporate action to the presiding officer of the meeting before adjournment or to the corporation within a reasonable time after adjournment of the meeting. The right of dissent or abstention is not available to a director who votes in favor of the corporate action. [2009 c 189 § 26; 2002 c 297 § 31; 1991 c 72 § 35; 1989 c 165 § 95.]

**23B.08.250 Committees.** (1) Unless the articles of incorporation or bylaws provide otherwise, a board of directors may create one or more committees of directors. Each committee must have two or more members, who serve at the pleasure of the board of directors.

(2) The creation of a committee and appointment of members to it must be approved by the greater of (a) a majority of all the directors in office when the creation of the committee is approved or (b) the number of directors required by the articles of incorporation or bylaws to approve the creation of the committee under RCW 23B.08.240.

(3) RCW 23B.08.200 through 23B.08.240, which govern meetings, approval of corporate action without meetings, notice and waiver of notice, and quorum and voting requirements of the board of directors, apply to committees and their members as well.

(4) To the extent specified by the board of directors or in the articles of incorporation or bylaws, each committee may exercise the authority of the board of directors under RCW 23B.08.010.

(5) A committee may not, however:

(a) Approve a distribution except according to a general formula or method prescribed by the board of directors;

(b) Approve or propose to shareholders corporate action that this title requires be approved by shareholders;

(c) Fill vacancies on the board of directors or on any of its committees;

(d) Amend articles of incorporation pursuant to RCW 23B.10.020;

(e) Adopt, amend, or repeal bylaws;

(f) Approve a plan of merger not requiring shareholder approval; or

(g) Approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee, or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

(6) The creation of, delegation of authority to, or approval of corporate action by a committee does not alone constitute compliance by a director with the standards of conduct described in RCW 23B.08.300. [2009 c 189 § 27; 1989 c 165 § 96.]

**23B.08.500 Indemnification definitions.** For purposes of RCW 23B.08.510 through 23B.08.600:

(1) "Corporation" includes any domestic or foreign predecessor entity of a corporation in a merger or other transaction in which the predecessor's existence ceased upon the effective date of the transaction.

(2) "Director" means an individual who is or was a director of a corporation or an individual who, while a director of a corporation, is or was serving at the corporation's request as a director, officer, partner, trustee, employee, or agent of another foreign or domestic corporation, partnership, joint venture, trust, employee benefit plan, or other enterprise. A director is considered to be serving an employee benefit plan at the corporation's request if the director's duties to the corporation also impose duties on, or otherwise involve services by, the director to the plan or to participants in or beneficiaries of the plan. "Director" includes, unless the context requires otherwise, the estate or personal representative of a director.

(3) "Expenses" include counsel fees.

(4) "Liability" means the obligation to pay a judgment, settlement, penalty, fine, including an excise tax assessed with respect to an employee benefit plan, or reasonable expenses incurred with respect to a proceeding.

(5) "Official capacity" means: (a) When used with respect to a director, the office of director in a corporation; and (b) when used with respect to an individual other than a director, as contemplated in RCW 23B.08.570, the office in a corporation held by the officer or the employment or agency relationship undertaken by the employee or agent on behalf of the corporation. "Official capacity" does not include service for any other foreign or domestic corporation or any partnership, joint venture, trust, employee benefit plan, or other enterprise.

(6) "Party" includes an individual who was, is, or is threatened to be made a named defendant or respondent in a proceeding.

(7) "Proceeding" means any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative and whether formal or informal. [2009 c 189 § 28; 1989 c 165 § 105.]

**23B.08.550 Determination and authorization of indemnification.** (1) A corporation may not indemnify a director under RCW 23B.08.510 unless approved in the specific case after a determination has been made that indemnification of the director is permissible in the circumstances because the director has met the standard of conduct set forth in RCW 23B.08.510.

(2) The determination shall be made:

(a) By the board of directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding;

(b) If a quorum cannot be obtained under (a) of this subsection, by majority vote of a committee duly designated by the board of directors, in which designation directors who are parties may participate, consisting solely of two or more directors not at the time parties to the proceeding;

(c) By special legal counsel:

(i) Selected by the board of directors or its committee in the manner prescribed in (a) or (b) of this subsection; or

(ii) If a quorum of the board of directors cannot be obtained under (a) of this subsection and a committee cannot be designated under (b) of this subsection, selected by majority vote of the full board of directors, in which selection directors who are parties may participate; or

(d) By the shareholders, but shares owned by or voted under the control of directors who are at the time parties to the proceeding may not be voted on the determination.

(3) Approval of indemnification and evaluation as to reasonableness of expenses shall be made in the same manner as the determination that indemnification is permissible, except that if the determination is made by special legal counsel, approval of indemnification and evaluation as to reasonableness of expenses shall be made by those entitled under subsection (2)(c) of this section to select counsel. [2009 c 189 § 29; 1989 c 165 § 110.]

**23B.08.700 Definitions.** For purposes of RCW 23B.08.710 through 23B.08.730:

(1) "Conflicting interest" with respect to a corporation means the interest a director of the corporation has respecting a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, if:

(a) Whether or not the transaction is brought before the board of directors of the corporation for action, the director knows at the time of commitment that the director or a related person is a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the director or a related person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction; or

(b) The transaction is brought, or is of such character and significance to the corporation that it would in the normal course be brought, before the board of directors of the corpo-

ration for action, and the director knows at the time of commitment that any of the following persons is either a party to the transaction or has a beneficial financial interest in or so closely linked to the transaction and of such financial significance to the person that the interest would reasonably be expected to exert an influence on the director's judgment if the director were called upon to vote on the transaction: (i) An entity, other than the corporation, of which the director is a director, general partner, agent, or employee; (ii) a person that controls one or more of the entities specified in (b)(i) of this subsection or an entity that is controlled by, or is under common control with, one or more of the entities specified in (b)(i) of this subsection; or (iii) an individual who is a general partner, principal, or employer of the director.

(2) "Director's conflicting interest transaction" with respect to a corporation means a transaction effected or proposed to be effected by the corporation, or by a subsidiary of the corporation or any other entity in which the corporation has a controlling interest, respecting which a director of the corporation has a conflicting interest.

(3) "Related person" of a director means (a) the spouse, or a parent or sibling thereof, of the director, or a child, grandchild, sibling, parent, or spouse of any thereof, of the director, or an individual having the same home as the director, or a trust or estate of which an individual specified herein is a substantial beneficiary; or (b) a trust, estate, incompetent, conservatee, or minor of which the director is a fiduciary.

(4) "Required disclosure" means disclosure by the director who has a conflicting interest of (a) the existence and nature of the director's conflicting interest, and (b) all facts known to the director respecting the subject matter of the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction.

(5) "Time of commitment" respecting a transaction means the time when the transaction becomes effective or, if made pursuant to contract, the time when the corporation, or its subsidiary or the entity in which it has a controlling interest, becomes contractually obligated so that its unilateral withdrawal from the transaction would entail significant loss, liability, or other damage. [2009 c 189 § 30; 1989 c 165 § 116.]

**23B.08.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 63.]

## Chapter 23B.10 RCW

## AMENDMENT OF ARTICLES OF INCORPORATION AND BYLAWS

## Sections

23B.10.020	Amendment of articles of incorporation by board of directors.
23B.10.060	Articles of amendment.
23B.10.070	Restated articles of incorporation.
23B.10.080	Amendment of articles of incorporation pursuant to reorganization.
23B.10.200	Amendment of bylaws by board of directors or shareholders.
23B.10.205	Amendment of bylaws—Election of directors.
23B.10.210	Bylaw increasing quorum or voting requirements for directors.

**23B.10.020 Amendment of articles of incorporation by board of directors.** Unless the articles of incorporation provide otherwise, a corporation's board of directors may adopt one or more amendments to the corporation's articles of incorporation without shareholder approval:

(1) If the corporation has only one class of shares outstanding, to provide, change, or eliminate any provision with respect to the par value of any class of shares;

(2) To delete the names and addresses of the initial directors;

(3) To delete the name and address of the initial registered agent or registered office, if a statement of change is on file with the secretary of state;

(4) If the corporation has only one class of shares outstanding, solely to:

(a) Effect a forward split of, or change the number of authorized shares of that class in proportion to a forward split of, or stock dividend in, the corporation's outstanding shares; or

(b) Effect a reverse split of the corporation's outstanding shares and the number of authorized shares of that class in the same proportions;

(5) To change the corporate name; or

(6) To make any other change expressly permitted by this title to be made without shareholder approval. [2009 c 189 § 31; 2003 c 35 § 3; 1989 c 165 § 121.]

**23B.10.060 Articles of amendment.** A corporation amending its articles of incorporation shall deliver to the secretary of state for filing articles of amendment setting forth:

(1) The name of the corporation;

(2) The text of each amendment adopted;

(3) If an amendment provides for an exchange, reclassification, or cancellation of issued shares, provisions for implementing the amendment if not contained in the amendment itself;

(4) The date of each amendment's adoption;

(5) If an amendment was adopted by the incorporators or board of directors without shareholder approval, a statement to that effect and that shareholder approval was not required; and

(6) If shareholder approval was required, a statement that the amendment was duly approved by the shareholders in accordance with the provisions of RCW 23B.10.030 and 23B.10.040. [2009 c 189 § 32; 1989 c 165 § 125.]

**23B.10.070 Restated articles of incorporation.** (1) Any officer of the corporation may restate its articles of incorporation at any time.

(2) A restatement may include one or more amendments to the articles of incorporation. If the restatement includes an amendment not requiring shareholder approval, it must be adopted by the board of directors. If the restatement includes an amendment requiring shareholder approval, it must be adopted in accordance with RCW 23B.10.030.

(3) If the board of directors submits a restatement for shareholder approval, the corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the proposed restatement and contain or be accompanied by a copy of the restatement that identifies any amendment or other change it would make in the articles of incorporation.

(4) A corporation restating its articles of incorporation shall deliver to the secretary of state for filing articles of restatement setting forth the name of the corporation and the text of the restated articles of incorporation together with a certificate setting forth:

(a) If the restatement does not include an amendment to the articles of incorporation, a statement to that effect;

(b) If the restatement contains an amendment to the articles of incorporation not requiring shareholder approval, a statement that the board of directors adopted the restatement and the date of such adoption;

(c) If the restatement contains an amendment to the articles of incorporation requiring shareholder approval, the information required by RCW 23B.10.060; and

(d) Both the articles of restatement and the certificate must be executed.

(5) Duly adopted restated articles of incorporation supersede the original articles of incorporation and all amendments to them.

(6) The secretary of state may certify restated articles of incorporation, as the articles of incorporation currently in effect, without including the certificate information required by subsection (4) of this section. [2009 c 189 § 33; 1991 c 72 § 36; 1989 c 165 § 126.]

**23B.10.080 Amendment of articles of incorporation pursuant to reorganization.** (1) A corporation's articles of incorporation may be amended without approval by the board of directors or shareholders to carry out a plan of reorganization ordered or decreed by a court of competent jurisdiction under federal statute if the articles of incorporation after amendment contain only provisions required or permitted by RCW 23B.02.020.

(2) The individual or individuals designated by the court shall deliver to the secretary of state for filing articles of amendment setting forth:

(a) The name of the corporation;

(b) The text of each amendment approved by the court;

(c) The date of the court's order or decree approving the articles of amendment;

(d) The title of the reorganization proceeding in which the order or decree was entered; and

(e) A statement that the court had jurisdiction of the proceeding under federal statute.

(3) Shareholders of a corporation undergoing reorganization do not have dissenters' rights except as and to the extent provided in the reorganization plan.

(4) This section does not apply after entry of a final decree in the reorganization proceeding even though the court retains jurisdiction of the proceeding for limited purposes unrelated to consummation of the reorganization plan. [2009 c 189 § 34; 1989 c 165 § 127.]

**23B.10.200 Amendment of bylaws by board of directors or shareholders.** (1) A corporation's board of directors may amend or repeal the corporation's bylaws, or adopt new bylaws, unless:

(a) The articles of incorporation, RCW 23B.10.205, or, if applicable, RCW 23B.10.210, or any other provision of this title reserve this power exclusively to the shareholders in whole or part; or

(b) The shareholders, in amending or repealing a particular bylaw, provide expressly that the board of directors may not amend or repeal that bylaw.

(2) A corporation's shareholders may amend or repeal the corporation's bylaws, or adopt new bylaws, even though the bylaws may also be amended or repealed, or new bylaws may also be adopted, by its board of directors. [2009 c 189 § 35; 2007 c 467 § 7; 1989 c 165 § 129.]

**23B.10.205 Amendment of bylaws—Election of directors.** (1) Unless the articles of incorporation specifically prohibit the adoption of a bylaw pursuant to this section, alter the vote specified in RCW 23B.07.280(2), or allow for or do not exclude cumulative voting, a public company may elect in its bylaws to be governed in the election of directors as follows:

(a) Each vote entitled to be cast may be voted for, voted against, or withheld for one or more candidates up to that number of candidates that is equal to the number of directors to be elected but without cumulating the votes, or a shareholder may indicate an abstention for one or more candidates;

(b) To be elected, a candidate must have received the number, percentage, or level of votes specified in the bylaws; provided that holders of shares entitled to vote in the election and constituting a quorum are present at the meeting. Except in a contested election as provided in (e) of this subsection, a candidate who does not receive the number, percentage, or level of votes specified in the bylaws but who was a director at the time of the election shall continue to serve as a director for a term that shall terminate on the date that is the earlier of (i) the date specified in the bylaw, but not longer than ninety days from the date on which the voting results are determined pursuant to RCW 23B.07.035(2), or (ii) the date on which an individual is selected by the board of directors to fill the office held by such director, which selection shall be deemed to constitute the filling of a vacancy by the board to which RCW 23B.08.100 applies;

(c) A bylaw adopted pursuant to this section may provide that votes cast against and/or withheld as to a candidate are to be taken into account in determining whether the number, percentage, or level of votes required for election has been received. Unless the bylaw specifies otherwise, only votes cast are to be taken into account and a ballot marked "with-

held" in respect to a share is deemed to be a vote cast. Unless the bylaws specify otherwise, shares otherwise present at the meeting but for which there is an abstention or as to which no authority or direction to vote in the election is given or specified, are not deemed to be votes cast in the election;

(d) The board of directors may select any qualified individual to fill the office held by a director who did not receive the specified vote for election referenced in (b) of this subsection; and

(e) Unless the bylaw specifies otherwise, a bylaw adopted pursuant to this subsection (1) shall not apply to an election of directors by a voting group if (i) at the expiration of the time fixed under a provision requiring advance notification of director candidates, or (ii) absent such a provision, at a time fixed by the board of directors which is not more than fourteen days before notice is given of the meeting at which the election is to occur, there are more candidates for election by the voting group than the number of directors to be elected, one or more of whom are properly proposed by shareholders. An individual shall not be considered a candidate for purposes of this subsection (1)(e) if the board of directors determines before the notice of meeting is given that such individual's candidacy does not create a bona fide election contest.

(2) A bylaw containing an election to be governed by this section may be repealed or amended:

(a) If originally adopted by the shareholders, only by the shareholders, unless the bylaw otherwise provides; or

(b) If adopted by the board of directors, by the board of directors or the shareholders. [2009 c 189 § 36; 2007 c 467 § 5.]

**23B.10.210 Bylaw increasing quorum or voting requirements for directors.** (1) A bylaw that fixes a greater quorum or voting requirement for the board of directors may be amended or repealed:

(a) If originally adopted by the shareholders, only by the shareholders; or

(b) If originally adopted by the board of directors, either by the shareholders or by the board of directors.

(2) A bylaw adopted or amended by the shareholders that fixes a greater quorum or voting requirement for the board of directors may provide that it may be amended or repealed only by a specified vote of either the shareholders or the board of directors.

(3) If the corporation is a public company, approval by the board of directors under subsection (1)(b) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the quorum requirement and be approved by the vote required for approval under the quorum and voting requirement then in effect.

(4) If the corporation is not a public company, approval by the board of directors under subsection (1)(b) of this section to adopt or amend a bylaw that changes the quorum or voting requirement for the board of directors must meet the same quorum requirement and be approved by the same vote required for approval under the quorum and voting requirement then in effect or proposed to be adopted, whichever is greater. [2009 c 189 § 37; 1989 c 165 § 130.]

## Chapter 23B.11 RCW

## MERGER AND SHARE EXCHANGE

## Sections

- 23B.11.030 Approval of plan of merger or share exchange.  
 23B.11.040 Merger of subsidiary.  
 23B.11.080 Merger. (*Effective July 1, 2010.*)  
 23B.11.090 Articles of merger. (*Effective July 1, 2010.*)  
 23B.11.110 Merger with foreign and domestic entities—Effect. (*Effective July 1, 2010.*)

**23B.11.030 Approval of plan of merger or share exchange.** (1) After adopting a plan of merger or share exchange, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, shall submit the plan of merger, except as provided in subsection (7) of this section, or share exchange for approval by its shareholders.

(2) For a plan of merger or share exchange to be approved:

(a) The board of directors must recommend the plan of merger or share exchange to the shareholders, unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the plan; and

(b) The shareholders entitled to vote must approve the plan, except as provided in subsection (7) of this section.

(3) The board of directors may condition its submission of the proposed plan of merger or share exchange on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed plan of merger or share exchange.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan of merger or share exchange and must contain or be accompanied by a copy or summary of the plan.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the plan of merger must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the plan, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on the plan, unless shareholder approval is not required under subsection (7) of this section. The articles of incorporation may require a greater or lesser vote than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of merger and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of merger under the circumstances described in RCW 23B.11.035.

(6) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the plan of share exchange must be approved by two-thirds of the

voting group comprising all the votes entitled to be cast on the plan, and of each other voting group entitled under RCW 23B.11.035 or the articles of incorporation to vote separately on the plan. The articles of incorporation may require a greater or lesser vote than that provided in this subsection, or a greater or lesser vote by separate voting groups, so long as the required vote is not less than a majority of all the votes entitled to be cast on the plan of share exchange and of each other voting group entitled to vote separately on the plan. Separate voting by additional voting groups is required on a plan of share exchange under the circumstances described in RCW 23B.11.035.

(7) Approval by the shareholders of the surviving corporation on a plan of merger is not required if:

(a) The articles of incorporation of the surviving corporation will not differ, except for amendments enumerated in RCW 23B.10.020, from its articles of incorporation before the merger;

(b) Each shareholder of the surviving corporation whose shares were outstanding immediately before the effective date of the merger will hold the same number of shares, with identical designations, preferences, limitations, and relative rights, immediately after the merger;

(c) The number of voting shares outstanding immediately after the merger, plus the number of voting shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of voting shares of the surviving corporation authorized by its articles of incorporation immediately before the merger; and

(d) The number of participating shares outstanding immediately after the merger, plus the number of participating shares issuable as a result of the merger, either by the conversion of securities issued pursuant to the merger or the exercise of rights and warrants issued pursuant to the merger, will not exceed the total number of participating shares authorized by its articles of incorporation immediately before the merger.

(8) As used in subsection (7) of this section:

(a) "Participating shares" means shares that entitle their holders to participate without limitation in distributions.

(b) "Voting shares" means shares that entitle their holders to vote unconditionally in elections of directors.

(9) After a merger or share exchange is approved, and at any time before articles of merger or share exchange are filed, the planned merger or share exchange may be abandoned, subject to any contractual rights, without further shareholder approval, in accordance with the procedure set forth in the plan of merger or share exchange or, if none is set forth, in the manner determined by the board of directors. [2009 c 189 § 38; 2003 c 35 § 6; 1989 c 165 § 133.]

**23B.11.040 Merger of subsidiary.** (1) A parent corporation owning at least ninety percent of the outstanding shares of each class of a subsidiary corporation may merge the subsidiary into itself without approval of the shareholders of the parent or subsidiary.

(2) The board of directors of the parent shall approve a plan of merger that sets forth:

(a) The names of the parent and subsidiary; and

(b) The manner and basis of converting the shares of the subsidiary into shares, obligations, or other securities of the parent or any other corporation or into cash or other property in whole or part.

(3) Within ten days after the corporate action becomes effective, the parent shall deliver a notice to each shareholder of the subsidiary, which notice shall include a copy of the plan of merger.

(4) Articles of merger under this section may not contain amendments to the articles of incorporation of the parent corporation, except for amendments enumerated in RCW 23B.10.020. [2009 c 189 § 39; 2002 c 297 § 34; 1989 c 165 § 134.]

**23B.11.080 Merger. (Effective July 1, 2010.)** (1) One or more domestic corporations may merge with one or more limited liability companies, partnerships, or limited partnerships if:

(a) The board of directors of each corporation adopts and the shareholders of each corporation approve, if approval would be necessary, the plan of merger as required by RCW 23B.11.030;

(b) The partners of each limited partnership approve the plan of merger as required by RCW 25.10.781;

(c) The partners of each partnership approve the plan of merger as required by RCW 25.05.375; and

(d) The members of each limited liability company approve, if approval is necessary, the plan of merger as required by RCW 25.15.400.

(2) The plan of merger must set forth:

(a) The name of each limited liability company, partnership, corporation, and limited partnership planning to merge and the name of the surviving limited liability company, partnership, corporation, or limited partnership into which each other limited liability company, partnership, corporation, or limited partnership plans to merge;

(b) The terms and conditions of the merger; and

(c) The manner and basis of converting the shares of each corporation, the member interests of each limited liability company, and the partnership interests in each partnership and each limited partnership into shares, limited liability company member interests, partnership interests, obligations, or other securities of the surviving limited liability company, partnership, corporation, or limited partnership, or into cash or other property, including shares, obligations, or securities of any other limited liability company, partnership, or corporation, and partnership interests, obligations, or securities of any other limited partnership, in whole or in part.

(3) The plan of merger may set forth:

(a) Amendments to the articles of incorporation of the surviving corporation;

(b) Amendments to the certificate of limited partnership of the surviving limited partnership; and

(c) Other provisions relating to the merger. [2009 c 188 § 1401; 1998 c 103 § 1310; 1991 c 269 § 38.]

**Effective date—2009 c 188:** "Sections 1401 through 1416 of this act take effect July 1, 2010." [2009 c 188 § 1417.]

**23B.11.090 Articles of merger. (Effective July 1, 2010.)** After a plan of merger for one or more corporations and one or more limited partnerships, one or more partner-

ships, or one or more limited liability companies is approved by the shareholders of each corporation (or adopted by the board of directors of any corporation for which shareholder approval is not required), is approved by the partners for each limited partnership as required by RCW 25.10.781, is approved by the partners of each partnership as required by RCW 25.05.380, or is approved by the members of each limited liability company as required by RCW 25.15.400, the surviving entity must:

(1) If the surviving entity is a corporation, file with the secretary of state articles of merger setting forth:

(a) The plan of merger;

(b) A statement that the merger was duly approved by the shareholders of each corporation pursuant to RCW 23B.11.030 (or a statement that shareholder approval was not required for a merging corporation); and

(c) A statement that the merger was duly approved by the partners of each limited partnership pursuant to RCW 25.10.781.

(2) If the surviving entity is a limited partnership, comply with the requirements in RCW 25.10.786.

(3) If the surviving entity is a partnership, comply with the requirements in RCW 25.05.380.

(4) If the surviving entity is a limited liability company, comply with the requirements in RCW 25.15.405. [2009 c 188 § 1402; 1998 c 103 § 1311; 1991 c 269 § 39.]

**Effective date—2009 c 188:** See note following RCW 23B.11.080.

**23B.11.110 Merger with foreign and domestic entities—Effect. (Effective July 1, 2010.)** (1) One or more foreign limited partnerships, foreign corporations, foreign partnerships, and foreign limited liability companies may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations, provided that:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited partnership was organized and the law of the state or country under which each foreign corporation was incorporated and each foreign limited partnership or foreign corporation complies with that law in effecting the merger;

(b) If the surviving entity is a foreign or domestic corporation, that corporation complies with RCW 23B.11.090;

(c) If the surviving entity is a foreign or domestic limited partnership, that limited partnership complies with RCW 25.10.786;

(d) Each domestic corporation complies with RCW 23B.11.080;

(e) Each domestic limited partnership complies with RCW 25.10.781;

(f) Each domestic limited liability company complies with RCW 25.15.400; and

(g) Each domestic partnership complies with RCW 25.05.375.

(2) Upon the merger taking effect, a surviving foreign corporation, foreign limited partnership, foreign limited liability corporation, or foreign partnership is deemed:

(a) To appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting shareholders or partners of each



domestic corporation, domestic limited partnership, domestic limited liability company, or domestic partnership party to the merger; and

(b) To agree that it will promptly pay to the dissenting shareholders or partners of each domestic corporation, domestic limited partnership, domestic limited liability company, or domestic partnership party to the merger the amount, if any, to which they are entitled under chapter 23B.13 RCW, in the case of dissenting shareholders, or under chapter 25.10, 25.15, or 25.05 RCW, in the case of dissenting partners. [2009 c 188 § 1403; 1998 c 103 § 1313; 1991 c 269 § 41.]

**Effective date—2009 c 188:** See note following RCW 23B.11.080.

## Chapter 23B.12 RCW

### SALE OF ASSETS

#### Sections

23B.12.020 Sale of assets other than in the regular course of business.

**23B.12.020 Sale of assets other than in the regular course of business.** (1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the corporation's board of directors, if the board of directors proposes and its shareholders approve the proposed transaction.

(2) For a transaction to be approved:

(a) The board of directors must recommend the proposed transaction to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) The shareholders entitled to vote must approve the transaction.

(3) The board of directors may condition its submission of the proposed transaction on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed transaction.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed shareholders' meeting in accordance with RCW 23B.07.050. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the sale, lease, exchange, or other disposition of all, or substantially all, the property of the corporation and contain or be accompanied by a description of the transaction.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the transaction must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the transaction, and of each other voting group entitled under the articles of incorporation to vote separately on the transaction. The articles of incorporation may require a greater or lesser vote than provided in this subsection, or a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote is not less than

a majority of all the votes entitled to be cast on the transaction and of each other voting group entitled to vote separately on the transaction.

(6) After a sale, lease, exchange, or other disposition of property is approved, the transaction may be abandoned, subject to any contractual rights, without further shareholder approval, in a manner determined by the board of directors.

(7) A transaction that constitutes a distribution is governed by RCW 23B.06.400 and not by this section. [2009 c 189 § 40; 2003 c 35 § 8; 1989 c 165 § 139.]

## Chapter 23B.13 RCW

### DISSENTERS' RIGHTS

#### Sections

23B.13.020 Right to dissent. (*Effective until July 1, 2010.*)

23B.13.020 Right to dissent. (*Effective July 1, 2010.*)

23B.13.200 Notice of dissenters' rights.

23B.13.210 Notice of intent to demand payment.

23B.13.220 Dissenters' rights—Notice.

23B.13.240 Share restrictions.

23B.13.260 Failure to take corporate action.

23B.13.270 After-acquired shares.

23B.13.280 Procedure if shareholder dissatisfied with payment or offer.

**23B.13.020 Right to dissent.** (*Effective until July 1, 2010.*) (1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) A plan of merger, which has become effective, to which the corporation is a party (i) if shareholder approval was required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, and the shareholder was entitled to vote on the merger, or (ii) if the corporation was a subsidiary that has been merged with its parent under RCW 23B.11.040;

(b) A plan of share exchange, which has become effective, to which the corporation is a party as the corporation whose shares have been acquired, if the shareholder was entitled to vote on the plan;

(c) A sale or exchange, which has become effective, of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder was entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation, whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration other than shares of the corporation; or

(e) Any corporate action approved pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not chal-

lunge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, RCW 25.10.900 through 25.10.955, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:

(a) The proposed corporate action is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or

(c) The shareholder's demand for payment is withdrawn with the written consent of the corporation. [2009 c 189 § 41; 2003 c 35 § 9; 1991 c 269 § 37; 1989 c 165 § 141.]

**23B.13.020 Right to dissent. (Effective July 1, 2010.)**

(1) A shareholder is entitled to dissent from, and obtain payment of the fair value of the shareholder's shares in the event of, any of the following corporate actions:

(a) A plan of merger, which has become effective, to which the corporation is a party (i) if shareholder approval was required for the merger by RCW 23B.11.030, 23B.11.080, or the articles of incorporation, and the shareholder was entitled to vote on the merger, or (ii) if the corporation was a subsidiary that has been merged with its parent under RCW 23B.11.040;

(b) A plan of share exchange, which has become effective, to which the corporation is a party as the corporation whose shares have been acquired, if the shareholder was entitled to vote on the plan;

(c) A sale or exchange, which has become effective, of all, or substantially all, of the property of the corporation other than in the usual and regular course of business, if the shareholder was entitled to vote on the sale or exchange, including a sale in dissolution, but not including a sale pursuant to court order or a sale for cash pursuant to a plan by which all or substantially all of the net proceeds of the sale will be distributed to the shareholders within one year after the date of sale;

(d) An amendment of the articles of incorporation, whether or not the shareholder was entitled to vote on the amendment, if the amendment effects a redemption or cancellation of all of the shareholder's shares in exchange for cash or other consideration other than shares of the corporation; or

(e) Any corporate action approved pursuant to a shareholder vote to the extent the articles of incorporation, bylaws, or a resolution of the board of directors provides that voting or nonvoting shareholders are entitled to dissent and obtain payment for their shares.

(2) A shareholder entitled to dissent and obtain payment for the shareholder's shares under this chapter may not challenge the corporate action creating the shareholder's entitlement unless the action fails to comply with the procedural requirements imposed by this title, RCW 25.10.831 through 25.10.886, the articles of incorporation, or the bylaws, or is fraudulent with respect to the shareholder or the corporation.

(3) The right of a dissenting shareholder to obtain payment of the fair value of the shareholder's shares shall terminate upon the occurrence of any one of the following events:

(a) The proposed corporate action is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the corporate action; or

(c) The shareholder's demand for payment is withdrawn with the written consent of the corporation. [2009 c 189 § 41; 2009 c 188 § 1404; 2003 c 35 § 9; 1991 c 269 § 37; 1989 c 165 § 141.]

**Reviser's note:** This section was amended by 2009 c 188 § 1404 and by 2009 c 189 § 41, 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—2009 c 188:** See note following RCW 23B.11.080.

**23B.13.200 Notice of dissenters' rights.** (1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval by a vote at a shareholders' meeting, the meeting notice must state that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter.

(2) If corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval without a vote of shareholders in accordance with RCW 23B.07.040, the shareholder consent described in RCW 23B.07.040(1)(b) and the notice described in RCW 23B.07.040(3)(a) must include a statement that shareholders are or may be entitled to assert dissenters' rights under this chapter and be accompanied by a copy of this chapter. [2009 c 189 § 42; 2002 c 297 § 36; 1989 c 165 § 143.]

**23B.13.210 Notice of intent to demand payment.** (1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted to a vote at a shareholders' meeting, a shareholder who wishes to assert dissenters' rights must (a) deliver to the corporation before the vote is taken notice of the shareholder's intent to demand payment for the shareholder's shares if the proposed corporate action is effected, and (b) not vote such shares in favor of the proposed corporate action.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is submitted for approval without a vote of shareholders in accordance with RCW 23B.07.040, a shareholder who wishes to assert dissenters' rights must not execute the consent or otherwise vote such shares in favor of the proposed corporate action.

(3) A shareholder who does not satisfy the requirements of subsection (1) or (2) of this section is not entitled to payment for the shareholder's shares under this chapter. [2009 c 189 § 43; 2002 c 297 § 37; 1989 c 165 § 144.]

**23B.13.220 Dissenters' rights—Notice.** (1) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved at a shareholders' meeting, the corporation shall within ten days after the effective date of the corporate action deliver to all shareholders who satisfied the requirements of RCW 23B.13.210(1) a notice in compliance with subsection (3) of this section.

(2) If proposed corporate action creating dissenters' rights under RCW 23B.13.020 is approved without a vote of shareholders in accordance with RCW 23B.07.040, the

notice delivered pursuant to RCW 23B.07.040(3)(b) to shareholders who satisfied the requirements of RCW 23B.13.210(2) shall comply with subsection (3) of this section.

(3) Any notice under subsection (1) or (2) of this section must:

(a) State where the payment demand must be sent and where and when certificates for certificated shares must be deposited;

(b) Inform holders of uncertificated shares to what extent transfer of the shares will be restricted after the payment demand is received;

(c) Supply a form for demanding payment that includes the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action and requires that the person asserting dissenters' rights certify whether or not the person acquired beneficial ownership of the shares before that date;

(d) Set a date by which the corporation must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice in subsection (1) or (2) of this section is delivered; and

(e) Be accompanied by a copy of this chapter. [2009 c 189 § 44; 2002 c 297 § 38; 1989 c 165 § 145.]

**23B.13.240 Share restrictions.** (1) The corporation may restrict the transfer of uncertificated shares from the date the demand for payment under RCW 23B.13.230 is received until the proposed corporate action is effected or the restriction is released under RCW 23B.13.260.

(2) The person for whom dissenters' rights are asserted as to uncertificated shares retains all other rights of a shareholder until the effective date of the proposed corporate action. [2009 c 189 § 45; 1989 c 165 § 147.]

**23B.13.260 Failure to take corporate action.** (1) If the corporation does not effect the proposed corporate action within sixty days after the date set for demanding payment and depositing share certificates, the corporation shall return the deposited certificates and release any transfer restrictions imposed on uncertificated shares.

(2) If after returning deposited certificates and releasing transfer restrictions, the corporation wishes to effect the proposed corporate action, it must send a new dissenters' notice under RCW 23B.13.220 and repeat the payment demand procedure. [2009 c 189 § 46; 1989 c 165 § 149.]

**23B.13.270 After-acquired shares.** (1) A corporation may elect to withhold payment required by RCW 23B.13.250 from a dissenter unless the dissenter was the beneficial owner of the shares before the date set forth in the dissenters' notice as the date of the first announcement to news media or to shareholders of the terms of the proposed corporate action.

(2) To the extent the corporation elects to withhold payment under subsection (1) of this section, after the effective date of the proposed corporate action, it shall estimate the fair value of the shares, plus accrued interest, and shall pay this amount to each dissenter who agrees to accept it in full satisfaction of the dissenter's demand. The corporation shall send with its offer an explanation of how it estimated the fair value

of the shares, an explanation of how the interest was calculated, and a statement of the dissenter's right to demand payment under RCW 23B.13.280. [2009 c 189 § 47; 1989 c 165 § 150.]

**23B.13.280 Procedure if shareholder dissatisfied with payment or offer.** (1) A dissenter may deliver a notice to the corporation informing the corporation of the dissenter's own estimate of the fair value of the dissenter's shares and amount of interest due, and demand payment of the dissenter's estimate, less any payment under RCW 23B.13.250, or reject the corporation's offer under RCW 23B.13.270 and demand payment of the dissenter's estimate of the fair value of the dissenter's shares and interest due, if:

(a) The dissenter believes that the amount paid under RCW 23B.13.250 or offered under RCW 23B.13.270 is less than the fair value of the dissenter's shares or that the interest due is incorrectly calculated;

(b) The corporation fails to make payment under RCW 23B.13.250 within sixty days after the date set for demanding payment; or

(c) The corporation does not effect the proposed corporate action and does not return the deposited certificates or release the transfer restrictions imposed on uncertificated shares within sixty days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless the dissenter notifies the corporation of the dissenter's demand under subsection (1) of this section within thirty days after the corporation made or offered payment for the dissenter's shares. [2009 c 189 § 48; 2002 c 297 § 40; 1989 c 165 § 151.]

## Chapter 23B.14 RCW DISSOLUTION

### Sections

23B.14.010	Dissolution by initial directors, incorporators, or board of directors.
23B.14.020	Dissolution by board of directors and shareholders.
23B.14.030	Articles of dissolution—Publication of notice.
23B.14.040	Revocation of dissolution.
23B.14.050	Effect of dissolution.

**23B.14.010 Dissolution by initial directors, incorporators, or board of directors.** (1) A majority of the initial directors, or, if initial directors were not named in the articles of incorporation and have not been elected, a majority of the incorporators, of a corporation that has not issued shares may approve dissolution of the corporation.

(2) Unless prohibited by the articles of incorporation, a majority of the board of directors may approve dissolution of the corporation without approval by the shareholders, upon a finding by the board of directors that:

(a) The corporation is not able to pay its liabilities as they become due in the usual course of business, or the corporation's assets are less than the sum of its total liabilities; and

(b) Ten or more days have elapsed since the corporation gave notice to all shareholders, whether or not they would otherwise be entitled to vote under RCW 23B.14.020, of the intent of the board of directors to approve dissolution under

this subsection. [2009 c 189 § 49; 2006 c 52 § 5; 1989 c 165 § 154.]

**23B.14.020 Dissolution by board of directors and shareholders.** (1) A corporation's board of directors may propose dissolution for submission to the shareholders.

(2) For a proposal to dissolve to be approved:

(a) The board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) The shareholders entitled to vote must approve the proposal to dissolve as provided in subsection (5) of this section.

(3) The board of directors may condition its submission of the proposal for dissolution on any basis, including the affirmative vote of holders of a specified percentage of shares held by any group of shareholders not otherwise entitled under this title or the articles of incorporation to vote as a separate voting group on the proposed dissolution.

(4) The corporation shall notify each shareholder, whether or not entitled to vote, of the proposed dissolution either (a) by giving notice of a shareholders' meeting in accordance with RCW 23B.07.050 and stating that the purpose or one of the purposes of the meeting is to consider dissolving the corporation, or (b) in accordance with the requirements of RCW 23B.07.040 for approving the proposed dissolution without a meeting.

(5) In addition to any other voting conditions imposed by the board of directors under subsection (3) of this section, the proposed dissolution must be approved by two-thirds of the voting group comprising all the votes entitled to be cast on the proposed dissolution, and of each other voting group entitled under the articles of incorporation to vote separately on the proposed dissolution. The articles of incorporation may require a greater or lesser vote than provided in this subsection, or a greater or lesser vote by any separate voting groups provided for in the articles of incorporation, so long as the required vote is not less than a majority of all the votes entitled to be cast on the proposed dissolution and of each other voting group entitled to vote separately on the proposed dissolution. [2009 c 189 § 50; 2006 c 52 § 6; 2003 c 35 § 10; 1989 c 165 § 155.]

**23B.14.030 Articles of dissolution—Publication of notice.** (1) At any time after dissolution is authorized under RCW 23B.14.010 or 23B.14.020, the corporation may dissolve by delivering to the secretary of state for filing:

(a) A copy of a revenue clearance certificate issued pursuant to RCW 82.32.260; and

(b) Articles of dissolution setting forth:

(i) The name of the corporation;

(ii) The date dissolution was approved; and

(iii) A statement that dissolution was duly approved by the initial directors, the incorporators, or the board of directors in accordance with RCW 23B.14.010, or was duly proposed by the board of directors and approved by the shareholders in accordance with RCW 23B.14.020.

(2) A corporation is dissolved upon the effective date of its articles of dissolution.

(3) A dissolved corporation shall, within thirty days after the effective date of its articles of dissolution, publish notice of its dissolution and request that persons with claims against the dissolved corporation present them in accordance with the notice. The notice must be published once a week for three consecutive weeks in a newspaper of general circulation in the county where the dissolved corporation's principal office (or, if none in this state, its registered office) is or was last located. The notice must also describe the information that must be included in a claim, provide a mailing address where a claim may be sent, and state that claims against the dissolved corporation may be barred in accordance with the provisions of this chapter if not timely asserted. A dissolved corporation's failure to publish notice in accordance with this subsection does not affect the validity or the effective date of its dissolution.

(4) For purposes of this chapter, "dissolved corporation" means a corporation whose dissolution has been approved in accordance with RCW 23B.14.010 or 23B.14.020 and whose articles of dissolution have become effective, and includes any trust or other successor entity to which the remaining assets of such a corporation are transferred subject to its liabilities for purposes of liquidation in accordance with RCW 23B.14.050. [2009 c 189 § 51; 2006 c 52 § 7; 1989 c 165 § 156.]

**23B.14.040 Revocation of dissolution.** (1) A corporation may revoke its dissolution within one hundred twenty days of its effective date.

(2) Revocation of dissolution must be approved in the same manner as the dissolution was approved unless that approval permitted revocation upon approval by the board of directors alone, in which event the board of directors may revoke the dissolution without shareholder approval.

(3) After the revocation of dissolution is approved, the corporation may revoke the dissolution by delivering to the secretary of state for filing articles of revocation of dissolution, together with a copy of its articles of dissolution, that set forth:

(a) The name of the corporation and a statement that such name satisfies the requirements of RCW 23B.04.010; if the name is not available, the corporation must file articles of amendment changing its name with the articles of revocation of dissolution;

(b) The effective date of the dissolution that was revoked;

(c) The date that the revocation of dissolution was approved;

(d) If the corporation's board of directors, or incorporators, revoked the dissolution, a statement to that effect;

(e) If the corporation's board of directors revoked a dissolution authorized by the shareholders, a statement that revocation was permitted by action by the board of directors alone pursuant to that authorization; and

(f) If shareholder approval was required to revoke the dissolution, a statement that revocation of the dissolution was duly approved by the shareholders in accordance with RCW 23B.14.040(2) [subsection (2) of this section] and 23B.14.020.

(4) Revocation of dissolution is effective upon the effective date of the articles of revocation of dissolution.

(5) When the revocation of dissolution is effective, it relates back to and takes effect as of the effective date of the dissolution and the corporation resumes carrying on its business as if dissolution had never occurred. [2009 c 189 § 52; 1989 c 165 § 157.]

**23B.14.050 Effect of dissolution.** (1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) Collecting its assets;

(b) Disposing of its properties that will be applied toward satisfaction or making reasonable provision for satisfaction of its liabilities or will otherwise not be distributed in kind to its shareholders, but in any case subject to applicable liens and security interests as well as any applicable contractual restrictions on the disposition of its properties;

(c) Satisfying or making reasonable provision for satisfying its liabilities, in accordance with their priorities as established by law, and on a pro rata basis within each class of liabilities;

(d) Subject to the limitations imposed by RCW 23B.06.400, distributing its remaining property among its shareholders according to their interests; and

(e) Doing every other act necessary to wind up and liquidate its business and affairs.

(2) Except as otherwise provided in this chapter, dissolution of a corporation does not:

(a) Transfer title to the corporation's property;

(b) Prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) Subject its directors or officers to standards of conduct different from those prescribed in chapter 23B.08 RCW;

(d) Change quorum or voting requirements for its board of directors or shareholders; change provisions for selection, resignation, or removal of its directors or officers or both; or change provisions for amending its bylaws;

(e) Prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) Abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(g) Terminate the authority of the registered agent of the corporation.

(3) A dissolved corporation's board of directors may make a determination that reasonable provision for the satisfaction of any liability, whether arising in tort or by contract, statute, or otherwise, and whether matured or unmatured, contingent, or conditional, has been made by means of a purchase of insurance coverage, provision of security therefor, contractual assumption thereof by a solvent person, or any other means, that the board of directors determines is reasonably calculated to provide for satisfaction of the reasonably estimated amount of such liability. Upon making such a determination, the board of directors shall, for purposes of determining whether a subsequent distribution to shareholders is prohibited under RCW 23B.06.400(2), be entitled to treat such liability as fully satisfied by the assets used or committed in order to make such provision. In making determi-

nations under RCW 23B.06.400(2), the board of directors of a dissolved corporation may also disregard, and make no provision for the satisfaction of, any liabilities that are barred in accordance with RCW 23B.14.060(2), or that may exceed any provision for their satisfaction ordered by a superior court pursuant to RCW 23B.14.065, or that the board of directors does not consider, based on the facts known to it, reasonably likely to arise prior to expiration of the survival period specified in RCW 23B.14.340.

(4) The board of directors of a dissolved corporation may at any time petition to have the dissolution continued under court supervision in accordance with RCW 23B.14.300, or, upon a finding that the corporation is not able to pay its liabilities as they become due in the usual course of business or that its assets are less than the sum of its total liabilities, may dedicate the corporation's assets to the repayment of its creditors by making an assignment for the benefit of creditors in accordance with chapter 7.08 RCW or obtaining the appointment of a general receiver in accordance with chapter 7.60 RCW. The assumption of control over the corporation's assets by a court, an assignee for the benefit of creditors, or a general receiver relieves the directors of any further duties with respect to the liquidation of the corporation's assets or the application of any assets or proceeds toward satisfaction of its liabilities.

(5) Corporate actions to be approved by a corporation that has been dissolved under RCW 23B.14.030 or 23B.14.210, which are within the scope of activities permitted in this chapter, may be approved by the corporation's board of directors and, if required, by its shareholders, membership in both groups determined as of the effective date of the dissolution. If vacancies in the board of directors occur after the effective date of dissolution, the shareholders, or the remaining directors, even if less than a quorum of the board, may fill the vacancies. A special meeting of the shareholders for purposes of approving any corporate action required or permitted to be approved by shareholders, or for purposes of electing directors, may be called by any person who was an officer, director, or shareholder of the corporation at the effective date of the dissolution. [2009 c 189 § 53; 2006 c 52 § 8; 1989 c 165 § 158.]

## Chapter 23B.16 RCW

### RECORDS AND REPORTS

#### Sections

23B.16.010 Corporate records.

23B.16.020 Inspection of records by shareholders.

**23B.16.010 Corporate records.** (1) A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all corporate actions approved by the shareholders or board of directors by executed consent without a meeting, and a record of all corporate actions approved by a committee of the board of directors exercising the authority of the board of directors on behalf of the corporation.

(2) A corporation shall maintain appropriate accounting records.

(3) A corporation or its agent shall maintain a record of its shareholders, in a form that permits preparation of a list of the names and addresses of all shareholders, in alphabetical order by class of shares showing the number and class of shares held by each.

(4) A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

(5) A corporation shall keep a copy of the following records at its principal office:

(a) Its articles or restated articles of incorporation and all amendments to them currently in effect;

(b) Its bylaws or restated bylaws and all amendments to them currently in effect;

(c) The minutes of all shareholders' meetings, and records of all corporate actions approved by shareholders without a meeting, for the past three years;

(d) The financial statements described in RCW 23B.16.200(1), for the past three years;

(e) All communications in the form of a record to shareholders generally within the past three years;

(f) A list of the names and business addresses of its current directors and officers; and

(g) Its initial report or most recent annual report delivered to the secretary of state under RCW 23B.16.220. [2009 c 189 § 54; 2002 c 297 § 45; 1991 c 72 § 40; 1989 c 165 § 182.]

#### **23B.16.020 Inspection of records by shareholders.**

(1) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in RCW 23B.16.010(5) if the shareholder gives the corporation notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

(2) A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection (3) of this section and gives the corporation notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy:

(a) Excerpts from minutes of any meeting of the board of directors, or of any meeting of a committee of the board of directors while exercising the authority of the board of directors, minutes of any meeting of the shareholders, and records of corporate actions approved by the shareholders or board of directors or a committee thereof without a meeting, to the extent not subject to inspection under subsection (1) of this section;

(b) Accounting records of the corporation; and

(c) The record of shareholders.

(3) A shareholder may inspect and copy the records described in subsection (2) of this section only if:

(a) The shareholder's demand is made in good faith and for a proper purpose;

(b) The shareholder describes with reasonable particularity the shareholder's purpose and the records the shareholder desires to inspect; and

(c) The records are directly connected with the shareholder's purpose.

(4) The right of inspection granted by this section may not be abolished or limited by a corporation's articles of incorporation or bylaws.

(5) This section does not affect:

(a) The right of a shareholder to inspect records under RCW 23B.07.200 or, if the shareholder is in litigation with the corporation, to the same extent as any other litigant; or

(b) The power of a court, independently of this title, to compel the production of corporate records for examination.

(6) For purposes of this section, "shareholder" includes a beneficial owner whose shares are held in a voting trust or by a nominee on the beneficial owner's behalf. [2009 c 189 § 55; 2002 c 297 § 46; 1989 c 165 § 183.]

### **Chapter 23B.19 RCW**

#### **SIGNIFICANT BUSINESS TRANSACTIONS**

##### Sections

23B.19.040 Approval of significant business transaction required—Violation.

23B.19.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**23B.19.040 Approval of significant business transaction required—Violation.** (1)(a) Notwithstanding anything to the contrary contained in this title, a target corporation shall not for a period of five years following the acquiring person's share acquisition time engage in a significant business transaction unless:

(i) It is exempted by RCW 23B.19.030;

(ii) The significant business transaction or the purchase of shares made by the acquiring person is approved prior to the acquiring person's share acquisition time by a majority of the members of the board of directors of the target corporation; or

(iii) At or subsequent to the acquiring person's share acquisition time, such significant business transaction is approved by a majority of the members of the board of directors of the target corporation and approved at an annual or special meeting of shareholders, and not by written consent, by the affirmative vote of at least two-thirds of the outstanding voting shares, except shares beneficially owned by or under the voting control of the acquiring person.

(b) If a good faith proposal for a significant business transaction is made in writing to the board of directors of the target corporation prior to the significant business transaction or prior to the share acquisition time, the board of directors shall respond in writing, within thirty days or such shorter period, if any, as may be required by the exchange act setting forth its reasons for its decision regarding the proposal. If a good faith proposal to purchase shares is made in writing to the board of directors of the target corporation, the board of directors, unless it responds affirmatively in writing within thirty days or a shorter period, if any, as may be required by the exchange act shall be deemed to have disapproved such share purchase.

(2) Except for a significant business transaction approved under subsection (1) of this section or exempted by

RCW 23B.19.030, in addition to any other requirement, a target corporation shall not engage at any time in any significant business transaction described in RCW 23B.19.020(15) (a) or (e) with any acquiring person of such a corporation other than a significant business transaction that either meets all of the conditions of (a), (b), and (c) of this subsection or meets the conditions of (d) of this subsection:

(a) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding common shares of such a target corporation in a significant business transaction is at least equal to the higher of the following:

(i) The highest per share price paid by such an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting shares of a target corporation, for any shares of common shares of the same class or series acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the earliest date, up to the amount of the interest; and

(ii) The market value per share of common shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of common shares since the date, up to the amount of the interest.

(b) The aggregate amount of the cash and the market value as of the consummation date of consideration other than cash to be received per share by holders of outstanding shares of any class or series of shares, other than common shares, of the target corporation is at least equal to the highest of the following, whether or not the acquiring person has previously acquired any shares of such a class or series of shares:

(i) The highest per share price paid by an acquiring person at a time when the person was the beneficial owner, directly or indirectly, of five percent or more of the outstanding voting shares of a resident domestic corporation, for any shares of the same class or series of shares acquired by it: (A) Within the five-year period immediately prior to the announcement date with respect to a significant business transaction; or (B) within the five-year period immediately prior to, or in, the transaction in which the acquiring person became an acquiring person, whichever is higher; plus, in either case, interest compounded annually from the earliest date on which the highest per share acquisition price was paid through the consummation date at the rate for one-year

United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid, and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the earliest date, up to the amount of the interest;

(ii) The highest preferential amount per share to which the holders of shares of the same class or series of shares are entitled in the event of any voluntary liquidation, dissolution, or winding up of the target corporation, plus the aggregate amount of any dividends declared or due as to which the holders are entitled prior to payment of dividends on some other class or series of shares, unless the aggregate amount of the dividends is included in the preferential amount; and

(iii) The market value per share of the same class or series of shares on the announcement date with respect to a significant business transaction or on the date of the acquiring person's share acquisition time, whichever is higher; plus interest compounded annually from such a date through the consummation date at the rate for one-year United States treasury obligations from time to time in effect; less the aggregate amount of any cash dividends paid and the market value of any dividends paid other than in cash, per share of the same class or series of shares since the date, up to the amount of the interest.

(c) The consideration to be received by holders of a particular class or series of outstanding shares, including common shares, of the target corporation in a significant business transaction is in cash or in the same form as the acquiring person has used to acquire the largest number of shares of the same class or series of shares previously acquired by the person, and the consideration shall be distributed promptly.

(d) The significant business transaction is approved at an annual meeting of shareholders, or special meeting of shareholders called for such a purpose, no earlier than five years after the acquiring person's share acquisition time, by a majority of the votes entitled to be counted within each voting group entitled to vote separately on the transaction. The votes of all outstanding shares entitled to vote under this title or the articles of incorporation shall be entitled to be counted under this subsection except that the votes of shares as to which an acquiring person has beneficial ownership or voting control may not be counted to determine whether shareholders have approved a transaction for purposes of this subsection. The votes of shares as to which an acquiring person has beneficial ownership or voting control shall, however, be counted in determining whether a transaction is approved under other sections of this title and for purposes of determining a quorum.

(3) Subsection (2) of this section does not apply to a target corporation that on June 6, 1996, had a provision in its articles of incorporation, adopted under \*RCW 23B.17.020(3)(d), expressly electing not to be covered under \*RCW 23B.17.020, which is repealed by section 6, chapter 155, Laws of 1996.

(4) A significant business transaction that is made in violation of subsection (1) or (2) of this section and that is not exempt under RCW 23B.19.030 is void. [2009 c 189 § 56; 2007 c 45 § 1; 1997 c 19 § 3; 1996 c 155 § 3; 1989 c 165 § 200.]

\*Reviser's note: RCW 23B.17.020 was repealed by 1996 c 155 § 6.

**23B.19.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 64.]

## Title 24

### CORPORATIONS AND ASSOCIATIONS (NONPROFIT)

#### Chapters

- 24.03** Washington nonprofit corporation act.
- 24.06** Nonprofit miscellaneous and mutual corporations act.
- 24.12** Corporations sole.
- 24.44** Uniform management of institutional funds act.
- 24.55** Prudent management of institutional funds act.

#### Chapter 24.03 RCW

##### WASHINGTON NONPROFIT CORPORATION ACT

###### Sections

- 24.03.050 Registered office and registered agent.

#### **24.03.050 Registered office and registered agent.**

Each corporation shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its principal office. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation, whether for profit or not for profit, or a governmental body or agency, or a foreign corporation, whether for profit or not for profit, authorized to transact business or conduct affairs in this state, having an office identical with such registered

office, or a domestic limited liability company whose business office is identical with the registered office, or a foreign limited liability company authorized to conduct affairs in this state whose business address is identical with the registered office. A registered agent shall not be appointed without having given prior consent to the appointment, in the form of a record. The consent shall be filed with the secretary of state in such form as the secretary may prescribe. The consent shall be filed with or as a part of the record first appointing a registered agent. In the event any individual, corporation, or limited liability company has been appointed agent without consent, that person, corporation, or limited liability company may file a notarized statement attesting to that fact, and the name shall immediately be removed from the records of the secretary of state.

No Washington corporation or foreign corporation authorized to conduct affairs in this state may be permitted to maintain any action in any court in this state until the corporation complies with the requirements of this section. [2009 c 202 § 1; 2004 c 265 § 8; 1986 c 240 § 9; 1982 c 35 § 80; 1969 ex.s. c 163 § 1; 1967 c 235 § 11.]

**Intent—Severability—Effective dates—Application—1982 c 35:** See notes following RCW 43.07.160.

#### Chapter 24.06 RCW

##### NONPROFIT MISCELLANEOUS AND MUTUAL CORPORATIONS ACT

###### Sections

- 24.06.050 Registered office and registered agent.

#### **24.06.050 Registered office and registered agent.**

Each domestic corporation and foreign corporation authorized to do business in this state shall have and continuously maintain in this state:

(1) A registered office which may be, but need not be, the same as its principal office. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the registered office address if the corporation also maintains on file the specific geographic address of the registered office where personal service of process may be made.

(2) A registered agent, which agent may be either an individual resident in this state whose business office is identical with such registered office, or a domestic corporation existing under any act of this state, or a governmental body or agency, or a foreign corporation authorized to transact business or conduct affairs in this state under any act of this state having an office identical with such registered office. The resident agent and registered office shall be designated by duly adopted resolution of the board of directors; and a statement of such designation, executed by an officer of the corporation, shall be filed with the secretary of state. A registered agent shall not be appointed without having given prior



written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent. In the event any individual or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state.

No Washington corporation or foreign corporation authorized to transact business in this state may be permitted to maintain any action in any court in this state until the corporation complies with the requirements of this section. [2009 c 202 § 2; 1993 c 356 § 15; 1982 c 35 § 125; 1969 ex.s. c 120 § 10.]

**Effective date—1993 c 356:** See note following RCW 24.03.046.

**Intent—Severability—Effective dates—Application—1982 c 35:** See notes following RCW 43.07.160.

## Chapter 24.12 RCW CORPORATIONS SOLE

### Sections

24.12.005	Application of chapter.
24.12.045	Annual report—Contents—Fee—Secretary of state's powers.
24.12.051	Notice of annual report requirement—Rules.
24.12.055	Failure to file annual report—Reinstatement after administrative dissolution.

**24.12.005 Application of chapter.** Effective August 1, 2009, a corporation sole may not be formed or incorporated under this chapter. [2009 c 437 § 16.]

**24.12.045 Annual report—Contents—Fee—Secretary of state's powers.** (1) Each corporation sole registered in this state shall file, with a ten dollar filing fee and within the time prescribed by this chapter, an annual report in the form prescribed by the secretary of state. The report shall set forth:

(a) The name of the corporation sole and the state or country under the laws of which it is incorporated;

(b) The address of the principal place of business of the corporation sole in this state including street and number;

(c) The name and respective address of the bishop, overseer, or presiding elder of the corporation sole; and

(d) The corporation sole's unified business identifier number.

(2)(a) The information shall be given as of the date of the execution of the report. It shall be executed by the corporation sole by an officer of the corporation sole or, if the corporation sole is in the hands of a receiver or trustee, it shall be executed on behalf of the corporation sole by such receiver or trustee.

(b) The secretary of state may provide that correcting or updating information appearing on previous annual or biennial filings is sufficient to constitute the current filing.

(3) The secretary may administratively dissolve a corporation sole that does not comply with this section. However, the secretary shall reinstate a corporation sole administratively dissolved under this subsection if the corporation sole complies with the requirements of RCW 24.12.055 within

five years of the administrative dissolution. [2009 c 437 § 13.]

**24.12.051 Notice of annual report requirement—Rules.** (1) Not less than thirty days prior to a corporation sole's renewal date, the secretary of state shall mail to each corporation sole, by first-class mail addressed to its registered office, a notice that its annual report must be filed as required by this chapter, and stating that if it fails to file its annual report it shall be dissolved or its certificate of authority revoked, as the case may be. Failure of the secretary of state to mail the notice does not relieve a corporation sole from its obligation to file the annual reports required by this chapter.

(2)(a) The report of a corporation sole shall be delivered to the secretary of state on an annual renewal date as the secretary of state may establish. The secretary of state may adopt rules to establish biennial reporting dates and to stagger reporting dates.

(b) If the secretary of state finds that the report substantially conforms to the requirements of this chapter, the secretary of state shall file that report. [2009 c 437 § 14.]

**24.12.055 Failure to file annual report—Reinstatement after administrative dissolution.** (1) The secretary of state shall, when exigent or mitigating circumstances are presented, reinstate to full active status any corporation sole previously in good standing that would otherwise be penalized or lose its active status. Any corporation sole desiring to seek relief under this section shall, within five years of the missed filing or lapse, notify the secretary of state in writing. The notification must include the name and mailing address of the corporation sole, the corporate sole officer to whom correspondence should be sent, and a statement under oath by a responsible corporate sole officer, setting forth the nature of the missed filing or lapse, the circumstances of the missed filing or lapse, that disproportionate harm would occur to the corporation sole if relief were not granted, and the relief sought.

(2) Upon receipt of the notice under subsection (1) of this section, the secretary of state shall investigate the circumstances of the missed filing or lapse.

(a) If the secretary of state is satisfied that sufficient exigent or mitigating circumstances exist; that the corporation sole has demonstrated good faith and a reasonable attempt to comply with the applicable corporate sole license statutes of this state; that disproportionate harm would occur to the corporation sole if relief were not granted; and that relief would not be contrary to the public interest expressed in this title, the secretary may issue an order reinstating the corporation sole and specifying any terms and conditions of the relief. Reinstatement may relate back to the date of lapse or dissolution.

(b) If the secretary of state determines the request does not comply with the requirements for relief, the secretary shall issue an order denying the requested relief and stating the reasons for the denial. Any denial of relief by the secretary of state is final and is not appealable.

(c) The secretary of state shall keep records of all requests for relief and the disposition of the requests. The secretary of state shall annually report to the legislature the

number of relief requests received in the preceding year and a summary of the secretary's disposition of the requests. [2009 c 437 § 15.]

### Chapter 24.44 RCW

#### UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT

##### Sections

24.44.010 through 24.44.090 Repealed.  
24.44.900 Repealed.

**24.44.010 through 24.44.090 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**24.44.900 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

### Chapter 24.55 RCW

#### PRUDENT MANAGEMENT OF INSTITUTIONAL FUNDS ACT

##### Sections

24.55.005 Short title.  
24.55.007 Uniformity of application and construction.  
24.55.010 Definitions.  
24.55.015 Standard of conduct in managing and investing institutional fund.  
24.55.025 Appropriation for expenditure or accumulation of endowment fund—Rules of construction.  
24.55.035 Delegation of management and investment functions.  
24.55.045 Release or modification of restrictions on management, investment, or purpose.  
24.55.055 Reviewing compliance.  
24.55.065 Application to existing institutional funds.  
24.55.075 Relation to electronic signatures in global and national commerce act.  
24.55.900 Effective date—2009 c 436.

**24.55.005 Short title.** Chapter 436, Laws of 2009 may be known and cited as the uniform prudent management of institutional funds act. [2009 c 436 § 1.]

**24.55.007 Uniformity of application and construction.** In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2009 c 436 § 10.]

**24.55.010 Definitions.** In this chapter:

(1) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, the promotion of a governmental purpose, or any other purpose the achievement of which is beneficial to the community.

(2) "Endowment fund" means an institutional fund or part thereof that, under the terms of a gift instrument, is not wholly expendable by the institution on a current basis. "Endowment fund" does not include assets that an institution designates as an endowment fund for its own use.

(3) "Gift instrument" means a record or records, including an institutional solicitation, under which property is

granted to, transferred to, or held by an institution as an institutional fund.

(4) "Institution" means:

(a) A person, other than an individual, organized and operated exclusively for charitable purposes;

(b) A government or governmental subdivision, agency, or instrumentality, to the extent that it holds funds exclusively for a charitable purpose; or

(c) A trust that had both charitable and noncharitable interests, after all noncharitable interests have terminated.

(5) "Institutional fund" means a fund held by an institution exclusively for charitable purposes. "Institutional fund" does not include:

(a) Program-related assets;

(b) A fund held for an institution by a trustee that is not an institution; or

(c) A fund in which a beneficiary that is not an institution has an interest, other than an interest that could arise upon violation or failure of the purposes of the fund.

(6) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(7) "Program-related asset" means an asset held by an institution primarily to accomplish a charitable purpose of the institution and not primarily for investment.

(8) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form. [2009 c 436 § 2.]

**24.55.015 Standard of conduct in managing and investing institutional fund.** (1) Subject to the intent of a donor expressed in a gift instrument, an institution, in managing and investing an institutional fund, shall consider the charitable purposes of the institution and the purposes of the institutional fund.

(2) In addition to complying with the duty of loyalty imposed by law other than this chapter, each person responsible for managing and investing an institutional fund shall manage and invest the fund in good faith and with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

(3) In managing and investing an institutional fund, an institution:

(a) May incur only costs that are appropriate and reasonable in relation to the assets, the purposes of the institution, and the skills available to the institution; and

(b) Shall make a reasonable effort to verify facts relevant to the management and investment of the fund.

(4) An institution may pool two or more institutional funds for purposes of management and investment.

(5) Except as otherwise provided by a gift instrument, the following rules apply:

(a) In managing and investing an institutional fund, the following factors, if relevant, must be considered:

(i) General economic conditions;

(ii) The possible effect of inflation or deflation;

(iii) The expected tax consequences, if any, of investment decisions or strategies;

(iv) The role that each investment or course of action plays within the overall investment portfolio of the fund;

(v) The expected total return from income and the appreciation of investments;

(vi) Other resources of the institution;

(vii) The needs of the institution and the institutional fund to make distributions and to preserve capital; and

(viii) An asset's special relationship or special value, if any, to the charitable purposes of the institution.

(b) Management and investment decisions about an individual asset must be made not in isolation but rather in the context of the institutional fund's portfolio of investments as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the institutional fund and to the institution.

(c) Except as otherwise provided by law, an institution may invest in any kind of property or type of investment consistent with this section.

(d) An institution shall diversify the investments of an institutional fund unless the institution reasonably determines that, because of special circumstances, the purposes of the fund are better served without diversification.

(e) Within a reasonable time after receiving property, an institution shall make and carry out decisions concerning the retention or disposition of the property or to rebalance a portfolio, in order to bring the institutional fund into compliance with the purposes, terms, and distribution requirements of the institution as necessary to meet other circumstances of the institution and the requirements of this chapter.

(f) A person that has special skills or expertise, or is selected in reliance upon the person's representation that the person has special skills or expertise, has a duty to use those skills or that expertise in managing and investing institutional funds. [2009 c 436 § 3.]

**24.55.025 Appropriation for expenditure or accumulation of endowment fund—Rules of construction.** (1) Subject to the intent of a donor expressed in the gift instrument, an institution may appropriate for expenditure or accumulate so much of an endowment fund as the institution determines is prudent for the uses, benefits, purposes, and duration for which the endowment fund is established. Unless stated otherwise in the gift instrument, the assets in an endowment fund are donor-restricted assets until appropriated for expenditure by the institution. In making a determination to appropriate or accumulate, the institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, and shall consider, if relevant, the following factors:

(a) The duration and preservation of the endowment fund;

(b) The purposes of the institution and the endowment fund;

(c) General economic conditions;

(d) The possible effect of inflation or deflation;

(e) The expected total return from income and the appreciation of investments;

(f) Other resources of the institution; and

(g) The investment policy of the institution.

(2) To limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section, a gift instrument must specifically state the limitation.

(3) Terms in a gift instrument designating a gift as an endowment, or a direction or authorization in the gift instrument to use only "income," "interest," "dividends," or "rents, issues, or profits," or "to preserve the principal intact," or words of similar import:

(a) Create an endowment fund of permanent duration unless other language in the gift instrument limits the duration or purpose of the fund; and

(b) Do not otherwise limit the authority to appropriate for expenditure or accumulate under subsection (1) of this section. [2009 c 436 § 4.]

**24.55.035 Delegation of management and investment functions.** (1) Subject to any specific limitation set forth in a gift instrument or in law other than this chapter, an institution may delegate to an external agent the management and investment of an institutional fund to the extent that an institution could prudently delegate under the circumstances. An institution shall act in good faith, with the care that an ordinarily prudent person in a like position would exercise under similar circumstances, in:

(a) Selecting an agent;

(b) Establishing the scope and terms of the delegation, consistent with the purposes of the institution and the institutional fund; and

(c) Periodically reviewing the agent's actions in order to monitor the agent's performance and compliance with the scope and terms of the delegation.

(2) In performing a delegated function, an agent owes a duty to the institution to exercise reasonable care to comply with the scope and terms of the delegation.

(3) An institution that complies with subsection (1) of this section is not liable for the decisions or actions of an agent to which the function was delegated.

(4) By accepting delegation of a management or investment function from an institution that is subject to the laws of this state, an agent submits to the jurisdiction of the courts of this state in all proceedings arising from or related to the delegation or the performance of the delegated function.

(5) An institution may delegate management and investment functions to its committees, officers, or employees as authorized by law. [2009 c 436 § 5.]

**24.55.045 Release or modification of restrictions on management, investment, or purpose.** (1) If the donor consents in a record, an institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund. A release or modification may not allow a fund to be used for a purpose other than a charitable purpose of the institution.

(2) The court, upon application of an institution, may modify a restriction contained in a gift instrument regarding the management or investment of an institutional fund if the restriction has become impracticable or wasteful, if it impairs the management or investment of the fund, or if, because of circumstances not anticipated by the donor, a modification of

a restriction will further the purposes of the fund. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor's probable intention.

(3) If a particular charitable purpose or a restriction contained in a gift instrument on the use of an institutional fund becomes unlawful, impracticable, impossible to achieve, or wasteful, the court, upon application of an institution, may modify the purpose of the fund or the restriction on the use of the fund in a manner consistent with the charitable purposes expressed in the gift instrument. The institution shall notify the attorney general of the application, and the attorney general must be given an opportunity to be heard.

(4) If an institution determines that a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund is unlawful, impracticable, impossible to achieve, or wasteful, the institution, sixty days after notification to the attorney general, may release or modify the restriction, in whole or part, if:

(a) The institutional fund subject to the restriction has a total value of less than seventy-five thousand dollars. On the first day of July of each year, beginning on July 1, 2011, the dollar limit provided in this subsection (4)(a) shall increase by an amount of two thousand five hundred dollars;

(b) More than twenty years have elapsed since the fund was established; and

(c) The institution uses the property in a manner consistent with the charitable purposes expressed in the gift instrument. [2009 c 436 § 6.]

**24.55.055 Reviewing compliance.** Compliance with this chapter is determined in light of the facts and circumstances existing at the time a decision is made or action is taken, and not by hindsight. [2009 c 436 § 7.]

**24.55.065 Application to existing institutional funds.**

(1) Before July 1, 2009, this chapter applies to an institutional fund existing on May 11, 2009, only if the institution's governing body elects to apply this chapter to the institutional fund before July 1, 2009.

(2) On and after July 1, 2009, this chapter applies to all institutional funds.

(3) As applied to institutional funds existing on May 11, 2009, this chapter governs only decisions made or actions taken on or after July 1, 2009, except that in the case of an institution that makes the election under subsection (1) of this section this chapter governs decisions made or actions taken on or after the date the institution elects to be covered by this chapter. [2009 c 436 § 8.]

**24.55.075 Relation to electronic signatures in global and national commerce act.** This chapter modifies, limits, and supersedes the electronic signatures in global and national commerce act (15 U.S.C. Sec. 7001 et seq.), but does not modify, limit, or supersede 15 U.S.C. Sec. 7001(a), or authorize electronic delivery of any of the notices described in 15 U.S.C. Sec. 7003(b). [2009 c 436 § 9.]

**24.55.900 Effective date—2009 c 436.** 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 11, 2009]. [2009 c 436 § 14.]

## Title 25

### PARTNERSHIPS

#### Chapters

**25.05 Revised uniform partnership act.**

**25.10 Uniform limited partnership act.**

**25.15 Limited liability companies.**

#### Chapter 25.05 RCW

#### REVISED UNIFORM PARTNERSHIP ACT

##### Sections

25.05.005	Definitions.
25.05.355	Conversion of partnership to limited partnership. ( <i>Effective July 1, 2010.</i> )
25.05.375	Merger—Plan—Approval. ( <i>Effective July 1, 2010.</i> )
25.05.385	Effect of merger. ( <i>Effective July 1, 2010.</i> )
25.05.390	Merger—Foreign and domestic. ( <i>Effective July 1, 2010.</i> )
25.05.425	Partner—Dissent—Payment of fair value. ( <i>Effective July 1, 2010.</i> )
25.05.500	Formation—Registration—Application—Registered agent—Fee—Forms.
25.05.530	Change of registered office or agent for service of process.
25.05.533	Resignation of registered agent for service of process.
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25.05.580	Registered office and agent for service of process.
25.05.583	Change of registered office or agent for service of process.
25.05.586	Resignation of registered agent for service of process.
25.05.589	Service of process.

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

(1) "Business" includes every trade, occupation, and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of:

(a) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) A comparable order under federal, state, or foreign law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Foreign limited liability partnership" means a partnership that:

(a) Is formed under laws other than the laws of this state; and

(b) Has the status of a limited liability partnership under those laws.

(5) "Limited liability partnership" means a partnership that has filed an application under RCW 25.05.500 and does not have a similar statement in effect in any other jurisdiction.

(6) "Partnership" means an association of two or more persons to carry on as co-owners a business for profit formed

under RCW 25.05.055, predecessor law, or comparable law of another jurisdiction.

(7) "Partnership agreement" means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(8) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(9) "Partnership interest" or "partner's interest in the partnership" means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(10) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(11) "Property" means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(12) "Registered agent" means an individual resident of this state, a domestic corporation, a government, governmental subdivision, agency, or instrumentality, or a foreign corporation authorized to do business in this state.

(13) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(14) "Statement" means a statement of partnership authority under RCW 25.05.110, a statement of denial under RCW 25.05.115, a statement of dissociation under RCW 25.05.265, a statement of dissolution under RCW 25.05.320, or an amendment or cancellation of any statement under these sections.

(15) "Transfer" includes an assignment, conveyance, lease, mortgage, deed, and encumbrance. [2009 c 202 § 3; 1998 c 103 § 101.]

**25.05.355 Conversion of partnership to limited partnership. (Effective July 1, 2010.)** (1) A partnership may be converted to a limited partnership pursuant to this section.

(2) The terms and conditions of a conversion of a partnership to a limited partnership must be approved by all of the partners or by a number or percentage specified for conversion in the partnership agreement.

(3) After the conversion is approved by the partners, the partnership shall file a certificate of limited partnership in the jurisdiction in which the limited partnership is to be formed. The certificate must include:

(a) A statement that the partnership was converted to a limited partnership from a partnership;

(b) Its former name; and

(c) A statement of the number of votes cast by the partners for and against the conversion and, if the vote is less than unanimous, the number or percentage required to approve the conversion under the partnership agreement.

(4) If the partnership was converted to a domestic limited partnership, the certificate must also include:

(a) The name of the limited partnership;

(b) The address of the office for records and the name and address of the agent for service of process appointed pursuant to RCW 25.10.121;

(c) The name and the geographical and mailing address of each general partner;

(d) The latest date upon which the limited partnership is to dissolve; and

(e) Any other matters the general partners determine to include therein.

(5) The conversion takes effect when the certificate of limited partnership is filed or at any later date specified in the certificate.

(6) A general partner who becomes a limited partner as a result of the conversion remains liable as a general partner for an obligation incurred by the partnership before the conversion takes effect. If the other party to a transaction with the limited partnership reasonably believes when entering the transaction that the limited partner is a general partner, the limited partner is liable for an obligation incurred by the limited partnership within ninety days after the conversion takes effect. The limited partner's liability for all other obligations of the limited partnership incurred after the conversion takes effect is that of a limited partner as provided in the Washington uniform limited partnership act. [2009 c 188 § 1405; 1998 c 103 § 902.]

**Effective date—2009 c 188:** See note following RCW 23B.11.080.

**25.05.375 Merger—Plan—Approval. (Effective July 1, 2010.)** (1) Unless otherwise provided in the partnership agreement, approval of a plan of merger by a domestic partnership party to the merger shall occur when the plan is approved by all of the partners.

(2) If a domestic limited partnership is a party to the merger, the plan of merger shall be adopted and approved as provided in RCW 25.10.781.

(3) If a domestic limited liability company is a party to the merger, the plan of merger shall be adopted and approved as provided in RCW 25.15.400.

(4) If a domestic corporation is a party to the merger, the plan of merger shall be adopted and approved as provided in chapter 23B.11 RCW. [2009 c 188 § 1406; 1998 c 103 § 906.]

**Effective date—2009 c 188:** See note following RCW 23B.11.080.

**25.05.385 Effect of merger. (Effective July 1, 2010.)** (1) When a merger takes effect:

(a) Every other partnership, limited liability company, limited partnership, or corporation that is party to the merger merges into the surviving partnership, limited liability company, limited partnership, or corporation and the separate existence of every partnership, limited liability company, limited partnership, or corporation except the surviving partnership, limited liability company, limited partnership, or corporation ceases;

(b) The title to all real estate and other property owned by each partnership, limited liability company, limited partnership, and corporation party to the merger is vested in the surviving partnership, limited liability company, limited partnership, or corporation without reversion or impairment;

(c) The surviving partnership, limited liability company, limited partnership, or corporation has all liabilities of each partnership, limited liability company, limited partnership, and corporation that is party to the merger;

(d) A proceeding pending against any partnership, limited liability company, limited partnership, or corporation that is party to the merger may be continued as if the merger did not occur or the surviving partnership, limited liability company, limited partnership, or corporation may be substituted in the proceeding for the partnership, limited liability company, limited partnership, or corporation whose existence ceased;

(e) The certificate of formation of the surviving limited liability company is amended to the extent provided in the plan of merger;

(f) The partnership agreement of the surviving limited partnership is amended to the extent provided in the plan of merger;

(g) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(h) The former members of every limited liability company party to the merger, the former holders of the partnership interests of every domestic partnership or limited partnership that is party to the merger, and the former holders of the shares of every domestic corporation that is party to the merger are entitled only to the rights provided in the plan of merger, or to their rights under this article, to their rights under RCW 25.10.831 through 25.10.886, or to their rights under chapter 23B.13 RCW.

(2) Unless otherwise agreed, a merger of a domestic partnership, including a domestic partnership which is not the surviving entity in the merger, shall not require the domestic partnership to wind up its affairs under article 8 of this chapter.

(3) Unless otherwise agreed, a merger of a domestic limited partnership, including a domestic limited partnership which is not the surviving entity in the merger, shall not require the domestic limited partnership to wind up its affairs under RCW 25.10.581 or pay its liabilities and distribute its assets under RCW 25.10.621.

(4) Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs under RCW 25.15.295 or pay its liabilities and distribute its assets under RCW 25.15.300. [2009 c 188 § 1407; 1998 c 103 § 908.]

**Effective date—2009 c 188:** See note following RCW 23B.11.080.

**25.05.390 Merger—Foreign and domestic. (Effective July 1, 2010.)** (1) One or more foreign partnerships, foreign limited liability companies, foreign limited partnerships, and foreign corporations may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations if:

(a) The merger is permitted by the law of the jurisdiction under which each foreign partnership was organized, each foreign limited liability company was formed, each foreign limited partnership was organized, and each foreign corpora-

tion was incorporated, and each foreign partnership, foreign limited liability company, foreign limited partnership, and foreign corporation complies with that law in effecting the merger;

(b) The surviving entity complies with RCW 25.05.380;

(c) Each domestic limited liability company complies with RCW 25.15.400;

(d) Each domestic limited partnership complies with RCW 25.10.781; and

(e) Each domestic corporation complies with RCW 23B.11.080.

(2) Upon the merger taking effect, a surviving foreign limited liability company, limited partnership, or corporation is deemed to appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting members, partners, or shareholders of each domestic limited liability company, domestic limited partnership, or domestic corporation party to the merger. [2009 c 188 § 1408; 1998 c 103 § 909.]

**Effective date—2009 c 188:** See note following RCW 23B.11.080.

**25.05.425 Partner—Dissent—Payment of fair value. (Effective July 1, 2010.)** (1) Except as provided in RCW 25.05.435 or 25.05.445(2), a partner in a domestic partnership is entitled to dissent from, and obtain payment of the fair value of the partner's interest in a partnership in the event of consummation of a plan of merger to which the partnership is a party as permitted by RCW 25.05.370 or 25.05.390.

(2) A partner entitled to dissent and obtain payment for the partner's interest in a partnership under this article may not challenge the merger creating the partner's entitlement unless the merger fails to comply with the procedural requirements imposed by this title, Title 23B RCW, RCW 25.10.776 through 25.10.796, or 25.15.430, as applicable, or the partnership agreement, or is fraudulent with respect to the partner or the partnership.

(3) The right of a dissenting partner in a partnership to obtain payment of the fair value of the partner's interest in the partnership shall terminate upon the occurrence of any one of the following events:

(a) The proposed merger is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the merger; or

(c) The partner's demand for payment is withdrawn with the written consent of the partnership. [2009 c 188 § 1409; 1998 c 103 § 1002.]

**Effective date—2009 c 188:** See note following RCW 23B.11.080.

**25.05.500 Formation—Registration—Application—Registered agent—Fee—Forms.** (1) A partnership which is not a limited liability partnership on June 11, 1998, may become a limited liability partnership upon the approval of the terms and conditions upon which it becomes a limited liability partnership by the vote necessary to amend the partnership agreement except, in the case of a partnership agreement that expressly considers obligations to contribute to the partnership, the vote necessary to amend those provisions, and by filing the applications required by subsection (2) of this section. A partnership which is a limited liability partnership on

June 11, 1998, continues as a limited liability partnership under this chapter.

(2)(a) To become and to continue as a limited liability partnership, a partnership shall file with the secretary of state an application stating the name of the partnership; the location of a registered office, which need not be a place of its activity in this state; the address of its principal office; if the partnership's principal office is not located in this state, the address of a registered office and the name and address of a registered agent for service of process in this state which the partnership will be required to continuously maintain; the number of partners; a brief statement of the business in which the partnership engages; any other matters that the partnership determines to include; and that the partnership thereby applies for status as a limited liability partnership.

(b) A registered agent for service of process under (a) of this subsection must be an individual who is a resident of this state or other person authorized to do business in this state.

(3) The application shall be accompanied by a fee of one hundred seventy-five dollars for each partnership.

(4) The secretary of state shall register as a limited liability partnership any partnership that submits a completed application with the required fee.

(5) A partnership registered under this section shall pay an annual fee, in each year following the year in which its application is filed, on a date and in an amount specified by the secretary of state. The fee must be accompanied by a notice, on a form provided by the secretary of state, of the number of partners currently in the partnership and of any material changes in the information contained in the partnership's application for registration.

(6) Registration is effective immediately after the date an application is filed, and remains effective until:

(a) It is voluntarily withdrawn by filing with the secretary of state a written withdrawal notice executed by a majority of the partners or by one or more partners or other persons authorized to execute a withdrawal notice; or

(b) Thirty days after receipt by the partnership of a notice from the secretary of state, which notice shall be sent by first-class mail, postage prepaid, that the partnership has failed to make timely payment of the annual fee specified in subsection (5) of this section, unless the fee is paid within such a thirty-day period.

(7) The status of a partnership as a limited liability partnership, and the liability of the partners thereof, shall not be affected by: (a) Errors in the information stated in an application under subsection (2) of this section or a notice under subsection (6) of this section; or (b) changes after the filing of such an application or notice in the information stated in the application or notice.

(8) The secretary of state may provide forms for the application under subsection (2) of this section or a notice under subsection (6) of this section. [2009 c 437 § 4; 1998 c 103 § 1101.]

**25.05.530 Change of registered office or agent for service of process.** (1) In order to change its registered office, registered agent for service of process, or the address of its registered agent for service of process, a limited liability partnership must deliver to the secretary of state for filing a statement of change containing:

- (a) The name of the limited liability partnership;
- (b) The street and mailing address of its current registered office;
- (c) If the current registered office is to be changed, the street and mailing address of the new registered office;
- (d) The name and street and mailing address of its current registered agent for service of process; and
- (e) If the current registered agent for service of process or an address of the registered agent is to be changed, the new information.

(2) A statement of change is effective when filed by the secretary of state. [2009 c 437 § 5.]

**25.05.533 Resignation of registered agent for service of process.** (1) In order to resign as a registered agent for service of process of a limited liability partnership, the registered agent must deliver to the secretary of state for filing a statement of resignation containing the name of the limited liability partnership.

(2) After receiving a statement of resignation, the secretary of state shall file it and mail a copy to the registered office of the limited liability partnership and another copy to the principal office if the address of the office appears in the records of the secretary of state and is different from the address of the registered office.

(3) A registered agent for service of process is terminated on the thirty-first day after the secretary of state files the statement of resignation. [2009 c 437 § 6.]

**25.05.536 Service of process.** (1) A registered agent for service of process appointed by a limited liability partnership is a registered agent of the limited liability partnership for service of any process, notice, or demand required or permitted by law to be served upon the limited liability partnership.

(2) If a limited liability partnership does not appoint or maintain a registered agent for service of process in this state or the registered agent for service of process cannot with reasonable diligence be found at the registered agent's address, the secretary of state is an agent of the limited liability partnership upon whom process, notice, or demand may be served.

(3) Service of any process, notice, or demand on the secretary of state may be made by delivering to and leaving with the secretary of state duplicate copies of the process, notice, or demand. If a process, notice, or demand is served on the secretary of state, the secretary of state shall forward one of the copies by registered or certified mail, return receipt requested, to the limited liability partnership at its registered office.

(4) Service is effected under subsection (3) of this section at the earliest of:

- (a) The date the limited liability partnership receives the process, notice, or demand;
- (b) The date shown on the return receipt, if signed on behalf of the limited liability partnership; or
- (c) Five days after the process, notice, or demand is deposited in the mail, if mailed postpaid and correctly addressed.

(5) The secretary of state shall keep a record of each process, notice, and demand served pursuant to this section and record the time of, and the action taken regarding, the service.

(6) This section does not affect the right to serve process, notice, or demand in any other manner provided by law. [2009 c 437 § 7.]

**25.05.560 Effect of failure to qualify.** (1) A foreign limited liability partnership transacting business in this state may not maintain an action or proceeding in this state unless it has in effect a registration as a foreign limited liability partnership.

(2) The failure of a foreign limited liability partnership to have in effect a registration as a foreign limited liability partnership does not impair the validity of a contract or act of the foreign limited liability partnership or preclude it from defending an action or proceeding in this state.

(3) A limitation on personal liability of a partner is not waived solely by transacting business in this state without registration as a foreign limited liability partnership.

(4) If a foreign limited liability partnership transacts business in this state without a registration as a foreign limited liability partnership, the secretary of state is its agent, as set forth under RCW 25.05.589, for service of process with respect to a right of action arising out of the transaction of business in this state. [2009 c 437 § 12; 1998 c 103 § 1203.]

**25.05.580 Registered office and agent for service of process.** (1) A foreign limited liability partnership shall designate and continuously maintain in this state:

(a) A registered office, which need not be a place of its activity in this state; and

(b) A registered agent for service of process.

(2) A registered agent for service of process of a foreign limited liability partnership must be an individual who is a resident of this state or other person authorized to do business in this state. [2009 c 437 § 8.]

**25.05.583 Change of registered office or agent for service of process.** (1) In order to change its registered office, registered agent for service of process, or the address of its registered agent for service of process, a foreign limited liability partnership must deliver to the secretary of state for filing a statement of change containing:

(a) The name of the foreign limited liability partnership;

(b) The street and mailing address of its current registered office;

(c) If the current registered office is to be changed, the street and mailing address of the new registered office;

(d) The name and street and mailing address of its current registered agent for service of process; and

(e) If the current registered agent for service of process or an address of the registered agent is to be changed, the new information.

(2) A statement of change is effective when filed by the secretary of state. [2009 c 437 § 9.]

**25.05.586 Resignation of registered agent for service of process.** (1) In order to resign as a registered agent for service of process of a foreign limited liability partnership, the

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registered agent must deliver to the secretary of state for filing a statement of resignation containing the name of the foreign limited liability partnership.

(2) After receiving a statement of resignation, the secretary of state shall file it and mail a copy to the registered office of the foreign limited liability partnership and another copy to the principal office if the address of the office appears in the records of the secretary of state and is different from the address of the registered office.

(3) A registered agent for service of process is terminated on the thirty-first day after the secretary of state files the statement of resignation. [2009 c 437 § 10.]

**25.05.589 Service of process.** (1) A registered agent for service of process appointed by a foreign limited liability partnership is a registered agent of the foreign limited liability partnership for service of any process, notice, or demand required or permitted by law to be served upon the foreign limited liability partnership.

(2) If a foreign limited liability partnership does not appoint or maintain a registered agent for service of process in this state or the registered agent for service of process cannot with reasonable diligence be found at the registered agent's address, the secretary of state is an agent of the foreign limited liability partnership upon whom process, notice, or demand may be served.

(3) Service of any process, notice, or demand on the secretary of state may be made by delivering to and leaving with the secretary of state duplicate copies of the process, notice, or demand. If a process, notice, or demand is served on the secretary of state, the secretary of state shall forward one of the copies by registered or certified mail, return receipt requested, to the foreign limited liability partnership at its registered office.

(4) Service is effected under subsection (3) of this section at the earliest of:

(a) The date the foreign limited liability partnership receives the process, notice, or demand;

(b) The date shown on the return receipt, if signed on behalf of the foreign limited liability partnership; or

(c) Five days after the process, notice, or demand is deposited in the mail, if mailed postpaid and correctly addressed.

(5) The secretary of state shall keep a record of each process, notice, and demand served pursuant to this section and record the time of, and the action taken regarding, the service.

(6) This section does not affect the right to serve process, notice, or demand in any other manner provided by law. [2009 c 437 § 11.]

## Chapter 25.10 RCW

### UNIFORM LIMITED PARTNERSHIP ACT

(Formerly: Limited partnerships)

#### Sections

25.10.005 Repealed. (*Effective July 1, 2010.*)

#### ARTICLE 1

#### GENERAL PROVISIONS

25.10.006 Short title. (*Effective January 1, 2010.*)

25.10.010 Repealed. (*Effective July 1, 2010.*)

25.10.011 Definitions. (*Effective January 1, 2010.*)



25.10.016 Knowledge and notice. *(Effective January 1, 2010.)*  
 25.10.020 Repealed. *(Effective July 1, 2010.)*  
 25.10.021 Nature, purpose, and duration of entity. *(Effective January 1, 2010.)*  
 25.10.030 Repealed. *(Effective July 1, 2010.)*  
 25.10.031 Powers. *(Effective January 1, 2010.)*  
 25.10.040 Registered office and agent.  
 25.10.040 Registered office and agent.  
 25.10.041 Governing law. *(Effective January 1, 2010.)*  
 25.10.050 Repealed. *(Effective July 1, 2010.)*  
 25.10.051 Supplemental principles of law—Rate of interest. *(Effective January 1, 2010.)*  
 25.10.060 Repealed. *(Effective July 1, 2010.)*  
 25.10.061 Name. *(Effective January 1, 2010.)*  
 25.10.070 Repealed. *(Effective July 1, 2010.)*  
 25.10.071 Reservation of name. *(Effective January 1, 2010.)*  
 25.10.080 Repealed. *(Effective July 1, 2010.)*  
 25.10.081 Effect of partnership agreement—Nonwaivable provisions. *(Effective January 1, 2010.)*  
 25.10.090 Repealed. *(Effective July 1, 2010.)*  
 25.10.091 Required information. *(Effective January 1, 2010.)*  
 25.10.100 Repealed. *(Effective July 1, 2010.)*  
 25.10.101 Business transactions of partner with partnership. *(Effective January 1, 2010.)*  
 25.10.110 Repealed. *(Effective July 1, 2010.)*  
 25.10.111 Dual capacity. *(Effective January 1, 2010.)*  
 25.10.120 Repealed. *(Effective July 1, 2010.)*  
 25.10.121 Office and agent for service of process. *(Effective January 1, 2010.)*  
 25.10.130 Repealed. *(Effective July 1, 2010.)*  
 25.10.131 Change of designated office or agent for service of process. *(Effective January 1, 2010.)*  
 25.10.140 Repealed. *(Effective July 1, 2010.)*  
 25.10.141 Resignation of agent for service of process. *(Effective January 1, 2010.)*  
 25.10.150 Repealed. *(Effective July 1, 2010.)*  
 25.10.151 Service of process. *(Effective January 1, 2010.)*  
 25.10.160 Repealed. *(Effective July 1, 2010.)*  
 25.10.161 Consent and proxies of partners. *(Effective January 1, 2010.)*  
 25.10.170 Repealed. *(Effective July 1, 2010.)*  
 25.10.171 Standards for electronic filing rules. *(Effective January 1, 2010.)*  
 25.10.180 Repealed. *(Effective July 1, 2010.)*  
 25.10.190 Repealed. *(Effective July 1, 2010.)*  
 25.10.200 Repealed. *(Effective July 1, 2010.)*

## ARTICLE 2

FORMATION—CERTIFICATE OF LIMITED PARTNERSHIP  
AND OTHER FILINGS

25.10.201 Formation of limited partnership—Certificate of limited partnership. *(Effective January 1, 2010.)*  
 25.10.210 Repealed. *(Effective July 1, 2010.)*  
 25.10.211 Amendment or restatement of certificate of limited partnership. *(Effective January 1, 2010.)*  
 25.10.220 Repealed. *(Effective July 1, 2010.)*  
 25.10.221 Statement of termination. *(Effective January 1, 2010.)*  
 25.10.230 Repealed. *(Effective July 1, 2010.)*  
 25.10.231 Signing of records. *(Effective January 1, 2010.)*  
 25.10.240 Repealed. *(Effective July 1, 2010.)*  
 25.10.241 Signing and filing pursuant to judicial order. *(Effective January 1, 2010.)*  
 25.10.250 Repealed. *(Effective July 1, 2010.)*  
 25.10.251 Delivery to and filing of records by secretary of state—Effective time and date. *(Effective January 1, 2010.)*  
 25.10.260 Repealed. *(Effective July 1, 2010.)*  
 25.10.261 Correcting filed record. *(Effective January 1, 2010.)*  
 25.10.270 Repealed. *(Effective July 1, 2010.)*  
 25.10.271 Liability for false information in filed record. *(Effective January 1, 2010.)*  
 25.10.280 Repealed. *(Effective July 1, 2010.)*  
 25.10.281 Certificate of existence or authorization. *(Effective January 1, 2010.)*  
 25.10.290 Repealed. *(Effective July 1, 2010.)*  
 25.10.291 Annual report for secretary of state. *(Effective January 1, 2010.)*  
 25.10.300 Repealed. *(Effective July 1, 2010.)*

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 25.10.310 Repealed. *(Effective July 1, 2010.)*  
 25.10.311 No right or power as limited partner to bind limited partnership. *(Effective January 1, 2010.)*

25.10.320 Repealed. *(Effective July 1, 2010.)*  
 25.10.321 No liability as limited partner for limited partnership obligations. *(Effective January 1, 2010.)*  
 25.10.330 Repealed. *(Effective July 1, 2010.)*  
 25.10.331 Right of limited partner and former limited partner to information. *(Effective January 1, 2010.)*  
 25.10.340 Repealed. *(Effective July 1, 2010.)*  
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 25.10.350 Repealed. *(Effective July 1, 2010.)*  
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 25.10.360 Repealed. *(Effective July 1, 2010.)*  
 25.10.370 Repealed. *(Effective July 1, 2010.)*

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## GENERAL PARTNERS

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 25.10.381 General partner agent of limited partnership. *(Effective January 1, 2010.)*  
 25.10.390 Repealed. *(Effective July 1, 2010.)*  
 25.10.391 Limited partnership liable for general partner's actionable conduct. *(Effective January 1, 2010.)*  
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 25.10.410 Repealed. *(Effective July 1, 2010.)*  
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 25.10.420 Repealed. *(Effective July 1, 2010.)*  
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 25.10.430 Repealed. *(Effective July 1, 2010.)*  
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 25.10.453 Repealed. *(Effective July 1, 2010.)*  
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## CONTRIBUTIONS AND DISTRIBUTIONS

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 25.10.471 Sharing of distributions. *(Effective January 1, 2010.)*  
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 25.10.491 Right to distribution. *(Effective January 1, 2010.)*  
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 25.10.500 Repealed. *(Effective July 1, 2010.)*  
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 25.10.550 Repealed. *(Effective July 1, 2010.)*  
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 25.10.580 Repealed. *(Effective July 1, 2010.)*  
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 25.10.590 Repealed. *(Effective July 1, 2010.)*  
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 25.10.596 Known claims against dissolved limited partnership. *(Effective January 1, 2010.)*  
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 25.10.650 Repealed. *(Effective July 1, 2010.)*  
 25.10.651 Activities not constituting transacting business. *(Effective January 1, 2010.)*  
 25.10.656 Filing of certificate of authority. *(Effective January 1, 2010.)*  
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 25.10.670 Repealed. *(Effective July 1, 2010.)*  
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 25.10.756 Conversion. *(Effective January 1, 2010.)*

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 25.10.800 Repealed. *(Effective July 1, 2010.)*  
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 25.10.910 Repealed. *(Effective July 1, 2010.)*  
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 25.10.920 Repealed. *(Effective July 1, 2010.)*  
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 25.10.925 Repealed. *(Effective July 1, 2010.)*  
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 25.10.930 Repealed. *(Effective July 1, 2010.)*  
 25.10.935 Repealed. *(Effective July 1, 2010.)*  
 25.10.940 Repealed. *(Effective July 1, 2010.)*  
 25.10.945 Repealed. *(Effective July 1, 2010.)*  
 25.10.950 Repealed. *(Effective July 1, 2010.)*  
 25.10.955 Repealed. *(Effective July 1, 2010.)*

**25.10.005 Repealed. *(Effective July 1, 2010.)*** See Supplementary Table of Disposition of Former RCW Sections, this volume.

ARTICLE 1  
GENERAL PROVISIONS

**25.10.006 Short title.** *(Effective January 1, 2010.)*

This chapter may be known and cited as the uniform limited partnership act. [2009 c 188 § 101.]

**25.10.010 Repealed.** *(Effective July 1, 2010.)* See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.011 Definitions.** *(Effective January 1, 2010.)*

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

(1) "Certificate of limited partnership" means the certificate required by RCW 25.10.201, including the certificate as amended or restated.

(2) "Contribution," except in the term "right of contribution," means any benefit provided by a person to a limited partnership in order to become a partner or in the person's capacity as a partner.

(3) "Debtor in bankruptcy" means a person that is the subject of:

(a) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) A comparable order under federal, state, or foreign law governing insolvency.

(4) "Designated office" means:

(a) With respect to a limited partnership, the office that the limited partnership is required to designate and maintain under RCW 25.10.121; and

(b) With respect to a foreign limited partnership, its principal office.

(5) "Distribution" means a transfer of money or other property from a limited partnership to a partner in the partner's capacity as a partner or to a transferee on account of a transferable interest owned by the transferee.

(6) "Foreign limited liability limited partnership" means a foreign limited partnership whose general partners have limited liability for the obligations of the foreign limited partnership under a provision similar to RCW 25.10.401(3).

(7) "Foreign limited partnership" means a partnership formed under the laws of a jurisdiction other than this state and required by those laws to have one or more general partners and one or more limited partners. "Foreign limited partnership" includes a foreign limited liability limited partnership.

(8) "General partner" means:

(a) With respect to a limited partnership, a person that:

(i) Becomes a general partner under RCW 25.10.371; or

(ii) Was a general partner in a limited partnership when the limited partnership became subject to this chapter under RCW 25.10.911 (1) or (2); and

(b) With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a general partner in a limited partnership.

(9) "Limited liability limited partnership," except in the term "foreign limited liability limited partnership," means a limited partnership whose certificate of limited partnership

states that the limited partnership is a limited liability limited partnership.

(10) "Limited partner" means:

(a) With respect to a limited partnership, a person that:

(i) Becomes a limited partner under RCW 25.10.301; or

(ii) Was a limited partner in a limited partnership when the limited partnership became subject to this chapter under RCW 25.10.911 (1) or (2); and

(b) With respect to a foreign limited partnership, a person that has rights, powers, and obligations similar to those of a limited partner in a limited partnership.

(11) "Limited partnership," except in the terms "foreign limited partnership" and "foreign limited liability limited partnership," means an entity, having one or more general partners and one or more limited partners, that is formed under this chapter by two or more persons or becomes subject to this chapter under article 11 of this chapter or RCW 25.10.911 (1) or (2). "Limited partnership" includes a limited liability limited partnership.

(12) "Partner" means a limited partner or general partner.

(13) "Partnership agreement" means the partners' agreement, whether oral, implied, in a record, or in any combination, concerning the limited partnership. "Partnership agreement" includes the agreement as amended.

(14) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government; governmental subdivision, agency, or instrumentality; public corporation, or any other legal or commercial entity.

(15) "Person dissociated as a general partner" means a person dissociated as a general partner of a limited partnership.

(16) "Principal office" means the office where the principal executive office of a limited partnership or foreign limited partnership is located, whether or not the office is located in this state.

(17) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(18) "Required information" means the information that a limited partnership is required to maintain under RCW 25.10.091.

(19) "Sign" means:

(a) To sign with respect to a written record;

(b) To electronically transmit along with sufficient information to determine the sender's identity with respect to an electronic transmission; or

(c) With respect to a record to be filed with the secretary of state, to comply with the standard for filing with the office of the secretary of state as prescribed by the secretary of state.

(20) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(21) "Transfer" includes an assignment, conveyance, deed, bill of sale, lease, mortgage, security interest, encumbrance, gift, and transfer by operation of law.

(22) "Transferable interest" means a partner's right to receive distributions.

(23) "Transferee" means a person to which all or part of a transferable interest has been transferred, whether or not the transferor is a partner. [2009 c 188 § 102.]

**25.10.016 Knowledge and notice. (Effective January 1, 2010.)** (1) A person knows a fact if the person has actual knowledge of it.

(2) A person has notice of a fact if the person:

- (a) Knows of it;
- (b) Has received a notification of it;
- (c) Has reason to know it exists from all of the facts known to the person at the time in question; or
- (d) Has notice of it under subsection (3) or (4) of this section.

(3) A certificate of limited partnership on file in the office of the secretary of state is notice that the partnership is a limited partnership and the persons designated in the certificate as general partners are general partners. Except as otherwise provided in subsection (4) of this section, the certificate is not notice of any other fact.

(4) A person has notice of:

(a) Another person's dissociation as a general partner, ninety days after the effective date of an amendment to the certificate of limited partnership that states that the other person has dissociated or ninety days after the effective date of a statement of dissociation pertaining to the other person, whichever occurs first;

(b) A limited partnership's dissolution, ninety days after the effective date of an amendment to the certificate of limited partnership stating that the limited partnership is dissolved;

(c) A limited partnership's termination, ninety days after the effective date of a statement of termination;

(d) A limited partnership's conversion under article 11 of this chapter, ninety days after the effective date of the articles of conversion; or

(e) A merger under article 11 of this chapter, ninety days after the effective date of the articles of merger.

(5) A person notifies or gives a notification to another person by taking steps reasonably required to inform the other person in ordinary course, whether or not the other person learns of it.

(6) A person receives a notification when the notification:

(a) Comes to the person's attention; or

(b) Is delivered at the person's place of business or at any other place held out by the person as a place for receiving communications.

(7) Except as otherwise provided in subsection (8) of this section, a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction for the person knows, has notice, or receives a notification of the fact, or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. A person other than an individual exercises reasonable diligence if it maintains reasonable routines for communicating significant information to the individual conducting the transaction for the person and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to

communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(8) A general partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is effective immediately as knowledge of, notice to, or receipt of a notification by the limited partnership, except in the case of a fraud on the limited partnership committed by or with the consent of the general partner. A limited partner's knowledge, notice, or receipt of a notification of a fact relating to the limited partnership is not effective as knowledge of, notice to, or receipt of a notification by the limited partnership. [2009 c 188 § 103.]

**25.10.020 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.021 Nature, purpose, and duration of entity. (Effective January 1, 2010.)** (1) A limited partnership is an entity distinct from its partners. A limited partnership is the same entity regardless of whether its certificate of limited partnership states that the limited partnership is a limited liability limited partnership.

(2) A limited partnership may be organized under this chapter for any lawful purpose.

(3) A limited partnership has a perpetual duration. [2009 c 188 § 104.]

**25.10.030 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.031 Powers. (Effective January 1, 2010.)** A limited partnership has the powers to do all things necessary or convenient to carry on its activities, including the power to sue, be sued, and defend in its own name and to maintain an action against a partner for harm caused to the limited partnership by a breach of the partnership agreement or violation of a duty to the partnership. [2009 c 188 § 105.]

**25.10.040 Registered office and agent.** (1) Each limited partnership shall continuously maintain in this state an office which may but need not be a place of its business in this state, at which shall be kept the records required by \*RCW 25.10.050 to be maintained. The office shall be at a specific geographical location in this state and be identified by number, if any, and street or building address or rural route or other geographical address. The office shall not be identified only by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the office address.

(2) Each limited partnership shall continuously maintain in this state an agent for service of process on the limited partnership, which agent must be an individual resident of this state, a domestic corporation, a government, governmental subdivision, agency, or instrumentality, or a foreign corporation authorized to do business in this state. The agent may, but need not, be located at the office identified in \*RCW 25.10.040(1) [subsection (1) of this section]. The agent's address shall be at a specific geographical location in this state and be identified by number, if any, and street or building address or rural route or other geographical address. The agent's address shall not be identified only by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the agent's geographic address.

(3) A registered agent shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filed with or as a part of the document first appointing a registered agent. In the event any individual or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state. The registered agent so appointed by a limited partnership shall be an agent of such limited partnership upon whom any process, notice, or demand required or permitted by law to be served upon the limited partnership may be served. If a limited partnership fails to appoint or maintain a registered agent in this state, or if its registered agent cannot with reasonable diligence be found, then the secretary of state shall be an agent of such limited partnership upon whom any such process, notice, or demand may be served. Service on the secretary of state of any such process, notice, or demand shall be made by delivering to and leaving with the secretary of state, or with any authorized clerk of the corporation department of the secretary of state's office, duplicate copies of such process, notice, or demand. In the event any such process, notice, or demand is served on the secretary of state, the secretary of state shall immediately cause one of the copies thereof to be forwarded by certified mail, addressed to the limited partnership at the office referred to in \*RCW 25.10.040(1) [subsection (1) of this section]. Any service so had on the secretary of state shall be returnable in no fewer than thirty days.

The secretary of state shall keep a record of all processes, notices, and demands served upon the secretary of state under this section, and shall record therein the time of such service and the secretary of state's action with reference thereto.

Nothing in this section limits or affects the right to serve any process, notice, or demand required or permitted by law to be served upon a limited partnership in any other manner now or hereafter permitted by law.

Any registered agent may resign as such agent upon filing a written notice thereof, executed in duplicate, with the secretary of state, who shall forthwith mail one copy thereof to the limited partnership. The appointment of such agent shall terminate upon the expiration of thirty days after receipt of such notice by the secretary of state. [2009 c 202 § 4; 1987 c 55 § 3; 1981 c 51 § 4.]

**Reviser's note:** \*(1) RCW 25.10.050 and 25.10.040 were repealed by 2009 c 188 § 1305, effective July 1, 2010.

(2) RCW 25.10.040 was amended by 2009 c 202 § 4 without cognizance of its repeal by 2009 c 188 § 1305, effective July 1, 2010. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**25.10.040 Registered office and agent.** [1987 c 55 § 3; 1981 c 51 § 4.] Repealed by 2009 c 188 § 1305, effective July 1, 2010. See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Reviser's note:** RCW 25.10.040 was amended by 2009 c 202 § 4 without cognizance of its repeal by 2009 c 188 § 1305, effective July 1, 2010. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

**25.10.041 Governing law. (Effective January 1, 2010.)** The law of this state governs relations among the partners of a limited partnership and between the partners and the limited partnership and the liability of partners as partners for an obligation of the limited partnership. [2009 c 188 § 106.]

**25.10.050 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.051 Supplemental principles of law—Rate of interest. (Effective January 1, 2010.)** (1) Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.

(2) If an obligation to pay interest arises under this chapter and the rate is not specified, the rate is that specified in RCW 19.52.010(1). [2009 c 188 § 107.]

**25.10.060 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.061 Name. (Effective January 1, 2010.)** (1) The name of a limited partnership may contain the name of any partner.

(2) The name of a limited partnership that is not a limited liability limited partnership must contain the term "limited partnership" or the abbreviation "LP" or "L.P." and may not contain the term "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P."

(3) The name of a limited liability limited partnership must contain the term "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and must not contain the abbreviation "LP" or "L.P."

(4) Unless authorized by subsection (5) of this section, the name of a limited partnership must be distinguishable in the records of the secretary of state from:

(a) The name of each person other than an individual incorporated, organized, or authorized to transact business in this state through a filing or registration with the secretary of state; and

(b) Each name reserved under RCW 25.10.071.

(5) A limited partnership may apply to the secretary of state for authorization to use a name that does not comply with subsection (4) of this section. The secretary of state shall authorize use of the name applied for if, as to each conflicting name:

(a) The present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the secretary of state to change the conflicting name to a name that complies with subsection (4) of this section and is distinguishable in the records of the secretary of state from the name applied for;

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name applied for; or

(c) The applicant delivers to the secretary of state proof satisfactory to the secretary of state that the present user, registrant, or owner of the conflicting name:

(i) Has merged into the applicant;

(ii) Has been converted into the applicant; or

(iii) Has transferred substantially all of its assets, including the conflicting name, to the applicant.

(6) Subject to RCW 25.10.661, this section applies to any foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

(7) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in any of the following designations for the same name: "Corporation," "incorporated," "company," "limited," "partnership," "limited partnership," "limited liability limited partnership," "limited liability company," or "limited liability partnership," or the abbreviations "corp.," "inc.," "co.," "ltd.," "LP," "L.P.," "LLP," "L.L.P.," "LLLP," "L.L.L.P.," "LLC," or "L.L.C.";

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(8) This chapter does not control the use of assumed business names or trade names. [2009 c 188 § 108.]

**25.10.070 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.071 Reservation of name. (Effective January 1, 2010.)** (1) The exclusive right to the use of a name that complies with RCW 25.10.061 may be reserved by:

(a) A person intending to organize a limited partnership under this chapter and to adopt the name;

(b) A limited partnership or a foreign limited partnership authorized to transact business in this state intending to adopt the name;

(c) A foreign limited partnership intending to obtain a certificate of authority to transact business in this state and adopt the name;

(d) A person intending to organize a foreign limited partnership and intending to have it obtain a certificate of authority to transact business in this state and adopt the name;

(e) A foreign limited partnership formed under the name; or

(f) A foreign limited partnership formed under a name that does not comply with RCW 25.10.061 (2) or (3), but the name reserved under this subsection (1)(f) may differ from the foreign limited partnership's name only to the extent necessary to comply with RCW 25.10.061 (2) and (3).

(2) A person may apply to reserve a name under subsection (1) of this section by delivering to the secretary of state for filing an application that states the name to be reserved and the subsection of subsection (1) of this section that applies. If the secretary of state finds that the name is available for use by the applicant, the secretary of state shall file a statement of name reservation and thereby reserve the name for the exclusive use of the applicant for one hundred eighty days.

(3) An applicant that has reserved a name pursuant to subsection (2) of this section may reserve the same name for additional one hundred eighty-day periods. A person having a current reservation for a name may not apply for another one hundred eighty-day period for the same name until ninety days have elapsed in the current reservation.

(4) A person that has reserved a name under this section may deliver to the secretary of state for filing a notice of transfer that states the reserved name, the name and street and mailing address of some other person to which the reservation is to be transferred, and the subsection of subsection (1) of this section that applies to the other person. Subject to RCW 25.10.251(3), the transfer is effective when the secretary of state files the notice of transfer. [2009 c 188 § 109.]

**25.10.080 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.081 Effect of partnership agreement—Non-waivable provisions. (Effective January 1, 2010.)** (1) Except as otherwise provided in subsection (2) of this section, the partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(2) A partnership agreement may not:

(a) Vary a limited partnership's power under RCW 25.10.031 to sue, be sued, and defend in its own name;

(b) Vary the law applicable to a limited partnership under RCW 25.10.041;

(c) Vary the requirements of RCW 25.10.231;

(d) Vary the information required under RCW 25.10.091 or unreasonably restrict the right to information under RCW 25.10.331 or 25.10.431, but the partnership agreement may impose reasonable restrictions on the availability and use of information obtained under those sections and may define appropriate remedies, including liquidated damages, for a breach of any reasonable restriction on use;

(e) Eliminate the duty of loyalty under RCW 25.10.441, but the partnership agreement may, if not manifestly unreasonable:

(i) Identify specific types or categories of activities that do not violate the duty of loyalty; and

(ii) Specify the number or percentage of partners that may authorize or ratify, after full disclosure to all partners of all material facts, a specific act or transaction that otherwise would violate the duty of loyalty;

(f) Unreasonably reduce the duty of care under RCW 25.10.441(3);

(g) Eliminate the obligation of good faith and fair dealing under RCW 25.10.341(2) and 25.10.441(4), but the partnership agreement may prescribe the standards by which the performance of the obligation is to be measured, if the standards are not manifestly unreasonable;

(h) Vary the power of a person to dissociate as a general partner under RCW 25.10.526(1) except to require that the notice under RCW 25.10.521(1) be in a record;

(i) Vary the power of a court to decree dissolution in the circumstances specified in RCW 25.10.576;

(j) Vary the requirement to wind up the partnership's business as specified in RCW 25.10.581;

(k) Unreasonably restrict the right to maintain an action under article 10 of this chapter;

(l) Restrict the right of a partner under RCW 25.10.796(1) to approve a conversion or merger or the right of a general partner under RCW 25.10.796(2) to consent to an amendment to the certificate of limited partnership that deletes a statement that the limited partnership is a limited liability limited partnership; or

(m) Restrict rights under this chapter of a person other than a partner or a transferee. [2009 c 188 § 110.]

**25.10.090 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.091 Required information.** (*Effective January 1, 2010.*) A limited partnership shall maintain at its designated office the following information:

(1) A current list showing the full name and last known street and mailing address of each partner, separately identifying the general partners, in alphabetical order, and the limited partners, in alphabetical order;

(2) A copy of the initial certificate of limited partnership and all amendments to and restatements of the certificate, together with signed copies of any powers of attorney under which any certificate, amendment, or restatement has been signed;

(3) A copy of any filed articles of conversion or merger;

(4) A copy of the limited partnership's federal, state, and local tax returns and reports, if any, for the three most recent years;

(5) A copy of any partnership agreement made in a record and any amendment made in a record to any partnership agreement;

(6) A copy of any financial statement of the limited partnership for the three most recent years;

(7) A copy of the three most recent annual reports delivered by the limited partnership to the secretary of state pursuant to RCW 25.10.291;

(8) A copy of any record made by the limited partnership during the past three years of any consent given by or vote taken of any partner pursuant to this chapter or the partnership agreement; and

(9) Unless contained in a partnership agreement made in a record, a record stating:

(a) The amount of cash, and a description and statement of the agreed value of the other benefits, contributed and agreed to be contributed by each partner;

(b) The times at which, or events on the happening of which, any additional contributions agreed to be made by each partner are to be made;

(c) For any person that is both a general partner and a limited partner, a specification of what transferable interest the person owns in each capacity; and

(d) Any events upon the happening of which the limited partnership is to be dissolved and its activities wound up. [2009 c 188 § 111.]

**25.10.100 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.101 Business transactions of partner with partnership.** (*Effective January 1, 2010.*) A partner may lend money to and transact other business with the limited partnership and has the same rights and obligations with respect to the loan or other transaction as a person that is not a partner. [2009 c 188 § 112.]

**25.10.110 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.111 Dual capacity.** (*Effective January 1, 2010.*) A person may be both a general partner and a limited partner.

A person that is both a general and limited partner has the rights, powers, duties, and obligations provided by this chapter and the partnership agreement in each of those capacities. When the person acts as a general partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for general partners. When the person acts as a limited partner, the person is subject to the obligations, duties, and restrictions under this chapter and the partnership agreement for limited partners. [2009 c 188 § 113.]

**25.10.120 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.121 Office and agent for service of process.** (*Effective January 1, 2010.*) (1) A limited partnership shall designate and continuously maintain in this state:

(a) An office, which need not be a place of its activity in this state; and

(b) An agent for service of process.

(2) A foreign limited partnership shall designate and continuously maintain in this state an agent for service of process.

(3) An agent for service of process of a limited partnership or foreign limited partnership must be an individual who is a resident of this state or other person authorized to do business in this state. [2009 c 188 § 114.]

**25.10.130 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.131 Change of designated office or agent for service of process.** (*Effective January 1, 2010.*) (1) In order to change its designated office, agent for service of process, or the address of its agent for service of process, a limited partnership or a foreign limited partnership must deliver to the secretary of state for filing a statement of change containing:

(a) The name of the limited partnership or foreign limited partnership;

(b) The street and mailing address of its current designated office;

(c) If the current designated office is to be changed, the street and mailing address of the new designated office;

(d) The name and street and mailing address of its current agent for service of process; and

(e) If the current agent for service of process or an address of the agent is to be changed, the new information.

(2) Subject to RCW 25.10.251(3), a statement of change is effective when filed by the secretary of state. [2009 c 188 § 115.]

**25.10.140 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.141 Resignation of agent for service of process.** (*Effective January 1, 2010.*) (1) In order to resign as an

agent for service of process of a limited partnership or foreign limited partnership, the agent must deliver to the secretary of state for filing a statement of resignation containing the name of the limited partnership or foreign limited partnership.

(2) After receiving a statement of resignation, the secretary of state shall file it and mail a copy to the designated office of the limited partnership or foreign limited partnership and another copy to the principal office if the address of the office appears in the records of the secretary of state and is different from the address of the designated office.

(3) An agent for service of process is terminated on the thirty-first day after the secretary of state files the statement of resignation. [2009 c 188 § 116.]

**25.10.150 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.151 Service of process. (Effective January 1, 2010.)** (1) An agent for service of process appointed by a limited partnership or foreign limited partnership is an agent of the limited partnership or foreign limited partnership for service of any process, notice, or demand required or permitted by law to be served upon the limited partnership or foreign limited partnership.

(2) If a limited partnership or foreign limited partnership does not appoint or maintain an agent for service of process in this state or the agent for service of process cannot with reasonable diligence be found at the agent's address, the secretary of state is an agent of the limited partnership or foreign limited partnership upon whom process, notice, or demand may be served.

(3) Service of any process, notice, or demand on the secretary of state may be made by delivering to and leaving with the secretary of state duplicate copies of the process, notice, or demand. If a process, notice, or demand is served on the secretary of state, the secretary of state shall forward one of the copies by registered or certified mail, return receipt requested, to the limited partnership or foreign limited partnership at its designated office.

(4) Service is effected under subsection (3) of this section at the earliest of:

(a) The date the limited partnership or foreign limited partnership receives the process, notice, or demand;

(b) The date shown on the return receipt, if signed on behalf of the limited partnership or foreign limited partnership; or

(c) Five days after the process, notice, or demand is deposited in the mail, if mailed postpaid and correctly addressed.

(5) The secretary of state shall keep a record of each process, notice, and demand served pursuant to this section and record the time of, and the action taken regarding, the service.

(6) This section does not affect the right to serve process, notice, or demand in any other manner provided by law. [2009 c 188 § 117.]

**25.10.160 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.161 Consent and proxies of partners. (Effective January 1, 2010.)** Action requiring the consent of partners under this chapter may be taken without a meeting, and a partner may appoint a proxy to consent or otherwise act for the partner by signing an appointment record, either personally or by the partner's attorney-in-fact. [2009 c 188 § 118.]

**25.10.170 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.171 Standards for electronic filing rules. (Effective January 1, 2010.)** The secretary of state may adopt rules to facilitate electronic filing. The rules will detail the circumstances under which the electronic filing of documents will be permitted, how the documents will be filed, and how the secretary of state will return filed documents. The rules may also impose additional requirements related to implementation of electronic filing processes, including but not limited to file formats, signature technologies, delivery, and the types of entities, records, or documents permitted. [2009 c 188 § 119.]

**25.10.180 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.190 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.200 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## ARTICLE 2 FORMATION—CERTIFICATE OF LIMITED PARTNERSHIP AND OTHER FILINGS

**25.10.201 Formation of limited partnership—Certificate of limited partnership. (Effective January 1, 2010.)**

(1) In order for a limited partnership to be formed, a certificate of limited partnership must be delivered to the secretary of state for filing. The certificate of limited partnership must state:

(a) The name of the limited partnership, which must comply with RCW 25.10.061;

(b) The street and mailing address of the initial designated office and the name and street and mailing address of the initial agent for service of process;

(c) The name and the street and mailing address of each general partner;

(d) Whether the limited partnership is a limited liability limited partnership; and

(e) Any additional information required by article 11 of this chapter.

(2) A certificate of limited partnership may also contain any other matters but may not vary or otherwise affect the provisions specified in RCW 25.10.081(2) in a manner inconsistent with that section.



(3) If there has been substantial compliance with subsection (1) of this section, subject to RCW 25.10.251(3), a limited partnership is formed when the secretary of state files the certificate of limited partnership.

(4) Subject to subsection (2) of this section, if any provision of a partnership agreement is inconsistent with the filed certificate of limited partnership or with a filed statement of dissociation, termination, or change or filed articles of conversion or merger:

(a) The partnership agreement prevails as to partners and transferees; and

(b) The filed certificate of limited partnership, statement of dissociation, termination, or change or articles of conversion or merger prevails as to persons, other than partners and transferees, that reasonably rely on the filed record to their detriment. [2009 c 188 § 201.]

**25.10.210 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.211 Amendment or restatement of certificate of limited partnership. (Effective January 1, 2010.)** (1) In order to amend its certificate of limited partnership, a limited partnership must deliver to the secretary of state for filing an amendment or, pursuant to article 11 of this chapter, articles of merger stating:

(a) The name of the limited partnership;

(b) The date of filing of its initial certificate of limited partnership; and

(c) The changes the amendment makes to the certificate of limited partnership as most recently amended or restated.

(2) A limited partnership shall promptly deliver to the secretary of state for filing an amendment to a certificate of limited partnership to reflect:

(a) The admission of a new general partner;

(b) The dissociation of a person as a general partner; or

(c) The appointment of a person to wind up the limited partnership's activities under RCW 25.10.581 (3) or (4).

(3) A general partner that knows that any information in a filed certificate of limited partnership was false when the certificate was filed or has become false due to changed circumstances shall promptly:

(a) Cause the certificate of limited partnership to be amended; or

(b) If appropriate, deliver to the secretary of state for filing a statement of change pursuant to RCW 25.10.131 or a statement of correction pursuant to RCW 25.10.261.

(4) A certificate of limited partnership may be amended at any time for any other proper purpose as determined by the limited partnership.

(5) A restated certificate of limited partnership may be delivered to the secretary of state for filing in the same manner as an amendment.

(6) Subject to RCW 25.10.251(3), an amendment or restated certificate of limited partnership is effective when filed by the secretary of state. [2009 c 188 § 202.]

**25.10.220 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.221 Statement of termination. (Effective January 1, 2010.)** A dissolved limited partnership that has completed winding up may deliver to the secretary of state for filing a statement of termination that states:

(1) The name of the limited partnership;

(2) The date of filing of its initial certificate of limited partnership; and

(3) Any other information as determined by the general partners filing the statement or by a person appointed pursuant to RCW 25.10.581 (3) or (4). [2009 c 188 § 203.]

**25.10.230 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.231 Signing of records. (Effective January 1, 2010.)** (1) Each record delivered to the secretary of state for filing pursuant to this chapter must be signed in the following manner:

(a) An initial certificate of limited partnership must be signed by all general partners listed in the certificate.

(b) An amendment adding or deleting a statement that the limited partnership is a limited liability limited partnership must be signed by all general partners listed in the certificate.

(c) An amendment designating as general partner a person admitted under RCW 25.10.571(3)(b) following the dissociation of a limited partnership's last general partner must be signed by that person.

(d) An amendment required by RCW 25.10.581(3) following the appointment of a person to wind up the dissolved limited partnership's activities must be signed by that person.

(e) Any other amendment must be signed by:

(i) At least one general partner listed in the certificate of limited partnership;

(ii) Each other person designated in the amendment as a new general partner; and

(iii) Each person that the amendment indicates has dissociated as a general partner, unless:

(A) The person is deceased or a guardian or general conservator has been appointed for the person and the amendment so states; or

(B) The person has previously delivered to the secretary of state for filing a statement of dissociation.

(f) A restated certificate of limited partnership must be signed by at least one general partner listed in the certificate, and, to the extent the restated certificate effects a change under any other subsection of this subsection (1), the certificate must be signed in a manner that satisfies that subsection.

(g) A statement of termination must be signed by all general partners listed in the certificate or, if the certificate of a dissolved limited partnership lists no general partners, by the person appointed pursuant to RCW 25.10.581 (3) or (4) to wind up the dissolved limited partnership's activities.

(h) Articles of conversion must be signed by each general partner listed in the certificate of limited partnership.

(i) Articles of merger must be signed as provided in RCW 25.10.786(1).

(j) Any other record delivered on behalf of a limited partnership to the secretary of state for filing must be signed by at least one general partner listed in the certificate of limited partnership.

(k) A statement by a person pursuant to RCW 25.10.531(1)(d) stating that the person has dissociated as a general partner must be signed by that person.

(l) A statement of withdrawal by a person pursuant to RCW 25.10.351 must be signed by that person.

(m) A record delivered on behalf of a foreign limited partnership to the secretary of state for filing must be signed by at least one general partner of the foreign limited partnership.

(n) Any other record delivered on behalf of any person to the secretary of state for filing must be signed by that person.

(2) Any person may sign by an attorney-in-fact any record to be filed pursuant to this chapter. [2009 c 188 § 204.]

**25.10.240 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.241 Signing and filing pursuant to judicial order. (Effective January 1, 2010.)** (1) If a person required by this chapter to sign a record or deliver a record to the secretary of state for filing does not do so, any other person that is aggrieved may petition the appropriate court to order:

- (a) The person to sign the record;
- (b) Delivery of the record to the secretary of state for filing; or
- (c) The secretary of state to file the record unsigned.

(2) If the person aggrieved under subsection (1) of this section is not the limited partnership or foreign limited partnership to which the record pertains, the aggrieved person shall make the limited partnership or foreign limited partnership a party to the action. A person aggrieved under subsection (1) of this section may seek the remedies provided in subsection (1) of this section in the same action in combination or in the alternative.

(3) A record filed unsigned pursuant to this section is effective without being signed. [2009 c 188 § 205.]

**25.10.250 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.251 Delivery to and filing of records by secretary of state—Effective time and date. (Effective January 1, 2010.)** (1) A record authorized or required to be delivered to the secretary of state for filing under this chapter must be captioned to describe the record's purpose, be in a medium permitted by the secretary of state, and be delivered to the secretary of state. Unless the secretary of state determines that a record does not comply with the filing requirements of this chapter, and if all filing fees have been paid, the secretary of state shall file the record and:

- (a) For a statement of dissociation, send:

- (i) A copy of the filed statement and a receipt for the fees to the person that the statement indicates has dissociated as a general partner; and

- (ii) A copy of the filed statement and receipt to the limited partnership;

- (b) For a statement of withdrawal, send:

- (i) A copy of the filed statement and a receipt for the fees to the person on whose behalf the record was filed; and

- (ii) If the statement refers to an existing limited partnership, a copy of the filed statement and receipt to the limited partnership; and

- (c) For all other records, send a copy of the filed record and a receipt for the fees to the person on whose behalf the record was filed.

(2) Upon request and payment of a fee, the secretary of state shall send to the requester a certified copy of the requested record.

(3) Except as otherwise provided in RCW 25.10.141 and 25.10.261, a record delivered to the secretary of state for filing under this chapter may specify an effective time and a delayed effective date. Except as otherwise provided in this chapter, a record filed by the secretary of state is effective:

- (a) If the record does not specify an effective time and does not specify a delayed effective date, on the date and at the time the record is filed as evidenced by the secretary of state's endorsement of the date and time on the record;

- (b) If the record specifies an effective time but not a delayed effective date, on the date the record is filed at the time specified in the record;

- (c) If the record specifies a delayed effective date but not an effective time, at 12:01 a.m. on the earlier of:

- (i) The specified date; or

- (ii) The ninetieth day after the record is filed; or

- (d) If the record specifies an effective time and a delayed effective date, at the specified time on the earlier of:

- (i) The specified date; or

- (ii) The ninetieth day after the record is filed. [2009 c 188 § 206.]

**25.10.260 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.261 Correcting filed record. (Effective January 1, 2010.)** (1) A limited partnership or foreign limited partnership may deliver to the secretary of state for filing a statement of correction to correct a record previously delivered by the limited partnership or foreign limited partnership to the secretary of state and filed by the secretary of state, if at the time of filing the record contained false or erroneous information or was defectively signed.

(2) A statement of correction may not state a delayed effective date and must:

- (a) Describe the record to be corrected, including its filing date, or attach a copy of the record as filed;

- (b) Specify the incorrect information and the reason it is incorrect or the manner in which the signing was defective; and

- (c) Correct the incorrect information or defective signature.

(3) When filed by the secretary of state, a statement of correction is effective retroactively as of the effective date of the record the statement corrects, but the statement is effective when filed:

(a) For the purposes of RCW 25.10.016 (3) and (4); and

(b) As to persons relying on the uncorrected record and adversely affected by the correction. [2009 c 188 § 207.]

**25.10.270 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.271 Liability for false information in filed record. (Effective January 1, 2010.)** (1) If a record delivered to the secretary of state for filing under this chapter and filed by the secretary of state contains false information, a person that suffers loss by reliance on the information may recover damages for the loss from:

(a) A person that signed the record, or caused another to sign it on the person's behalf, and knew the information to be false at the time the record was signed; and

(b) A general partner that has notice that the information was false when the record was filed or has become false because of changed circumstances, if the general partner has notice for a reasonably sufficient time before the information is relied upon to enable the general partner to effect an amendment under RCW 25.10.211, file a petition under RCW 25.10.241, or deliver to the secretary of state for filing a statement of change under RCW 25.10.131 or a statement of correction under RCW 25.10.261.

(2) A person who signs a record authorized or required to be filed under this chapter that such a person knows is false in any material respect with intent that the record be delivered to the secretary of state for filing is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW. [2009 c 188 § 208.]

**25.10.280 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.281 Certificate of existence or authorization. (Effective January 1, 2010.)** (1) Any person may apply to the secretary of state to furnish a certificate of existence for a domestic limited partnership or a certificate of authorization for a foreign limited partnership.

(2) A certificate of existence or authorization means that as of the date of its issuance:

(a) The domestic limited partnership is duly formed under the laws of this state, or that the foreign limited partnership is authorized to transact business in this state;

(b) All fees and penalties owed to this state under this chapter have been paid, if (i) payment is reflected in the records of the secretary of state, and (ii) nonpayment affects the existence or authorization of the domestic or foreign limited partnership;

(c) The limited partnership's most recent annual report required by RCW 25.10.291 has been delivered to the secretary of state;

(d) The partnership's certificate of limited partnership has not been amended to state that the limited partnership is dissolved; and

(e) A statement of termination or an application for withdrawal has not been filed by the secretary of state.

(3) A person may apply to the secretary of state to issue a certificate covering any fact of record.

(4) Subject to any qualification stated in the certificate, a certificate of existence or authorization issued by the secretary of state may be relied upon as conclusive evidence that the domestic or foreign limited partnership is in existence or is authorized to transact business in the limited partnership form in this state. [2009 c 188 § 209.]

**25.10.290 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.291 Annual report for secretary of state. (Effective January 1, 2010.)** (1) A limited partnership or a foreign limited partnership authorized to transact business in this state shall deliver to the secretary of state for filing an annual report that states:

(a) The name of the limited partnership or foreign limited partnership;

(b) The street and mailing address of its designated office and the name and street and mailing address of its agent for service of process in this state;

(c) In the case of a limited partnership, the street and mailing address of its principal office; and

(d) In the case of a foreign limited partnership, the state or other jurisdiction under whose law the foreign limited partnership is formed and any alternate name adopted under RCW 25.10.661(1).

(2) Information in an annual report must be current as of the date the annual report is delivered to the secretary of state for filing.

(3) Annual reports must be delivered to the secretary of state on a date determined by the secretary of state, and at such additional times as the partnership elects.

(4) If an annual report does not contain the information required in subsection (1) of this section, the secretary of state shall promptly notify the reporting limited partnership or foreign limited partnership and return the report to it for correction. If the report is corrected to contain the information required in subsection (1) of this section and delivered to the secretary of state within thirty days after the effective date of the notice, it is timely delivered.

(5) If a filed annual report contains an address of a designated office or the name or address of an agent for service of process that differs from the information shown in the records of the secretary of state immediately before the filing, the differing information in the annual report is considered a statement of change under RCW 25.10.131. [2009 c 188 § 210.]

**25.10.300 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

ARTICLE 3  
LIMITED PARTNERS

**25.10.301 Becoming limited partner.** (*Effective January 1, 2010.*) A person becomes a limited partner:

- (1) As provided in the partnership agreement;
- (2) As the result of a conversion or merger under article 11 of this chapter; or
- (3) With the consent of all the partners. [2009 c 188 § 301.]

**25.10.310 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.311 No right or power as limited partner to bind limited partnership.** (*Effective January 1, 2010.*) A limited partner does not have the right or the power as a limited partner to act for or bind the limited partnership. [2009 c 188 § 302.]

**25.10.320 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.321 No liability as limited partner for limited partnership obligations.** (*Effective January 1, 2010.*) An obligation of a limited partnership, whether arising in contract, tort, or otherwise, is not the obligation of a limited partner. A limited partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for an obligation of the limited partnership solely by reason of being a limited partner, even if the limited partner participates in the management and control of the limited partnership. [2009 c 188 § 303.]

**25.10.330 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.331 Right of limited partner and former limited partner to information.** (*Effective January 1, 2010.*)

(1) On ten days' demand, made in a record received by the limited partnership, a limited partner may inspect and copy required information during regular business hours in the limited partnership's designated office. The limited partner need not have any particular purpose for seeking the information.

(2) During regular business hours and at a reasonable location specified by the limited partnership, a limited partner may obtain from the limited partnership and inspect and copy true and full information regarding the state of the activities and financial condition of the limited partnership and other information regarding the activities of the limited partnership as is just and reasonable if:

- (a) The limited partner seeks the information for a purpose reasonably related to the partner's interest as a limited partner;
- (b) The limited partner makes a demand in a record received by the limited partnership, describing with reason-

able particularity the information sought and the purpose for seeking the information; and

(c) The information sought is directly connected to the limited partner's purpose.

(3) Within ten days after receiving a demand pursuant to subsection (2) of this section, the limited partnership in a record shall inform the limited partner that made the demand:

(a) What information the limited partnership will provide in response to the demand;

(b) When and where the limited partnership will provide the information; and

(c) If the limited partnership declines to provide any demanded information, the limited partnership's reasons for declining.

(4) Subject to subsection (6) of this section, a person dissociated as a limited partner may inspect and copy required information during regular business hours in the limited partnership's designated office if:

(a) The information pertains to the period during which the person was a limited partner;

(b) The person seeks the information in good faith; and

(c) The person meets the requirements of subsection (2) of this section.

(5) The limited partnership shall respond to a demand made pursuant to subsection (4) of this section in the same manner as provided in subsection (3) of this section.

(6) If a limited partner dies, RCW 25.10.561 applies.

(7) The limited partnership may impose reasonable restrictions on the use of information obtained under this section. In a dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

(8) A limited partnership may charge a person that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(9) A limited partner or person dissociated as a limited partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (7) of this section or by the partnership agreement applies both to the attorney or other agent and to the limited partner or person dissociated as a limited partner.

(10) The rights stated in this section do not extend to a person as transferee, but may be exercised by the legal representative of an individual under legal disability who is a limited partner or person dissociated as a limited partner. [2009 c 188 § 304.]

**25.10.340 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.341 Limited duties of limited partners.** (*Effective January 1, 2010.*) (1) A limited partner does not have any fiduciary duty to the limited partnership or to any other partner solely by reason of being a limited partner.

(2) A limited partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(3) A limited partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the limited partner's conduct furthers the limited partner's own interest. [2009 c 188 § 305.]

**25.10.350 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.351 Person erroneously believing self to be limited partner.** (*Effective January 1, 2010.*) (1) Except as otherwise provided in subsection (2) of this section, a person that makes an investment in a business enterprise, and erroneously but in good faith believes that the person has become a limited partner in the enterprise, is not a general partner and is not liable for the enterprise's obligations by reason of making the investment, receiving distributions from the enterprise, or exercising any rights of or appropriate to a limited partner, if, on ascertaining the mistake, the person:

(a) Causes an appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing; or

(b) Withdraws from future participation as an owner in the enterprise by signing and delivering to the secretary of state for filing a statement of withdrawal under this section.

(2) A person that makes an investment described in subsection (1) of this section is liable to the same extent as a general partner to any third party that enters into a transaction with the enterprise, believing in good faith that the person is a general partner, before the secretary of state files a statement of withdrawal, certificate of limited partnership, amendment, or statement of correction to show that the person is not a general partner.

(3) If a person makes a diligent effort in good faith to comply with subsection (1)(a) of this section and is unable to cause the appropriate certificate of limited partnership, amendment, or statement of correction to be signed and delivered to the secretary of state for filing, the person has the right to withdraw from the enterprise pursuant to subsection (1)(b) of this section even if the withdrawal would otherwise breach an agreement with others that are or have agreed to become co-owners of the enterprise. [2009 c 188 § 306.]

**25.10.360 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.370 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

#### ARTICLE 4 GENERAL PARTNERS

**25.10.371 Becoming general partner.** (*Effective January 1, 2010.*) A person becomes a general partner:

(1) As provided in the partnership agreement;

(2) Under RCW 25.10.571(3)(b) following the dissociation of a limited partnership's last general partner;

(3) As the result of a conversion or merger under article 11 of this chapter; or

(4) With the consent of all the partners. [2009 c 188 § 401.]

**25.10.381 General partner agent of limited partnership.** (*Effective January 1, 2010.*) (1) Each general partner is an agent of the limited partnership for the purposes of its activities. An act of a general partner, including the signing of a record in the partnership's name, for apparently carrying on in the ordinary course of the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership, unless the general partner did not have authority to act for the limited partnership in the particular matter and the person with which the general partner was dealing knew, had received a notification, or had notice under RCW 25.10.016(4) that the general partner lacked authority.

(2) An act of a general partner that is not apparently for carrying on in the ordinary course of the limited partnership's activities or activities of the kind carried on by the limited partnership binds the limited partnership only if the act was actually authorized by all the other partners. [2009 c 188 § 402.]

**25.10.390 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.391 Limited partnership liable for general partner's actionable conduct.** (*Effective January 1, 2010.*)

(1) A limited partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a general partner acting in the ordinary course of activities of the limited partnership or with authority of the limited partnership.

(2) If, in the course of the limited partnership's activities or while acting with authority of the limited partnership, a general partner receives or causes the limited partnership to receive money or property of a person not a partner, and the money or property is misapplied by a general partner, the limited partnership is liable for the loss. [2009 c 188 § 403.]

**25.10.400 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.401 General partner's liability.** (*Effective January 1, 2010.*)

(1) Except as otherwise provided in subsections (2) and (3) of this section, all general partners are liable jointly and severally for all obligations of the limited partnership unless otherwise agreed by the claimant or provided by law.

(2) A person that becomes a general partner of an existing limited partnership is not personally liable for an obligation of a limited partnership incurred before the person became a general partner.

(3) An obligation of a limited partnership incurred while the limited partnership is a limited liability limited partnership, whether arising in contract, tort, or otherwise, is solely

the obligation of the limited partnership. A general partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or acting as a general partner. This subsection applies despite anything inconsistent in the partnership agreement that existed immediately before the consent required to become a limited liability limited partnership under RCW 25.10.421(2)(b). [2009 c 188 § 404.]

**25.10.410 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.411 Actions by and against partnership and partners. (Effective January 1, 2010.)** (1) To the extent not inconsistent with RCW 25.10.401, a general partner may be joined in an action against the limited partnership or named in a separate action.

(2) A judgment against a limited partnership is not by itself a judgment against a general partner. A judgment against a limited partnership may not be satisfied from a general partner's assets unless there is also a judgment against the general partner.

(3) A judgment creditor of a general partner may not levy execution against the assets of the general partner to satisfy a judgment based on a claim against the limited partnership, unless the partner is personally liable for the claim under RCW 25.10.401 and:

(a) A judgment based on the same claim has been obtained against the limited partnership and a writ of execution on the judgment has been returned unsatisfied in whole or in part;

(b) The limited partnership is a debtor in bankruptcy;

(c) The general partner has agreed that the creditor need not exhaust limited partnership assets;

(d) A court grants permission to the judgment creditor to levy execution against the assets of a general partner based on a finding that limited partnership assets subject to execution are clearly insufficient to satisfy the judgment, that exhaustion of limited partnership assets is excessively burdensome, or that the grant of permission is an appropriate exercise of the court's equitable powers; or

(e) Liability is imposed on the general partner by law or contract independent of the existence of the limited partnership. [2009 c 188 § 405.]

**25.10.420 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.421 Management rights of general partner. (Effective January 1, 2010.)** (1) Each general partner has equal rights in the management and conduct of the limited partnership's activities. Except as expressly provided in this chapter, any matter relating to the activities of the limited partnership may be exclusively decided by the general partner or, if there is more than one general partner, by a majority of the general partners.

(2) The consent of each partner is necessary to:

(a) Amend the partnership agreement;

(b) Amend the certificate of limited partnership to add or, subject to RCW 25.10.796, delete a statement that the limited partnership is a limited liability limited partnership; and

(c) Sell, lease, exchange, or otherwise dispose of all, or substantially all, of the limited partnership's property, with or without the good will, other than in the usual and regular course of the limited partnership's activities.

(3) A limited partnership shall reimburse a general partner for payments made and indemnify a general partner for liabilities incurred by the general partner in the ordinary course of the activities of the partnership or for the preservation of its activities or property.

(4) A limited partnership shall reimburse a general partner for an advance to the limited partnership beyond the amount of capital the general partner agreed to contribute.

(5) A payment or advance made by a general partner that gives rise to an obligation of the limited partnership under subsection (3) or (4) of this section constitutes a loan to the limited partnership that accrues interest from the date of the payment or advance.

(6) A general partner is not entitled to remuneration for services performed for the partnership. [2009 c 188 § 406.]

**25.10.430 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.431 Right of general partner and former general partner to information. (Effective January 1, 2010.)** (1) A general partner, without having any particular purpose for seeking the information, may inspect and copy during regular business hours:

(a) In the limited partnership's designated office, required information; and

(b) At a reasonable location specified by the limited partnership, any other records maintained by the limited partnership regarding the limited partnership's activities and financial condition.

(2) Each general partner and the limited partnership shall furnish to a general partner:

(a) Without demand, any information concerning the limited partnership's activities and activities reasonably required for the proper exercise of the general partner's rights and duties under the partnership agreement or this chapter; and

(b) On demand, any other information concerning the limited partnership's activities, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

(3) Subject to subsection (5) of this section, on ten days' demand made in a record received by the limited partnership, a person dissociated as a general partner may have access to the information and records described in subsection (1) of this section at the location specified in subsection (1) of this section if:

(a) The information or record pertains to the period during which the person was a general partner;

(b) The person seeks the information or record in good faith; and

(c) The person satisfies the requirements imposed on a limited partner by RCW 25.10.331(2).

(4) The limited partnership shall respond to a demand made pursuant to subsection (3) of this section in the same manner as provided in RCW 25.10.331(3).

(5) If a general partner dies, RCW 25.10.561 applies.

(6) The limited partnership may impose reasonable restrictions on the use of information under this section. In any dispute concerning the reasonableness of a restriction under this subsection, the limited partnership has the burden of proving reasonableness.

(7) A limited partnership may charge a person dissociated as a general partner that makes a demand under this section reasonable costs of copying, limited to the costs of labor and material.

(8) A general partner or person dissociated as a general partner may exercise the rights under this section through an attorney or other agent. Any restriction imposed under subsection (6) of this section or by the partnership agreement applies both to the attorney or other agent and to the general partner or person dissociated as a general partner.

(9) The rights under this section do not extend to a person as transferee, but the rights under subsection (3) of this section of a person dissociated as a general partner may be exercised by the legal representative of an individual who dissociated as a general partner under RCW 25.10.521(7) (b) or (c). [2009 c 188 § 407.]

**25.10.440 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.441 General standards of general partner's conduct. (Effective January 1, 2010.)** (1) The only fiduciary duties that a general partner has to the limited partnership and the other partners are the duties of loyalty and care under subsections (2) and (3) of this section.

(2) A general partner's duty of loyalty to the limited partnership and the other partners is limited to the following:

(a) To account to the limited partnership and hold as trustee for it any property, profit, or benefit derived by the general partner in the conduct and winding up of the limited partnership's activities or derived from a use by the general partner of limited partnership property, including the appropriation of a limited partnership opportunity;

(b) To refrain from dealing with the limited partnership in the conduct or winding up of the limited partnership's activities as or on behalf of a party having an interest adverse to the limited partnership; and

(c) To refrain from competing with the limited partnership in the conduct or winding up of the limited partnership's activities.

(3) A general partner's duty of care to the limited partnership and the other partners in the conduct and winding up of the limited partnership's activities is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A general partner shall discharge the duties to the partnership and the other partners under this chapter or under

the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A general partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the general partner's conduct furthers the general partner's own interest. [2009 c 188 § 408.]

**25.10.450 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.453 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.455 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.457 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.460 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## ARTICLE 5 CONTRIBUTIONS AND DISTRIBUTIONS

**25.10.461 Form of contribution. (Effective January 1, 2010.)** A contribution of a partner may consist of tangible or intangible property or other benefit to the limited partnership, including money, services performed, promissory notes, other agreements to contribute cash or property, and contracts for services to be performed. [2009 c 188 § 501.]

**25.10.466 Liability for contribution. (Effective January 1, 2010.)** (1) A partner's obligation to contribute money or other property or other benefit to, or to perform services for, a limited partnership is not excused by the partner's death, disability, or other inability to perform personally.

(2) If a partner does not make a promised nonmonetary contribution, the partner is obligated at the option of the limited partnership to contribute money equal to that portion of the value, as stated in the required information, of the stated contribution that has not been made.

(3) The obligation of a partner to make a contribution or return money or other property paid or distributed in violation of this chapter may be compromised only by consent of all partners. A creditor of a limited partnership that extends credit or otherwise acts in reasonable reliance on an obligation described in subsection (1) of this section, without notice of any compromise under this subsection, may enforce the original obligation to the extent that, in extending credit, the creditor reasonably relied on the obligation of a partner to make a contribution. [2009 c 188 § 502.]

**25.10.470 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.471 Sharing of distributions.** (*Effective January 1, 2010.*) A distribution by a limited partnership must be shared among the partners on the basis of the value, as stated in the required records when the limited partnership decides to make the distribution, of the contributions the limited partnership has received from each partner. [2009 c 188 § 503.]

**25.10.476 Interim distributions.** (*Effective January 1, 2010.*) A partner does not have a right to any distribution before the dissolution and winding up of the limited partnership unless the limited partnership decides to make an interim distribution. [2009 c 188 § 504.]

**25.10.480 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.481 No distribution on account of dissociation.** (*Effective January 1, 2010.*) A person does not have a right to receive a distribution on account of dissociation. [2009 c 188 § 505.]

**25.10.486 Distribution in kind.** (*Effective January 1, 2010.*) A partner does not have a right to demand or receive any distribution from a limited partnership in any form other than cash. Subject to RCW 25.10.621(2), a limited partnership may distribute an asset in kind to the extent each partner receives a percentage of the asset equal to the partner's share of distributions. [2009 c 188 § 506.]

**25.10.490 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.491 Right to distribution.** (*Effective January 1, 2010.*) When a partner or transferee becomes entitled to receive a distribution, the partner or transferee has the status of, and is entitled to all remedies available to, a creditor of the limited partnership with respect to the distribution. However, the limited partnership's obligation to make a distribution is subject to offset for any amount owed to the limited partnership by the partner or dissociated partner on whose account the distribution is made. [2009 c 188 § 507.]

**25.10.496 Limitations on distribution.** (*Effective January 1, 2010.*) (1) A limited partnership may not make a distribution in violation of the partnership agreement.

(2) A limited partnership may not make a distribution if after the distribution:

(a) The limited partnership would not be able to pay its debts as they become due in the ordinary course of the limited partnership's activities; or

(b) The limited partnership's total assets would be less than the sum of its total liabilities other than liabilities to partners on account of their partnership interests and liabilities for which recourse of creditors is limited to specified prop-

erty of the limited partnership, except that the fair value of property that is subject to a liability for which the recourse of creditors is limited shall be included in the assets of the limited partnership only to the extent that the fair value of that property exceeds that liability.

(3) A limited partnership may base a determination that a distribution is not prohibited under subsection (2) of this section on financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances or on a fair valuation or other method that is reasonable in the circumstances.

(4) Except as otherwise provided in subsection (7) of this section, the effect of a distribution under subsection (2) of this section is measured:

(a) In the case of distribution by purchase, redemption, or other acquisition of a transferable interest in the limited partnership, as of the date money or other property is transferred or debt incurred by the limited partnership; and

(b) In all other cases, as of the date:

(i) The distribution is authorized, if the payment occurs within one hundred twenty days after that date; or

(ii) The payment is made, if payment occurs more than one hundred twenty days after the distribution is authorized.

(5) A limited partnership's indebtedness to a partner incurred by reason of a distribution made in accordance with this section is at parity with the limited partnership's indebtedness to its general, unsecured creditors.

(6) A limited partnership's indebtedness, including indebtedness issued in connection with or as part of a distribution, is not considered a liability for purposes of subsection (2) of this section if the terms of the indebtedness provide that payment of principal and interest are made only to the extent that a distribution could then be made to partners under this section.

(7) If indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness is treated as a distribution, the effect of which is measured on the date the payment is made. [2009 c 188 § 508.]

**25.10.500 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.501 Liability for improper distributions.** (*Effective January 1, 2010.*) (1) A general partner that consents to a distribution made in violation of RCW 25.10.496 is personally liable to the limited partnership for the amount of the distribution that exceeds the amount that could have been distributed without the violation if it is established that in consenting to the distribution the general partner failed to comply with RCW 25.10.441.

(2) A partner or transferee that received a distribution knowing that the distribution to that partner or transferee was made in violation of RCW 25.10.496 is personally liable to the limited partnership but only to the extent that the distribution received by the partner or transferee exceeded the amount that could have been properly paid under RCW 25.10.496.

(3) A general partner against which an action is commenced under subsection (1) of this section may:



(a) Implead in the action any other person that is liable under subsection (1) of this section and compel contribution from the person; and

(b) Implead in the action any person that received a distribution in violation of subsection (2) of this section and compel contribution from the person in the amount the person received in violation of subsection (2) of this section.

(4) An action under this section is barred if it is not commenced within two years after the distribution. [2009 c 188 § 509.]

**25.10.510 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## ARTICLE 6 DISSOCIATION

**25.10.511 Dissociation as limited partner. (Effective January 1, 2010.)** (1) A person does not have a right to dissociate as a limited partner before the termination of the limited partnership.

(2) A person is dissociated from a limited partnership as a limited partner upon the occurrence of any of the following events:

(a) The limited partnership's having notice of the person's express will to withdraw as a limited partner or on a later date specified by the person;

(b) An event agreed to in the partnership agreement as causing the person's dissociation as a limited partner;

(c) The person's expulsion as a limited partner pursuant to the partnership agreement;

(d) The person's expulsion as a limited partner by the unanimous consent of the other partners if:

(i) It is unlawful to carry on the limited partnership's activities with the person as a limited partner;

(ii) There has been a transfer of all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, that has not been foreclosed;

(iii) The person is a corporation and, within ninety days after the limited partnership notifies the person that it will be expelled as a limited partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(iv) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(e) On application by the limited partnership, the person's expulsion as a limited partner by judicial order because:

(i) The person engaged in wrongful conduct that adversely and materially affected the limited partnership's activities;

(ii) The person willfully or persistently committed a material breach of the partnership agreement or of the obligation of good faith and fair dealing under RCW 25.10.341(2); or

(iii) The person engaged in conduct relating to the limited partnership's activities that makes it not reasonably practicable to carry on the activities with the person as limited partner;

(f) In the case of a person who is an individual, the person's death;

(g) In the case of a person that is a trust or is acting as a limited partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(h) In the case of a person that is an estate or is acting as a limited partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(i) Termination of a limited partner that is not an individual, partnership, limited liability company, corporation, trust, or estate;

(j) The limited partnership's participation in a conversion or merger under article 11 of this chapter, if the limited partnership:

(i) Is not the converted or surviving entity; or

(ii) Is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a limited partner. [2009 c 188 § 601.]

**25.10.516 Effect of dissociation as limited partner. (Effective January 1, 2010.)** (1) Upon a person's dissociation as a limited partner:

(a) Subject to RCW 25.10.561, the person does not have further rights as a limited partner;

(b) The person's obligation of good faith and fair dealing as a limited partner under RCW 25.10.341(2) continues only as to matters arising and events occurring before the dissociation; and

(c) Subject to RCW 25.10.561 and article 11 of this chapter, any transferable interest owned by the person in the person's capacity as a limited partner immediately before dissociation is owned by the person as a mere transferee.

(2) A person's dissociation as a limited partner does not of itself discharge the person from any obligation to the limited partnership or the other partners that the person incurred while a limited partner. [2009 c 188 § 602.]

**25.10.520 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.521 Dissociation as general partner. (Effective January 1, 2010.)** A person is dissociated from a limited partnership as a general partner upon the occurrence of any of the following events:

(1) The limited partnership's having notice of the person's express will to withdraw as a general partner or on a later date specified by the person;

(2) An event agreed to in the partnership agreement as causing the person's dissociation as a general partner;

(3) The person's expulsion as a general partner pursuant to the partnership agreement;

(4) The person's expulsion as a general partner by the unanimous consent of the other partners if:

(a) It is unlawful to carry on the limited partnership's activities with the person as a general partner;

(b) There has been a transfer of all or substantially all of the person's transferable interest in the limited partnership, other than a transfer for security purposes, or a court order charging the person's interest, that has not been foreclosed;

(c) The person is a corporation and, within ninety days after the limited partnership notifies the person that it will be expelled as a general partner because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

(d) The person is a limited liability company or partnership that has been dissolved and whose business is being wound up;

(5) On application by the limited partnership, the person's expulsion as a general partner by judicial determination because:

(a) The person engaged in wrongful conduct that adversely and materially affected the limited partnership activities;

(b) The person willfully or persistently committed a material breach of the partnership agreement or of a duty owed to the partnership or the other partners under RCW 25.10.441; or

(c) The person engaged in conduct relating to the limited partnership's activities that makes it not reasonably practicable to carry on the activities of the limited partnership with the person as a general partner;

(6) The person's:

(a) Becoming a debtor in bankruptcy;

(b) Execution of an assignment for the benefit of creditors;

(c) Seeking, consenting to, or acquiescing in the appointment of a trustee, receiver, or liquidator of the person or of all or substantially all of the person's property; or

(d) Failure, within ninety days after the appointment, to have vacated or stayed the appointment of a trustee, receiver, or liquidator of the general partner or of all or substantially all of the person's property obtained without the person's consent or acquiescence, or failing within ninety days after the expiration of a stay to have the appointment vacated;

(7) In the case of a person who is an individual:

(a) The person's death;

(b) The appointment of a guardian or general conservator for the person; or

(c) A judicial determination that the person has otherwise become incapable of performing the person's duties as a general partner under the partnership agreement;

(8) In the case of a person that is a trust or is acting as a general partner by virtue of being a trustee of a trust, distribution of the trust's entire transferable interest in the limited partnership, but not merely by reason of the substitution of a successor trustee;

(9) In the case of a person that is an estate or is acting as a general partner by virtue of being a personal representative of an estate, distribution of the estate's entire transferable

interest in the limited partnership, but not merely by reason of the substitution of a successor personal representative;

(10) Termination of a general partner that is not an individual, partnership, limited liability company, corporation, trust, or estate; or

(11) The limited partnership's participation in a conversion or merger under article 11 of this chapter, if the limited partnership:

(a) Is not the converted or surviving entity; or

(b) Is the converted or surviving entity but, as a result of the conversion or merger, the person ceases to be a general partner. [2009 c 188 § 603.]

**25.10.526 Person's power to dissociate as general partner—Wrongful dissociation. (Effective January 1, 2010.)** (1) A person has the power to dissociate as a general partner at any time, rightfully or wrongfully, by express will pursuant to RCW 25.10.521(1).

(2) A person's dissociation as a general partner is wrongful only if:

(a) It is in breach of an express provision of the partnership agreement; or

(b) It occurs before the termination of the limited partnership, and:

(i) The person withdraws as a general partner by express will;

(ii) The person is expelled as a general partner by judicial determination under RCW 25.10.521(5);

(iii) The person is dissociated as a general partner as a result of an event described in RCW 25.10.521(6); or

(iv) In the case of a person that is not an individual, trust other than a business trust, or estate, the person is expelled or otherwise dissociated as a general partner because it willfully dissolved or terminated.

(3) A person that wrongfully dissociates as a general partner is liable to the limited partnership and, subject to RCW 25.10.701, to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the general partner to the limited partnership or to the other partners. [2009 c 188 § 604.]

**25.10.530 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.531 Effect of dissociation as general partner. (Effective January 1, 2010.)** (1) Upon a person's dissociation as a general partner:

(a) The person's right to participate as a general partner in the management and conduct of the partnership's activities terminates;

(b) The person's duty of loyalty as a general partner under RCW 25.10.441(2)(c) terminates;

(c) The person's duty of loyalty as a general partner under RCW 25.10.441(2) (a) and (b) and duty of care under RCW 25.10.441(3) continue only with regard to matters arising and events occurring before the person's dissociation as a general partner;

(d) The person may sign and deliver to the secretary of state for filing a statement of dissociation pertaining to the

person and, at the request of the limited partnership, shall sign an amendment to the certificate of limited partnership that states that the person has dissociated; and

(e) Subject to RCW 25.10.561 and article 11 of this chapter, any transferable interest owned by the person immediately before dissociation in the person's capacity as a general partner is owned by the person as a mere transferee.

(2) A person's dissociation as a general partner does not of itself discharge the person from any obligation to the limited partnership or the other partners that the person incurred while a general partner. [2009 c 188 § 605.]

**25.10.536 Power to bind and liability to limited partnership before dissolution of partnership of person dissociated as general partner. (Effective January 1, 2010.)** (1) After a person is dissociated as a general partner and before the limited partnership is dissolved, converted under article 11 of this chapter, or merged out of existence under article 11 of this chapter, the limited partnership is bound by an act of the person only if:

(a) The act would have bound the limited partnership under RCW 25.10.381 before the dissociation; and

(b) At the time the other party enters into the transaction:

(i) Less than two years have passed since the dissociation; and

(ii) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(2) If a limited partnership is bound under subsection (1) of this section, the person dissociated as a general partner that caused the limited partnership to be bound is liable:

(a) To the limited partnership for any damage caused to the limited partnership arising from the obligation incurred under subsection (1) of this section; and

(b) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability. [2009 c 188 § 606.]

**25.10.540 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.541 Liability to other persons of person dissociated as general partner. (Effective January 1, 2010.)** (1) A person's dissociation as a general partner does not of itself discharge the person's liability as a general partner for an obligation of the limited partnership incurred before dissociation. Except as otherwise provided in subsections (2) and (3) of this section, the person is not liable for a limited partnership's obligation incurred after dissociation.

(2) A person whose dissociation as a general partner resulted in a dissolution and winding up of the limited partnership's activities is liable to the same extent as a general partner under RCW 25.10.401 on an obligation incurred by the limited partnership under RCW 25.10.586.

(3) A person that has dissociated as a general partner but whose

dissociation did not result in a dissolution and winding up of the limited partnership's activities is liable on a transaction entered into by the limited partnership after the dissociation only if:

(a) A general partner would be liable on the transaction; and

(b) At the time the other party enters into the transaction:

(i) Less than two years have passed since the dissociation; and

(ii) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner.

(4) By agreement with a creditor of a limited partnership and the limited partnership, a person dissociated as a general partner may be released from liability for an obligation of the limited partnership.

(5) A person dissociated as a general partner is released from liability for an obligation of the limited partnership if the limited partnership's creditor, with notice of the person's dissociation as a general partner but without the person's consent, agrees to a material alteration in the nature or time of payment of the obligation. [2009 c 188 § 607.]

#### ARTICLE 7

#### TRANSFERABLE INTERESTS AND RIGHTS OF TRANSFEREES AND CREDITORS

**25.10.546 Partner's transferable interest. (Effective January 1, 2010.)** The only interest of a partner that is transferable is the partner's transferable interest. A transferable interest is personal property. [2009 c 188 § 701.]

**25.10.550 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.551 Transfer of partner's transferable interest. (Effective January 1, 2010.)** (1) A transfer, in whole or in part, of a partner's transferable interest:

(a) Is permissible;

(b) Does not by itself cause the partner's dissociation or a dissolution and winding up of the limited partnership's activities; and

(c) Does not, as against the other partners or the limited partnership, entitle the transferee to participate in the management or conduct of the limited partnership's activities, to require access to information concerning the limited partnership's transactions except as otherwise provided in subsection (3) of this section, or to inspect or copy the required information or the limited partnership's other records.

(2) A transferee has a right to receive, in accordance with the transfer:

(a) Distributions to which the transferor would otherwise be entitled; and

(b) Upon the dissolution and winding up of the limited partnership's activities the net amount otherwise distributable to the transferor.

(3) In a dissolution and winding up, a transferee is entitled to an account of the limited partnership's transactions only from the date of dissolution.

(4) Upon transfer, the transferor retains the rights of a partner other than the interest in distributions transferred and retains all duties and obligations of a partner.

(5) A limited partnership need not give effect to a transferee's rights under this section until the limited partnership has notice of the transfer.

(6) A transfer of a partner's transferable interest in the limited partnership in violation of a restriction on transfer contained in the partnership agreement is ineffective as to a person having notice of the restriction at the time of transfer.

(7) A transferee that becomes a partner with respect to a transferable interest is liable for the transferor's obligations under RCW 25.10.466 and 25.10.501. However, the transferee is not obligated for liabilities unknown to the transferee at the time the transferee became a partner. [2009 c 188 § 702.]

**25.10.553 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.555 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.556 Rights of creditor of partner or transferee. (Effective January 1, 2010.)** (1) On application to a court of competent jurisdiction by any judgment creditor of a partner or transferee, the court may charge the transferable interest of the judgment debtor with payment of the unsatisfied amount of the judgment with interest. To the extent so charged, the judgment creditor has only the rights of a transferee. The court may appoint a receiver of the share of the distributions due or to become due to the judgment debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries the judgment debtor might have made or that the circumstances of the case may require to give effect to the charging order.

(2) A charging order constitutes a lien on the judgment debtor's transferable interest. The court may order a foreclosure upon the interest subject to the charging order at any time. The purchaser at the foreclosure sale has the rights of a transferee.

(3) At any time before foreclosure, an interest charged may be redeemed:

- (a) By the judgment debtor;
- (b) With property other than limited partnership property, by one or more of the other partners; or
- (c) With limited partnership property, by the limited partnership with the consent of all partners whose interests are not so charged.

(4) This chapter does not deprive any partner or transferee of the benefit of any exemption laws applicable to the partner's or transferee's transferable interest.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or transferee may satisfy a judgment out of the judgment debtor's transferable interest. [2009 c 188 § 703.]

**25.10.560 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.561 Power of estate of deceased partner. (Effective January 1, 2010.)** If a partner dies, the deceased partner's personal representative or other legal representative may exercise the rights of a transferee as provided in RCW 25.10.551 and, for the purposes of settling the estate, may exercise the rights of a current limited partner under RCW 25.10.331. [2009 c 188 § 704.]

**25.10.570 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## ARTICLE 8 DISSOLUTION

**25.10.571 Nonjudicial dissolution. (Effective January 1, 2010.)** Except as otherwise provided in RCW 25.10.576, a limited partnership is dissolved, and its activities must be wound up, only upon the occurrence of any of the following:

- (1) The happening of an event specified in the partnership agreement;
- (2) The consent of all general partners and of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective;
- (3) The passage of ninety days after the dissociation of a person as a general partner if following such dissociation the limited partnership does not have a remaining general partner unless before the end of the period:
  - (a) Consent to continue the activities of the limited partnership and admit at least one general partner is given by limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective; and
  - (b) At least one person is admitted as a general partner in accordance with the consent;
- (4) The passage of ninety days after the dissociation of the limited partnership's last limited partner, unless before the end of the period the limited partnership admits at least one limited partner; or
- (5) The signing and filing of a declaration of dissolution by the secretary of state under RCW 25.10.611(3). [2009 c 188 § 801.]

**25.10.576 Judicial dissolution. (Effective January 1, 2010.)** On application by a partner the Thurston county superior court may order dissolution of a limited partnership if it is not reasonably practicable to carry on the activities of the limited partnership in conformity with the partnership agreement. [2009 c 188 § 802.]

**25.10.580 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.581 Winding up. (Effective January 1, 2010.)**

(1) A limited partnership continues after dissolution only for the purpose of winding up its activities.

(2) In winding up its activities, the limited partnership:

(a) May amend its certificate of limited partnership to state that the limited partnership is dissolved, preserve the limited partnership business or property as a going concern for a reasonable time, prosecute and defend actions and proceedings, whether civil, criminal, or administrative, transfer the limited partnership's property, settle disputes by mediation or arbitration, file a statement of termination as provided in RCW 25.10.221, and perform other necessary acts; and

(b) Shall discharge the limited partnership's liabilities, settle and close the limited partnership's activities, and marshal and distribute the assets of the partnership.

(3) If a dissolved limited partnership does not have a general partner, a person to wind up the dissolved limited partnership's activities may be appointed by the consent of limited partners owning a majority of the rights to receive distributions as limited partners at the time the consent is to be effective. A person appointed under this subsection:

(a) Has the powers of a general partner under RCW 25.10.586; and

(b) Shall promptly amend the certificate of limited partnership to state:

(i) That the limited partnership does not have a general partner;

(ii) The name of the person that has been appointed to wind up the limited partnership; and

(iii) The street and mailing address of the person.

(4) On the application of any partner, or, if there are no partners, any transferee of a partner's transferable interest, the Thurston county superior court may order judicial supervision of the winding up, including the appointment of a person to wind up the dissolved limited partnership's activities, if:

(a) A limited partnership does not have a general partner and within a reasonable time following the dissolution no person has been appointed pursuant to subsection (3) of this section; or

(b) The applicant establishes other good cause. [2009 c 188 § 803.]

**25.10.586 Power of general partner and person dissociated as general partner to bind partnership after dissolution. (Effective January 1, 2010.)**

(1) A limited partnership is bound by a general partner's act after dissolution that:

(a) Is appropriate for winding up the limited partnership's activities; or

(b) Would have bound the limited partnership under RCW 25.10.381 before dissolution, if, at the time the other party enters into the transaction, the other party does not have notice of the dissolution.

(2) A person dissociated as a general partner binds a limited partnership through an act occurring after dissolution if:

(a) At the time the other party enters into the transaction:

(i) Less than two years have passed since the dissociation; and

(ii) The other party does not have notice of the dissociation and reasonably believes that the person is a general partner; and

(b) The act:

(i) Is appropriate for winding up the limited partnership's activities; or

(ii) Would have bound the limited partnership under RCW 25.10.381 before dissolution and at the time the other party enters into the transaction the other party does not have notice of the dissolution. [2009 c 188 § 804.]

**25.10.590 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.591 Liability after dissolution of general partner and person dissociated as general partner to limited partnership, other general partners, and persons dissociated as general partner. (Effective January 1, 2010.)**

(1) If a general partner having knowledge of the dissolution causes a limited partnership to incur an obligation under RCW 25.10.586(1) by an act that is not appropriate for winding up the partnership's activities, the general partner is liable:

(a) To the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(b) If another general partner or a person dissociated as a general partner is liable for the obligation, to that other general partner or person for any damage caused to that other general partner or person arising from the liability.

(2) If a person dissociated as a general partner causes a limited partnership to incur an obligation under RCW 25.10.586(2), the person is liable:

(a) To the limited partnership for any damage caused to the limited partnership arising from the obligation; and

(b) If a general partner or another person dissociated as a general partner is liable for the obligation, to the general partner or other person for any damage caused to the general partner or other person arising from the liability. [2009 c 188 § 805.]

**25.10.596 Known claims against dissolved limited partnership. (Effective January 1, 2010.)**

(1) A dissolved limited partnership may dispose of the known claims against it by following the procedure described in subsection (2) of this section.

(2) A dissolved limited partnership may notify its known claimants of the dissolution in a record. The notice must:

(a) Specify the information required to be included in a claim;

(b) Provide a mailing address to which the claim is to be sent;

(c) State the deadline for receipt of the claim, which may not be less than one hundred twenty days after the date the notice is received by the claimant;

(d) State that the claim will be barred if not received by the deadline; and

(e) Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on RCW 25.10.401.

(3) A claim against a dissolved limited partnership is barred if the requirements of subsection (2) of this section are met and:

(a) The claim is not received by the specified deadline; or

(b) In the case of a claim that is timely received but rejected by the dissolved limited partnership, the claimant does not commence an action to enforce the claim against the limited partnership within ninety days after the receipt of the notice of the rejection.

(4) This section does not apply to a claim based on an event occurring after the effective date of dissolution or a liability that is contingent on that date. [2009 c 188 § 806.]

**25.10.600 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.601 Other claims against dissolved limited partnership. (Effective January 1, 2010.)** (1) A dissolved limited partnership may publish notice of its dissolution and request persons having claims against the limited partnership to present them in accordance with the notice.

(2) The notice must:

(a) Be published at least once in a newspaper of general circulation in the county in which the dissolved limited partnership's principal office is located or, if it has none in this state, in the county in which the limited partnership's designated office is or was last located;

(b) Describe the information required to be contained in a claim and provide a mailing address to which the claim is to be sent;

(c) State that a claim against the limited partnership is barred unless an action to enforce the claim is commenced within three years after publication of the notice; and

(d) Unless the limited partnership has been throughout its existence a limited liability limited partnership, state that the barring of a claim against the limited partnership will also bar any corresponding claim against any general partner or person dissociated as a general partner that is based on RCW 25.10.401.

(3) If a dissolved limited partnership publishes a notice in accordance with subsection (2) of this section, the claim of each of the following claimants is barred unless the claimant commences an action to enforce the claim against the dissolved limited partnership within three years after the publication date of the notice:

(a) A claimant that did not receive notice in a record under RCW 25.10.596;

(b) A claimant whose claim was timely sent to the dissolved limited partnership but not acted on; and

(c) A claimant whose claim is contingent or based on an event occurring after the effective date of dissolution.

(4) A claim not barred under this section may be enforced:

(a) Against the dissolved limited partnership, to the extent of its undistributed assets;

(b) If the assets have been distributed in liquidation, against a partner or transferee to the extent of that person's proportionate share of the claim or the limited partnership's

assets distributed to the partner or transferee in liquidation, whichever is less, but a person's total liability for all claims under this subsection (4)(b) does not exceed the total amount of assets distributed to the person as part of the winding up of the dissolved limited partnership; or

(c) Against any person liable on the claim under RCW 25.10.401. [2009 c 188 § 807.]

**25.10.606 Liability of general partner and person dissociated as general partner when claim against limited partnership barred. (Effective January 1, 2010.)** If a claim against a dissolved limited partnership is barred under RCW 25.10.596 or 25.10.601, any corresponding claim under RCW 25.10.401 is also barred. [2009 c 188 § 808.]

**25.10.610 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.611 Administrative dissolution. (Effective January 1, 2010.)** (1) The secretary of state may dissolve a limited partnership administratively if the limited partnership does not:

(a) Within sixty days after the due date:

(i) Pay any fee, tax, or penalty due to the secretary of state under this chapter or other law; or

(ii) Deliver its annual report to the secretary of state;

(b) Maintain a registered agent and registered office as required under RCW 25.10.121; or

(c) Notify the secretary of state that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued.

(2) If the secretary of state determines that grounds exist for administratively dissolving a limited partnership, the secretary of state shall send notice of the grounds for dissolution to the limited partnership by first-class mail, postage prepaid.

(3) If within sixty days after service of the copy the limited partnership does not correct each ground for dissolution or demonstrate to the reasonable satisfaction of the secretary of state that each ground determined by the secretary of state does not exist, the secretary of state shall administratively dissolve the limited partnership. The secretary of state shall send the limited partnership a declaration of administrative dissolution stating the grounds for the dissolution.

(4) A limited partnership administratively dissolved continues its existence but may carry on only activities necessary to wind up its activities and liquidate its assets under RCW 25.10.581 and 25.10.621 and to notify claimants under RCW 25.10.596 and 25.10.601.

(5) The administrative dissolution of a limited partnership does not terminate the authority of its agent for service of process. [2009 c 188 § 809.]

**25.10.616 Reinstatement following administrative dissolution. (Effective January 1, 2010.)** (1) A limited partnership that has been administratively dissolved may apply to the secretary of state for reinstatement within five years after the effective date of dissolution. The application must be delivered to the secretary of state for filing and state:

(a) The name of the limited partnership and the effective date of its administrative dissolution;

(b) That the grounds for dissolution either did not exist or have been eliminated; and

(c) That the limited partnership's name satisfies the requirements of RCW 25.10.061.

(2) If the secretary of state determines that an application contains the information required by subsection (1) of this section and that the information is correct, the secretary of state shall prepare a declaration of reinstatement that states this determination, sign and file the original of the declaration of reinstatement, and send a copy of the filed declaration to the limited partnership.

(3) When reinstatement becomes effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited partnership may resume its activities as if the administrative dissolution had never occurred. [2009 c 188 § 810.]

**25.10.620 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.621 Disposition of assets—When contributions required. (Effective January 1, 2010.)** (1) In winding up a limited partnership's activities, the assets of the limited partnership, including the contributions required by this section, must be applied to satisfy the limited partnership's obligations to creditors including, to the extent permitted by law, partners that are creditors.

(2) Any surplus remaining after the limited partnership complies with subsection (1) of this section must be paid in cash as a distribution.

(3) If a limited partnership's assets are insufficient to satisfy all of its obligations under subsection (1) of this section, with respect to each unsatisfied obligation incurred when the limited partnership was not a limited liability limited partnership, the following rules apply:

(a) Each person that was a general partner when the obligation was incurred and that has not been released from the obligation under RCW 25.10.541 shall contribute to the limited partnership for the purpose of enabling the limited partnership to satisfy the obligation. The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(b) If a person does not contribute the full amount required under (a) of this subsection with respect to an unsatisfied obligation of the limited partnership, the other persons required to contribute by (a) of this subsection on account of the obligation shall contribute the additional amount necessary to discharge the obligation. The additional contribution due from each of those other persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those other persons when the obligation was incurred.

(c) If a person does not make the additional contribution required by (b) of this subsection, further additional contributions are determined and due in the same manner as provided in (b) of this subsection.

(4) A person that makes an additional contribution under subsection (3)(b) or (c) of this section may recover from any person whose failure to contribute under subsection (3)(a) or (b) of this section necessitated the additional contribution. A person may not recover under this subsection more than the amount additionally contributed. A person's liability under this subsection may not exceed the amount the person failed to contribute.

(5) The estate of a deceased individual is liable for the person's obligations under this section.

(6) An assignee for the benefit of creditors of a limited partnership or a partner, or a person appointed by a court to represent creditors of a limited partnership or a partner, may enforce a person's obligation to contribute under subsection (3) of this section. [2009 c 188 § 811.]

**25.10.630 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.640 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## ARTICLE 9

### FOREIGN LIMITED PARTNERSHIPS

**25.10.641 Governing law. (Effective January 1, 2010.)** (1) The laws of the state or other jurisdiction under which a foreign limited partnership is organized govern relations among the partners of the foreign limited partnership and between the partners and the foreign limited partnership and the liability of partners as partners for an obligation of the foreign limited partnership.

(2) A foreign limited partnership may not be denied a certificate of authority by reason of any difference between the laws of the jurisdiction under which the foreign limited partnership is organized and the laws of this state.

(3) A certificate of authority does not authorize a foreign limited partnership to engage in any business or exercise any power that a limited partnership may not engage in or exercise in this state. [2009 c 188 § 901.]

**25.10.646 Application for certificate of authority. (Effective January 1, 2010.)** (1) Before transacting business in this state, a foreign limited partnership shall apply for a certificate of authority to transact business in this state by delivering an application to the secretary of state for filing. The application must state:

(a) The name of the foreign limited partnership and, if the name does not comply with RCW 25.10.061, an alternate name adopted pursuant to RCW 25.10.661(1);

(b) The name of the state or other jurisdiction under whose law the foreign limited partnership is organized;

(c) The street and mailing address of the foreign limited partnership's principal office and, if the laws of the jurisdiction under which the foreign limited partnership is organized require the foreign limited partnership to maintain an office in that jurisdiction, the street and mailing address of the required office;

(d) The name and street and mailing address of the foreign limited partnership's initial agent for service of process in this state;

(e) The name and street and mailing address of each of the foreign limited partnership's general partners; and

(f) Whether the foreign limited partnership is a foreign limited liability limited partnership.

(2) A foreign limited partnership shall deliver with the completed application a certificate of existence or a record of similar import signed by the secretary of state or other official having custody of the foreign limited partnership's publicly filed records in the state or other jurisdiction under whose law the foreign limited partnership is organized. [2009 c 188 § 902.]

**25.10.650 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.651 Activities not constituting transacting business. (Effective January 1, 2010.)** (1) Activities of a foreign limited partnership that do not constitute transacting business in this state within the meaning of this article include:

(a) Maintaining, defending, and settling an action or proceeding;

(b) Holding meetings of its partners or carrying on any other activity concerning its internal affairs;

(c) Maintaining accounts in financial institutions;

(d) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited partnership's own securities or maintaining trustees or depositories with respect to those securities;

(e) Selling through independent contractors;

(f) Soliciting or obtaining orders, whether by mail or electronic means or through employees or agents or otherwise, if the orders require acceptance outside this state before they become contracts and the contracts do not involve any local performance other than delivery and installation;

(g) Making loans or creating or acquiring indebtedness, mortgages, or security interests in real or personal property;

(h) Securing or collecting debts or enforcing mortgages or other security interests in property securing the debts, and holding, protecting, and maintaining property so acquired;

(i) Owning, without more, real or personal property;

(j) Conducting an isolated transaction that is completed within thirty days and is not one in the course of similar transactions of a like manner;

(k) Owning a controlling interest in a domestic or foreign corporation, or participating as a limited partner of a domestic or foreign limited partnership, or participating as a member or a manager of a domestic or foreign limited liability company, that transacts business in this state; and

(l) Transacting business in interstate commerce.

(2) The list of activities in subsection (1) of this section is not exhaustive.

(3) This section does not apply in determining the contacts or activities that may subject a foreign limited partnership to service of process, taxation, or regulation under any other law of this state. [2009 c 188 § 903.]

**25.10.656 Filing of certificate of authority. (Effective January 1, 2010.)** Unless the secretary of state determines that an application for a certificate of authority does not comply with the filing requirements of this chapter, the secretary of state, upon payment of all filing fees, shall file the application, prepare, sign, and file a certificate of authority to transact business in this state, and send a copy of the filed certificate, together with a receipt for the fees, to the foreign limited partnership or its representative. [2009 c 188 § 904.]

**25.10.660 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.661 Noncomplying name of foreign limited partnership. (Effective January 1, 2010.)** (1) A foreign limited partnership whose name does not comply with RCW 25.10.061 may not obtain a certificate of authority until it adopts, for the purpose of transacting business in this state, an alternate name that complies with RCW 25.10.061. A foreign limited partnership that adopts an alternate name under this subsection and then obtains a certificate of authority with the name need not comply with RCW 19.80.010. After obtaining a certificate of authority with an alternate name, a foreign limited partnership shall transact business in this state under the name unless the foreign limited partnership is authorized under RCW 19.80.010 to transact business in this state under another name.

(2) If a foreign limited partnership authorized to transact business in this state changes its name to one that does not comply with RCW 25.10.061, it may not thereafter transact business in this state until it complies with subsection (1) of this section and obtains an amended certificate of authority. [2009 c 188 § 905.]

**25.10.666 Revocation of certificate of authority. (Effective January 1, 2010.)** (1) A certificate of authority of a foreign limited partnership to transact business in this state may be revoked by the secretary of state in the manner provided in subsections (2) and (3) of this section if the foreign limited partnership does not:

(a) Pay, within sixty days after the due date, any fee, tax, or penalty due to the secretary of state under this chapter or other law;

(b) Deliver, within sixty days after the due date, its annual report required under RCW 25.10.291;

(c) Appoint and maintain an agent for service of process as required by RCW 25.10.121; or

(d) Deliver for filing a statement of a change under RCW 25.10.131 within thirty days after a change has occurred in the name or address of the agent.

(2) In order to revoke a certificate of authority, the secretary of state must prepare, sign, and file a notice of revocation and send a copy to the foreign limited partnership's agent for service of process in this state, or if the foreign limited partnership does not appoint and maintain a proper agent in this state, to the foreign limited partnership's designated office. The notice must state:

(a) The revocation's effective date, which must be at least sixty days after the date the secretary of state sends the copy; and



(b) The foreign limited partnership's failures to comply with subsection (1) of this section that are the reason for the revocation.

(3) The authority of the foreign limited partnership to transact business in this state ceases on the effective date of the notice of revocation unless before that date the foreign limited partnership cures each failure to comply with subsection (1) of this section stated in the notice. If the foreign limited partnership cures the failures, the secretary of state shall so indicate on the filed notice. [2009 c 188 § 906.]

**25.10.670 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.671 Cancellation of certificate of authority—Effect of failure to have certificate.** (*Effective January 1, 2010.*) (1) In order to cancel its certificate of authority to transact business in this state, a foreign limited partnership must deliver to the secretary of state for filing a notice of cancellation. The certificate is canceled when the notice becomes effective under RCW 25.10.251.

(2) A foreign limited partnership transacting business in this state may not maintain an action or proceeding in this state unless it has a certificate of authority to transact business in this state.

(3) The failure of a foreign limited partnership to have a certificate of authority to transact business in this state does not impair the validity of a contract or act of the foreign limited partnership or prevent the foreign limited partnership from defending an action or proceeding in this state.

(4) A partner of a foreign limited partnership is not liable for the obligations of the foreign limited partnership solely by reason of the foreign limited partnership's having transacted business in this state without a certificate of authority.

(5) If a foreign limited partnership transacts business in this state without a certificate of authority or cancels its certificate of authority, it appoints the secretary of state as its agent for service of process for rights of action arising out of the transaction of business in this state. [2009 c 188 § 907.]

**25.10.676 Action by attorney general.** (*Effective January 1, 2010.*) The attorney general may maintain an action to restrain a foreign limited partnership from transacting business in this state in violation of this article. [2009 c 188 § 908.]

**25.10.680 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.690 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

## ARTICLE 10 ACTIONS BY PARTNERS

**25.10.701 Direct action by partner.** (*Effective January 1, 2010.*) (1) Subject to subsection (2) of this section, a

partner may maintain a direct action against the limited partnership or another partner for legal or equitable relief, with or without an accounting as to the partnership's activities, to enforce the rights and otherwise protect the interests of the partner, including rights and interests under the partnership agreement or this chapter or arising independently of the partnership relationship.

(2) A partner commencing a direct action under this section is required to plead and prove an actual or threatened injury that is not solely the result of an injury suffered or threatened to be suffered by the limited partnership.

(3) The accrual of, and any time limitation on, a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law. [2009 c 188 § 1001.]

**25.10.706 Derivative action.** (*Effective January 1, 2010.*) A partner may maintain a derivative action to enforce a right of a limited partnership if:

(1) The partner first makes a demand on the general partners, requesting that they cause the limited partnership to bring an action to enforce the right, and the general partners do not bring the action within a reasonable time; or

(2) A demand would be futile. [2009 c 188 § 1002.]

**25.10.711 Proper plaintiff.** (*Effective January 1, 2010.*) A derivative action may be maintained only by a person that is a partner at the time the action is commenced and:

(1) That was a partner when the conduct giving rise to the action occurred; or

(2) Whose status as a partner devolved upon the person by operation of law or pursuant to the terms of the partnership agreement from a person that was a partner at the time of the conduct. [2009 c 188 § 1003.]

**25.10.716 Pleading.** (*Effective January 1, 2010.*) In a derivative action, the complaint must state with particularity:

(1) The date and content of plaintiff's demand and the general partners' response to the demand; or

(2) Why a demand should be excused as futile. [2009 c 188 § 1004.]

**25.10.721 Proceeds and expenses.** (*Effective January 1, 2010.*) (1) Except as otherwise provided in subsection (2) of this section:

(a) Any proceeds or other benefits of a derivative action, whether by judgment, compromise, or settlement, belong to the limited partnership and not to the derivative plaintiff;

(b) If the derivative plaintiff receives any proceeds, the derivative plaintiff shall immediately remit them to the limited partnership.

(2) If a derivative action is successful in whole or in part, the court may award the plaintiff reasonable expenses, including reasonable attorneys' fees, from the recovery of the limited partnership. [2009 c 188 § 1005.]

ARTICLE 11  
CONVERSION AND MERGER

**25.10.751 Definitions.** (*Effective January 1, 2010.*) In this article:

(1) "Constituent limited partnership" means a constituent organization that is a limited partnership.

(2) "Constituent organization" means an organization that is party to a merger.

(3) "Converted organization" means the organization into which a converting organization converts pursuant to RCW 25.10.756 through 25.10.771.

(4) "Converting limited partnership" means a converting organization that is a limited partnership.

(5) "Converting organization" means an organization that converts into another organization pursuant to RCW 25.10.756.

(6) "General partner" means a general partner of a limited partnership.

(7) "Governing statute" of an organization means the statute that governs the organization's internal affairs.

(8) "Organization" means a general partnership, including a limited liability partnership; limited partnership, including a limited liability limited partnership; limited liability company; business trust; corporation; or any other person having a governing statute. The term includes domestic and foreign organizations whether or not organized for profit.

(9) "Organizational documents" means:

(a) For a domestic or foreign general partnership, its partnership agreement;

(b) For a limited partnership or foreign limited partnership, its certificate of limited partnership and partnership agreement;

(c) For a domestic or foreign limited liability company, its certificate of formation and limited liability company agreement, or comparable records as provided in its governing statute;

(d) For a business trust, its agreement of trust and declaration of trust;

(e) For a domestic or foreign corporation for profit, its articles of incorporation, bylaws, and other agreements among its shareholders that are authorized by its governing statute, or comparable records as provided in its governing statute; and

(f) For any other organization, the basic records that create the organization and determine its internal governance and the relations among the persons that own it, have an interest in it, or are members of it.

(10) "Personal liability" means personal liability for a debt, liability, or other obligation of an organization that is imposed on a person that co-owns, has an interest in, or is a member of the organization:

(a) By the organization's governing statute solely by reason of the person co-owning, having an interest in, or being a member of the organization; or

(b) By the organization's organizational documents under a provision of the organization's governing statute authorizing those documents to make one or more specified persons liable for all or specified debts, liabilities, and other obligations of the organization solely by reason of the person

or persons co-owning, having an interest in, or being a member of the organization.

(11) "Surviving organization" means an organization into which one or more other organizations are merged. [2009 c 188 § 1101.]

**25.10.756 Conversion.** (*Effective January 1, 2010.*)

(1) An organization other than a limited partnership may convert into a limited partnership, and a limited partnership may convert into another organization pursuant to this section and RCW 25.10.761 through 25.10.771 and a plan of conversion, if:

(a) The other organization's governing statute authorizes the conversion;

(b) The conversion is not prohibited by the law of the jurisdiction that enacted the governing statute; and

(c) The other organization complies with its governing statute in effecting the conversion.

(2) A plan of conversion must be in a record and must include:

(a) The name and form of the organization before conversion;

(b) The name and form of the organization after conversion;

(c) The terms and conditions of the conversion, including the manner and basis for converting interests in the converting organization into any combination of money, interests in the converted organization, and other consideration; and

(d) The organizational documents of the converted organization. [2009 c 188 § 1102.]

**25.10.761 Action on plan of conversion by converting limited partnership.** (*Effective January 1, 2010.*)

(1) Subject to RCW 25.10.796, a plan of conversion must be consented to by all the partners of a converting limited partnership.

(2) Subject to RCW 25.10.796 and any contractual rights, after a conversion is approved, and at any time before a filing is made under RCW 25.10.766, a converting limited partnership may amend the plan or abandon the planned conversion:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, by the same consent as was required to approve the plan. [2009 c 188 § 1103.]

**25.10.766 Filings required for conversion—Effective date.** (*Effective January 1, 2010.*)

(1) After a plan of conversion is approved:

(a) A converting limited partnership shall deliver to the secretary of state for filing articles of conversion, which must include:

(i) A statement that the limited partnership has been converted into another organization;

(ii) The name and form of the organization and the jurisdiction of its governing statute;

(iii) The date the conversion is effective under the governing statute of the converted organization;

(iv) A statement that the conversion was approved as required by this chapter;

(v) A statement that the conversion was approved as required by the governing statute of the converted organization; and

(vi) If the converted organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office that the secretary of state may use for the purposes of RCW 25.10.771(3); and

(b) If the converting organization is not a converting limited partnership, the converting organization shall deliver to the secretary of state for filing a certificate of limited partnership, which must include, in addition to the information required by RCW 25.10.201:

(i) A statement that the limited partnership was converted from another organization;

(ii) The name and form of the organization and the jurisdiction of its governing statute; and

(iii) A statement that the conversion was approved in a manner that complied with the organization's governing statute.

(2) A conversion becomes effective:

(a) If the converted organization is a limited partnership, when the certificate of limited partnership takes effect; and

(b) If the converted organization is not a limited partnership, as provided by the governing statute of the converted organization. [2009 c 188 § 1104.]

**25.10.771 Effect of conversion. (Effective January 1, 2010.)** (1) An organization that has been converted pursuant to this article is for all purposes the same entity that existed before the conversion.

(2) When a conversion takes effect:

(a) All property owned by the converting organization remains vested in the converted organization;

(b) All debts, liabilities, and other obligations of the converting organization continue as obligations of the converted organization;

(c) An action or proceeding pending by or against the converting organization may be continued as if the conversion had not occurred;

(d) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of the converting organization remain vested in the converted organization;

(e) Except as otherwise provided in the plan of conversion, the terms and conditions of the plan of conversion take effect; and

(f) Except as otherwise agreed, the conversion does not dissolve a converting limited partnership for the purposes of article 8 of this chapter.

(3) A converted organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by the converting limited partnership, if before the conversion the converting limited partnership was subject to suit in this state on the obligation. A converted organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in RCW 25.10.151 (3) and (4). [2009 c 188 § 1105.]

**25.10.776 Merger. (Effective January 1, 2010.)** (1) A limited partnership may merge with one or more other constituent organizations pursuant to this section and RCW 25.10.781 through 25.10.791 and a plan of merger, if:

(a) The governing statute of each of the other organizations authorizes the merger;

(b) The merger is not prohibited by the law of a jurisdiction that enacted any of those governing statutes; and

(c) Each of the other organizations complies with its governing statute in effecting the merger.

(2) A plan of merger must be in a record and must include:

(a) The name and form of each constituent organization;

(b) The name and form of the surviving organization;

(c) The terms and conditions of the merger, including the manner and basis for converting the interests in each constituent organization into any combination of money, interests in the surviving organization, and other consideration; and

(d) Any amendments to be made by the merger to the surviving organization's organizational documents. [2009 c 188 § 1106.]

**25.10.781 Action on plan of merger by constituent limited partnership. (Effective January 1, 2010.)** (1) Subject to RCW 25.10.796, a plan of merger must be consented to by all the partners of a constituent limited partnership.

(2) Subject to RCW 25.10.796 and any contractual rights, after a merger is approved, and at any time before a filing is made under RCW 25.10.786, a constituent limited partnership may amend the plan or abandon the planned merger:

(a) As provided in the plan; and

(b) Except as prohibited by the plan, with the same consent as was required to approve the plan.

(3) If a domestic corporation is a party to the merger, the plan of merger shall be adopted and approved as provided in chapter 23B.11 RCW.

(4) If a domestic partnership is a party to the merger, the plan of merger shall be approved as provided in RCW 25.05.375.

(5) If a domestic limited liability company is a party to the merger, the plan of merger shall be approved as provided in RCW 25.15.400. [2009 c 188 § 1107.]

**25.10.786 Filings required for merger—Effective date. (Effective January 1, 2010.)** (1) After each constituent organization has approved a merger, articles of merger must be signed on behalf of:

(a) Each constituent limited partnership, by each general partner listed in the certificate of limited partnership; and

(b) Each other constituent organization, by an authorized representative.

(2) The articles of merger must include:

(a) The name and form of each constituent organization and the jurisdiction of its governing statute;

(b) The name and form of the surviving organization and the jurisdiction of its governing statute;

(c) The date the merger is effective under the governing statute of the surviving organization;

(d) Any amendments provided for in the plan of merger for the organizational document that created the surviving organization;

(e) A statement as to each constituent organization that the merger was approved as required by the organization's governing statute;

(f) If the surviving organization is a foreign organization not authorized to transact business in this state, the street and mailing address of an office that the secretary of state may use for the purposes of RCW 25.10.791(2); and

(g) Any additional information required by the governing statute of any constituent organization.

(3) Each constituent limited partnership shall deliver the articles of merger for filing in the office of the secretary of state.

(4) A merger becomes effective under this article:

(a) If the surviving organization is a limited partnership, upon the later of:

(i) Compliance with subsection (3) of this section; or

(ii) Subject to RCW 25.10.251(3), as specified in the articles of merger; or

(b) If the surviving organization is not a limited partnership, as provided by the governing statute of the surviving organization. [2009 c 188 § 1108.]

**25.10.791 Effect of merger. (Effective January 1, 2010.)** (1) When a merger becomes effective:

(a) The surviving organization continues;

(b) Each constituent organization that merges into the surviving organization ceases to exist as a separate entity;

(c) All property owned by each constituent organization that ceases to exist vests in the surviving organization;

(d) All debts, liabilities, and other obligations of each constituent organization that ceases to exist continue as obligations of the surviving organization;

(e) An action or proceeding pending by or against any constituent organization that ceases to exist may be continued as if the merger had not occurred;

(f) Except as prohibited by other law, all of the rights, privileges, immunities, powers, and purposes of each constituent organization that ceases to exist vest in the surviving organization;

(g) Except as otherwise provided in the plan of merger, the terms and conditions of the plan of merger take effect;

(h) Except as otherwise agreed, if a constituent limited partnership ceases to exist, the merger does not dissolve the limited partnership for the purposes of article 8 of this chapter; and

(i) Any amendments provided for in the articles of merger for the organizational document that created the surviving organization become effective.

(2) A surviving organization that is a foreign organization consents to the jurisdiction of the courts of this state to enforce any obligation owed by a constituent organization, if before the merger the constituent organization was subject to suit in this state on the obligation. A surviving organization that is a foreign organization and not authorized to transact business in this state appoints the secretary of state as its agent for service of process for the purposes of enforcing an obligation under this subsection. Service on the secretary of state under this subsection is made in the same manner and with the same consequences as in RCW 25.10.151 (3) and (4). [2009 c 188 § 1109.]

**25.10.796 Restrictions on approval of conversions and mergers and on relinquishing LLLP status. (Effective January 1, 2010.)** (1) If a partner of a converting or constituent limited partnership will have personal liability with respect to a converted or surviving organization, approval and amendment of a plan of conversion or merger are ineffective without the consent of the partner, unless:

(a) The limited partnership's partnership agreement provides for the approval of the conversion or merger with the consent of fewer than all the partners; and

(b) The partner has consented to the provision of the partnership agreement.

(2) An amendment to a certificate of limited partnership that deletes a statement that the limited partnership is a limited liability limited partnership is ineffective without the consent of each general partner unless:

(a) The limited partnership's partnership agreement provides for the amendment with the consent of less than all the general partners; and

(b) Each general partner that does not consent to the amendment has consented to the provision of the partnership agreement.

(3) A partner does not give the consent required by subsection (1) or (2) of this section merely by consenting to a provision of the partnership agreement that permits the partnership agreement to be amended with the consent of fewer than all the partners. [2009 c 188 § 1110.]

**25.10.800 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.801 Liability of general partner after conversion or merger. (Effective January 1, 2010.)** (1) A conversion or merger under this article does not discharge any liability under RCW 25.10.401 and 25.10.541 of a person that was a general partner in or dissociated as a general partner from a converting or constituent limited partnership, but:

(a) The provisions of this chapter pertaining to the collection or discharge of the liability continue to apply to the liability;

(b) For the purposes of applying those provisions, the converted or surviving organization is deemed to be the converting or constituent limited partnership; and

(c) If a person is required to pay any amount under this subsection:

(i) The person has a right of contribution from each other person that was liable as a general partner under RCW 25.10.401 when the obligation was incurred and has not been released from the obligation under RCW 25.10.541; and

(ii) The contribution due from each of those persons is in proportion to the right to receive distributions in the capacity of general partner in effect for each of those persons when the obligation was incurred.

(2) In addition to any other liability provided by law:

(a) A person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership that was not a limited liability limited partnership is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or

merger becomes effective, if, at the time the third party enters into the transaction, the third party:

- (i) Does not have notice of the conversion or merger; and
- (ii) Reasonably believes that:

(A) The converted or surviving business is the converting or constituent limited partnership;

(B) The converting or constituent limited partnership is not a limited liability limited partnership; and

(C) The person is a general partner in the converting or constituent limited partnership; and

(b) A person that was dissociated as a general partner from a converting or constituent limited partnership before the conversion or merger became effective is personally liable for each obligation of the converted or surviving organization arising from a transaction with a third party after the conversion or merger becomes effective, if:

(i) Immediately before the conversion or merger became effective the converting or surviving limited partnership was not a limited liability limited partnership; and

(ii) At the time the third party enters into the transaction, less than two years have passed since the person dissociated as a general partner and the third party:

(A) Does not have notice of the dissociation;

(B) Does not have notice of the conversion or merger; and

(C) Reasonably believes that the converted or surviving organization is the converting or constituent limited partnership, the converting or constituent limited partnership is not a limited liability limited partnership, and the person is a general partner in the converting or constituent limited partnership. [2009 c 188 § 1111.]

**25.10.806 Power of general partners and persons dissociated as general partners to bind organization after conversion or merger. (Effective January 1, 2010.)** (1) An act of a person that immediately before a conversion or merger became effective was a general partner in a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

(a) Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under RCW 25.10.381; and

(b) At the time the third party enters into the transaction, the third party:

- (i) Does not have notice of the conversion or merger; and
- (ii) Reasonably believes that the converted or surviving business is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

(2) An act of a person that before a conversion or merger became effective was dissociated as a general partner from a converting or constituent limited partnership binds the converted or surviving organization after the conversion or merger becomes effective, if:

(a) Before the conversion or merger became effective, the act would have bound the converting or constituent limited partnership under RCW 25.10.381 if the person had been a general partner; and

(b) At the time the third party enters into the transaction, less than two years have passed since the person dissociated as a general partner and the third party:

(i) Does not have notice of the dissociation;

(ii) Does not have notice of the conversion or merger; and

(iii) Reasonably believes that the converted or surviving organization is the converting or constituent limited partnership and that the person is a general partner in the converting or constituent limited partnership.

(3) If a person having knowledge of the conversion or merger causes a converted or surviving organization to incur an obligation under subsection (1) or (2) of this section, the person is liable:

(a) To the converted or surviving organization for any damage caused to the organization arising from the obligation; and

(b) If another person is liable for the obligation, to that other person for any damage caused to that other person arising from the liability. [2009 c 188 § 1112.]

**25.10.810 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.811 Article not exclusive. (Effective January 1, 2010.)** This article does not preclude an entity from being converted or merged under other law. [2009 c 188 § 1113.]

**25.10.820 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.830 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## ARTICLE 12 DISSENTERS' RIGHTS

**25.10.831 Definitions. (Effective January 1, 2010.)** In this article:

(1) "Dissenter" means a partner who is entitled to dissent from a plan of merger and who exercises that right when and in the manner required by this article.

(2) "Fair value," with respect to a dissenter's partnership interest, means the value of the partnership interest immediately before the effectuation of the merger to which the dissenter objects, excluding any appreciation or depreciation in anticipation of the merger unless exclusion would be inequitable.

(3) "Interest" means interest from the effective date of the merger until the date of payment, at the average rate currently paid by the limited partnership on its principal bank loans or, if none, at a rate that is fair and equitable under all the circumstances.

(4) "Limited partnership" means the domestic limited partnership in which the dissenter holds or held a partnership interest, or the surviving organization, whether foreign or domestic, of that limited partnership. [2009 c 188 § 1201.]

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

**25.10.836 Partner—Dissent—Payment of fair value. (Effective January 1, 2010.)** (1) Except as provided in RCW 25.10.846 or 25.10.856(2), a partner of a domestic limited partnership is entitled to dissent from, and obtain payment of, the fair value of the partner's partnership interest in the event of consummation of a plan of merger to which the limited partnership is a party as permitted by RCW 25.10.776.

(2) A partner entitled to dissent and obtain payment for the partner's partnership interest under this article may not challenge the merger creating the partner's entitlement unless the merger fails to comply with the procedural requirements imposed by this chapter, Title 23B RCW, chapter 25.05 RCW, chapter 25.15 RCW, or the partnership agreement, or is fraudulent with respect to the partner or the limited partnership.

(3) The right of a dissenting partner to obtain payment of the fair value of the partner's partnership interest shall terminate upon the occurrence of any one of the following events:

- (a) The proposed merger is abandoned or rescinded;
- (b) A court having jurisdiction permanently enjoins or sets aside the merger; or
- (c) The partner's demand for payment is withdrawn with the written consent of the limited partnership. [2009 c 188 § 1202.]

**25.10.840 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.841 Dissenters' rights—Notice—Timing. (Effective January 1, 2010.)** (1) Not less than ten days prior to the approval of a plan of merger, the limited partnership must send a written notice to all partners who are entitled to vote on or approve the plan of merger that they may be entitled to assert dissenters' rights under this article. Such notice shall be accompanied by a copy of this article.

(2) The limited partnership shall notify in writing all partners not entitled to vote on or approve the plan of merger that the plan of merger was approved, and send them the dissenters' notice as required by RCW 25.10.851. [2009 c 188 § 1203.]

**25.10.846 Partner—Dissent—Voting restriction. (Effective January 1, 2010.)** A partner who is entitled to vote on or approve the plan of merger and who wishes to assert dissenters' rights must not vote in favor of or approve the plan of merger. A partner who does not satisfy the requirements of this section is not entitled to payment for the partner's interest under this article. [2009 c 188 § 1204.]

**25.10.851 Partners—Dissenters' notice—Requirements. (Effective January 1, 2010.)** (1) If the plan of merger is approved, the limited partnership shall deliver a written dissenters' notice to all partners who satisfied the requirements of RCW 25.10.846.

(2) The dissenters' notice required by RCW 25.10.841(2) or by subsection (1) of this section must be sent

within ten days after the approval of the plan of merger, and must:

- (a) State where the payment demand must be sent;
- (b) Inform holders of the partnership interest as to the extent transfer of the partnership interest will be restricted as permitted by RCW 25.10.861 after the payment demand is received;
- (c) Supply a form for demanding payment;
- (d) Set a date by which the limited partnership must receive the payment demand, which date may not be fewer than thirty nor more than sixty days after the date the notice under this section is delivered; and
- (e) Be accompanied by a copy of this article. [2009 c 188 § 1205.]

**25.10.856 Partner—Payment demand—Entitlement. (Effective January 1, 2010.)** (1) A partner who demands payment retains all other rights of a partner until the proposed merger becomes effective.

(2) A partner sent a dissenters' notice who does not demand payment by the date set in the dissenters' notice is not entitled to payment for the partner's partnership interest under this article. [2009 c 188 § 1206.]

**25.10.861 Partnership interests—Transfer restrictions. (Effective January 1, 2010.)** The limited partnership may restrict the transfer of partnership interests from the date the demand for their payment is received until the proposed merger becomes effective or the restriction is released under this article. [2009 c 188 § 1207.]

**25.10.866 Payment of fair value—Requirements for compliance. (Effective January 1, 2010.)** (1) Within thirty days of the later of the date the proposed merger becomes effective, or the payment demand is received, the limited partnership shall pay each dissenter who complied with RCW 25.10.856 the amount the limited partnership estimates to be the fair value of the partnership interest, plus accrued interest.

- (2) The payment must be accompanied by:
  - (a) Copies of any financial statements for the most recent fiscal year maintained as required by RCW 25.10.091;
  - (b) An explanation of how the limited partnership estimated the fair value of the partnership interest;
  - (c) An explanation of how the accrued interest was calculated;
  - (d) A statement of the dissenter's right to demand payment; and
  - (e) A copy of this article. [2009 c 188 § 1208.]

**25.10.871 Merger—Not effective within sixty days—Transfer restrictions. (Effective January 1, 2010.)** (1) If the proposed merger does not become effective within sixty days after the date set for demanding payment, the limited partnership shall release any transfer restrictions imposed as permitted by RCW 25.10.861.

(2) If, after releasing transfer restrictions, the proposed merger becomes effective, the limited partnership must send a new dissenters' notice as provided in RCW 25.10.841(2) and 25.10.851 and repeat the payment demand procedure. [2009 c 188 § 1209.]

**25.10.876 Dissenter's estimate of fair value—Notice.** (*Effective January 1, 2010.*) (1) A dissenter may notify the limited partnership in writing of the dissenter's own estimate of the fair value of the dissenter's partnership interest and amount of interest due, and demand payment of the dissenter's estimate, less any payment under RCW 25.10.866; if:

(a) The dissenter believes that the amount paid is less than the fair value of the dissenter's partnership interest or that the interest due is incorrectly calculated;

(b) The limited partnership fails to make payment within sixty days after the date set for demanding payment; or

(c) The limited partnership, having failed to effectuate the proposed merger, does not release the transfer restrictions imposed on partnership interests as permitted by RCW 25.10.861 within sixty days after the date set for demanding payment.

(2) A dissenter waives the right to demand payment under this section unless the dissenter notifies the limited partnership of the dissenter's demand in writing under subsection (1)(a) of this section within thirty days after the limited partnership made payment for the dissenter's partnership interest. [2009 c 188 § 1210.]

**25.10.881 Unsettled demand for payment—Proceeding—Parties—Appraisers.** (*Effective January 1, 2010.*)

(1) If a demand for payment under RCW 25.10.876 remains unsettled, the limited partnership shall commence a proceeding within sixty days after receiving the payment demand and petition the court to determine the fair value of the partnership interest and accrued interest. If the limited partnership does not commence the proceeding within the sixty-day period, it shall pay each dissenter whose demand remains unsettled the amount demanded.

(2) The limited partnership shall commence the proceeding in the superior court in the county where its office is or was maintained as required by RCW 25.10.121.

(3) The limited partnership shall make all dissenters, whether or not residents of this state, whose demands remain unsettled parties to the proceeding as in an action against their partnership interests and all parties must be served with a copy of the petition. Nonresidents may be served by registered or certified mail or by publication as provided by law.

(4) The limited partnership may join as a party to the proceeding any partner who claims to be a dissenter but who has not, in the opinion of the limited partnership, complied with the provisions of this chapter. If the court determines that such partner has not complied with the provisions of this article, the partner shall be dismissed as a party.

(5) The jurisdiction of the court in which the proceeding is commenced is plenary and exclusive. The court may appoint one or more persons as appraisers to receive evidence and recommend decisions on the question of fair value. The appraisers have the powers described in the order appointing them or in any amendment to it. The dissenters are entitled to the same discovery rights as parties in other civil proceedings.

(6) Each dissenter made a party to the proceeding is entitled to judgment for the amount, if any, by which the court finds the fair value of the dissenter's partnership interest, plus

interest, exceeds the amount paid by the limited partnership. [2009 c 188 § 1211.]

**25.10.886 Unsettled demand for payment—Costs, fees, and expenses of counsel.** (*Effective January 1, 2010.*)

(1) The court in a proceeding commenced under RCW 25.10.881 shall determine all costs of the proceeding, including the reasonable compensation and expenses of appraisers appointed by the court. The court shall assess the costs against the limited partnership, except that the court may assess the costs against all or some of the dissenters, in amounts the court finds equitable, to the extent the court finds the dissenters acted arbitrarily, vexatiously, or not in good faith in demanding payment.

(2) The court may also assess the fees and expenses of counsel and experts for the respective parties, in amounts the court finds equitable:

(a) Against the limited partnership and in favor of any or all dissenters if the court finds the limited partnership did not substantially comply with the requirements of this article; or

(b) Against either the limited partnership or a dissenter, in favor of any other party, if the court finds that the party against whom the fees and expenses are assessed acted arbitrarily, vexatiously, or not in good faith with respect to the rights provided by this article.

(3) If the court finds that the services of counsel for any dissenter were of substantial benefit to other dissenters similarly situated, and that the fees for those services should not be assessed against the limited partnership, the court may award to these counsel reasonable fees to be paid out of the amounts awarded the dissenters who were benefited. [2009 c 188 § 1212.]

**25.10.900 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

## ARTICLE 13 MISCELLANEOUS PROVISIONS

**25.10.901 Uniformity of application and construction.** (*Effective January 1, 2010.*) In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it. [2009 c 188 § 1301.]

**25.10.903 Effective date—2009 c 188.** This chapter takes effect January 1, 2010. [2009 c 188 § 1304.]

**25.10.905 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.906 Relation to electronic signatures in global and national commerce act.** (*Effective January 1, 2010.*) This chapter modifies, limits, or supersedes the federal electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but this chapter does not modify, limit, or supersede section 101(c) of that chapter or authorize

electronic delivery of any of the notices described in section 103(b) of that chapter. [2009 c 188 § 1303.]

**25.10.910 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.911 Application to existing relationships.** (*Effective January 1, 2010.*) (1) Before July 1, 2010, this chapter governs only:

(a) A limited partnership formed on or after January 1, 2010; and

(b) Except as otherwise provided in subsections (3) and (4) of this section, a limited partnership formed before January 1, 2010, that elects, in the manner provided in its partnership agreement or by law for amending the partnership agreement, to be subject to this chapter.

(2) Except as otherwise provided in subsection (3) of this section, on and after July 1, 2010, this chapter governs all limited partnerships.

(3) With respect to a limited partnership formed before January 1, 2010, the following rules apply except as the partners otherwise elect in the manner provided in the partnership agreement or by law for amending the partnership agreement:

(a) RCW 25.10.021(3) does not apply and the limited partnership has whatever duration it had under the law applicable immediately before January 1, 2010.

(b) The limited partnership is not required to amend its certificate of limited partnership to comply with RCW 25.10.201(1)(d).

(c) RCW 25.10.511 and 25.10.516 do not apply and a limited partner has the same right and power to dissociate from the limited partnership, with the same consequences, as existed immediately before January 1, 2010.

(d) RCW 25.10.521(4) does not apply.

(e) RCW 25.10.521(5) does not apply and a court has the same power to expel a general partner as the court had immediately before January 1, 2010.

(f) RCW 25.10.571(3) does not apply and the connection between a person's dissociation as a general partner and the dissolution of the limited partnership is the same as existed immediately before January 1, 2010.

(4) With respect to a limited partnership that elects pursuant to subsection (1)(b) of this section to be subject to this chapter, after the election takes effect the provisions of this chapter relating to the liability of the limited partnership's general partners to third parties apply:

(a) Before July 1, 2010, to:

(i) A third party that had not done business with the limited partnership in the year before the election took effect; and

(ii) A third party that had done business with the limited partnership in the year before the election took effect only if the third party knows or has received a notification of the election; and

(b) On and after July 1, 2010, to all third parties, but those provisions remain inapplicable to any obligation incurred while those provisions were inapplicable under (a)(ii) of this subsection. [2009 c 188 § 1306.]

**25.10.915 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.916 Establishment of filing fees and miscellaneous charges.** (*Effective January 1, 2010.*) (1) The secretary of state shall adopt rules establishing fees that shall be charged and collected for:

(a) Filing of a certificate of limited partnership or an application for a certificate of authority of a foreign limited partnership;

(b) Filing of an amendment or restatement of a certificate of domestic or foreign limited partnership;

(c) Filing an application to reserve, register, or transfer a limited partnership name;

(d) Filing any other certificate, statement, or report authorized or permitted to be filed; and

(e) Copies, certified copies, certificates, service of process filings, and expedited filings or other special services.

(2) In the establishment of a fee schedule, the secretary of state shall, insofar as is possible and reasonable, be guided by the fee schedule provided for corporations governed by Title 23B RCW.

(a) Fees for copies, certified copies, certificates of record, and service of process filings are the same as in RCW 23B.01.220.

(b) Fees for reinstatement of a foreign or domestic limited partnership are the same as in RCW 23B.01.560.

(c) All fees collected by the secretary of state shall be deposited with the state treasurer pursuant to law. [2009 c 188 § 1307.]

**25.10.920 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.921 Authority to adopt rules.** (*Effective January 1, 2010.*) The secretary of state has the power and authority reasonably necessary for the efficient and effective administration of this chapter, including the adoption of rules under chapter 34.05 RCW. [2009 c 188 § 1308.]

**25.10.925 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.926 Savings clause.** (*Effective January 1, 2010.*) This chapter does not affect an action commenced, proceeding brought, or right accrued before January 1, 2010. [2009 c 188 § 1309.]

**25.10.930 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.935 Repealed.** (*Effective July 1, 2010.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.



**25.10.940 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.945 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.950 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**25.10.955 Repealed. (Effective July 1, 2010.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 25.15 RCW**

**LIMITED LIABILITY COMPANIES**

Sections

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**25.15.010 Name set forth in certificate of formation. (Effective July 1, 2010.)** (1) The name of each limited liability company as set forth in its certificate of formation:

(a) Must contain the words "Limited Liability Company," the words "Limited Liability" and abbreviation "Co.," or the abbreviation "L.L.C." or "LLC";

(b) Except as provided in subsection (1)(d) of this section, may contain the name of a member or manager;

(c) Must not contain language stating or implying that the limited liability company is organized for a purpose other than those permitted by RCW 25.15.030;

(d) Must not contain any of the words or phrases: "Bank," "banking," "banker," "trust," "cooperative," "partnership," "corporation," "incorporated," or the abbreviations "corp.," "Ltd.," or "inc.," or "LP," "L.P.," "LLP," "L.L.P.," or any combination of the words "industrial" and "loan," or any combination of any two or more of the words "building," "savings," "loan," "home," "association," and "society," or any other words or phrases prohibited by any statute of this state; and

(e) Must be distinguishable upon the records of the secretary of state from the names described in RCW 23B.04.010(1)(d) and 25.10.061(4), and the names of any limited liability company reserved, registered, or formed under the laws of this state or qualified to do business as a foreign limited liability company in this state.

(2) A limited liability company may apply to the secretary of state for authorization to use any name which is not

distinguishable upon the records of the secretary of state from one or more of the names described in subsection (1)(e) of this section. The secretary of state shall authorize use of the name applied for if the other corporation, limited partnership, limited liability partnership, or limited liability company consents in writing to the use and files with the secretary of state documents necessary to change its name or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying limited liability company.

(3) A name shall not be considered distinguishable upon the records of the secretary of state by virtue of:

(a) A variation in any of the following designations for the same name: "Corporation," "incorporated," "company," "limited," "partnership," "limited partnership," "limited liability company," or "limited liability partnership," or the abbreviations "corp.," "inc.," "co.," "Ltd.," "LP," "L.P.," "LLP," "L.L.P.," "LLC," or "L.L.C.";

(b) The addition or deletion of an article or conjunction such as "the" or "and" from the same name;

(c) Punctuation, capitalization, or special characters or symbols in the same name; or

(d) Use of abbreviation or the plural form of a word in the same name.

(4) This chapter does not control the use of assumed business names or "trade names." [2009 c 188 § 1410; 1998 c 102 § 9; 1996 c 231 § 5; 1994 c 211 § 102.]

**Effective date—2009 c 188:** See note following RCW 23B.11.080.

**25.15.020 Registered office—Registered agent. (1)** Each limited liability company shall continuously maintain in this state:

(a) A registered office, which may but need not be a place of its business in this state. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the registered office address if the limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(b) A registered agent for service of process on the limited liability company, which agent may be either an individual resident of this state whose business office is identical with the limited liability company's registered office, or a domestic corporation, limited partnership, or limited liability company, or a government, governmental subdivision, agency, or instrumentality, or a separate legal entity comprised of two or more of these entities, or a foreign corporation, limited partnership, or limited liability company authorized to do business in this state having a business office identical with such registered office; and

(c) A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written con-

sent shall be filed with or as a part of the document first appointing a registered agent.

(2) A limited liability company may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(a) The name of the limited liability company;

(b) If the current registered office is to be changed, the street address of the new registered office in accord with subsection (1) of this section;

(c) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(d) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(3) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any limited liability company for which the agent is the registered agent by notifying the limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (2) of this section and recites that the limited liability company has been notified of the change.

(4) A registered agent may resign as agent by signing and delivering to the secretary of state for filing a statement that the registered office is also discontinued. After filing the statement the secretary of state shall mail a copy of the statement to the limited liability company at its principal office. The agency appointment is terminated, and the registered office discontinued is so provided, on the thirty-first day after the date on which the statement was filed. [2009 c 202 § 5; 2002 c 74 § 16; 1996 c 231 § 6; 1994 c 211 § 104.]

**Captions not law—2002 c 74:** See note following RCW 19.09.020.

**25.15.270 Dissolution.** A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following:

(1)(a) The dissolution date, if any, specified in the certificate of formation. If a dissolution date is not specified in the certificate of formation, the limited liability company's existence will continue until the first to occur of the events described in subsections (2) through (6) of this section. If a dissolution date is specified in the certificate of formation, the certificate of formation may be amended and the existence of the limited liability company may be extended by vote of all the members.

(b) This subsection does not apply to a limited liability company formed under RCW 30.08.025 or 32.08.025;

(2) The happening of events specified in a limited liability company agreement;

(3) The written consent of all members;

(4) Unless the limited liability company agreement provides otherwise, ninety days following an event of dissociation of the last remaining member, unless those having the rights of assignees in the limited liability company under RCW 25.15.130(1) have, by the ninetieth day, voted to admit

one or more members, voting as though they were members, and in the manner set forth in RCW 25.15.120(1);

(5) The entry of a decree of judicial dissolution under RCW 25.15.275; or

(6) The expiration of five years after the effective date of dissolution under RCW 25.15.285 without the reinstatement of the limited liability company. [2009 c 437 § 1; 2006 c 48 § 4; 2000 c 169 § 4; 1997 c 21 § 1; 1996 c 231 § 9; 1994 c 211 § 801.]

**25.15.290 Administrative dissolution—Reinstatement—Application—When effective.** (1) A limited liability company administratively dissolved under RCW 25.15.285 may apply to the secretary of state for reinstatement within five years after the effective date of dissolution. The application must:

(a) Recite the name of the limited liability company and the effective date of its administrative dissolution;

(b) State that the ground or grounds for dissolution either did not exist or have been eliminated; and

(c) State that the limited liability company's name satisfies the requirements of RCW 25.15.010.

(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the name is available, the secretary of state shall reinstate the limited liability company and give the limited liability company written notice, as provided in RCW 25.15.285(1), of the reinstatement that recites the effective date of reinstatement. If the name is not available, the limited liability company must file with its application for reinstatement an amendment to its certificate of formation reflecting a change of name.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the administrative dissolution and the limited liability company may resume carrying on its business as if the administrative dissolution had never occurred.

(4) If an application for reinstatement is not made within the five-year period set forth in subsection (1) of this section, or if the application made within this period is not granted, the limited liability company's certificate of formation is deemed canceled. [2009 c 437 § 2; 1994 c 211 § 805.]

**25.15.293 Voluntary dissolution—Reinstatement—Application—When effective.** (1) A limited liability company voluntarily dissolved under RCW 25.15.270 may apply to the secretary of state for reinstatement within one hundred twenty days after the effective date of dissolution. The application must:

(a) Recite the name of the limited liability company and the effective date of its voluntary dissolution;

(b) State that the ground or grounds for voluntary dissolution have been eliminated; and

(c) State that the limited liability company's name satisfies the requirements of RCW 25.15.010.

(2) If the secretary of state determines that the application contains the information required by subsection (1) of this section and that the name is available, the secretary of state shall reinstate the limited liability company and give the limited liability company written notice of the reinstatement

that recites the effective date of reinstatement. If the name is not available, the limited liability company must file with its application for reinstatement an amendment to its certificate of formation reflecting a change of name.

(3) When the reinstatement is effective, it relates back to and takes effect as of the effective date of the voluntary dissolution and the limited liability company may resume carrying on its business as if the voluntary dissolution had never occurred.

(4) If an application for reinstatement is not made within the one hundred twenty-day period set forth in subsection (1) of this section, or if the application made within this period is not granted, the secretary of state shall cancel the limited liability company's certificate of formation. [2009 c 437 § 3.]

**25.15.325 Name—Registered office—Registered agent. (Effective July 1, 2010.)** (1) A foreign limited liability company may register with the secretary of state under any name (whether or not it is the name under which it is registered in the jurisdiction of its formation) that includes the words "Limited Liability Company," the words "Limited Liability" and the abbreviation "Co.," or the abbreviation "L.L.C." or "LLC" and that could be registered by a domestic limited liability company. A foreign limited liability company may apply to the secretary of state for authorization to use a name which is not distinguishable upon the records of the office of the secretary of state from the names described in RCW 23B.04.010 and 25.10.061, and the names of any domestic or foreign limited liability company reserved, registered, or formed under the laws of this state. The secretary of state shall authorize use of the name applied for if the other corporation, limited liability company, limited liability partnership, or limited partnership consents in writing to the use and files with the secretary of state documents necessary to change its name, or the name reserved or registered to a name that is distinguishable upon the records of the secretary of state from the name of the applying foreign limited liability company.

(2) Each foreign limited liability company shall continuously maintain in this state:

(a) A registered office, which may but need not be a place of its business in this state. The registered office shall be at a specific geographic location in this state, and be identified by number, if any, and street, or building address or rural route, or, if a commonly known street or rural route address does not exist, by legal description. A registered office may not be identified by post office box number or other nongeographic address. For purposes of communicating by mail, the secretary of state may permit the use of a post office address in conjunction with the registered office address if the foreign limited liability company also maintains on file the specific geographic address of the registered office where personal service of process may be made;

(b) A registered agent for service of process on the foreign limited liability company, which agent may be either an individual resident of this state whose business office is identical with the foreign limited liability company's registered office, or a domestic corporation, a limited partnership or limited liability company, or a foreign corporation authorized to do business in this state having a business office identical with such registered office; and

(c) A registered agent who shall not be appointed without having given prior written consent to the appointment. The written consent shall be filed with the secretary of state in such form as the secretary may prescribe. The written consent shall be filled with or as a part of the document first appointing a registered agent. In the event any individual, limited liability company, limited partnership, or corporation has been appointed agent without consent, that person or corporation may file a notarized statement attesting to that fact, and the name shall forthwith be removed from the records of the secretary of state.

(3) A foreign limited liability company may change its registered office or registered agent by delivering to the secretary of state for filing a statement of change that sets forth:

(a) The name of the foreign limited liability company;

(b) If the current registered office is to be changed, the street address of the new registered office in accord with subsection (2)(a) of this section;

(c) If the current registered agent is to be changed, the name of the new registered agent and the new agent's written consent, either on the statement or attached to it, to the appointment; and

(d) That after the change or changes are made, the street addresses of its registered office and the business office of its registered agent will be identical.

(4) If a registered agent changes the street address of the agent's business office, the registered agent may change the street address of the registered office of any foreign limited liability company for which the agent is the registered agent by notifying the foreign limited liability company in writing of the change and signing, either manually or in facsimile, and delivering to the secretary of state for filing a statement that complies with the requirements of subsection (3) of this section and recites that the foreign limited liability company has been notified of the change.

(5) A registered agent of any foreign limited liability company may resign as agent by signing and delivering to the secretary of state for filing a statement that the registered office is also discontinued. After filing the statement the secretary of state shall mail a copy of the statement to the foreign limited liability company at its principal place of business shown in its application for certificate of registration if no annual report has been filed. The agency appointment is terminated, and the registered office discontinued if so provided, on the thirty-first day after the date on which the statement was filed. [2009 c 188 § 1411; 2002 c 74 § 19; 1998 c 102 § 10; 1996 c 231 § 10; 1994 c 211 § 904.]

**Effective date—2009 c 188:** See note following RCW 23B.11.080.

**Captions not law—2002 c 74:** See note following RCW 19.09.020.

**25.15.400 Merger—Plan—Approval. (Effective July 1, 2010.)** (1) Unless otherwise provided in the limited liability company agreement, approval of a plan of merger by a domestic limited liability company party to the merger shall occur when the plan is approved by the members, or if there is more than one class or group of members, then by each class or group of members, in either case, by members contributing more than fifty percent of the agreed value (as stated in the records of the limited liability company required to be kept pursuant to RCW 25.15.135) of the contributions made,

or obligated to be made, by all members or by the members in each class or group, as appropriate.

(2) If a domestic limited partnership is a party to the merger, the plan of merger shall be adopted and approved as provided in RCW 25.10.781.

(3) If a domestic corporation is a party to the merger, the plan of merger shall be adopted and approved as provided in chapter 23B.11 RCW.

(4) If a domestic partnership is a party to the merger, the plan of merger must be approved as provided in RCW 25.05.375. [2009 c 188 § 1412; 1998 c 103 § 1320; 1994 c 211 § 1102.]

**Effective date—2009 c 188:** See note following RCW 23B.11.080.

**25.15.405 Articles of merger—Filing. (Effective July 1, 2010.)** After a plan of merger is approved or adopted, the surviving partnership, limited liability company, limited partnership, or corporation shall deliver to the secretary of state for filing articles of merger setting forth:

(1) The plan of merger;

(2) If the approval of any members, partners, or shareholders of one or more partnerships, limited liability companies, limited partnerships, or corporations party to the merger was not required, a statement to that effect; or

(3) If the approval of any members, partners, or shareholders of one or more of the partnerships, limited liability companies, limited partnerships, or corporations party to the merger was required, a statement that the merger was duly approved by such members, partners, and shareholders pursuant to RCW 25.05.375, 25.15.400, 25.10.781, or chapter 23B.11 RCW. [2009 c 188 § 1413; 1998 c 103 § 1321; 1994 c 211 § 1103.]

**Effective date—2009 c 188:** See note following RCW 23B.11.080.

**25.15.410 Effect of merger. (Effective July 1, 2010.)**

(1) When a merger takes effect:

(a) Every other partnership, limited liability company, limited partnership, or corporation that is party to the merger merges into the surviving partnership, limited liability company, limited partnership, or corporation and the separate existence of every partnership, limited liability company, limited partnership, or corporation except the surviving partnership, limited liability company, limited partnership, or corporation ceases;

(b) The title to all real estate and other property owned by each partnership, limited liability company, limited partnership, and corporation party to the merger is vested in the surviving partnership, limited liability company, limited partnership, or corporation without reversion or impairment;

(c) The surviving partnership, limited liability company, limited partnership, or corporation has all liabilities of each partnership, limited liability company, limited partnership, and corporation that is party to the merger;

(d) A proceeding pending against any partnership, limited liability company, limited partnership, or corporation that is party to the merger may be continued as if the merger did not occur or the surviving partnership, limited liability company, limited partnership, or corporation may be substituted in the proceeding for the partnership, limited liability

company, limited partnership, or corporation whose existence ceased;

(e) The certificate of formation of the surviving limited liability company is amended to the extent provided in the plan of merger;

(f) The partnership agreement of the surviving limited partnership is amended to the extent provided in the plan of merger;

(g) The articles of incorporation of the surviving corporation are amended to the extent provided in the plan of merger; and

(h) The former members of every limited liability company party to the merger, holders of the partnership interests of every domestic partnership or domestic limited partnership that is party to the merger, and the former holders of the shares of every domestic corporation that is party to the merger are entitled only to the rights provided in the plan of merger, to their rights under chapter 25.05 RCW, to their rights under this article, to their rights under RCW 25.10.831 through 25.10.886, or to their rights under chapter 23B.13 RCW.

(2) Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs under RCW 25.15.295 or pay its liabilities and distribute its assets under RCW 25.15.300.

(3) Unless otherwise agreed, a merger of a domestic limited partnership, including a domestic limited partnership which is not the surviving entity in the merger, shall not require the domestic limited partnership to wind up its affairs under RCW 25.10.581 or pay its liabilities and distribute its assets under RCW 25.10.621.

(4) Unless otherwise agreed, a merger of a domestic partnership, including a domestic partnership which is not the surviving entity in the merger, shall not require the domestic partnership to wind up its affairs under article 8 of chapter 25.05 RCW.

(5) Unless otherwise agreed, a merger of a domestic limited liability company, including a domestic limited liability company which is not the surviving entity in the merger, shall not require the domestic limited liability company to wind up its affairs under article 8 of chapter 25.15 RCW. [2009 c 188 § 1414; 1998 c 103 § 1322; 1994 c 211 § 1104.]

**Effective date—2009 c 188:** See note following RCW 23B.11.080.

**25.15.415 Merger—Foreign and domestic. (Effective July 1, 2010.)**

(1) One or more foreign partnerships, one or more foreign limited liability companies, one or more foreign limited partnerships, and one or more foreign corporations may merge with one or more domestic partnerships, domestic limited liability companies, domestic limited partnerships, or domestic corporations if:

(a) The merger is permitted by the law of the jurisdiction under which each foreign limited liability company was formed, each foreign partnership or foreign limited partnership was organized, and each foreign corporation was incorporated, and each foreign limited liability company, foreign partnership, foreign limited partnership, and foreign corporation complies with that law in effecting the merger;

(b) The surviving entity complies with RCW 25.15.405 and 25.05.380;

(c) Each domestic limited liability company complies with RCW 25.15.400;

(d) Each domestic limited partnership complies with RCW 25.10.781; and

(e) Each domestic corporation complies with RCW 23B.11.080.

(2) Upon the merger taking effect, a surviving foreign limited liability company, limited partnership, or corporation is deemed to appoint the secretary of state as its agent for service of process in a proceeding to enforce any obligation or the rights of dissenting partners or shareholders of each domestic limited liability company, domestic limited partnership, or domestic corporation party to the merger. [2009 c 188 § 1415; 1998 c 103 § 1323; 1994 c 211 § 1105.]

**Effective date—2009 c 188:** See note following RCW 23B.11.080.

**25.15.430 Member—Dissent—Payment of fair value. (Effective July 1, 2010.)** (1) Except as provided in RCW 25.15.440 or 25.15.450(2), a member of a domestic limited liability company is entitled to dissent from, and obtain payment of, the fair value of the member's interest in a limited liability company in the event of consummation of a plan of merger to which the limited liability company is a party as permitted by RCW 25.15.395 or 25.15.415.

(2) A member entitled to dissent and obtain payment for the member's interest in a limited liability company under this article may not challenge the merger creating the member's entitlement unless the merger fails to comply with the procedural requirements imposed by this title, Title 23B RCW, RCW 25.10.776 through 25.10.796, or the limited liability company agreement, or is fraudulent with respect to the member or the limited liability company.

(3) The right of a dissenting member in a limited liability company to obtain payment of the fair value of the member's interest in the limited liability company shall terminate upon the occurrence of any one of the following events:

(a) The proposed merger is abandoned or rescinded;

(b) A court having jurisdiction permanently enjoins or sets aside the merger; or

(c) The member's demand for payment is withdrawn with the written consent of the limited liability company. [2009 c 188 § 1416; 1994 c 211 § 1202.]

**Effective date—2009 c 188:** See note following RCW 23B.11.080.

## Title 26

### DOMESTIC RELATIONS

#### Chapters

- 26.09 Dissolution proceedings—Legal separation.**
- 26.12 Family court.**
- 26.16 Rights and liabilities—Community property.**
- 26.18 Child support enforcement.**
- 26.19 Child support schedule.**
- 26.23 State support registry.**
- 26.26 Uniform parentage act.**
- 26.27 Uniform child custody jurisdiction act.**
- 26.28 Age of majority.**
- 26.33 Adoption.**

**26.44 Abuse of children.**

**26.50 Domestic violence prevention.**

**26.60 State registered domestic partnerships.**

#### Chapter 26.09 RCW

#### DISSOLUTION PROCEEDINGS— LEGAL SEPARATION

##### Sections

- 26.09.004 Definitions.
- 26.09.010 Civil practice to govern—Designation of proceedings—Decrees.
- 26.09.105 Child support—Medical support—Conditions. (*Effective October 1, 2009.*)
- 26.09.260 Modification of parenting plan or custody decree.
- 26.09.915 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**26.09.004 Definitions.** The definitions in this section apply throughout this chapter.

(1) "Military duties potentially impacting parenting functions" means those obligations imposed, voluntarily or involuntarily, on a parent serving in the armed forces that may interfere with that parent's abilities to perform his or her parenting functions under a temporary or permanent parenting plan. Military duties potentially impacting parenting functions include, but are not limited to:

(a) "Deployment," which means the temporary transfer of a service member serving in an active-duty status to another location in support of a military operation, to include any tour of duty classified by the member's branch of the armed forces as "remote" or "unaccompanied";

(b) "Activation" or "mobilization," which means the call-up of a national guard or reserve service member to extended active-duty status. For purposes of this definition, "mobilization" does not include national guard or reserve annual training, inactive duty days, or drill weekends; or

(c) "Temporary duty," which means the transfer of a service member from one military base or the service member's home to a different location, usually another base, for a limited period of time to accomplish training or to assist in the performance of a noncombat mission.

(2) "Parenting functions" means those aspects of the parent-child relationship in which the parent makes decisions and performs functions necessary for the care and growth of the child. Parenting functions include:

(a) Maintaining a loving, stable, consistent, and nurturing relationship with the child;

(b) Attending to the daily needs of the child, such as feeding, clothing, physical care and grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) Attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

(d) Assisting the child in developing and maintaining appropriate interpersonal relationships;

(e) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental

level and the family's social and economic circumstances; and

(f) Providing for the financial support of the child.

(3) "Permanent parenting plan" means a plan for parenting the child, including allocation of parenting functions, which plan is incorporated in any final decree or decree of modification in an action for dissolution of marriage or domestic partnership, declaration of invalidity, or legal separation.

(4) "Temporary parenting plan" means a plan for parenting of the child pending final resolution of any action for dissolution of marriage or domestic partnership, declaration of invalidity, or legal separation which is incorporated in a temporary order. [2009 c 502 § 1; 2008 c 6 § 1003; 1987 c 460 § 3.]

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

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**26.09.010 Civil practice to govern—Designation of proceedings—Decrees.** (1) Except as otherwise specifically provided herein, the practice in civil action shall govern all proceedings under this chapter, except that trial by jury is dispensed with.

(2) A proceeding for dissolution of marriage or domestic partnership, legal separation or a declaration concerning the validity of a marriage or domestic partnership shall be entitled "In re the marriage of . . . . . and . . . . ." or "In re the domestic partnership of . . . . . and . . . . ." Such proceedings may be filed in the superior court of the county where the petitioner resides.

(3) In cases where there has been no prior proceeding in this state involving the marital or domestic partnership status of the parties or support obligations for a minor child, a separate parenting and support proceeding between the parents shall be entitled "In re the parenting and support of . . . . ."

(4) The initial pleading in all proceedings under this chapter shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in other matters under this chapter shall be denominated as provided in the civil rules for superior court.

(5) In this chapter, "decree" includes "judgment".

(6) A decree of dissolution, of legal separation, or a declaration concerning the validity of a marriage or domestic partnership shall not be awarded to one of the parties, but shall provide that it affects the status previously existing between the parties in the manner decreed.

(7) In order to provide a means by which to facilitate a fair, efficient, and swift process to resolve matters regarding custody and visitation when a parent serving in the armed forces receives temporary duty, deployment, activation, or mobilization orders from the military, the court shall, upon motion of such a parent:

(a) For good cause shown, hold an expedited hearing in custody and visitation matters instituted under this chapter when the military duties of the parent have a material effect on the parent's ability, or anticipated ability, to appear in person at a regularly scheduled hearing; and

(b) Upon reasonable advance notice to the affected parties and for good cause shown, allow the parent to present tes-

timony and evidence by electronic means in custody and visitation matters instituted under this chapter when the military duties of the parent have a material effect on the parent's ability to appear in person at a regularly scheduled hearing. The phrase "electronic means" includes communication by telephone, video teleconference, or the internet. [2009 c 502 § 2; 2008 c 6 § 1004; 1989 c 375 § 1; 1987 c 460 § 1; 1975 c 32 § 1; 1973 1st ex.s. c 157 § 1.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**26.09.105 Child support—Medical support—Conditions.** (*Effective October 1, 2009.*) (1) Whenever a child support order is entered or modified under this chapter, the court shall require both parents to provide medical support for any child named in the order as provided in this section.

(a) Medical support consists of:

- (i) Health insurance coverage; and
- (ii) Cash medical support.

(b) Cash medical support consists of:

(i) A parent's monthly payment toward the premium paid for coverage by either the other parent or the state, which represents the obligated parent's proportionate share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation; and

(ii) A parent's proportionate share of uninsured medical expenses.

(c) Under appropriate circumstances, the court may excuse one parent from the responsibility to provide health insurance coverage or the monthly payment toward the premium.

(d) The court shall always require both parents to contribute their proportionate share of uninsured medical expenses.

(2) Both parents share the obligation to provide medical support for the child or children specified in the order, by providing health insurance coverage or contributing a cash medical support obligation when appropriate, and paying a proportionate share of any uninsured medical expenses.

(3)(a) The court may specify how medical support must be provided by each parent under subsection (4) of this section.

(b) If the court does not specify how medical support will be provided or if neither parent provides proof that he or she is providing health insurance coverage for the child at the time the support order is entered, the division of child support or either parent may enforce a parent's obligation to provide medical support under RCW 26.18.170.

(4)(a) If there is sufficient evidence provided at the time the order is entered, the court may make a determination of which parent must provide coverage and which parent must contribute a sum certain amount as his or her monthly payment toward the premium.

(b) If both parents have available health insurance coverage that is accessible to the child at the time the support order is entered, the court has discretion to order the parent with better coverage to provide the health insurance coverage for the child and the other parent to pay a monthly payment toward the premium. In making the determination of which coverage is better, the court shall consider the needs of the

child, the cost and extent of each parent's coverage, and the accessibility of the coverage.

(c) Each parent shall remain responsible for his or her proportionate share of uninsured medical expenses.

(5) The order must provide that if the parties' circumstances change, the parties' medical support obligations will be enforced as provided in RCW 26.18.170.

(6) A parent who is ordered to maintain or provide health insurance coverage may comply with that requirement by:

(a) Providing proof of accessible private insurance coverage for any child named in the order; or

(b) Providing coverage that can be extended to cover the child that is available to that parent through employment or that is union-related, if the cost of such coverage does not exceed twenty-five percent of that parent's basic child support obligation.

(7) The court may order a parent to provide health insurance coverage that exceeds twenty-five percent of that parent's basic support obligation if it is in the best interests of the child to provide coverage.

(8) If the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment, the obligated parent shall pay a monthly payment toward the premium.

(9) Each parent is responsible for his or her proportionate share of uninsured medical expenses for the child or children covered by the support order.

(10) The parents must maintain health insurance coverage as required under this section until:

(a) Further order of the court;

(b) The child is emancipated, if there is no express language to the contrary in the order; or

(c) Health insurance is no longer available through the parents' employer or union and no conversion privileges exist to continue coverage following termination of employment.

(11) A parent who is required to extend health insurance coverage to a child under this section is liable for any covered health care costs for which the parent receives direct payment from an insurer.

(12) This section shall not be construed to limit the authority of the court to enter or modify support orders containing provisions for payment of uninsured health expenses, health care costs, or insurance premiums which are in addition to and not inconsistent with this section.

(13) A parent ordered to provide health insurance coverage must provide proof of such coverage or proof that such coverage is unavailable within twenty days of the entry of the order to:

(a) The other parent; or

(b) The department of social and health services if the parent has been notified or ordered to make support payments to the Washington state support registry.

(14) Every order requiring a parent to provide health care or insurance coverage must be entered in compliance with \*RCW 26.23.050 and be subject to direct enforcement as provided under chapter 26.18 RCW.

(15) When a parent is providing health insurance coverage at the time the order is entered, the premium shall be included in the worksheets for the calculation of child support under chapter 26.19 RCW.

(16) As used in this section:

(a) "Accessible" means health insurance coverage which provides primary care services to the child or children with reasonable effort by the custodian.

(b) "Cash medical support" means a combination of: (i) A parent's monthly payment toward the premium paid for coverage by either the other parent or the state, which represents the obligated parent's proportionate share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation; and (ii) a parent's proportionate share of uninsured medical expenses.

(c) "Health insurance coverage" does not include medical assistance provided under chapter 74.09 RCW.

(d) "Uninsured medical expenses" includes premiums, copays, deductibles, along with other health care costs not covered by insurance.

(e) "Obligated parent" means a parent ordered to provide health insurance coverage for the children.

(f) "Proportionate share" means an amount equal to a parent's percentage share of the combined monthly net income of both parents as computed when determining a parent's child support obligation under chapter 26.19 RCW.

(g) "Monthly payment toward the premium" means a parent's contribution toward premiums paid by the other parent or the state for insurance coverage for the child, which is based on the obligated parent's proportionate share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation.

(17) The department of social and health services has rule-making authority to enact rules in compliance with 45 C.F.R. Parts 302, 303, 304, 305, and 308. [2009 c 476 § 1; 1994 c 230 § 1; 1989 c 416 § 1; 1985 c 108 § 1; 1984 c 201 § 1.]

\*Reviser's note: The reference to RCW 26.23.050 appears to refer to the amendments made by 1989 c 416 § 8, which was vetoed by the governor.

Effective date—2009 c 476: "This act takes effect October 1, 2009." [2009 c 476 § 10]

**26.09.260 Modification of parenting plan or custody decree.** (1) Except as otherwise provided in subsections (4), (5), (6), (8), and (10) of this section, the court shall not modify a prior custody decree or a parenting plan unless it finds, upon the basis of facts that have arisen since the prior decree or plan or that were unknown to the court at the time of the prior decree or plan, that a substantial change has occurred in the circumstances of the child or the nonmoving party and that the modification is in the best interest of the child and is necessary to serve the best interests of the child. The effect of a parent's military duties potentially impacting parenting functions shall not, by itself, be a substantial change of circumstances justifying a permanent modification of a prior decree or plan.

(2) In applying these standards, the court shall retain the residential schedule established by the decree or parenting plan unless:

(a) The parents agree to the modification;

(b) The child has been integrated into the family of the petitioner with the consent of the other parent in substantial deviation from the parenting plan;

(c) The child's present environment is detrimental to the child's physical, mental, or emotional health and the harm likely to be caused by a change of environment is outweighed by the advantage of a change to the child; or

(d) The court has found the nonmoving parent in contempt of court at least twice within three years because the parent failed to comply with the residential time provisions in the court-ordered parenting plan, or the parent has been convicted of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070.

(3) A conviction of custodial interference in the first or second degree under RCW 9A.40.060 or 9A.40.070 shall constitute a substantial change of circumstances for the purposes of this section.

(4) The court may reduce or restrict contact between the child and the parent with whom the child does not reside a majority of the time if it finds that the reduction or restriction would serve and protect the best interests of the child using the criteria in RCW 26.09.191.

(5) The court may order adjustments to the residential aspects of a parenting plan upon a showing of a substantial change in circumstances of either parent or of the child, and without consideration of the factors set forth in subsection (2) of this section, if the proposed modification is only a minor modification in the residential schedule that does not change the residence the child is scheduled to reside in the majority of the time and:

(a) Does not exceed twenty-four full days in a calendar year; or

(b) Is based on a change of residence of the parent with whom the child does not reside the majority of the time or an involuntary change in work schedule by a parent which makes the residential schedule in the parenting plan impractical to follow; or

(c) Does not result in a schedule that exceeds ninety overnights per year in total, if the court finds that, at the time the petition for modification is filed, the decree of dissolution or parenting plan does not provide reasonable time with the parent with whom the child does not reside a majority of the time, and further, the court finds that it is in the best interests of the child to increase residential time with the parent in excess of the residential time period in (a) of this subsection. However, any motion under this subsection (5)(c) is subject to the factors established in subsection (2) of this section if the party bringing the petition has previously been granted a modification under this same subsection within twenty-four months of the current motion. Relief granted under this section shall not be the sole basis for adjusting or modifying child support.

(6) The court may order adjustments to the residential aspects of a parenting plan pursuant to a proceeding to permit or restrain a relocation of the child. The person objecting to the relocation of the child or the relocating person's proposed revised residential schedule may file a petition to modify the parenting plan, including a change of the residence in which the child resides the majority of the time, without a showing of adequate cause other than the proposed relocation itself. A hearing to determine adequate cause for modification shall not be required so long as the request for relocation of the child is being pursued. In making a determination of a modification pursuant to relocation of the child, the court shall

first determine whether to permit or restrain the relocation of the child using the procedures and standards provided in RCW 26.09.405 through 26.09.560. Following that determination, the court shall determine what modification pursuant to relocation should be made, if any, to the parenting plan or custody order or visitation order.

(7) A parent with whom the child does not reside a majority of the time and whose residential time with the child is subject to limitations pursuant to RCW 26.09.191 (2) or (3) may not seek expansion of residential time under subsection (5)(c) of this section unless that parent demonstrates a substantial change in circumstances specifically related to the basis for the limitation.

(8)(a) If a parent with whom the child does not reside a majority of the time voluntarily fails to exercise residential time for an extended period, that is, one year or longer, the court upon proper motion may make adjustments to the parenting plan in keeping with the best interests of the minor child.

(b) For the purposes of determining whether the parent has failed to exercise residential time for one year or longer, the court may not count any time periods during which the parent did not exercise residential time due to the effect of the parent's military duties potentially impacting parenting functions.

(9) A parent with whom the child does not reside a majority of the time who is required by the existing parenting plan to complete evaluations, treatment, parenting, or other classes may not seek expansion of residential time under subsection (5)(c) of this section unless that parent has fully complied with such requirements.

(10) The court may order adjustments to any of the non-residential aspects of a parenting plan upon a showing of a substantial change of circumstances of either parent or of a child, and the adjustment is in the best interest of the child. Adjustments ordered under this section may be made without consideration of the factors set forth in subsection (2) of this section.

(11) If the parent with whom the child resides a majority of the time receives temporary duty, deployment, activation, or mobilization orders from the military that involve moving a substantial distance away from the parent's residence or otherwise would have a material effect on the parent's ability to exercise parenting functions and primary placement responsibilities, then:

(a) Any temporary custody order for the child during the parent's absence shall end no later than ten days after the returning parent provides notice to the temporary custodian, but shall not impair the discretion of the court to conduct an expedited or emergency hearing for resolution of the child's residential placement upon return of the parent and within ten days of the filing of a motion alleging an immediate danger of irreparable harm to the child. If a motion alleging immediate danger has not been filed, the motion for an order restoring the previous residential schedule shall be granted; and

(b) The temporary duty, activation, mobilization, or deployment and the temporary disruption to the child's schedule shall not be a factor in a determination of change of circumstances if a motion is filed to transfer residential placement from the parent who is a military service member.



(12) If a parent receives military temporary duty, deployment, activation, or mobilization orders that involve moving a substantial distance away from the military parent's residence or otherwise have a material effect on the military parent's ability to exercise residential time or visitation rights, at the request of the military parent, the court may delegate the military parent's residential time or visitation rights, or a portion thereof, to a child's family member, including a stepparent, or another person other than a parent, with a close and substantial relationship to the minor child for the duration of the military parent's absence, if delegating residential time or visitation rights is in the child's best interest. The court may not permit the delegation of residential time or visitation rights to a person who would be subject to limitations on residential time under RCW 26.09.191. The parties shall attempt to resolve disputes regarding delegation of residential time or visitation rights through the dispute resolution process specified in their parenting plan, unless excused by the court for good cause shown. Such a court-ordered temporary delegation of a military parent's residential time or visitation rights does not create separate rights to residential time or visitation for a person other than a parent.

(13) If the court finds that a motion to modify a prior decree or parenting plan has been brought in bad faith, the court shall assess the attorney's fees and court costs of the nonmoving parent against the moving party. [2009 c 502 § 3; 2000 c 21 § 19; 1999 c 174 § 1; 1991 c 367 § 9. Prior: 1989 c 375 § 14; 1989 c 318 § 3; 1987 c 460 § 19; 1973 1st ex.s. c 157 § 26.]

**Applicability—2000 c 21:** See RCW 26.09.405.

**Intent—Captions not law—2000 c 21:** See notes following RCW 26.09.405.

**Severability—Effective date—Captions not law—1991 c 367:** See notes following RCW 26.09.015.

**Severability—1989 c 318:** See note following RCW 26.09.160.

**26.09.915 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 65.]

## Chapter 26.12 RCW

### FAMILY COURT

#### Sections

- 26.12.175 Appointment of guardian ad litem—Independent investigation—Court-appointed special advocate program—Background information—Review of appointment.
- 26.12.177 Guardians ad litem and investigators—Training—Registry—Subregistry—Selection—Substitution—Exceptions.

**26.12.175 Appointment of guardian ad litem—Independent investigation—Court-appointed special advocate program—Background information—Review of appointment.** (1)(a) The court may appoint a guardian ad litem to represent the interests of a minor or dependent child when the court believes the appointment of a guardian ad litem is necessary to protect the best interests of the child in any proceeding under this chapter. The court may appoint a guardian ad litem from the court-appointed special advocate program, if that program exists in the county. The court shall attempt to match a child with special needs with a guardian ad litem who has specific training or education related to the child's individual needs. The family court services professionals may also make a recommendation to the court regarding whether a guardian ad litem should be appointed for the child.

(b) The guardian ad litem's role is to investigate and report factual information regarding the issues ordered to be reported or investigated to the court. The guardian ad litem shall always represent the best interests of the child. Guardians ad litem and investigators under this title may make recommendations based upon his or her investigation, which the court may consider and weigh in conjunction with the recommendations of all of the parties. If a child expresses a preference regarding the parenting plan, the guardian ad litem shall report the preferences to the court, together with the facts relative to whether any preferences are being expressed voluntarily and the degree of the child's understanding. The court may require the guardian ad litem to provide periodic reports to the parties regarding the status of his or her investigation. The guardian ad litem shall file his or her report at least sixty days prior to trial.

(c) The parties to the proceeding may file with the court written responses to any report filed by the guardian ad litem or investigator. The court shall consider any written responses to a report filed by the guardian ad litem or investigator, including any factual information or recommendations provided in the report.

(d) The court shall enter an order for costs, fees, and disbursements to cover the costs of the guardian ad litem. The court may order either or both parents to pay for the costs of the guardian ad litem, according to their ability to pay. If both parents are indigent, the county shall bear the cost of the guardian, subject to appropriation for guardians' ad litem services by the county legislative authority. Guardians ad litem who are not volunteers shall provide the parties with an itemized accounting of their time and billing for services each month.

(2)(a) If the guardian ad litem appointed is from the county court-appointed special advocate program, the program shall supervise any guardian ad litem assigned to the

case. The court-appointed special advocate program shall be entitled to notice of all proceedings in the case.

(b) The legislative authority of each county may authorize creation of a court-appointed special advocate program. The county legislative authority may adopt rules of eligibility for court-appointed special advocate program services that are not inconsistent with this section.

(3) Each guardian ad litem program for compensated guardians ad litem and each court-appointed special advocate program shall maintain a background information record for each guardian ad litem in the program. The background information record shall include, but is not limited to, the following information:

(a) Level of formal education;

(b) General training related to the guardian ad litem's duties;

(c) Specific training related to issues potentially faced by children in dissolution, custody, paternity, and other family law proceedings;

(d) Specific training or education related to child disability or developmental issues;

(e) Number of years' experience as a guardian ad litem;

(f) Number of appointments as a guardian ad litem and county or counties of appointment;

(g) The names of any counties in which the person was removed from a guardian ad litem registry pursuant to a grievance action, and the name of the court and the cause number of any case in which the court has removed the person for cause;

(h) Founded allegations of abuse or neglect as defined in RCW 26.44.020;

(i) The results of an examination that shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050 and the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834. This background check shall be done through the Washington state patrol criminal identification section; and

(j) Criminal history, as defined in RCW 9.94A.030, for the period covering ten years prior to the appointment.

The background information record shall be updated annually. As a condition of appointment, the guardian ad litem's background information record shall be made available to the court. If the appointed guardian ad litem is not a member of a guardian ad litem program the person appointed as guardian ad litem shall provide the background information record to the court.

Upon appointment, the guardian ad litem, court-appointed special advocate program or guardian ad litem program, shall provide the parties or their attorneys with a copy of the background information record. The portion of the background information record containing the results of the criminal background check and the criminal history shall not be disclosed to the parties or their attorneys. The background information record shall not include identifying information that may be used to harm a guardian ad litem, such as home addresses and home telephone numbers, and for volunteer guardians ad litem the court may allow the use of maiden names or pseudonyms as necessary for their safety.

(4) When a court-appointed special advocate or volunteer guardian ad litem is requested on a case, the program

shall give the court the name of the person it recommends. The court shall immediately appoint the person recommended by the program.

(5) If a party in a case reasonably believes the court-appointed special advocate or volunteer guardian ad litem is inappropriate or unqualified, the party may request a review of the appointment by the program. The program must complete the review within five judicial days and remove any appointee for good cause. If the party seeking the review is not satisfied with the outcome of the review, the party may file a motion with the court for the removal of the court-appointed special advocate or volunteer guardian ad litem on the grounds the advocate or volunteer is inappropriate or unqualified. [2009 c 480 § 3; 2000 c 124 § 6; 1996 c 249 § 15; 1993 c 289 § 4; 1991 c 367 § 17.]

**Grievance rules—2000 c 124:** See note following RCW 11.88.090.

**Intent—1996 c 249:** See note following RCW 2.56.030.

**Severability—Effective date—Captions not law—1991 c 367:** See notes following RCW 26.09.015.

**26.12.177 Guardians ad litem and investigators—Training—Registry—Subregistry—Selection—Substitution—Exceptions.** (1) All guardians ad litem and investigators appointed under this title must comply with the training requirements established under RCW 2.56.030(15), prior to their appointment in cases under Title 26 RCW, except that volunteer guardians ad litem or court-appointed special advocates may comply with alternative training requirements approved by the administrative office of the courts that meet or exceed the statewide requirements. In cases involving allegations of limiting factors under RCW 26.09.191, the guardians ad litem and investigators appointed under this title must have additional relevant training under RCW 2.56.030(15) and as recommended under RCW 2.53.040, when it is available.

(2)(a) Each guardian ad litem program for compensated guardians ad litem shall establish a rotational registry system for the appointment of guardians ad litem and investigators under this title. If a judicial district does not have a program the court shall establish the rotational registry system. Guardians ad litem and investigators under this title shall be selected from the registry except in exceptional circumstances as determined and documented by the court. The parties may make a joint recommendation for the appointment of a guardian ad litem from the registry.

(b) In judicial districts with a population over one hundred thousand, a list of three names shall be selected from the registry and given to the parties along with the background information record as specified in RCW 26.12.175(3), including their hourly rate for services. Each party may, within three judicial days, strike one name from the list. If more than one name remains on the list, the court shall make the appointment from the names on the list. In the event all three names are stricken the person whose name appears next on the registry shall be appointed.

(c) If a party reasonably believes that the appointed guardian ad litem is inappropriate or unqualified, charges an hourly rate higher than what is reasonable for the particular proceeding, or has a conflict of interest, the party may, within three judicial days from the appointment, move for substitu-

tion of the appointed guardian ad litem by filing a motion with the court.

(d) Under this section, within either registry referred to in (a) of this subsection, a subregistry may be created that consists of guardians ad litem under contract with the department of social and health services' division of child support. Guardians ad litem on such a subregistry shall be selected and appointed in state-initiated paternity cases only.

(e) The superior court shall remove any person from the guardian ad litem registry who has been found to have misrepresented his or her qualifications.

(3) The rotational registry system shall not apply to court-appointed special advocate programs. [2009 c 480 § 4; 2007 c 496 § 305; 2005 c 282 § 30; 2000 c 124 § 7; 1997 c 41 § 7; 1996 c 249 § 18.]

**Part headings not law—2007 c 496:** See note following RCW 26.09.002.

**Intent—1996 c 249:** See note following RCW 2.56.030.

### Chapter 26.16 RCW

#### RIGHTS AND LIABILITIES— COMMUNITY PROPERTY

##### Sections

26.16.120 Agreements as to status.

**26.16.120 Agreements as to status.** Nothing contained in any of the provisions of \*this chapter or in any law of this state, shall prevent both spouses or both domestic partners from jointly entering into any agreement concerning the status or disposition of the whole or any portion of the community property, then owned by them or afterwards to be acquired, to take effect upon the death of either. But such agreement may be made at any time by both spouses or both domestic partners by the execution of an instrument in writing under their hands and seals, and to be witnessed, acknowledged and certified in the same manner as deeds to real estate are required to be, under the laws of the state, and the same may at any time thereafter be altered or amended in the same manner. Such agreement shall not derogate from the right of creditors; nor be construed to curtail the powers of the superior court to set aside or cancel such agreement for fraud or under some other recognized head of equity jurisdiction, at the suit of either party; nor prevent the application of laws governing the community property and inheritance rights of slayers or abusers under chapter 11.84 RCW. [2009 c 525 § 18; 2008 c 6 § 612; 1998 c 292 § 505; Code 1881 § 2416; RRS § 6894.]

**\*Reviser's note:** "this chapter", which is Code 1881, chapter CLXXXIII, is codified as RCW 26.16.010 through 26.16.040, 26.16.060, 26.16.120, 26.16.140 through 26.16.160, and 26.16.180 through 26.16.210.

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Application—Conflict with federal requirements—1998 c 292:** See notes following RCW 41.04.273.

**Part headings and section captions not law—Effective dates—1998 c 292:** See RCW 11.11.902 and 11.11.903.

*Acknowledgments: Chapter 64.08 RCW.*

*Descent and distribution of community property: RCW 11.04.015.*

*Private seals abolished: RCW 64.04.090.*

### Chapter 26.18 RCW

#### CHILD SUPPORT ENFORCEMENT

##### Sections

26.18.170 Medical support—Enforcement—Rules. (*Effective October 1, 2009.*)

26.18.180 Liability of employer or union—Penalties. (*Effective October 1, 2009.*)

26.18.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**26.18.170 Medical support—Enforcement—Rules. (Effective October 1, 2009.)** (1) Whenever a parent has been ordered to provide medical support for a dependent child, the department or the other parent may seek enforcement of the medical support as provided under this section.

(a) If the obligated parent provides proof that he or she provides accessible coverage for the child through private insurance, that parent has satisfied his or her obligation to provide health insurance coverage.

(b) If the obligated parent does not provide proof of coverage, either the department or the other parent may take appropriate action as provided in this section to enforce the obligation.

(2) The department may attempt to enforce a parent's obligation to provide health insurance coverage for the dependent child. If health insurance coverage is not available through the parent's employment or union at a cost not to exceed twenty-five percent of the parent's basic support obligation, or as otherwise provided in the support order, the department may enforce any monthly payment toward the premium ordered to be provided under RCW 26.09.105 or 74.20A.300.

(3) A parent seeking to enforce another parent's monthly payment toward the premium under RCW 26.09.105 may:

(a) Apply for support enforcement services from the division of child support as provided by rule; or

(b) Take action on his or her own behalf by:

(i) Filing a motion in the underlying superior court action; or

(ii) Initiating an action in superior court to determine the amount owed by the obligated parent, if there is not already an underlying superior court action.

(4)(a) The department may serve a notice of support owed under RCW 26.23.110 on a parent to determine the amount of that parent's monthly payment toward the premium.

(b) Whether or not the child receives temporary assistance for needy families or medicaid, the department may enforce the responsible parent's monthly payment toward the premium. When the child receives state-financed medical coverage through the department under chapter 74.09 RCW for which there is an assignment, the department may disburse amounts collected to the custodial parent to be used for the medical costs of the child or the department may retain amounts collected and apply them toward the cost of providing the child's state-financed medical coverage. The department may disregard monthly payments toward the premium which are passed through to the family in accordance with federal law.

(5)(a) If the order to provide health insurance coverage contains language notifying the parent ordered to provide coverage that failure to provide such coverage or proof that such coverage is unavailable may result in direct enforcement of the order and orders payments through, or has been submitted to, the Washington state support registry for enforcement, then the department may, without further notice to the parent, send a national medical support notice pursuant to 42 U.S.C. Sec. 666(a)(19), and sections 401 (e) and (f) of the federal child support and performance incentive act of 1998 to the parent's employer or union. The notice shall be served:

- (i) By regular mail;
- (ii) In the manner prescribed for the service of a summons in a civil action;
- (iii) By certified mail, return receipt requested; or
- (iv) By electronic means if there is an agreement between the secretary of the department and the person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States to accept service by electronic means.

(b) The notice shall require the employer or union to enroll the child in the health insurance plan as provided in subsection (8) of this section.

(c) The returned part A of the national medical support notice to the division of child support by the employer constitutes proof of service of the notice in the case where the notice was served by regular mail.

(6) Upon receipt of a national medical support notice from a child support agency operating under Title IV-D of the federal social security act:

(a) The parent's employer or union shall comply with the provisions of the notice, including meeting response time frames and withholding requirements required under part A of the notice;

(b) The parent's employer or union shall also be responsible for complying with forwarding part B of the notice to the child's plan administrator, if required by the notice;

(c) The plan administrator is responsible for complying with the provisions of the notice.

(7) If the parent's order to provide health insurance coverage does not order payments through, and has not been submitted to, the Washington state support registry for enforcement:

(a) The parent seeking enforcement may, without further notice to the obligated parent, send a certified copy of the order requiring health insurance coverage to the parent's employer or union by certified mail, return receipt requested; and

(b) The parent seeking enforcement shall attach a notarized statement to the order declaring that the order is the latest order addressing coverage entered by the court and require the employer or union to enroll the child in the health insurance plan as provided in subsection (8) of this section.

(8) Upon receipt of an order that provides for health insurance coverage:

(a) The parent's employer or union shall answer the party who sent the order within twenty days and confirm that the child:

- (i) Has been enrolled in the health insurance plan;
- (ii) Will be enrolled; or

(ii) Cannot be covered, stating the reasons why such coverage cannot be provided;

(b) The employer or union shall withhold any required premium from the parent's income or wages;

(c) If more than one plan is offered by the employer or union, and each plan may be extended to cover the child, then the child shall be enrolled in the parent's plan. If the parent's plan does not provide coverage which is accessible to the child, the child shall be enrolled in the least expensive plan otherwise available to the parent;

(d) The employer or union shall provide information about the name of the health insurance coverage provider or issuer and the extent of coverage available to the parent and shall make available any necessary claim forms or enrollment membership cards.

(9) If the order for coverage contains no language notifying either or both parents that failure to provide health insurance coverage or proof that such coverage is unavailable may result in direct enforcement of the order, the department or the parent seeking enforcement may serve a written notice of intent to enforce the order on the obligated parent by certified mail, return receipt requested, or by personal service. If the parent required to provide medical support fails to provide written proof that such coverage has been obtained or applied for or fails to provide proof that such coverage is unavailable within twenty days of service of the notice, the department or the parent seeking enforcement may proceed to enforce the order directly as provided in subsection (5) of this section.

(10) If the parent ordered to provide health insurance coverage elects to provide coverage that will not be accessible to the child because of geographic or other limitations when accessible coverage is otherwise available, the department or the parent seeking enforcement may serve a written notice of intent to purchase health insurance coverage on the obligated parent by certified mail, return receipt requested. The notice shall also specify the type and cost of coverage.

(11) If the department serves a notice under subsection (10) of this section the parent required to provide medical support shall, within twenty days of the date of service:

- (a) File an application for an adjudicative proceeding; or
- (b) Provide written proof to the department that the obligated parent has either applied for, or obtained, coverage accessible to the child.

(12) If the parent seeking enforcement serves a notice under subsection (10) of this section, within twenty days of the date of service the parent required to provide medical support shall provide written proof to the parent seeking enforcement that he or she has either applied for, or obtained, coverage accessible to the child.

(13) If the parent required to provide medical support fails to respond to a notice served under subsection (10) of this section to the party who served the notice, the party who served the notice may purchase the health insurance coverage specified in the notice directly.

(a) If the obligated parent is the responsible parent, the amount of the monthly premium shall be added to the support debt and be collectible without further notice.

(b) If the obligated parent is the custodial parent, the responsible parent may file an application for enforcement services and ask the department to establish and enforce the custodial parent's obligation.

(c) The amount of the monthly premium may be collected or accrued until the parent required to provide medical support provides proof of the required coverage.

(14) The signature of the parent seeking enforcement or of a department employee shall be a valid authorization to the coverage provider or issuer for purposes of processing a payment to the child's health services provider. An order for health insurance coverage shall operate as an assignment of all benefit rights to the parent seeking enforcement or to the child's health services provider, and in any claim against the coverage provider or issuer, the parent seeking enforcement or his or her assignee shall be subrogated to the rights of the parent obligated to provide medical support for the child. Notwithstanding the provisions of this section regarding assignment of benefits, this section shall not require a health care service contractor authorized under chapter 48.44 RCW or a health maintenance organization authorized under chapter 48.46 RCW to deviate from their contractual provisions and restrictions regarding reimbursement for covered services. If the coverage is terminated, the employer shall mail a notice of termination to the department or the parent seeking enforcement at that parent's last known address within thirty days of the termination date.

(15) This section shall not be construed to limit the right of the parents or parties to the support order to bring an action in superior court at any time to enforce, modify, or clarify the original support order.

(16) Where a child does not reside in the issuer's service area, an issuer shall cover no less than urgent and emergent care. Where the issuer offers broader coverage, whether by policy or reciprocal agreement, the issuer shall provide such coverage to any child otherwise covered that does not reside in the issuer's service area.

(17) If a parent required to provide medical support fails to pay his or her portion, determined under RCW 26.19.080, of any premium, deductible, copay, or uninsured medical expense incurred on behalf of the child, pursuant to a child support order, the department or the parent seeking reimbursement of medical expenses may enforce collection of the obligated parent's portion of the premium, deductible, copay, or uninsured medical expense incurred on behalf of the child.

(a) If the department is enforcing the order and the responsible parent is the obligated parent, the obligated parent's portion of the premium, deductible, copay, or uninsured medical expenses incurred on behalf of the child added to the support debt and be collectible without further notice, following the reduction of the expenses to a sum certain either in a court order or by the department, pursuant to RCW 26.23.110.

(b) If the custodial parent is the obligated parent, the responsible parent may file an application for enforcement services and ask the department to establish and enforce the custodial parent's obligation.

(18) As used in this section:

(a) "Accessible" means health insurance coverage which provides primary care services to the child or children with reasonable effort by the custodian.

(b) "Cash medical support" means a combination of: (i) A parent's monthly payment toward the premium paid for coverage by either the other parent or the state, which represents the obligated parent's proportionate share of the pre-

mium paid, but no more than twenty-five percent of the obligated parent's basic support obligation; and (ii) a parent's proportionate share of uninsured medical expenses.

(c) "Health insurance coverage" does not include medical assistance provided under chapter 74.09 RCW.

(d) "Uninsured medical expenses" includes premiums, copays, deductibles, along with other health care costs not covered by insurance.

(e) "Obligated parent" means a parent ordered to provide health insurance coverage for the children.

(f) "Monthly payment toward the premium" means a parent's contribution toward premiums paid by the other parent or the state for insurance coverage for the child, which is based on the obligated parent's proportionate share of the premium paid, but no more than twenty-five percent of the obligated parent's basic support obligation.

(19) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under 45 C.F.R. Parts 302, 303, 304, 305, and 308. [2009 c 476 § 2; 2007 c 143 § 1; 2000 c 86 § 2; 1995 c 34 § 7; 1994 c 230 § 7; 1993 c 426 § 14; 1989 c 416 § 5.]

**Effective date—2009 c 476:** See note following RCW 26.09.105.

**Severability—2007 c 143:** "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." [2007 c 143 § 10.]

**26.18.180 Liability of employer or union—Penalties. (Effective October 1, 2009.)**

(1) The employer or union of a parent who has been ordered to provide health insurance coverage shall be liable for a fine of up to one thousand dollars per occurrence, if the employer or union fails or refuses, within twenty days of receiving the order or notice for health insurance coverage to:

(a) Promptly enroll the parent's child in the health insurance plan; or

(b) Make a written answer to the person or entity who sent the order or notice for health insurance coverage stating that the child:

(i) Will be enrolled in the next available open enrollment period; or

(ii) Cannot be covered and explaining the reasons why coverage cannot be provided.

(2) Liability may be established and the fine may be collected by the office of support enforcement under chapter 74.20A or 26.23 RCW using any of the remedies contained in those chapters.

(3) Any employer or union who enrolls a child in a health insurance plan in compliance with chapter 26.18 RCW shall be exempt from liability resulting from such enrollment. [2009 c 476 § 3; 2000 c 86 § 3; 1989 c 416 § 9.]

**Effective date—2009 c 476:** See note following RCW 26.09.105.

**26.18.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)** For the purposes of this

chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 66.]

**Chapter 26.19 RCW**

**CHILD SUPPORT SCHEDULE**

Sections

- 26.19.020 Child support economic table. *(Effective October 1, 2009.)*
- 26.19.065 Standards for establishing lower and upper limits on child support amounts. *(Effective October 1, 2009.)*
- 26.19.071 Standards for determination of income. *(Effective October 1, 2009.)*
- 26.19.075 Standards for deviation from the standard calculation. *(Effective October 1, 2009.)*
- 26.19.080 Allocation of child support obligation between parents—Court-ordered day care or special child rearing expenses. *(Effective October 1, 2009.)*

**26.19.020 Child support economic table. *(Effective October 1, 2009.)***

**ECONOMIC TABLE**

**MONTHLY BASIC SUPPORT OBLIGATION PER CHILD**

KEY: A= AGE 0-11 B= AGE 12-18

COMBINED MONTHLY NET INCOME	ONE CHILD FAMILY		TWO CHILDREN FAMILY	
	A	B	A	B

For income less than \$1000 the obligation is based upon the resources and living expenses of each household. Minimum support may not be less than \$50 per child per month except when allowed by RCW 26.19.065(2).

1000	220	272	171	211
1100	242	299	188	232
1200	264	326	205	253
1300	285	352	221	274
1400	307	379	238	294
1500	327	404	254	313
1600	347	428	269	333
1700	367	453	285	352
1800	387	478	300	371
1900	407	503	316	390
2000	427	527	331	409
2100	447	552	347	429
2200	467	577	362	448
2300	487	601	378	467

2400	506	626	393	486
2500	526	650	408	505
2600	534	661	416	513
2700	542	670	421	520
2800	549	679	427	527
2900	556	686	431	533
3000	561	693	436	538
3100	566	699	439	543
3200	569	704	442	546
3300	573	708	445	549
3400	574	710	446	551
3500	575	711	447	552
3600	577	712	448	553
3700	578	713	449	554
3800	581	719	452	558
3900	596	736	463	572
4000	609	753	473	584
4100	623	770	484	598
4200	638	788	495	611
4300	651	805	506	625
4400	664	821	516	637
4500	677	836	525	649
4600	689	851	535	661
4700	701	866	545	673
4800	713	882	554	685
4900	726	897	564	697
5000	738	912	574	708
5100	751	928	584	720
5200	763	943	593	732
5300	776	959	602	744
5400	788	974	612	756
5500	800	989	622	768
5600	812	1004	632	779
5700	825	1019	641	791
5800	837	1035	650	803
5900	850	1050	660	815
6000	862	1065	670	827
6100	875	1081	680	839
6200	887	1096	689	851
6300	899	1112	699	863
6400	911	1127	709	875
6500	924	1142	718	887
6600	936	1157	728	899
6700	949	1172	737	911
6800	961	1188	747	923
6900	974	1203	757	935
7000	986	1218	767	946
7100	998	1233	776	958
7200	1009	1248	785	971
7300	1021	1262	794	982
7400	1033	1276	803	993
7500	1044	1290	812	1004
7600	1055	1305	821	1015
7700	1067	1319	830	1026
7800	1078	1333	839	1037
7900	1089	1346	848	1048
8000	1100	1360	857	1059
8100	1112	1374	865	1069
8200	1123	1387	874	1080
8300	1134	1401	882	1091
8400	1144	1414	891	1101



6500	599	740	506	626	442	546
6600	607	750	513	635	448	554
6700	615	761	520	643	454	561
6800	623	770	527	651	460	568
6900	631	780	533	659	466	575
7000	639	790	540	668	472	583
7100	647	800	547	677	478	591
7200	654	809	554	684	484	598
7300	662	818	560	693	490	605
7400	670	828	567	701	496	613
7500	677	837	574	709	502	620
7600	685	846	581	718	507	627
7700	692	855	587	726	513	634
7800	700	865	594	734	519	642
7900	707	874	601	742	525	649
8000	714	883	607	750	531	656
8100	722	892	614	759	536	663
8200	729	901	620	767	542	670
8300	736	910	627	775	548	677
8400	743	919	633	783	553	684
8500	750	928	640	791	559	691
8600	758	936	646	799	565	698
8700	765	945	653	807	570	705
8800	772	954	659	815	576	712
8900	779	962	665	822	582	719
9000	786	971	672	830	587	726
9100	792	980	678	838	593	732
9200	799	988	684	846	598	739
9300	806	996	691	854	604	746
9400	813	1005	697	861	609	753
9500	820	1013	703	869	614	759
9600	826	1021	709	877	620	766
9700	833	1030	716	884	625	773
9800	840	1038	722	892	631	779
9900	846	1046	728	900	636	786
10000	853	1054	734	907	641	793
10100	859	1062	740	915	647	799
10200	866	1070	746	922	652	806
10300	872	1078	752	930	657	812
10400	879	1086	758	937	662	819
10500	885	1094	764	944	668	825
10600	891	1102	770	952	673	832
10700	898	1109	776	959	678	838
10800	904	1117	782	966	683	844
10900	910	1125	788	974	688	851
11000	916	1132	794	981	693	857
11100	922	1140	799	988	698	863
11200	928	1147	805	995	703	869

11300	934	1155	811	1002	708	876
11400	940	1162	817	1009	714	882
11500	946	1170	822	1017	719	888
11600	952	1177	828	1024	723	894
11700	958	1184	834	1031	728	900
11800	964	1191	839	1038	733	906
11900	970	1199	845	1045	738	912
12000	975	1206	851	1051	743	919

The economic table is presumptive for combined monthly net incomes up to and including twelve thousand dollars. When combined monthly net income exceeds twelve thousand dollars, the court may exceed the presumptive amount of support set for combined monthly net incomes of twelve thousand dollars upon written findings of fact. [2009 c 84 § 1; 1998 c 163 § 2; 1991 c 367 § 25; 1990 1st ex.s. c 2 § 19; 1989 c 175 § 76; 1988 c 275 § 3.]

**Effective date—2009 c 84:** "This act takes effect October 1, 2009." [2009 c 84 § 6.]

**Severability—Effective date—Captions not law—1991 c 367:** See notes following RCW 26.09.015.

**Effective dates—Severability—1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Effective dates—Severability—1988 c 275:** See notes following RCW 26.19.001.

**26.19.065 Standards for establishing lower and upper limits on child support amounts. (Effective October 1, 2009.)**

**(1) Limit at forty-five percent of a parent’s net income.** Neither parent’s child support obligation owed for all his or her biological or legal children may exceed forty-five percent of net income except for good cause shown.

(a) Each child is entitled to a pro rata share of the income available for support, but the court only applies the pro rata share to the children in the case before the court.

(b) Before determining whether to apply the forty-five percent limitation, the court must consider whether it would be unjust to apply the limitation after considering the best interests of the child and the circumstances of each parent. Such circumstances include, but are not limited to, leaving insufficient funds in the custodial parent’s household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and any involuntary limits on either parent’s earning capacity including incarceration, disabilities, or incapacity.

(c) Good cause includes, but is not limited to, possession of substantial wealth, children with day care expenses, special medical need, educational need, psychological need, and larger families.

**(2) Presumptive minimum support obligation.** (a) When a parent’s monthly net income is below one hundred twenty-five percent of the federal poverty guideline, a support order of not less than fifty dollars per child per month shall be entered unless the obligor parent establishes that it would be unjust to do so in that particular case. The decision whether there is a sufficient basis to deviate below the presumptive minimum payment must take into consideration the best interests of the child and the circumstances of each par-



ent. Such circumstances can include leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and earning capacity.

(b) The basic support obligation of the parent making the transfer payment, excluding health care, day care, and special child-rearing expenses, shall not reduce his or her net income below the self-support reserve of one hundred twenty-five percent of the federal poverty level, except for the presumptive minimum payment of fifty dollars per child per month or when it would be unjust to apply the self-support reserve limitation after considering the best interests of the child and the circumstances of each parent. Such circumstances include, but are not limited to, leaving insufficient funds in the custodial parent's household to meet the basic needs of the child, comparative hardship to the affected households, assets or liabilities, and earning capacity. This section shall not be construed to require monthly substantiation of income.

(3) **Income above twelve thousand dollars.** The economic table is presumptive for combined monthly net incomes up to and including twelve thousand dollars. When combined monthly net income exceeds twelve thousand dollars, the court may exceed the presumptive amount of support set for combined monthly net incomes of twelve thousand dollars upon written findings of fact. [2009 c 84 § 2; 1998 c 163 § 1; 1991 c 367 § 33.]

**Effective date—2009 c 84:** See note following RCW 26.19.020.

**Severability—Effective date—Captions not law—1991 c 367:** See notes following RCW 26.09.015.

**26.19.071 Standards for determination of income. (Effective October 1, 2009.)** (1) **Consideration of all income.** All income and resources of each parent's household shall be disclosed and considered by the court when the court determines the child support obligation of each parent. Only the income of the parents of the children whose support is at issue shall be calculated for purposes of calculating the basic support obligation. Income and resources of any other person shall not be included in calculating the basic support obligation.

(2) **Verification of income.** Tax returns for the preceding two years and current paystubs shall be provided to verify income and deductions. Other sufficient verification shall be required for income and deductions which do not appear on tax returns or paystubs.

(3) **Income sources included in gross monthly income.** Except as specifically excluded in subsection (4) of this section, monthly gross income shall include income from any source, including:

- (a) Salaries;
- (b) Wages;
- (c) Commissions;
- (d) Deferred compensation;
- (e) Overtime, except as excluded for income in subsection (4)(h) of this section;
- (f) Contract-related benefits;
- (g) Income from second jobs, except as excluded for income in subsection (4)(h) of this section;
- (h) Dividends;
- (i) Interest;
- (j) Trust income;

- (k) Severance pay;
- (l) Annuities;
- (m) Capital gains;
- (n) Pension retirement benefits;
- (o) Workers' compensation;
- (p) Unemployment benefits;
- (q) Maintenance actually received;
- (r) Bonuses;
- (s) Social security benefits;
- (t) Disability insurance benefits; and
- (u) Income from self-employment, rent, royalties, contracts, proprietorship of a business, or joint ownership of a partnership or closely held corporation.

(4) **Income sources excluded from gross monthly income.** The following income and resources shall be disclosed but shall not be included in gross income:

- (a) Income of a new spouse or new domestic partner or income of other adults in the household;
- (b) Child support received from other relationships;
- (c) Gifts and prizes;
- (d) Temporary assistance for needy families;
- (e) Supplemental security income;
- (f) General assistance;
- (g) Food stamps; and
- (h) Overtime or income from second jobs beyond forty hours per week averaged over a twelve-month period worked to provide for a current family's needs, to retire past relationship debts, or to retire child support debt, when the court finds the income will cease when the party has paid off his or her debts.

Receipt of income and resources from temporary assistance for needy families, supplemental security income, general assistance, and food stamps shall not be a reason to deviate from the standard calculation.

(5) **Determination of net income.** The following expenses shall be disclosed and deducted from gross monthly income to calculate net monthly income:

- (a) Federal and state income taxes;
- (b) Federal insurance contributions act deductions;
- (c) Mandatory pension plan payments;
- (d) Mandatory union or professional dues;
- (e) State industrial insurance premiums;
- (f) Court-ordered maintenance to the extent actually paid;
- (g) Up to five thousand dollars per year in voluntary retirement contributions actually made if the contributions show a pattern of contributions during the one-year period preceding the action establishing the child support order unless there is a determination that the contributions were made for the purpose of reducing child support; and
- (h) Normal business expenses and self-employment taxes for self-employed persons. Justification shall be required for any business expense deduction about which there is disagreement.

Items deducted from gross income under this subsection shall not be a reason to deviate from the standard calculation.

(6) **Imputation of income.** The court shall impute income to a parent when the parent is voluntarily unemployed or voluntarily underemployed. The court shall determine whether the parent is voluntarily underemployed or voluntarily unemployed based upon that parent's work history,

education, health, and age, or any other relevant factors. A court shall not impute income to a parent who is gainfully employed on a full-time basis, unless the court finds that the parent is voluntarily underemployed and finds that the parent is purposely underemployed to reduce the parent's child support obligation. Income shall not be imputed for an unemployable parent. Income shall not be imputed to a parent to the extent the parent is unemployed or significantly underemployed due to the parent's efforts to comply with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child. In the absence of records of a parent's actual earnings, the court shall impute a parent's income in the following order of priority:

- (a) Full-time earnings at the current rate of pay;
- (b) Full-time earnings at the historical rate of pay based on reliable information, such as employment security department data;
- (c) Full-time earnings at a past rate of pay where information is incomplete or sporadic;
- (d) Full-time earnings at minimum wage in the jurisdiction where the parent resides if the parent has a recent history of minimum wage earnings, is recently coming off public assistance, general assistance-unemployable, supplemental security income, or disability, has recently been released from incarceration, or is a high school student;
- (e) Median net monthly income of year-round full-time workers as derived from the United States bureau of census, current population reports, or such replacement report as published by the bureau of census. [2009 c 84 § 3; 2008 c 6 § 1038; 1997 c 59 § 4; 1993 c 358 § 4; 1991 sp.s. c 28 § 5.]

**Effective date—2009 c 84:** See note following RCW 26.19.020.

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Severability—Effective date—Captions not law—1991 sp.s. c 28:** See notes following RCW 26.09.100.

**26.19.075 Standards for deviation from the standard calculation. (Effective October 1, 2009.)** (1) Reasons for deviation from the standard calculation include but are not limited to the following:

- (a) **Sources of income and tax planning.** The court may deviate from the standard calculation after consideration of the following:
  - (i) Income of a new spouse or new domestic partner if the parent who is married to the new spouse or in a partnership with a new domestic partner is asking for a deviation based on any other reason. Income of a new spouse or new domestic partner is not, by itself, a sufficient reason for deviation;
  - (ii) Income of other adults in the household if the parent who is living with the other adult is asking for a deviation based on any other reason. Income of the other adults in the household is not, by itself, a sufficient reason for deviation;
  - (iii) Child support actually received from other relationships;
  - (iv) Gifts;
  - (v) Prizes;
  - (vi) Possession of wealth, including but not limited to savings, investments, real estate holdings and business inter-

ests, vehicles, boats, pensions, bank accounts, insurance plans, or other assets;

- (vii) Extraordinary income of a child;
- (viii) Tax planning considerations. A deviation for tax planning may be granted only if the child would not receive a lesser economic benefit due to the tax planning; or
- (ix) Income that has been excluded under RCW 26.19.071(4)(h) if the person earning that income asks for a deviation for any other reason.

(b) **Nonrecurring income.** The court may deviate from the standard calculation based on a finding that a particular source of income included in the calculation of the basic support obligation is not a recurring source of income. Depending on the circumstances, nonrecurring income may include overtime, contract-related benefits, bonuses, or income from second jobs. Deviations for nonrecurring income shall be based on a review of the nonrecurring income received in the previous two calendar years.

(c) **Debt and high expenses.** The court may deviate from the standard calculation after consideration of the following expenses:

- (i) Extraordinary debt not voluntarily incurred;
- (ii) A significant disparity in the living costs of the parents due to conditions beyond their control;
- (iii) Special needs of disabled children;
- (iv) Special medical, educational, or psychological needs of the children; or
- (v) Costs incurred or anticipated to be incurred by the parents in compliance with court-ordered reunification efforts under chapter 13.34 RCW or under a voluntary placement agreement with an agency supervising the child.

(d) **Residential schedule.** The court may deviate from the standard calculation if the child spends a significant amount of time with the parent who is obligated to make a support transfer payment. The court may not deviate on that basis if the deviation will result in insufficient funds in the household receiving the support to meet the basic needs of the child or if the child is receiving temporary assistance for needy families. When determining the amount of the deviation, the court shall consider evidence concerning the increased expenses to a parent making support transfer payments resulting from the significant amount of time spent with that parent and shall consider the decreased expenses, if any, to the party receiving the support resulting from the significant amount of time the child spends with the parent making the support transfer payment.

(e) **Children from other relationships.** The court may deviate from the standard calculation when either or both of the parents before the court have children from other relationships to whom the parent owes a duty of support.

(i) The child support schedule shall be applied to the mother, father, and children of the family before the court to determine the presumptive amount of support.

(ii) Children from other relationships shall not be counted in the number of children for purposes of determining the basic support obligation and the standard calculation.

(iii) When considering a deviation from the standard calculation for children from other relationships, the court may consider only other children to whom the parent owes a duty of support. The court may consider court-ordered payments

of child support for children from other relationships only to the extent that the support is actually paid.

(iv) When the court has determined that either or both parents have children from other relationships, deviations under this section shall be based on consideration of the total circumstances of both households. All child support obligations paid, received, and owed for all children shall be disclosed and considered.

(2) All income and resources of the parties before the court, new spouses or new domestic partners, and other adults in the households shall be disclosed and considered as provided in this section. The presumptive amount of support shall be determined according to the child support schedule. Unless specific reasons for deviation are set forth in the written findings of fact and are supported by the evidence, the court shall order each parent to pay the amount of support determined by using the standard calculation.

(3) The court shall enter findings that specify reasons for any deviation or any denial of a party's request for any deviation from the standard calculation made by the court. The court shall not consider reasons for deviation until the court determines the standard calculation for each parent.

(4) When reasons exist for deviation, the court shall exercise discretion in considering the extent to which the factors would affect the support obligation.

(5) Agreement of the parties is not by itself adequate reason for any deviations from the standard calculation. [2009 c 84 § 4; 2008 c 6 § 1039; 1997 c 59 § 5; 1993 c 358 § 5; 1991 sp.s. c 28 § 6.]

**Effective date—2009 c 84:** See note following RCW 26.19.020.

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Severability—Effective date—Captions not law—1991 sp.s. c 28:** See notes following RCW 26.09.100.

**26.19.080 Allocation of child support obligation between parents—Court-ordered day care or special child rearing expenses. (Effective October 1, 2009.)** (1) The basic child support obligation derived from the economic table shall be allocated between the parents based on each parent's share of the combined monthly net income.

(2) Health care costs are not included in the economic table. Monthly health care costs shall be shared by the parents in the same proportion as the basic child support obligation. Health care costs shall include, but not be limited to, medical, dental, orthodontia, vision, chiropractic, mental health treatment, prescription medications, and other similar costs for care and treatment.

(3) Day care and special child rearing expenses, such as tuition and long-distance transportation costs to and from the parents for visitation purposes, are not included in the economic table. These expenses shall be shared by the parents in the same proportion as the basic child support obligation. If an obligor pays court or administratively ordered day care or special child rearing expenses that are not actually incurred, the obligee must reimburse the obligor for the overpayment if the overpayment amounts to at least twenty percent of the obligor's annual day care or special child rearing expenses. The obligor may institute an action in the superior court or file an application for an adjudicative hearing with the department of social and health services for reimbursement

of day care and special child rearing expense overpayments that amount to twenty percent or more of the obligor's annual day care and special child rearing expenses. Any ordered overpayment reimbursement shall be applied first as an offset to child support arrearages of the obligor. If the obligor does not have child support arrearages, the reimbursement may be in the form of a direct reimbursement by the obligee or a credit against the obligor's future support payments. If the reimbursement is in the form of a credit against the obligor's future child support payments, the credit shall be spread equally over a twelve-month period. Absent agreement of the obligee, nothing in this section entitles an obligor to pay more than his or her proportionate share of day care or other special child rearing expenses in advance and then deduct the overpayment from future support transfer payments.

(4) The court may exercise its discretion to determine the necessity for and the reasonableness of all amounts ordered in excess of the basic child support obligation. [2009 c 84 § 5; 1996 c 216 § 1; 1990 1st ex.s. c 2 § 7.]

**Effective date—2009 c 84:** See note following RCW 26.19.020.

**Effective dates—Severability—1990 1st ex.s. c 2:** See notes following RCW 26.09.100.

## Chapter 26.23 RCW

### STATE SUPPORT REGISTRY

#### Sections

- 26.23.050 Support orders—Provisions—Enforcement—Confidential information form—Rules. (*Effective October 1, 2009.*)
- 26.23.110 Procedures when amount of support obligation needs to be determined—Notice—Adjudicative proceeding—Rules. (*Effective October 1, 2009.*)

**26.23.050 Support orders—Provisions—Enforcement—Confidential information form—Rules. (Effective October 1, 2009.)** (1) If the division of child support is providing support enforcement services under RCW 26.23.045, or if a party is applying for support enforcement services by signing the application form on the bottom of the support order, the superior court shall include in all court orders that establish or modify a support obligation:

(a) A provision that orders and directs the responsible parent to make all support payments to the Washington state support registry;

(b) A statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent at any time after entry of the court order, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement;

(c) A statement that the receiving parent might be required to submit an accounting of how the support, including any cash medical support, is being spent to benefit the child;

(d) A statement that any parent required to provide health insurance coverage for the child or children covered by the order must notify the division of child support and the other parent when the coverage terminates; and

(e) A statement that the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as provided in RCW 74.20A.320.

As used in this subsection and subsection (3) of this section, "good cause not to require immediate income withholding" means a written determination of why implementing immediate wage withholding would not be in the child's best interests and, in modification cases, proof of timely payment of previously ordered support.

(2) In all other cases not under subsection (1) of this section, the court may order the responsible parent to make payments directly to the person entitled to receive the payments, to the Washington state support registry, or may order that payments be made in accordance with an alternate arrangement agreed upon by the parties.

(a) The superior court shall include in all orders under this subsection that establish or modify a support obligation:

(i) A statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent at any time after entry of the court order, unless:

(A) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due; or

(B) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement;

(ii) A statement that the receiving parent may be required to submit an accounting of how the support is being spent to benefit the child;

(iii) A statement that any parent required to provide health insurance coverage for the child or children covered by the order must notify the division of child support and the other parent when the coverage terminates; and

(iv) A statement that a parent seeking to enforce the obligation to provide health insurance coverage may:

(A) File a motion in the underlying superior court action; or

(B) If there is not already an underlying superior court action, initiate an action in the superior court.

As used in this subsection, "good cause not to require immediate income withholding" is any reason that the court finds appropriate.

(b) The superior court may order immediate or delayed income withholding as follows:

(i) Immediate income withholding may be ordered if the responsible parent has earnings. If immediate income withholding is ordered under this subsection, all support payments shall be paid to the Washington state support registry. The superior court shall issue a mandatory wage assignment order as set forth in chapter 26.18 RCW when the support order is signed by the court. The parent entitled to receive the

transfer payment is responsible for serving the employer with the order and for its enforcement as set forth in chapter 26.18 RCW.

(ii) If immediate income withholding is not ordered, the court shall require that income withholding be delayed until a payment is past due. The support order shall contain a statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent, after a payment is past due.

(c) If a mandatory wage withholding order under chapter 26.18 RCW is issued under this subsection and the division of child support provides support enforcement services under RCW 26.23.045, the existing wage withholding assignment is prospectively superseded upon the division of child support's subsequent service of an income withholding notice.

(3) The office of administrative hearings and the department of social and health services shall require that all support obligations established as administrative orders include a provision which orders and directs that the responsible parent shall make all support payments to the Washington state support registry. All administrative orders shall also state that the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as provided in RCW 74.20A.320. All administrative orders shall also state that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state without further notice to the responsible parent at any time after entry of the order, unless:

(a) One of the parties demonstrates, and the presiding officer finds, that there is good cause not to require immediate income withholding; or

(b) The parties reach a written agreement that is approved by the presiding officer that provides for an alternate agreement.

(4) If the support order does not include the provision ordering and directing that all payments be made to the Washington state support registry and a statement that withholding action may be taken against wages, earnings, assets, or benefits if a support payment is past due or at any time after the entry of the order, or that a parent's licensing privileges may not be renewed, or may be suspended, the division of child support may serve a notice on the responsible parent stating such requirements and authorizations. Service may be by personal service or any form of mail requiring a return receipt.

(5) Every support order shall state:

(a) The address where the support payment is to be sent;

(b) That withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the responsible parent at any time after entry of a support order, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement;

(c) The income of the parties, if known, or that their income is unknown and the income upon which the support award is based;

(d) The support award as a sum certain amount;

(e) The specific day or date on which the support payment is due;

(f) The names and ages of the dependent children;

(g) A provision requiring both the responsible parent and the custodial parent to keep the Washington state support registry informed of whether he or she has access to health insurance coverage at reasonable cost and, if so, the health insurance policy information;

(h) That either or both the responsible parent and the custodial parent shall be obligated to provide medical support for his or her child through health insurance coverage if:

(i) The obligated parent provides accessible coverage for the child through private insurance; or

(ii) Coverage that can be extended to cover the child is or becomes available to the parent through employment or is union-related; or

(iii) In the absence of such coverage, through an additional sum certain amount, as that parent's monthly payment toward the premium as provided under RCW 26.09.105;

(i) That a parent providing health insurance coverage must notify both the division of child support and the other parent when coverage terminates;

(j) That if proof of health insurance coverage or proof that the coverage is unavailable is not provided within twenty days, the parent seeking enforcement or the department may seek direct enforcement of the coverage through the employer or union of the parent required to provide medical support without further notice to the parent as provided under chapter 26.18 RCW;

(k) The reasons for not ordering health insurance coverage if the order fails to require such coverage;

(l) That the responsible parent's privileges to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the parent is not in compliance with a support order as provided in RCW 74.20A.320;

(m) That each parent must:

(i) Promptly file with the court and update as necessary the confidential information form required by subsection (7) of this section; and

(ii) Provide the state case registry and update as necessary the information required by subsection (7) of this section; and

(n) That parties to administrative support orders shall provide to the state case registry and update as necessary their residential addresses and the address of the responsible parent's employer. The division of child support may adopt rules that govern the collection of parties' current residence and mailing addresses, telephone numbers, dates of birth, social security numbers, the names of the children, social security numbers of the children, dates of birth of the children, driver's license numbers, and the names, addresses, and telephone numbers of the parties' employers to enforce an administrative support order. The division of child support

shall not release this information if the division of child support determines that there is reason to believe that release of the information may result in physical or emotional harm to the party or to the child, or a restraining order or protective order is in effect to protect one party from the other party.

(6) After the responsible parent has been ordered or notified to make payments to the Washington state support registry under this section, the responsible parent shall be fully responsible for making all payments to the Washington state support registry and shall be subject to payroll deduction or other income-withholding action. The responsible parent shall not be entitled to credit against a support obligation for any payments made to a person or agency other than to the Washington state support registry except as provided under RCW 74.20.101. A civil action may be brought by the payor to recover payments made to persons or agencies who have received and retained support moneys paid contrary to the provisions of this section.

(7) All petitioners and parties to all court actions under chapters 26.09, 26.10, 26.12, 26.18, 26.21A, 26.23, 26.26, and 26.27 RCW shall complete to the best of their knowledge a verified and signed confidential information form or equivalent that provides the parties' current residence and mailing addresses, telephone numbers, dates of birth, social security numbers, driver's license numbers, and the names, addresses, and telephone numbers of the parties' employers. The clerk of the court shall not accept petitions, except in parentage actions initiated by the state, orders of child support, decrees of dissolution, or paternity orders for filing in such actions unless accompanied by the confidential information form or equivalent, or unless the confidential information form or equivalent is already on file with the court clerk. In lieu of or in addition to requiring the parties to complete a separate confidential information form, the clerk may collect the information in electronic form. The clerk of the court shall transmit the confidential information form or its data to the division of child support with a copy of the order of child support or paternity order, and may provide copies of the confidential information form or its data and any related findings, decrees, parenting plans, orders, or other documents to the state administrative agency that administers Title IV-A, IV-D, IV-E, or XIX of the federal social security act. In state initiated paternity actions, the parties adjudicated the parents of the child or children shall complete the confidential information form or equivalent or the state's attorney of record may complete that form to the best of the attorney's knowledge.

(8) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under 45 C.F.R. Parts 302, 303, 304, 305, and 308. [2009 c 476 § 4; 2007 c 143 § 3; 2001 c 42 § 3; 1998 c 160 § 2; 1997 c 58 § 888; 1994 c 230 § 9; 1993 c 207 § 1; 1991 c 367 § 39; 1989 c 360 § 15; 1987 c 435 § 5.]

**Effective date—2009 c 476:** See note following RCW 26.09.105.

**Severability—2007 c 143:** See note following RCW 26.18.170.

**Effective date—Severability—2001 c 42:** See notes following RCW 26.09.020.

**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.

**Intent—1997 c 58:** See note following RCW 74.20A.320.

**Severability—Effective date—Captions not law—1991 c 367:** See notes following RCW 26.09.015.

**26.23.110 Procedures when amount of support obligation needs to be determined—Notice—Adjudicative proceeding—Rules. (Effective October 1, 2009.)** (1) The department may serve a notice of support owed on a responsible parent when a support order:

(a) Does not state the current and future support obligation as a fixed dollar amount;

(b) Contains an escalation clause or adjustment provision for which additional information not contained in the support order is needed to determine the fixed dollar amount of the support debt or the fixed dollar amount of the current and future support obligation, or both; or

(c) Provides that the responsible parent is responsible for paying for a portion of uninsured medical costs, copayments, and/or deductibles incurred on behalf of the child, but does not reduce the costs to a fixed dollar amount.

(2) The department may serve a notice of support owed on a parent who has been designated to pay per a support order a portion of uninsured medical costs, copayments, or deductibles incurred on behalf of the child, but only when the support order does not reduce the costs to a fixed dollar amount.

(3) The department may serve a notice of support owed to determine a parent's monthly payment toward the premium as defined in RCW 26.09.105, if the support order does not set a fixed dollar amount for the monthly payment toward the premium.

(4) The notice of support owed shall facilitate enforcement of the support order and implement and effectuate the terms of the support order, rather than modify those terms. When the office of support enforcement issues a notice of support owed, the office shall inform the payee under the support order.

(5) The notice of support owed shall be served on a responsible parent by personal service or any form of mailing requiring a return receipt. The notice shall be served on the applicant or recipient of services by first-class mail to the last known address. The notice of support owed shall contain an initial finding of the fixed dollar amount of current and future support obligation that should be paid or the fixed dollar amount of the support debt owed under the support order, or both.

(6) A parent who objects to the fixed dollar amounts stated in the notice of support owed has twenty days from the date of the service of the notice of support owed to file an application for an adjudicative proceeding or initiate an action in superior court.

(7) The notice of support owed shall state that the parent may:

(a) File an application for an adjudicative proceeding governed by chapter 34.05 RCW, the administrative procedure act, in which the parent will be required to appear and show cause why the fixed dollar amount of support debt or current and future support obligation, or both, stated in the

notice of support owed is incorrect and should not be ordered; or

(b) Initiate an action in superior court.

(8) If either parent does not file an application for an adjudicative proceeding or initiate an action in superior court, the fixed dollar amount of current and future support obligation or support debt, or both, stated in the notice of support owed shall become final and subject to collection action.

(9) If an adjudicative proceeding is requested, the department shall mail a copy of the notice of adjudicative proceeding to the parties.

(10) If either parent does not initiate an action in superior court, and serve notice of the action on the department and the other party to the support order within the twenty-day period, the parent shall be deemed to have made an election of remedies and shall be required to exhaust administrative remedies under this chapter with judicial review available as provided for in RCW 34.05.510 through 34.05.598.

(11) An adjudicative order entered in accordance with this section shall state the basis, rationale, or formula upon which the fixed dollar amounts established in the adjudicative order were based. The fixed dollar amount of current and future support obligation or the amount of the support debt, or both, determined under this section shall be subject to collection under this chapter and other applicable state statutes.

(12) The department shall also provide for:

(a) An annual review of the support order if either the office of support enforcement or the parent requests such a review; and

(b) A late adjudicative proceeding if the parent fails to file an application for an adjudicative proceeding in a timely manner under this section.

(13) If an annual review or late adjudicative proceeding is requested under subsection (12) of this section, the department shall mail a copy of the notice of adjudicative proceeding to the parties' last known address.

(14) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under 45 C.F.R. Parts 302, 303, 304, 305, and 308. [2009 c 476 § 5; 2007 c 143 § 4; 1993 c 12 § 1. Prior: 1989 c 360 § 16; 1989 c 175 § 77; 1987 c 435 § 11.]

**Effective date—2009 c 476:** See note following RCW 26.09.105.

**Severability—2007 c 143:** See note following RCW 26.18.170.

**Effective dates—1989 c 360 §§ 9, 10, 16, and 39:** See note following RCW 74.20A.060.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

## Chapter 26.26 RCW UNIFORM PARENTAGE ACT

### Sections

26.26.914 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)

**26.26.914 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective**

*if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)* For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 67.]

### Chapter 26.27 RCW

#### UNIFORM CHILD CUSTODY JURISDICTION ACT

##### Sections

26.27.941 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**26.27.941 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 68.]

### Chapter 26.28 RCW

#### AGE OF MAJORITY

##### Sections

26.28.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**26.28.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships

or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 69.]

### Chapter 26.33 RCW

#### ADOPTION

##### Sections

26.33.190 Preplacement report—Requirements—Fees.  
 26.33.295 Open adoption agreements—Agreed orders—Enforcement.  
 26.33.420 Postadoption contact between siblings—Intent—Findings.  
 26.33.430 Postadoption contact between siblings—Duty of court.  
 26.33.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**26.33.190 Preplacement report—Requirements—Fees.** (1) Any person may at any time request an agency, the department, an individual approved by the court, or a qualified salaried court employee to prepare a preplacement report. A certificate signed under penalty of perjury by the person preparing the report specifying his or her qualifications as required in this chapter shall be attached to or filed with each preplacement report and shall include a statement of training or experience that qualifies the person preparing the report to discuss relevant adoption issues. A person may have more than one preplacement report prepared. All preplacement reports shall be filed with the court in which the petition for adoption is filed.

(2) The preplacement report shall be a written document setting forth all relevant information relating to the fitness of the person requesting the report as an adoptive parent. The report shall be based on a study which shall include an investigation of the home environment, family life, health, facilities, and resources of the person requesting the report. The report shall include a list of the sources of information on which the report is based. The report shall include a recommendation as to the fitness of the person requesting the report to be an adoptive parent. The report shall also verify that the following issues were discussed with the prospective adoptive parents:

(a) The concept of adoption as a lifelong developmental process and commitment;

(b) The potential for the child to have feelings of identity confusion and loss regarding separation from the birth parents;

(c) If applicable, the relevance of the child's relationship with siblings and the potential benefit to the child of providing for a continuing relationship and contact between the child and known siblings;

(d) Disclosure of the fact of adoption to the child;

(e) The child's possible questions about birth parents and relatives; and

(f) The relevance of the child's racial, ethnic, and cultural heritage.

(3) All preplacement reports shall include a background check of any conviction records, pending charges, or disciplinary board final decisions of prospective adoptive parents. The background check shall include an examination of state and national criminal identification data provided by the Washington state patrol criminal identification system including, but not limited to, a fingerprint-based background check of national crime information databases for any person being investigated. It shall also include a review of any child abuse and neglect history of any adult living in the prospective adoptive parents' home. The background check of the child abuse and neglect history shall include a review of the child abuse and neglect registries of all states in which the prospective adoptive parents or any other adult living in the home have lived during the five years preceding the date of the preplacement report.

(4) An agency, the department, or a court approved individual may charge a reasonable fee based on the time spent in conducting the study and preparing the preplacement report. The court may set a reasonable fee for conducting the study and preparing the report when a court employee has prepared the report. An agency, the department, a court approved individual, or the court may reduce or waive the fee if the financial condition of the person requesting the report so warrants. An agency's, the department's, or court approved individual's, fee is subject to review by the court upon request of the person requesting the report.

(5) The person requesting the report shall designate to the agency, the department, the court approved individual, or the court in writing the county in which the preplacement report is to be filed. If the person requesting the report has not filed a petition for adoption, the report shall be indexed in the name of the person requesting the report and a cause number shall be assigned. A fee shall not be charged for filing the report. The applicable filing fee may be charged at the time a petition governed by this chapter is filed. Any subsequent preplacement reports shall be filed together with the original report.

(6) A copy of the completed preplacement report shall be delivered to the person requesting the report.

(7) A person may request that a report not be completed. A reasonable fee may be charged for the value of work done. [2009 c 234 § 4; 2007 c 387 § 2; 1991 c 136 § 3; 1990 c 146 § 3; 1984 c 155 § 19.]

**26.33.295 Open adoption agreements—Agreed orders—Enforcement.** (1) Nothing in this chapter shall be construed to prohibit the parties to a proceeding under this chapter from entering into agreements regarding communication with or contact between child adoptees, adoptive parents, siblings of child adoptees, and a birth parent or parents.

(2) Agreements regarding communication with or contact between child adoptees, adoptive parents, siblings of child adoptees, and a birth parent or parents shall not be legally enforceable unless the terms of the agreement are set forth in a written court order entered in accordance with the provisions of this section. The court shall not enter a proposed order unless the terms of such order have been approved in writing by the prospective adoptive parents, any

birth parent whose parental rights have not previously been terminated, and, if the child or siblings of the child are in the custody of the department or a licensed child-placing agency, a representative of the department or child-placing agency. If the child is represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child-custody proceeding, the terms of the proposed order also must be approved in writing by the child's representative. An agreement under this section need not disclose the identity of the parties to be legally enforceable. The court shall not enter a proposed order unless the court finds that the communication or contact with the child adoptee, as agreed upon and as set forth in the proposed order, would be in the child adoptee's best interests.

(3) Failure to comply with the terms of an agreed order regarding communication or contact that has been entered by the court pursuant to this section shall not be grounds for setting aside an adoption decree or revocation of a written consent to an adoption after that consent has been approved by the court as provided in this chapter.

(4) An agreed order entered pursuant to this section may be enforced by a civil action and the prevailing party in that action may be awarded, as part of the costs of the action, a reasonable amount to be fixed by the court as attorneys' fees. The court shall not modify an agreed order under this section unless it finds that the modification is necessary to serve the best interests of the child adoptee, and that: (a) The modification is agreed to by the adoptive parent and the birth parent or parents; or (b) exceptional circumstances have arisen since the agreed order was entered that justify modification of the order.

(5) This section does not require the department or other supervising agency to agree to any specific provisions in an open adoption agreement and does not create a new obligation for the department to provide supervision or transportation for visits between siblings separated by adoption from foster care. [2009 c 234 § 3; 1990 c 285 § 4.]

**Findings—Purpose—Severability—1990 c 285:** See notes following RCW 74.04.005.

**26.33.420 Postadoption contact between siblings—Intent—Findings.** The legislature finds that the importance of children's relationships with their siblings is well recognized in law and science. The bonds between siblings are often irreplaceable, leading some experts to believe that sibling relationships can be longer lasting and more influential than any other over a person's lifetime. For children who have been removed from home due to abuse or neglect, these bonds are often much stronger because siblings have learned early the importance of depending on one another and cooperating in order to cope with their common problems. The legislature further finds that when children are in the foster care system they typically have some degree of contact or visitation with their siblings even when they are not living together. The legislature finds, however, that when one or more of the siblings is adopted from foster care, these relationships may be severed completely if an open adoption agreement fails to attend to the needs of the siblings for continuing postadoption contact. The legislature intends to promote a greater focus, in permanency planning and adoption proceedings, on the interests of siblings separated by adop-



tive placements and to encourage the inclusion in adoption agreements of provisions to support ongoing postadoption contact between siblings. [2009 c 234 § 1.]

#### **26.33.430 Postadoption contact between siblings—**

**Duty of court.** The court, in reviewing and approving an agreement under RCW 26.33.295 for the adoption of a child from foster care, shall encourage the adoptive parents, birth parents, foster parents, kinship caregivers, and the department or other supervising agency to seriously consider the long-term benefits to the child adoptee and siblings of the child adoptee of providing for and facilitating continuing postadoption contact between siblings. To the extent feasible, and when in the best interests of the child adoptee and siblings of the child adoptee, contact between the siblings should be frequent and of a similar nature as that which existed prior to the adoption. If the child adoptee or known siblings of the child adoptee are represented by an attorney or guardian ad litem in a proceeding under this chapter or in any other child custody proceeding, the court shall inquire of each attorney and guardian ad litem regarding the potential benefits of continuing contact between the siblings and the potential detriments of severing contact. [2009 c 234 § 2.]

**26.33.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 70.]

### **Chapter 26.44 RCW**

#### **ABUSE OF CHILDREN**

##### Sections

26.44.020	Definitions.
26.44.030	Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Investigations—Interviews of children—Records—Risk assessment process.
26.44.200	Methamphetamine manufacture—Presence of child.
26.44.210	Alleged child abuse or neglect at center for childhood deafness and hearing loss—Investigation by department—Investigation report.
26.44.230	Repealed.

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

(1) "Abuse or neglect" means sexual abuse, sexual exploitation, or injury of a child by any person under circumstances which cause harm to the child's health, welfare, or safety, excluding conduct permitted under RCW 9A.16.100; or the negligent treatment or maltreatment of a child by a person responsible for or providing care to the child. An abused child is a child who has been subjected to child abuse or neglect as defined in this section.

(2) "Child" or "children" means any person under the age of eighteen years of age.

(3) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. Child protective services includes referral to services to ameliorate conditions that endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(4) "Child protective services section" means the child protective services section of the department.

(5) "Clergy" means any regularly licensed or ordained minister, priest, or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(6) "Court" means the superior court of the state of Washington, juvenile department.

(7) "Department" means the state department of social and health services.

(8) "Founded" means the determination following an investigation by the department that, based on available information, it is more likely than not that child abuse or neglect did occur.

(9) "Inconclusive" means the determination following an investigation by the department, prior to October 1, 2008, that based on available information a decision cannot be made that more likely than not, child abuse or neglect did or did not occur.

(10) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment, or care.

(11) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(12) "Malice" or "maliciously" means an intent, wish, or design to intimidate, annoy, or injure another person. Such malice may be inferred from an act done in willful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a willful disregard of social duty.

(13) "Negligent treatment or maltreatment" means an act or a failure to act, or the cumulative effects of a pattern of conduct, behavior, or inaction, that evidences a serious disre-

gard of consequences of such magnitude as to constitute a clear and present danger to a child's health, welfare, or safety, including but not limited to conduct prohibited under RCW 9A.42.100. When considering whether a clear and present danger exists, evidence of a parent's substance abuse as a contributing factor to negligent treatment or maltreatment shall be given great weight. The fact that siblings share a bedroom is not, in and of itself, negligent treatment or maltreatment. Poverty, homelessness, or exposure to domestic violence as defined in RCW 26.50.010 that is perpetrated against someone other than the child does not constitute negligent treatment or maltreatment in and of itself.

(14) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(15) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term "practitioner" includes a duly accredited Christian Science practitioner. A person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner will not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(16) "Professional school personnel" include, but are not limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(17) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(18) "Screened-out report" means a report of alleged child abuse or neglect that the department has determined does not rise to the level of a credible report of abuse or neglect and is not referred for investigation.

(19) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

(20) "Sexually aggressive youth" means a child who is defined in RCW 74.13.075(1)(b) as being a sexually aggressive youth.

(21) "Social service counselor" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(22) "Supervising agency" means an agency licensed by the state under RCW 74.15.090 or an Indian tribe under RCW 74.15.190 that has entered into a performance-based contract with the department to provide child welfare services.

(23) "Unfounded" means the determination following an investigation by the department that available information indicates that, more likely than not, child abuse or neglect did not occur, or that there is insufficient evidence for the depart-

ment to determine whether the alleged child abuse did or did not occur. [2009 c 520 § 17; 2007 c 220 § 1; 2006 c 339 § 108; (2006 c 339 § 107 expired January 1, 2007); 2005 c 512 § 5; 2000 c 162 § 19; 1999 c 176 § 29; 1998 c 314 § 7. Prior: 1997 c 386 § 45; 1997 c 386 § 24; 1997 c 282 § 4; 1997 c 132 § 2; 1996 c 178 § 10; prior: 1993 c 412 § 12; 1993 c 402 § 1; 1988 c 142 § 1; prior: 1987 c 524 § 9; 1987 c 206 § 2; 1984 c 97 § 2; 1982 c 129 § 6; 1981 c 164 § 1; 1977 ex.s. c 80 § 25; 1975 1st ex.s. c 217 § 2; 1969 ex.s. c 35 § 2; 1965 c 13 § 2.]

**Effective date—2007 c 220 §§ 1-3:** "Sections 1 through 3 of this act take effect October 1, 2008." [2007 c 220 § 10.]

**Implementation—2007 c 220 §§ 1-3:** "The secretary of the department of social and health services may take the necessary steps to ensure that sections 1 through 3 of this act are implemented on their effective date." [2007 c 220 § 11.]

**Effective date—2006 c 339 § 108:** "Section 108 of this act takes effect January 1, 2007." [2006 c 339 § 404.]

**Expiration date—2006 c 339 § 107:** "Section 107 of this act expires January 1, 2007." [2006 c 339 § 403.]

**Intent—Part headings not law—2006 c 339:** See notes following RCW 70.96A.325.

**Finding—Intent—Effective date—Short title—2005 c 512:** See notes following RCW 26.44.100.

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Application—Effective date—1997 c 386:** See notes following RCW 13.50.010.

**Findings—1997 c 132:** "The legislature finds that housing is frequently influenced by the economic situation faced by the family. This may include siblings sharing a bedroom. The legislature also finds that the family living situation due to economic circumstances in and of itself is not sufficient to justify a finding of child abuse, negligent treatment, or maltreatment." [1997 c 132 § 1.]

**Effective date—1996 c 178:** See note following RCW 18.35.110.

**Severability—1984 c 97:** See RCW 74.34.900.

**Severability—1982 c 129:** See note following RCW 9A.04.080.

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**26.44.030 Reports—Duty and authority to make—Duty of receiving agency—Duty to notify—Case planning and consultation—Penalty for unauthorized exchange of information—Filing dependency petitions—Investigations—Interviews of children—Records—Risk assessment process.** (1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, employee of the department of early learning, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, placement and liaison specialist, responsible living skills program staff, HOPE center staff, or state family and children's ombudsman or any volunteer in the ombudsman's office has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) When any person, in his or her official supervisory capacity with a nonprofit or for-profit organization, has reasonable cause to believe that a child has suffered abuse or neglect caused by a person over whom he or she regularly exercises supervisory authority, he or she shall report such

incident, or cause a report to be made, to the proper law enforcement agency, provided that the person alleged to have caused the abuse or neglect is employed by, contracted by, or volunteers with the organization and coaches, trains, educates, or counsels a child or children or regularly has unsupervised access to a child or children as part of the employment, contract, or voluntary service. No one shall be required to report under this section when he or she obtains the information solely as a result of a privileged communication as provided in RCW 5.60.060.

Nothing in this subsection (1)(b) shall limit a person's duty to report under (a) of this subsection.

For the purposes of this subsection, the following definitions apply:

(i) "Official supervisory capacity" means a position, status, or role created, recognized, or designated by any non-profit or for-profit organization, either for financial gain or without financial gain, whose scope includes, but is not limited to, overseeing, directing, or managing another person who is employed by, contracted by, or volunteers with the nonprofit or for-profit organization.

(ii) "Regularly exercises supervisory authority" means to act in his or her official supervisory capacity on an ongoing or continuing basis with regards to a particular person.

(c) The reporting requirement also applies to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(d) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(e) The reporting requirement also applies to guardians ad litem, including court-appointed special advocates, appointed under Titles 11, 13, and 26 RCW, who in the course of their representation of children in these actions have reasonable cause to believe a child has been abused or neglected.

(f) The report must be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child has suffered abuse or neglect. The report must include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable

cause to believe other children are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section does apply.

(3) Any other person who has reasonable cause to believe that a child has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report must also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child. Information considered privileged by statute and not directly related to reports required by this section must not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual

assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving a report of alleged abuse or neglect, the department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which:

(a) The department believes there is a serious threat of substantial harm to the child;

(b) The report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or

(c) The department has a prior founded report of abuse or neglect with regard to a member of the household that is within three years of receipt of the referral.

(11)(a) For reports of alleged abuse or neglect that are accepted for investigation by the department, the investigation shall be conducted within time frames established by the department in rule. In no case shall the investigation extend longer than ninety days from the date the report is received, unless the investigation is being conducted under a written protocol pursuant to RCW 26.44.180 and a law enforcement agency or prosecuting attorney has determined that a longer investigation period is necessary. At the completion of the investigation, the department shall make a finding that the report of child abuse or neglect is founded or unfounded.

(b) If a court in a civil or criminal proceeding, considering the same facts or circumstances as are contained in the report being investigated by the department, makes a judicial finding by a preponderance of the evidence or higher that the subject of the pending investigation has abused or neglected the child, the department shall adopt the finding in its investigation.

(12) In conducting an investigation of alleged abuse or neglect, the department or law enforcement agency:

(a) May interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview must occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall

determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation; and

(b) Shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(13) If a report of alleged abuse or neglect is founded and constitutes the third founded report received by the department within the last twelve months involving the same child or family, the department shall promptly notify the office of the family and children's ombudsman of the contents of the report. The department shall also notify the ombudsman of the disposition of the report.

(14) In investigating and responding to allegations of child abuse and neglect, the department may conduct background checks as authorized by state and federal law.

(15) The department shall maintain investigation records and conduct timely and periodic reviews of all founded cases of abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(16) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

(17) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(18) Upon receiving a report of alleged abuse or neglect involving a child under the court's jurisdiction under chapter 13.34 RCW, the department shall promptly notify the child's guardian ad litem of the report's contents. The department shall also notify the guardian ad litem of the disposition of the report. For purposes of this subsection, "guardian ad litem" has the meaning provided in RCW 13.34.030. [2009 c 480 § 1; 2008 c 211 § 5; (2008 c 211 § 4 expired October 1, 2008). Prior: 2007 c 387 § 3; 2007 c 220 § 2; 2005 c 417 § 1; 2003 c 207 § 4; prior: 1999 c 267 § 20; 1999 c 176 § 30; 1998 c 328 § 5; 1997 c 386 § 25; 1996 c 278 § 2; 1995 c 311 § 17; prior: 1993 c 412 § 13; 1993 c 237 § 1; 1991 c 111 § 1; 1989 c 22 § 1; prior: 1988 c 142 § 2; 1988 c 39 § 1; prior: 1987 c 524 § 10; 1987 c 512 § 23; 1987 c 206 § 3; 1986 c 145 § 1; 1985 c 259 § 2; 1984 c 97 § 3; 1982 c 129 § 7; 1981 c 164 § 2; 1977 ex.s. c 80 § 26; 1975 1st ex.s. c 217 § 3; 1971 ex.s. c 167 § 1; 1969 ex.s. c 35 § 3; 1965 c 13 § 3.]

**Effective date—2008 c 211 § 5:** "Section 5 of this act takes effect October 1, 2008." [2008 c 211 § 8.]

**Expiration date—2008 c 211 § 4:** "Section 4 of this act expires October 1, 2008." [2008 c 211 § 7.]

**Effective date—Implementation—2007 c 220 §§ 1-3:** See notes following RCW 26.44.020.

**Severability—2005 c 417:** "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." [2005 c 417 § 2.]

**Findings—Intent—Severability—1999 c 267:** See notes following RCW 43.20A.790.

**Short title—Purpose—Entitlement not granted—Federal waivers—1999 c 267 §§ 10-26:** See RCW 74.15.900 and 74.15.901.

**Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176:** See notes following RCW 74.34.005.

**Application—Effective date—1997 c 386:** See notes following RCW 13.50.010.

**Finding—Intent—1996 c 278:** "The legislature finds that including certain department of corrections personnel among the professionals who are mandated to report suspected abuse or neglect of children, dependent adults, or people with developmental disabilities is an important step toward improving the protection of these vulnerable populations. The legislature intends, however, to limit the circumstances under which department of corrections personnel are mandated reporters of suspected abuse or neglect to only those circumstances when the information is obtained during the course of their employment. This act is not to be construed to alter the circumstances under which other professionals are mandated to report suspected abuse or neglect, nor is it the legislature's intent to alter current practices and procedures utilized by other professional organizations who are mandated reporters under RCW 26.44.030(1)(a)." [1996 c 278 § 1.]

**Severability—1987 c 512:** See RCW 18.19.901.

**Legislative findings—1985 c 259:** "The Washington state legislature finds and declares:

The children of the state of Washington are the state's greatest resource and the greatest source of wealth to the state of Washington. Children of all ages must be protected from child abuse. Governmental authorities must give the prevention, treatment, and punishment of child abuse the highest priority, and all instances of child abuse must be reported to the proper authorities who should diligently and expeditiously take appropriate action, and child abusers must be held accountable to the people of the state for their actions.

The legislature recognizes the current heavy caseload of governmental authorities responsible for the prevention, treatment, and punishment of child abuse. The information obtained by child abuse reporting requirements, in addition to its use as a law enforcement tool, will be used to determine the need for additional funding to ensure that resources for appropriate governmental response to child abuse are available." [1985 c 259 § 1.]

**Severability—1984 c 97:** See RCW 74.34.900.

**Severability—1982 c 129:** See note following RCW 9A.04.080.

**Purpose—Intent—Severability—1977 ex.s. c 80:** See notes following RCW 4.16.190.

**26.44.200 Methamphetamine manufacture—Presence of child.** A law enforcement agency in the course of investigating: (1) An allegation under RCW 69.50.401 (1) and (2) (a) through (e) relating to manufacture of methamphetamine; or (2) an allegation under RCW 69.50.440 relating to possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine, that discovers a child present at the site, shall contact the department immediately. [2009 c 520 § 18; 2002 c 134 § 4; 2001 c 52 § 3.]

**Effective date—2002 c 134:** See note following RCW 69.50.440.

**Finding—Construction—2001 c 52:** See notes following RCW 13.34.350.

**26.44.210 Alleged child abuse or neglect at center for childhood deafness and hearing loss—Investigation by department—Investigation report.** (1) The department must investigate referrals of alleged child abuse or neglect occurring at the \*state school for the deaf, including alleged incidents involving students abusing other students; determine whether there is a finding of abuse or neglect; and deter-

mine whether a referral to law enforcement is appropriate under this chapter.

(2) The department must send a copy of the investigation report, including the finding, regarding any incidents of alleged child abuse or neglect at the \*state school for the deaf to the \*\*center's director, or the director's designee. The department may include recommendations to the director and the board of trustees or its successor board for increasing the safety of the school's students. [2009 c 381 § 23; 2002 c 208 § 1.]

**Reviser's note:** \*(1) The state school for the deaf was abolished and its powers, duties, and property transferred to the Washington state center for childhood deafness and hearing loss by 2009 c 381 § 11.

\*\*\*(2) "Center" appears to refer to the Washington state center for childhood deafness and hearing loss.

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**26.44.230 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 26.50 RCW

### DOMESTIC VIOLENCE PREVENTION

#### Sections

26.50.060	Relief—Duration—Realignment of designation of parties—Award of costs, service fees, and attorneys' fees.
26.50.110	Violation of order—Penalties.

**26.50.060 Relief—Duration—Realignment of designation of parties—Award of costs, service fees, and attorneys' fees.** (1) Upon notice and after hearing, the court may provide relief as follows:

(a) Restrain the respondent from committing acts of domestic violence;

(b) Exclude the respondent from the dwelling that the parties share, from the residence, workplace, or school of the petitioner, or from the day care or school of a child;

(c) Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(d) On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter;

(e) Order the respondent to participate in a domestic violence perpetrator treatment program approved under RCW 26.50.150;

(f) Order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected, including orders or directives to a peace officer, as allowed under this chapter;

(g) Require the respondent to pay the administrative court costs and service fees, as established by the county or municipality incurring the expense and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorneys' fees;

(h) Restrain the respondent from having any contact with the victim of domestic violence or the victim's children or members of the victim's household;

(i) Require the respondent to submit to electronic monitoring. The order shall specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the respondent to pay for electronic monitoring;

(j) Consider the provisions of RCW 9.41.800;

(k) Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity to make it clear which property is included. Personal effects may include pets. The court may order that a petitioner be granted the exclusive custody or control of any pet owned, possessed, leased, kept, or held by the petitioner, respondent, or minor child residing with either the petitioner or respondent and may prohibit the respondent from interfering with the petitioner's efforts to remove the pet. The court may also prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance of specified locations where the pet is regularly found; and

(l) Order use of a vehicle.

(2) If a protection order restrains the respondent from contacting the respondent's minor children the restraint shall be for a fixed period not to exceed one year. This limitation is not applicable to orders for protection issued under chapter 26.09, 26.10, or 26.26 RCW. With regard to other relief, if the petitioner has petitioned for relief on his or her own behalf or on behalf of the petitioner's family or household members or minor children, and the court finds that the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires, the court may either grant relief for a fixed period or enter a permanent order of protection.

If the petitioner has petitioned for relief on behalf of the respondent's minor children, the court shall advise the petitioner that if the petitioner wants to continue protection for a period beyond one year the petitioner may either petition for renewal pursuant to the provisions of this chapter or may seek relief pursuant to the provisions of chapter 26.09 or 26.26 RCW.

(3) If the court grants an order for a fixed time period, the petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal the court shall order a hearing which shall be not later than fourteen days from the date of the order. Except as provided in RCW 26.50.085, personal service shall be made on the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or by mail as provided in RCW 26.50.123. If the court permits service by publication or mail, the court shall set the new hearing date not later than twenty-four days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in RCW 26.50.070. The court shall grant the

petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in this section. The court may award court costs, service fees, and reasonable attorneys' fees as provided in subsection (1)(g) of this section.

(4) In providing relief under this chapter, the court may realign the designation of the parties as "petitioner" and "respondent" where the court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence and may issue an ex parte temporary order for protection in accordance with RCW 26.50.070 on behalf of the victim until the victim is able to prepare a petition for an order for protection in accordance with RCW 26.50.030.

(5) Except as provided in subsection (4) of this section, no order for protection shall grant relief to any party except upon notice to the respondent and hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with RCW 26.50.050.

(6) The court order shall specify the date the order expires if any. The court order shall also state whether the court issued the protection order following personal service, service by publication, or service by mail and whether the court has approved service by publication or mail of an order issued under this section.

(7) If the court declines to issue an order for protection or declines to renew an order for protection, the court shall state in writing on the order the particular reasons for the court's denial. [2009 c 439 § 2; 2000 c 119 § 15; 1999 c 147 § 2; 1996 c 248 § 13; 1995 c 246 § 7; 1994 sp.s. c 7 § 457. Prior: 1992 c 143 § 2; 1992 c 111 § 4; 1992 c 86 § 4; 1989 c 411 § 1; 1987 c 460 § 55; 1985 c 303 § 5; 1984 c 263 § 7.]

**Finding—Intent—2009 c 439:** "The legislature finds that considerable research shows a strong correlation between animal abuse, child abuse, and domestic violence. The legislature intends that perpetrators of domestic violence not be allowed to further terrorize and manipulate their victims, or the children of their victims, by using the threat of violence toward pets." [2009 c 439 § 1.]

**Application—2000 c 119:** See note following RCW 26.50.021.

**Severability—1995 c 246:** See note following RCW 26.50.010.

**Finding—Intent—Severability—1994 sp.s. c 7:** See notes following RCW 43.70.540.

**Effective date—1994 sp.s. c 7 §§ 401-410, 413-416, 418-437, and 439-460:** See note following RCW 9.41.010.

**Findings—1992 c 111:** See note following RCW 26.50.030.

**Short title—Section captions—Effective date—Severability—1987 c 460:** See RCW 26.09.910 through 26.09.913.

**26.50.110 Violation of order—Penalties.** (1)(a) Whenever an order is granted under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or restraint provisions prohibiting contact with a protected party;

(ii) A provision excluding the person from a residence, workplace, school, or day care;

(iii) A provision prohibiting a person from knowingly coming within, or knowingly remaining within, a specified distance of a location;

(iv) A provision prohibiting interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, respondent, or a minor child residing with either the petitioner or the respondent; or

(v) A provision of a foreign protection order specifically indicating that a violation will be a crime.

(b) Upon conviction, and in addition to any other penalties provided by law, the court may require that the respondent submit to electronic monitoring. The court shall specify who shall provide the electronic monitoring services, and the terms under which the monitoring shall be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring.

(2) A peace officer shall arrest without a warrant and take into custody a person whom the peace officer has probable cause to believe has violated an order issued under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, if the person restrained knows of the order. Presence of the order in the law enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of an order issued under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of an order issued under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a court order issued under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or of a valid foreign protection order as defined in RCW 26.52.020, is a class C felony if the offender has at least two previous convictions for violating the provisions of an order issued under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

(6) Upon the filing of an affidavit by the petitioner or any peace officer alleging that the respondent has violated an order granted under this chapter, chapter 7.90, 9.94A, 10.99, 26.09, 26.10, 26.26, or 74.34 RCW, or a valid foreign protection order as defined in RCW 26.52.020, the court may issue

an order to the respondent, requiring the respondent to appear and show cause within fourteen days why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation. [2009 c 439 § 3; 2009 c 288 § 3; 2007 c 173 § 2; 2006 c 138 § 25; 2000 c 119 § 24; 1996 c 248 § 16; 1995 c 246 § 14; 1992 c 86 § 5; 1991 c 301 § 6; 1984 c 263 § 12.]

**Reviser's note:** This section was amended by 2009 c 288 § 3 and by 2009 c 439 § 3, 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).

**Finding—Intent—2009 c 439:** See note following RCW 26.50.060.

**Findings—2009 c 288:** See note following RCW 9.94A.637.

**Finding—Intent—2007 c 173:** "The legislature finds this act necessary to restore and make clear its intent that a willful violation of a no-contact provision of a court order is a criminal offense and shall be enforced accordingly to preserve the integrity and intent of the domestic violence act. This act is not intended to broaden the scope of law enforcement power or effectuate any substantive change to any criminal provision in the Revised Code of Washington." [2007 c 173 § 1.]

**Short title—2006 c 138:** See RCW 7.90.900.

**Application—2000 c 119:** See note following RCW 26.50.021.

**Severability—1995 c 246:** See note following RCW 26.50.010.

**Finding—1991 c 301:** See note following RCW 10.99.020.

*Violation of order protecting vulnerable adult:* RCW 74.34.145.

## Chapter 26.60 RCW

### STATE REGISTERED DOMESTIC PARTNERSHIPS

#### Sections

26.60.015	Intent. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )
26.60.040	Registration—Records—Fees. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )
26.60.050	Repealed. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )
26.60.055	Repealed. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )
26.60.090	Reciprocity. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )

**26.60.015 Intent.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) It is the intent of the legislature that for all purposes under state law, state registered domestic partners shall be treated the same as married spouses. Any privilege, immunity, right, benefit, or responsibility granted or imposed by statute, administrative or court rule, policy, common law or any other law to an individual because the individual is or was a spouse, or because the individual is or was an in-law in a specified way to another individual, is granted on equivalent terms, substantive and procedural, to an individual because the individual is or was in a state registered domestic partnership or because the individual is or was, based on a state registered domestic partnership, related in a specified way to another individual. The provisions of chapter 521, Laws of 2009 shall be liberally construed to achieve equal treatment, to the extent not in conflict with federal law, of state registered domestic partners and married spouses. [2009 c 521 § 1.]

**26.60.040 Registration—Records—Fees.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (1) Two persons desiring to become state registered domestic partners who meet the requirements of RCW 26.60.030 may register their domestic partnership by filing a declaration of state registered domestic partnership with the secretary and paying the filing fee established pursuant to subsection (4) of this section. The declaration must be signed by both parties and notarized.

(2) Upon receipt of a signed, notarized declaration and the filing fee, the secretary shall register the declaration and provide a certificate of state registered domestic partnership to each party named on the declaration.

(3) The secretary shall permanently maintain a record of each declaration of state registered domestic partnership filed with the secretary. The secretary has the authority to update the records to reflect changes in the status of a state registered domestic partnership, such as a change of address, name, dissolution, or death. The secretary shall provide the state registrar of vital statistics with records of declarations of state registered domestic partnerships.

(4) The secretary shall set by rule and collect a reasonable fee for filing the declaration, calculated to cover the secretary's costs, but not to exceed fifty dollars. Fees collected under this section are expressly designated for deposit in the secretary of state's revolving fund established under RCW 43.07.130. [2009 c 521 § 71; 2007 c 156 § 5.]

**26.60.050 Repealed.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**26.60.055 Repealed.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**26.60.090 Reciprocity.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) A legal union of two persons of the same sex, other than a marriage, that was validly formed in another jurisdiction, and that is substantially equivalent to a domestic partnership under this chapter, shall be recognized as a valid domestic partnership in this state and shall be treated the same as a domestic partnership registered in this state regardless of whether it bears the name domestic partnership. [2009 c 521 § 72; 2008 c 6 § 1101.]

## Title 27

### LIBRARIES, MUSEUMS, AND HISTORICAL ACTIVITIES

#### Chapters

#### 27.12 Public libraries.

[2009 RCW Supp—page 352]

### Chapter 27.12 RCW PUBLIC LIBRARIES

#### Sections

27.12.010	Definitions.
27.12.040	Rural library districts—Establishment—Proposed maximum levy rate.
27.12.050	Rural library districts—Board of library trustees—Tax levies.
27.12.360	Annexation of city or town into rural county library district, island library district, or intercounty rural library district—Initiation procedure.

**27.12.010 Definitions.** As used in this chapter, unless the context requires a different meaning:

(1) "Governmental unit" means any county, city, town, rural county library district, intercounty rural library district, rural partial-county library district, or island library district;

(2) "Intercounty rural library district" means a municipal corporation organized to provide library service for all areas outside of incorporated cities and towns within two or more counties: PROVIDED, That any city or town meeting the population requirements of RCW 27.12.360 may be included therein as provided in RCW 27.12.360 through 27.12.390;

(3) "Island library district" means a municipal corporation organized to provide library service for all areas outside of incorporated cities and towns on a single island only, and not all of the area of the county, in counties composed entirely of islands and having a population of less than twenty-five thousand at the time the island library district was created: PROVIDED, That any city or town meeting the population requirements of RCW 27.12.360 may be included therein as provided in RCW 27.12.360 through 27.12.390;

(4) "Legislative body" means the body authorized to determine the amount of taxes to be levied in a governmental unit; in rural county library districts, in intercounty rural library districts, and in island library districts, the legislative body shall be the board of library trustees of the district;

(5) "Library" means a free public library supported in whole or in part with money derived from taxation;

(6) "Regional library" means a free public library maintained by two or more counties or other governmental units as provided in RCW 27.12.080;

(7) "Rural county library district" means a library serving all the area of a county not included within the area of incorporated cities and towns: PROVIDED, That any city or town meeting the population requirements of RCW 27.12.360 may be included therein as provided in RCW 27.12.360 through 27.12.390; and

(8) "Rural partial-county library district" means a municipal corporation organized to provide library service for a portion of the unincorporated area of a county. Any city or town located in the same county as a rural partial-county library district may annex to the district if the city or town has a population of one hundred thousand or less at the time of annexation. [2009 c 40 § 2; 1994 c 198 § 1; 1993 c 284 § 2; 1982 c 123 § 1; 1981 c 26 § 1; 1977 ex.s. c 353 § 5; 1965 c 122 § 1; 1947 c 75 § 10; 1941 c 65 § 1; 1935 c 119 § 2; Rem. Supp. 1947 § 8226-2.]

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



**27.12.040 Rural library districts—Establishment—Proposed maximum levy rate.** The procedure for the establishment of a rural county library district shall be as follows:

(1) Petitions signed by at least ten percent of the registered voters of the county who voted in the last general election, outside of the area of incorporated cities and towns, asking that the question, "Shall a rural county library district be established?" be submitted to a vote of the people, shall be filed with the county legislative authority. For all districts created after July 26, 2009, the petition may include a proposed initial maximum levy rate. This initial maximum levy rate must not exceed the rate limit set forth in RCW 27.12.050(1).

(2) The county legislative authority, after having determined that the petitions were signed by the requisite number of registered voters, shall place the proposition for the establishment of a rural county library district on the ballot for the vote of the people of the county, outside incorporated cities and towns, at the next succeeding general or special election. If the petition to create the rural county library district included a proposed initial maximum levy rate, the ballot proposition for the establishment of the rural county library district must include the initial maximum levy rate specified in the petition. This ballot must be submitted in such form as to enable the voters favoring the proposition to vote "Yes" and those opposing to vote "No."

(3) If a majority of those voting on the proposition vote in favor of the establishment of the rural county library district, the county legislative authority shall forthwith declare it established. [2009 c 306 § 1; 1990 c 259 § 1; 1955 c 59 § 4. Prior: 1947 c 75 § 11, part; 1943 c 251 § 1, part; 1941 c 65 § 4, part; Rem. Supp. 1947 § 8226-4a, part.]

*Dissolution—Disposition of property: RCW 27.12.320.*

*Dissolution of island library district: RCW 27.12.450.*

**27.12.050 Rural library districts—Board of library trustees—Tax levies.** (1) After the board of county commissioners has declared a rural county library district established, it shall appoint a board of library trustees and provide funds for the establishment and maintenance of library service for the district by making a tax levy on the property in the district of not more than fifty cents per thousand dollars of assessed value per year sufficient for the library service as shown to be required by the budget submitted to the board of county commissioners by the board of library trustees, and by making a tax levy in such further amount as shall be authorized pursuant to RCW 27.12.222 or 84.52.052 or 84.52.056. Such levies shall be a part of the general tax roll and shall be collected as a part of the general taxes against the property in the district.

(2) The initial levy rate may not exceed the rate limit in subsection (1) of this section or, if applicable, the initial maximum levy rate contained in the ballot proposition approved by the voters to create the district. In subsequent years, the levy rate may be increased as authorized under chapter 84.55 RCW. [2009 c 306 § 2; 1973 1st ex.s. c 195 § 5; 1955 c 59 § 5. Prior: 1947 c 75 § 11, part; 1943 c 251 § 1, part; 1941 c 65 § 4, part; Rem. Supp. 1947 § 8226-4a, part.]

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

*Budget for capital outlays—Accumulation of funds: RCW 27.12.220.*

*Capital outlays—Bonds—Excess levies: RCW 27.12.222.*

**27.12.360 Annexation of city or town into rural county library district, island library district, or inter-county rural library district—Initiation procedure.** Any city or town with a population of three hundred thousand or less at the time of annexation may become a part of any rural county library district, island library district, or intercounty rural library district lying contiguous thereto by annexation in the following manner: The inclusion of such a city or town may be initiated by the adoption of an ordinance by the legislative authority thereof stating its intent to join the library district and finding that the public interest will be served thereby. Before adoption, the ordinance shall be submitted to the library board of the city or town for its review and recommendations. If no library board exists in the city or town, the state librarian shall be notified of the proposed ordinance. If the board of trustees of the library district concurs in the annexation, notification thereof shall be transmitted to the legislative authority or authorities of the counties in which the city or town is situated. [2009 c 40 § 1; 1982 c 123 § 13; 1981 c 26 § 3; 1977 ex.s. c 353 § 1.]

## Title 28A

### COMMON SCHOOL PROVISIONS

#### Chapters

- 28A.150 General provisions.
- 28A.155 Special education.
- 28A.160 Student transportation.
- 28A.165 Learning assistance program.
- 28A.180 Transitional bilingual instruction program.
- 28A.185 Highly capable students.
- 28A.195 Private schools.
- 28A.210 Health—Screening and requirements.
- 28A.225 Compulsory school attendance and admission.
- 28A.230 Compulsory course work and activities.
- 28A.245 Skill centers.
- 28A.250 Online learning.
- 28A.290 Quality education council.
- 28A.300 Superintendent of public instruction.
- 28A.305 State board of education.
- 28A.310 Educational service districts.
- 28A.320 Provisions applicable to all districts.
- 28A.335 School districts' property.
- 28A.343 School director districts.
- 28A.350 School district warrants—Auditor's duties.
- 28A.400 Employees.
- 28A.405 Certificated employees.
- 28A.410 Certification.
- 28A.415 Institutes, workshops, and training.
- 28A.500 Local effort assistance.
- 28A.505 School districts' budgets.
- 28A.525 Bond issues.
- 28A.600 Students.
- 28A.625 Awards.
- 28A.630 Temporary provisions—Special projects.
- 28A.650 Education technology.
- 28A.655 Academic achievement and accountability.
- 28A.660 Alternative route teacher certification.
- 28A.705 Interstate compact on educational opportunity for military children.

**Chapter 28A.150 RCW**  
**GENERAL PROVISIONS**

## Sections

28A.150.030	Repealed. ( <i>Effective September 1, 2011.</i> )
28A.150.040	Repealed. ( <i>Effective September 1, 2011.</i> )
28A.150.060	Repealed. ( <i>Effective September 1, 2011.</i> )
28A.150.100	Repealed. ( <i>Effective September 1, 2011.</i> )
28A.150.198	Finding—Intent—2009 c 548.
28A.150.200	Program of basic education. ( <i>Effective September 1, 2011.</i> )
28A.150.203	Definitions. ( <i>Effective September 1, 2011.</i> )
28A.150.210	Basic education—Goals of school districts. ( <i>Effective September 1, 2011.</i> )
28A.150.220	Basic education—Minimum instructional requirements—Program accessibility—Rules. ( <i>Effective September 1, 2011.</i> )
28A.150.250	Annual basic education allocation—Full funding—Withholding of funds for noncompliance. ( <i>Effective September 1, 2011.</i> )
28A.150.260	Allocation of state funding to support instructional program of basic education—Distribution formula—Prototypical schools—Enhancements and adjustments—Review and approval—Enrollment calculation. ( <i>Effective September 1, 2011.</i> )
28A.150.262	Defining full-time equivalent student—Students receiving instruction through alternative learning experience online programs—Requirements—Rules.
28A.150.315	Voluntary all-day kindergarten programs—Funding. ( <i>Effective September 1, 2011.</i> )
28A.150.370	Repealed. ( <i>Effective September 1, 2011.</i> )
28A.150.380	Appropriations by legislature. ( <i>Effective until September 1, 2011.</i> )
28A.150.380	Appropriations by legislature. ( <i>Effective September 1, 2011.</i> )
28A.150.390	Appropriations for special education programs. ( <i>Effective September 1, 2011.</i> )
28A.150.392	Special education funding—Safety net awards—Rules—Annual survey and report—Safety net oversight committee. ( <i>Effective September 1, 2011.</i> )

**28A.150.030 Repealed. (*Effective September 1, 2011.*)**

See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.150.040 Repealed. (*Effective September 1, 2011.*)**

See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.150.060 Repealed. (*Effective September 1, 2011.*)**

See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.150.100 Repealed. (*Effective September 1, 2011.*)**

See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.150.198 Finding—Intent—2009 c 548.** (1) Public education in Washington state has evolved since the enactment of the Washington basic education act of 1977. Decisions by the courts have played a part in this evolution, as have studies and research about education practices and education funding. The legislature finds ample evidence of a need for continuing to refine the program of basic education that is funded by the state and delivered by school districts.

(2) The legislature reaffirms the work of Washington Learns and other educational task forces that have been convened over the past four years and their recommendations to make bold reforms to the entire educational system in order to educate all students to a higher level; to focus on the individualized instructional needs of students; to strive towards closing the achievement gap and reducing dropout rates; and

to prepare students for a constantly evolving workforce and increasingly demanding global economy. In enacting this legislation, the legislature intends to continue to review, evaluate, and revise the definition and funding of basic education in order to continue to fulfill the state obligation under Article IX of the state Constitution. The legislature also intends to continue to strengthen and modify the structure of the entire K-12 educational system, including nonbasic education programmatic elements, in order to build the capacity to anticipate and support potential future enhancements to basic education as the educational needs of our citizens continue to evolve.

(3) The legislature recognizes that the first step in revising the definition and funding of basic education is to create a transparent funding system for both allocations and expenditures so that not only policymakers and educators understand how the state supports basic education but also taxpayers. An adequate data system that enables the legislature to make rational, data-driven decisions on which educational programs impact student learning in order to more effectively and efficiently deliver the resources necessary to provide an ample program of basic education is also a necessity. A new prototypical funding system will allow the legislature to better understand how current resources are being used. A more complete and accurate educational data system will allow the legislature to understand whether current basic education programs are supporting student learning. Only with both of these systems in place can the legislature make informed decisions on how to best implement a dynamic and evolving system of basic education.

(4) For practical and educational reasons, major changes of the program of basic education and the funding formulas to support it cannot occur instantaneously. The legislature intends to build upon the previous efforts of the legislature and the basic education task force in order to develop a realistic implementation strategy for a new instructional program after technical experts develop the details of the prototypical schools funding formulas and the data and reporting system that will support a new instructional program. The legislature also intends to establish a formal structure for monitoring the implementation by the legislature of an evolving program of basic education and the financing necessary to support such a program. The legislature intends that the redefined program of basic education and funding for the program be fully implemented by 2018.

(5) It is the further intent of the legislature to also address additional issues that are of importance to the legislature but are not part of basic education. [2009 c 548 § 1.]

**Intent—2009 c 548:** "It is the intent of the legislature that specified policies and allocation formulas adopted under this act will constitute the legislature's definition of basic education under Article IX of the state Constitution once fully implemented. The legislature intends, however, to continue to review and revise the formulas and schedules and may make additional revisions, including revisions for technical purposes and consistency in the event of mathematical or other technical errors." [2009 c 548 § 2.]

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**28A.150.200 Program of basic education. (*Effective September 1, 2011.*)** (1) The program of basic education established under this chapter is deemed by the legislature to comply with the requirements of Article IX, section 1 of the

state Constitution, which states that "It is the paramount duty of the state to make ample provision for the education of all children residing within its borders, without distinction or preference on account of race, color, caste, or sex," and is adopted pursuant to Article IX, section 2 of the state Constitution, which states that "The legislature shall provide for a general and uniform system of public schools."

(2) The legislature defines the program of basic education under this chapter as that which is necessary to provide the opportunity to develop the knowledge and skills necessary to meet the state-established high school graduation requirements that are intended to allow students to have the opportunity to graduate with a meaningful diploma that prepares them for postsecondary education, gainful employment, and citizenship. Basic education by necessity is an evolving program of instruction intended to reflect the changing educational opportunities that are needed to equip students for their role as productive citizens and includes the following:

(a) The instructional program of basic education the minimum components of which are described in RCW 28A.150.220;

(b) The program of education provided by chapter 28A.190 RCW for students in residential schools as defined by RCW 28A.190.020 and for juveniles in detention facilities as identified by RCW 28A.190.010;

(c) The program of education provided by chapter 28A.193 RCW for individuals under the age of eighteen who are incarcerated in adult correctional facilities; and

(d) Transportation and transportation services to and from school for eligible students as provided under RCW 28A.160.150 through 28A.160.180. [2009 c 548 § 101; 1990 c 33 § 104; 1977 ex.s. c 359 § 1. Formerly RCW 28A.58.750.]

**Effective date—2009 c 548 §§ 101-110 and 701-710:** "Sections 101 through 110 and 701 through 710 of this act take effect September 1, 2011." [2009 c 548 § 804.]

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Effective date—1977 ex.s. c 359:** "This 1977 amendatory act shall take effect September 1, 1978." [1977 ex.s. c 359 § 22.]

**Severability—1977 ex.s. c 359:** "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 359 § 21.]

**28A.150.203 Definitions. (Effective September 1, 2011.)** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Basic education goal" means the student learning goals and the student knowledge and skills described under RCW 28A.150.210.

(2) "Certificated administrative staff" means all those persons who are chief executive officers, chief administrative officers, confidential employees, supervisors, principals, or assistant principals within the meaning of RCW 41.59.020(4).

(3) "Certificated employee" as used in this chapter and RCW 28A.195.010, 28A.405.100, 28A.405.210, 28A.405.240, 28A.405.250, 28A.405.300 through

28A.405.380, and chapter 41.59 RCW, means those persons who hold certificates as authorized by rule of the Washington professional educator standards board.

(4) "Certificated instructional staff" means those persons employed by a school district who are nonsupervisory certificated employees within the meaning of RCW 41.59.020(8).

(5) "Class size" means an instructional grouping of students where, on average, the ratio of students to teacher is the number specified.

(6) "Classified employee" means a person who does not hold a professional education certificate or is employed in a position that does not require such a certificate.

(7) "Classroom teacher" means a person who holds a professional education certificate and is employed in a position for which such certificate is required whose primary duty is the daily educational instruction of students. In exceptional cases, people of unusual competence but without certification may teach students so long as a certificated person exercises general supervision, but the hiring of such classified employees shall not occur during a labor dispute, and such classified employees shall not be hired to replace certificated employees during a labor dispute.

(8) "Instructional program of basic education" means the minimum program required to be provided by school districts and includes instructional hour requirements and other components under RCW 28A.150.220.

(9) "Program of basic education" means the overall program under RCW 28A.150.200 and deemed by the legislature to comply with the requirements of Article IX, section 1 of the state Constitution.

(10) "School day" means each day of the school year on which pupils enrolled in the common schools of a school district are engaged in academic and career and technical instruction planned by and under the direction of the school.

(11) "School year" includes the minimum number of school days required under RCW 28A.150.220 and begins on the first day of September and ends with the last day of August, except that any school district may elect to commence the annual school term in the month of August of any calendar year and in such case the operation of a school district for such period in August shall be credited by the superintendent of public instruction to the succeeding school year for the purpose of the allocation and distribution of state funds for the support of such school district.

(12) "Teacher planning period" means a period of a school day as determined by the administration and board of the directors of the district that may be used by teachers for instruction-related activities including but not limited to preparing instructional materials; reviewing student performance; recording student data; consulting with other teachers, instructional assistants, mentors, instructional coaches, administrators, and parents; or participating in professional development. [2009 c 548 § 102.]

**Effective date—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**28A.150.210 Basic education—Goals of school districts. (Effective September 1, 2011.)** A basic education is an evolving program of instruction that is intended to provide students with the opportunity to become responsible and respectful global citizens, to contribute to their economic well-being and that of their families and communities, to explore and understand different perspectives, and to enjoy productive and satisfying lives. Additionally, the state of Washington intends to provide for a public school system that is able to evolve and adapt in order to better focus on strengthening the educational achievement of all students, which includes high expectations for all students and gives all students the opportunity to achieve personal and academic success. To these ends, the goals of each school district, with the involvement of parents and community members, shall be to provide opportunities for every student to develop the knowledge and skills essential to:

(1) Read with comprehension, write effectively, and communicate successfully in a variety of ways and settings and with a variety of audiences;

(2) Know and apply the core concepts and principles of mathematics; social, physical, and life sciences; civics and history, including different cultures and participation in representative government; geography; arts; and health and fitness;

(3) Think analytically, logically, and creatively, and to integrate different experiences and knowledge to form reasoned judgments and solve problems; and

(4) Understand the importance of work and finance and how performance, effort, and decisions directly affect future career and educational opportunities. [2009 c 548 § 103; 2007 c 400 § 1; 1993 c 336 § 101; (1992 c 141 § 501 repealed by 1993 c 336 § 1203); 1977 ex.s. c 359 § 2. Formerly RCW 28A.58.752.]

**Effective date—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Captions not law—2007 c 400:** "Captions used in this act are not any part of the law." [2007 c 400 § 9.]

**Findings—Intent—1993 c 336:** "The legislature finds that student achievement in Washington must be improved to keep pace with societal changes, changes in the workplace, and an increasingly competitive international economy.

To increase student achievement, the legislature finds that the state of Washington needs to develop a public school system that focuses more on the educational performance of students, that includes high expectations for all students, and that provides more flexibility for school boards and educators in how instruction is provided.

The legislature further finds that improving student achievement will require:

(1) Establishing what is expected of students, with standards set at internationally competitive levels;

(2) Parents to be primary partners in the education of their children, and to play a significantly greater role in local school decision making;

(3) Students taking more responsibility for their education;

(4) Time and resources for educators to collaboratively develop and implement strategies for improved student learning;

(5) Making instructional programs more relevant to students' future plans;

(6) All parties responsible for education to focus more on what is best for students; and

(7) An educational environment that fosters mutually respectful interactions in an atmosphere of collaboration and cooperation.

It is the intent of the legislature to provide students the opportunity to

achieve at significantly higher levels, and to provide alternative or additional instructional opportunities to help students who are having difficulty meeting the essential academic learning requirements in RCW 28A.630.885.

It is also the intent of the legislature that students who have met or exceeded the essential academic learning requirements be provided with alternative or additional instructional opportunities to help advance their educational experience.

The provisions of chapter 336, Laws of 1993 shall not be construed to change current state requirements for students who receive home-based instruction under chapter 28A.200 RCW, or for students who attend state-approved private schools under chapter 28A.195 RCW." [1993 c 336 § 1.]

**Effective date—1993 c 336 § 101:** "Section 101 of this act shall take effect September 1, 1994." [1993 c 336 § 102.]

**Findings—1993 c 336:** "(1) The legislature finds that preparing students to make successful transitions from school to work helps promote educational, career, and personal success for all students.

(2) A successful school experience should prepare students to make informed career direction decisions at critical points in their educational progress. Schools that demonstrate the relevancy and practical application of course work will expose students to a broad range of interrelated career and educational opportunities and will expand students' posthigh school options.

(3) The school-to-work transitions program, under chapter 335, Laws of 1993, is intended to help secondary schools develop model programs for school-to-work transitions. The purposes of the model programs are to provide incentives for selected schools to:

(a) Integrate vocational and academic instruction into a single curriculum;

(b) Provide each student with a choice of multiple, flexible educational pathways based on the student's career interest areas;

(c) Emphasize increased vocational and academic guidance and counseling for students;

(d) Foster partnerships with local employers and employees to incorporate work sites as part of work-based learning experiences;

(e) Encourage collaboration among middle or junior high schools and secondary schools in developing successful transition programs and to encourage articulation agreements between secondary schools and community and technical colleges.

(4) The legislature further finds that successful implementation of the school-to-work transitions program is an important part of achieving the purposes of chapter 336, Laws of 1993." [1993 c 336 § 601.]

**Part headings not law—1993 c 336:** "Part headings as used in this act constitute no part of the law." [1993 c 336 § 1204.]

**Findings—Part headings—Severability—1992 c 141:** See notes following RCW 28A.410.040.

**Effective date—Severability—1977 ex.s. c 359:** See notes following RCW 28A.150.200.

### **28A.150.220 Basic education—Minimum instructional requirements—Program accessibility—Rules. (Effective September 1, 2011.)**

(1) In order for students to have the opportunity to develop the basic education knowledge and skills under RCW 28A.150.210, school districts must provide instruction of sufficient quantity and quality and give students the opportunity to complete graduation requirements that are intended to prepare them for postsecondary education, gainful employment, and citizenship. The program established under this section shall be the minimum instructional program of basic education offered by school districts.

(2) Each school district shall make available to students the following minimum instructional offering each school year:

(a) For students enrolled in grades one through twelve, at least a district-wide annual average of one thousand hours, which shall be increased to at least one thousand eighty instructional hours for students enrolled in each of grades seven through twelve and at least one thousand instructional hours for students in each of grades one through six accord-

ing to an implementation schedule adopted by the legislature; and

(b) For students enrolled in kindergarten, at least four hundred fifty instructional hours, which shall be increased to at least one thousand instructional hours according to the implementation schedule under RCW 28A.150.315.

(3) The instructional program of basic education provided by each school district shall include:

(a) Instruction in the essential academic learning requirements under RCW 28A.655.070;

(b) Instruction that provides students the opportunity to complete twenty-four credits for high school graduation, subject to a phased-in implementation of the twenty-four credits as established by the legislature. Course distribution requirements may be established by the state board of education under RCW 28A.230.090;

(c) If the essential academic learning requirements include a requirement of languages other than English, the requirement may be met by students receiving instruction in one or more American Indian languages;

(d) Supplemental instruction and services for underachieving students through the learning assistance program under RCW 28A.165.005 through 28A.165.065;

(e) Supplemental instruction and services for eligible and enrolled students whose primary language is other than English through the transitional bilingual instruction program under RCW 28A.180.010 through 28A.180.080;

(f) The opportunity for an appropriate education at public expense as defined by RCW 28A.155.020 for all eligible students with disabilities as defined in RCW 28A.155.020; and

(g) Programs for highly capable students under RCW 28A.185.010 through 28A.185.030.

(4) Nothing contained in this section shall be construed to require individual students to attend school for any particular number of hours per day or to take any particular courses.

(5) Each school district's kindergarten through twelfth grade basic educational program shall be accessible to all students who are five years of age, as provided by RCW 28A.225.160, and less than twenty-one years of age and shall consist of a minimum of one hundred eighty school days per school year in such grades as are conducted by a school district, and one hundred eighty half-days of instruction, or equivalent, in kindergarten, to be increased to a minimum of one hundred eighty school days per school year according to the implementation schedule under RCW 28A.150.315. However, effective May 1, 1979, a school district may schedule the last five school days of the one hundred and eighty day school year for noninstructional purposes in the case of students who are graduating from high school, including, but not limited to, the observance of graduation and early release from school upon the request of a student, and all such students may be claimed as a full-time equivalent student to the extent they could otherwise have been so claimed for the purposes of RCW 28A.150.250 and 28A.150.260.

(6) Nothing in this section precludes a school district from enriching the instructional program of basic education, such as offering additional instruction or providing additional services, programs, or activities that the school district deter-

mines to be appropriate for the education of the school district's students.

(7) The state board of education shall adopt rules to implement and ensure compliance with the program requirements imposed by this section, RCW 28A.150.250 and 28A.150.260, and such related supplemental program approval requirements as the state board may establish. [2009 c 548 § 104; 1993 c 371 § 2; (1995 c 77 § 1 and 1993 c 371 § 1 expired September 1, 2000); 1992 c 141 § 503; 1990 c 33 § 105; 1982 c 158 § 1; 1979 ex.s. c 250 § 1; 1977 ex.s. c 359 § 3. Formerly RCW 28A.58.754.]

**Effective date—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Contingent expiration date—1995 c 77 § 1:** "Section 1 of this act shall expire September 1, 2000. However, section 1 of this act shall not expire if, by September 1, 2000, a law is not enacted stating that a school accountability and academic assessment system is not in place." [1995 c 77 § 32.] That law was not enacted by September 1, 2000.

**Contingent effective date—1993 c 371 § 2:** "Section 2 of this act shall take effect September 1, 2000. However, section 2 of this act shall not take effect if, by September 1, 2000, a law is enacted stating that a school accountability and academic assessment system is not in place." [1993 c 371 § 5.] That law was not enacted by September 1, 2000.

**Contingent effective date—1992 c 141 §§ 502-504, 506, and 507:** See note following RCW 28A.150.205.

**Findings—Part headings—Severability—1992 c 141:** See notes following RCW 28A.410.040.

**Severability—1982 c 158:** "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 c 158 § 8.]

**Effective date—1979 ex.s. c 250:** "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 except as otherwise provided in subsection (5) of section 1, and section 2 of this amendatory act, shall take effect August 15, 1979." [1979 ex.s. c 250 § 10.]

**Severability—1979 ex.s. c 250:** "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." [1979 ex.s. c 250 § 11.]

**Effective date—Severability—1977 ex.s. c 359:** See notes following RCW 28A.150.200.

**28A.150.250 Annual basic education allocation—Full funding—Withholding of funds for noncompliance. (Effective September 1, 2011.)** (1) From those funds made available by the legislature for the current use of the common schools, the superintendent of public instruction shall distribute annually as provided in RCW 28A.510.250 to each school district of the state operating a basic education instructional program approved by the state board of education an amount based on the formulas provided in RCW 28A.150.260, 28A.150.390, and 28A.150.392 which, when combined with an appropriate portion of such locally available revenues, other than receipts from federal forest revenues distributed to school districts pursuant to RCW 28A.520.010 and 28A.520.020, as the superintendent of public instruction may deem appropriate for consideration in computing state equalization support, excluding excess property tax levies, will constitute a basic education allocation in

dollars for each annual average full-time equivalent student enrolled.

(2) The instructional program of basic education shall be considered to be fully funded by those amounts of dollars appropriated by the legislature pursuant to RCW 28A.150.260, 28A.150.390, and 28A.150.392 to fund those program requirements identified in RCW 28A.150.220 in accordance with the formula provided in RCW 28A.150.260 and those amounts of dollars appropriated by the legislature to fund the salary requirements of RCW 28A.150.410.

(3) If a school district's basic education program fails to meet the basic education requirements enumerated in RCW 28A.150.260 and 28A.150.220, the state board of education shall require the superintendent of public instruction to withhold state funds in whole or in part for the basic education allocation until program compliance is assured. However, the state board of education may waive this requirement in the event of substantial lack of classroom space. [2009 c 548 § 105; 1990 c 33 § 107; 1987 1st ex.s. c 2 § 201; 1986 c 144 § 1; 1983 c 3 § 30; 1982 c 158 § 3; 1982 c 158 § 2; 1980 c 154 § 12; 1979 ex.s. c 250 § 2; 1977 ex.s. c 359 § 4; 1975 1st ex.s. c 211 § 1; 1973 2nd ex.s. c 4 § 1; 1973 1st ex.s. c 195 § 9; 1973 c 46 § 2. See also 1973 1st ex.s. c 195 §§ 136, 137, 138 and 139. Prior: 1972 ex.s. c 124 § 1; 1972 ex.s. c 105 § 2; 1971 ex.s. c 294 § 19; 1969 c 138 § 2; 1969 ex.s. c 223 § 28A.41.130; prior: 1967 ex.s. c 140 § 3; 1965 ex.s. c 171 § 1; 1965 ex.s. c 154 § 2; prior: (i) 1949 c 212 § 1, part; 1945 c 141 § 4, part; 1923 c 96 § 1, part; 1911 c 118 § 1, part; 1909 c 97 p 312 §§ 7-10, part; Rem. Supp. 1949 § 4940-4, part. (ii) 1949 c 212 § 2, part; 1945 c 141 § 5, part; 1909 c 97 p 312 §§ 7-10, part; Rem. Supp. 1949 § 4940-5, part. Formerly RCW 28A.41.130, 28.41.130.]

**Effective date—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Intent—Severability—Effective date—1987 1st ex.s. c 2:** See notes following RCW 84.52.0531.

**Effective date—1986 c 144:** "Section 1 of this act shall be effective September 1, 1987." [1986 c 144 § 2.]

**Severability—1982 c 158:** See note following RCW 28A.150.220.

**Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154:** See notes following chapter 82.45 RCW digest.

**Effective date—Severability—1979 ex.s. c 250:** See notes following RCW 28A.150.220.

**Effective date—Severability—1977 ex.s. c 359:** See notes following RCW 28A.150.200.

**Emergency—Effective date—1973 2nd ex.s. c 4:** See notes following RCW 84.52.043.

**Severability—Effective dates and termination dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**Effective date—1972 ex.s. c 124:** "This 1972 amendatory act is necessary for the immediate preservation of the public peace, health and safety and the support of the state government and its existing public institutions, and sections 2, 3, 4, 6, 7 and 11 shall take effect immediately [February 25, 1972]; sections 1, 8, 9 and 10 hereof shall take effect July 1, 1973; and section 5 hereof shall take effect July 1, 1974." [1972 ex.s. c 124 § 12.]

**Severability—1972 ex.s. c 124:** "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 124 § 13.]

[2009 RCW Supp—page 358]

**Effective date—1972 ex.s. c 105:** "This act except for section 4 will take effect July 1, 1973." [1972 ex.s. c 105 § 5.]

**Severability—1972 ex.s. c 105:** "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 105 § 6.]

*Basic Education Act, RCW 28A.150.250 as part of: RCW 28A.150.200.*

*Distribution of forest reserve funds—As affects basic education allocation: RCW 28A.520.020.*

**28A.150.260 Allocation of state funding to support instructional program of basic education—Distribution formula—Prototypical schools—Enhancements and adjustments—Review and approval—Enrollment calculation. (Effective September 1, 2011.)** The purpose of this section is to provide for the allocation of state funding that the legislature deems necessary to support school districts in offering the minimum instructional program of basic education under RCW 28A.150.220. The allocation shall be determined as follows:

(1) The governor shall and the superintendent of public instruction may recommend to the legislature a formula for the distribution of a basic education instructional allocation for each common school district.

(2) The distribution formula under this section shall be for allocation purposes only. Except as may be required under chapter 28A.165, 28A.180, or 28A.155 RCW, or federal laws and regulations, nothing in this section requires school districts to use basic education instructional funds to implement a particular instructional approach or service. Nothing in this section requires school districts to maintain a particular classroom teacher-to-student ratio or other staff-to-student ratio or to use allocated funds to pay for particular types or classifications of staff. Nothing in this section entitles an individual teacher to a particular teacher planning period.

(3)(a) To the extent the technical details of the formula have been adopted by the legislature, the distribution formula for the basic education instructional allocation shall be based on minimum staffing and nonstaff costs the legislature deems necessary to support instruction and operations in prototypical schools serving high, middle, and elementary school students as provided in this section. The use of prototypical schools for the distribution formula does not constitute legislative intent that schools should be operated or structured in a similar fashion as the prototypes. Prototypical schools illustrate the level of resources needed to operate a school of a particular size with particular types and grade levels of students using commonly understood terms and inputs, such as class size, hours of instruction, and various categories of school staff. It is the intent that the funding allocations to school districts be adjusted from the school prototypes based on the actual number of annual average full-time equivalent students in each grade level at each school in the district and not based on the grade-level configuration of the school to the extent that data is available. The allocations shall be further adjusted from the school prototypes with minimum allocations for small schools and to reflect other factors identified in the omnibus appropriations act.

(b) For the purposes of this section, prototypical schools are defined as follows:

(i) A prototypical high school has six hundred average annual full-time equivalent students in grades nine through twelve;

(ii) A prototypical middle school has four hundred thirty-two average annual full-time equivalent students in grades seven and eight; and

(iii) A prototypical elementary school has four hundred average annual full-time equivalent students in grades kindergarten through six.

(c) The minimum allocation for each level of prototypical school shall be based on the number of full-time equivalent classroom teachers needed to provide instruction over the minimum required annual instructional hours under RCW 28A.150.220 and provide at least one teacher planning period per school day, and based on an average class size as specified in the omnibus appropriations act. The omnibus appropriations act shall at a minimum specify:

(i) Basic average class size;

(ii) Basic average class size in schools where more than fifty percent of the students are eligible for free and reduced-price meals;

(iii) Average class size for exploratory and preparatory career and technical education, laboratory science, advanced placement, and international baccalaureate courses; and

(iv) Average class size in grades kindergarten through three.

(d) The minimum allocation for each level of prototypical school shall include allocations for the following types of staff in addition to classroom teachers:

(i) Principals, including assistant principals, and other certificated building-level administrators;

(ii) Teacher librarians, performing functions including information literacy, technology, and media to support school library media programs;

(iii) Student health services, a function that includes school nurses, whether certificated instructional or classified employee, and social workers;

(iv) Guidance counselors, performing functions including parent outreach and graduation advisor;

(v) Professional development coaches;

(vi) Teaching assistance, which includes any aspect of educational instructional services provided by classified employees;

(vii) Office support, technology support, and other non-instructional aides;

(viii) Custodians, warehouse, maintenance, laborer, and professional and technical education support employees; and

(ix) Classified staff providing student and staff safety.

(4)(a) The minimum allocation for each school district shall include allocations per annual average full-time equivalent student for the following materials, supplies, and operating costs: Student technology; utilities; curriculum, textbooks, library materials, and instructional supplies; instructional professional development for both certificated and classified staff; other building-level costs including maintenance, custodial, and security; and central office administration.

(b) The annual average full-time equivalent student amounts in (a) of this subsection shall be enhanced based on full-time equivalent student enrollment in exploratory career and technical education courses for students in grades seven

through twelve; laboratory science courses for students in grades nine through twelve; preparatory career and technical education courses for students in grades nine through twelve offered in a high school; and preparatory career and technical education courses for students in grades eleven and twelve offered through a skill center.

(5) The allocations provided under subsections (3) and (4) of this section shall be enhanced as follows to provide additional allocations for classroom teachers and maintenance, supplies, and operating costs:

(a) To provide supplemental instruction and services for underachieving students through the learning assistance program under RCW 28A.165.005 through 28A.165.065, allocations shall be based on the percent of students in each school who are eligible for free and reduced-price meals. The minimum allocation for the learning assistance program shall provide an extended school day and extended school year for each level of prototypical school and a per student allocation for maintenance, supplies, and operating costs.

(b) To provide supplemental instruction and services for students whose primary language is other than English, allocations shall be based on the number of students in each school who are eligible for and enrolled in the transitional bilingual instruction program under RCW 28A.180.010 through 28A.180.080. The minimum allocation for each level of prototypical school shall provide for supplemental instruction based on percent of the school day a student is assumed to receive supplemental instruction and a per student allocation for maintenance, supplies, and operating costs.

(6) The allocations provided under subsections (3) and (4) of this section shall be enhanced to provide additional allocations to support programs for highly capable students under RCW 28A.185.010 through 28A.185.030, based on two and three hundred fourteen one-thousandths percent of each school district's full-time equivalent enrollment. The minimum allocation for the programs shall provide an extended school day and extended school year for each level of prototypical school and a per student allocation for maintenance, supplies, and operating costs.

(7) The allocations under subsections (3)(b), (c)(i), and (d), (4), and (8) of this section shall be enhanced as provided under RCW 28A.150.390 on an excess cost basis to provide supplemental instructional resources for students with disabilities.

(8) The distribution formula shall include allocations to school districts to support certificated and classified staffing of central office administration. The minimum allocation shall be calculated as a percentage, identified in the omnibus appropriations act, of the total allocations for staff under subsections (3) and (6) of this section for all schools in the district.

(9)(a) For the purposes of allocations for prototypical high schools and middle schools under subsections (3) and (5) of this section that are based on the percent of students in the school who are eligible for free and reduced-price meals, the actual percent of such students in a school shall be adjusted by a factor identified in the omnibus appropriations act to reflect underreporting of free and reduced-price meal eligibility among middle and high school students.

(b) Allocations or enhancements provided under subsections (3) and (4) of this section for exploratory and preparatory career and technical education courses shall be provided only for courses approved by the office of the superintendent of public instruction under chapter 28A.700 RCW.

(10)(a) This formula for distribution of basic education funds shall be reviewed biennially by the superintendent and governor. The recommended formula shall be subject to approval, amendment or rejection by the legislature.

(b) In the event the legislature rejects the distribution formula recommended by the governor, without adopting a new distribution formula, the distribution formula for the previous school year shall remain in effect.

(c) The enrollment of any district shall be the annual average number of full-time equivalent students and part-time students as provided in RCW 28A.150.350, enrolled on the first school day of each month, including students who are in attendance pursuant to RCW 28A.335.160 and 28A.225.250 who do not reside within the servicing school district. The definition of full-time equivalent student shall be determined by rules of the superintendent of public instruction and shall be included as part of the superintendent's biennial budget request. The definition shall be based on the minimum instructional hour offerings required under RCW 28A.150.220. Any revision of the present definition shall not take effect until approved by the house ways and means committee and the senate ways and means committee.

(d) The office of financial management shall make a monthly review of the superintendent's reported full-time equivalent students in the common schools in conjunction with RCW 43.62.050. [2009 c 548 § 106; 2006 c 263 § 322; 1997 c 13 § 2; (1997 c 13 § 1 and 1995 c 77 § 2 expired September 1, 2000); 1995 c 77 § 3; 1992 c 141 § 507; 1992 c 141 § 303; 1991 c 116 § 10; 1990 c 33 § 108; 1987 1st ex.s. c 2 § 202; 1985 c 349 § 5; 1983 c 229 § 1; 1979 ex.s. c 250 § 3; 1979 c 151 § 12; 1977 ex.s. c 359 § 5; 1969 ex.s. c 244 § 14. Prior: 1969 ex.s. c 217 § 3; 1969 c 130 § 7; 1969 ex.s. c 223 § 28A.41.140; prior: 1965 ex.s. c 154 § 3. Formerly RCW 28A.41.140, 28.41.140.]

**Effective date—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—Implementation schedule—2009 c 548:** "(1) The legislature intends to continue to redefine the instructional program of education under RCW 28A.150.220 that fulfills the obligations and requirements of Article IX of the state Constitution. The funding formulas under RCW 28A.150.260 to support the instructional program shall be implemented to the extent the technical details of the formula have been established and according to an implementation schedule to be adopted by the legislature. The object of the schedule is to assure that any increases in funding allocations are timely, predictable, and occur concurrently with any increases in program or instructional requirements. It is the intent of the legislature that no increased programmatic or instructional expectations be imposed upon schools or school districts without an accompanying increase in resources as necessary to support those increased expectations.

(2) The office of financial management, with assistance and support from the office of the superintendent of public instruction, shall convene a technical working group to:

(a) Develop the details of the funding formulas under RCW 28A.150.260;

(b) Recommend to the legislature an implementation schedule for phasing-in any increased program or instructional requirements concurrently with increases in funding for adoption by the legislature; and

(c) Examine possible sources of revenue to support increases in funding allocations and present options to the legislature and the quality education council created in section 114 of this act for consideration.

(3) The working group shall include representatives of the legislative

evaluation and accountability program committee, school district and educational service district financial managers, the Washington association of school business officers, the Washington education association, the Washington association of school administrators, the association of Washington school principals, the Washington state school directors' association, the public school employees of Washington, and other interested stakeholders with expertise in education finance. The working group may convene advisory subgroups on specific topics as necessary to assure participation and input from a broad array of diverse stakeholders.

(4) The working group shall be monitored and overseen by the legislature and the quality education council established in section 114 of this act. The working group shall submit its recommendations to the legislature by December 1, 2009." [2009 c 548 § 112.]

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Contingent effective date—1997 c 13 § 2:** "Section 2 of this act shall take effect September 1, 2000. However, section 2 of this act shall not take effect if, by September 1, 2000, a law is enacted stating that a school accountability and academic assessment system is not in place." [1997 c 13 § 15.] That law was not enacted by September 1, 2000.

**Contingent effective date—1995 c 77 § 3:** "Section 3 of this act shall take effect September 1, 2000. However, section 3 of this act shall not take effect if, by September 1, 2000, a law is enacted stating that a school accountability and academic assessment system is not in place." [1995 c 77 § 33.] That law was not enacted by September 1, 2000.

**Contingent effective date—1992 c 141 §§ 502-504, 506, and 507:** See note following RCW 28A.150.205.

**Findings—Part headings—Severability—1992 c 141:** See notes following RCW 28A.410.040.

**Intent—Severability—Effective date—1987 1st ex.s. c 2:** See notes following RCW 84.52.0531.

**Severability—1985 c 349:** "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 349 § 9.]

**Effective date—Severability—1979 ex.s. c 250:** See notes following RCW 28A.150.220.

**Effective date—Severability—1977 ex.s. c 359:** See notes following RCW 28A.150.200.

*Basic Education Act, RCW 28A.150.260 as part of: RCW 28A.150.200.*

*Distribution of forest reserve funds—As affects basic education allocation: RCW 28A.520.020.*

**28A.150.262 Defining full-time equivalent student—Students receiving instruction through alternative learning experience online programs—Requirements—Rules.** Under RCW 28A.150.260, the superintendent of public instruction shall revise the definition of a full-time equivalent student to include students who receive instruction through alternative learning experience online programs. As used in this section, an "alternative learning experience online program" is a set of online courses or an online school program as defined in RCW 28A.250.010 that is delivered to students in whole or in part independently from a regular classroom schedule. The superintendent of public instruction has the authority to adopt rules to implement the revised definition beginning with the 2005-2007 biennium for school districts claiming state funding for the programs. The rules shall include but not be limited to the following:

(1) Defining a full-time equivalent student under RCW 28A.150.260 or part-time student under RCW 28A.150.350 based upon the district's estimated average weekly hours of learning activity as identified in the student's learning plan,



as long as the student is found, through monthly evaluation, to be making satisfactory progress; the rules shall require districts providing programs under this section to nonresident students to establish procedures that address, at a minimum, the coordination of student counting for state funding so that no student is counted for more than one full-time equivalent in the aggregate;

(2) Requiring the board of directors of a school district offering, or contracting under RCW 28A.150.305 to offer, an alternative learning experience online program to adopt and annually review written policies for each program and program provider and to receive an annual report on its digital alternative learning experience online programs from its staff;

(3) Requiring each school district offering or contracting to offer an alternative learning experience online program to report annually to the superintendent of public instruction on the types of programs and course offerings, and number of students participating;

(4) Requiring completion of a program self-evaluation;

(5) Requiring documentation of the district of the student's physical residence;

(6) Requiring that supervision, monitoring, assessment, and evaluation of the alternative learning experience online program be provided by certificated instructional staff;

(7) Requiring each school district offering courses or programs to identify the ratio of certificated instructional staff to full-time equivalent students enrolled in such courses or programs, and to include a description of their ratio as part of the reports required under subsections (2) and (3) of this section;

(8) Requiring reliable methods to verify a student is doing his or her own work; the methods may include proctored examinations or projects, including the use of web cams or other technologies. "Proctored" means directly monitored by an adult authorized by the school district;

(9) Requiring, for each student receiving instruction in an alternative learning experience online program, a learning plan that includes a description of course objectives and information on the requirements a student must meet to successfully complete the program or courses. The rules shall allow course syllabi and other additional information to be used to meet the requirement for a learning plan;

(10) Requiring that the district assess the educational progress of enrolled students at least annually, using, for full-time students, the state assessment for the student's grade level and using any other annual assessments required by the school district. Part-time students shall also be assessed at least annually. However, part-time students who are either receiving home-based instruction under chapter 28A.200 RCW or who are enrolled in an approved private school under chapter 28A.195 RCW are not required to participate in the assessments required under chapter 28A.655 RCW. The rules shall address how students who reside outside the geographic service area of the school district are to be assessed;

(11) Requiring that each student enrolled in the program have direct personal contact with certificated instructional staff at least weekly until the student completes the course objectives or the requirements in the learning plan. Direct personal contact is for the purposes of instruction, review of

assignments, testing, evaluation of student progress, or other learning activities. Direct personal contact may include the use of telephone, e-mail, instant messaging, interactive video communication, or other means of digital communication;

(12) Requiring state-funded public schools or public school programs whose primary purpose is to provide alternative learning experience online learning programs to receive accreditation through the Northwest association of accredited schools or another national, regional, or state accreditation program listed by the office of the superintendent of public instruction after consultation with the Washington coalition for online learning;

(13) Requiring state-funded public schools or public school programs whose primary purpose is to provide alternative learning experience online learning to provide information to students and parents on whether or not the courses or programs: Cover one or more of the school district's learning goals or of the state's essential academic learning requirements or whether they permit the student to meet one or more of the state's or district's graduation requirements; and

(14) Requiring that a school district that provides one or more alternative learning experience online courses to a student provide the parent or guardian of the student, prior to the student's enrollment, with a description of any difference between home-based education as described in chapter 28A.200 RCW and the enrollment option selected by the student. The parent or guardian shall sign documentation attesting to his or her understanding of the difference and the documentation shall be retained by the district and made available for audit. [2009 c 542 § 9; 2005 c 356 § 2.]

**Findings—Intent—2005 c 356:** "The legislature finds that digital learning courses and programs can provide students with opportunities to study subjects that may not otherwise be available within the students' schools, school districts, or communities. These courses can also meet the instructional needs of students who have scheduling conflicts, students who learn best from technology-based instructional methods, and students who have a need to enroll in schools on a part-time basis. Digital learning courses can also meet the needs of students and families seeking nontraditional learning environments. The legislature further finds that the state rules used by school districts to support some digital learning courses were adopted before these types of courses were created, so the rules are not well-suited to the funding and delivery of digital instruction. It is the intent of the legislature to clarify the funding and delivery requirements for digital learning courses." [2005 c 356 § 1.]

**28A.150.315 Voluntary all-day kindergarten programs—Funding. (Effective September 1, 2011.)**

(1) Beginning with the 2007-08 school year, funding for voluntary all-day kindergarten programs shall be phased-in beginning with schools with the highest poverty levels, defined as those schools with the highest percentages of students qualifying for free and reduced-price lunch support in the prior school year. Once a school receives funding for the all-day kindergarten program, that school shall remain eligible for funding in subsequent school years regardless of changes in the school's percentage of students eligible for free and reduced-price lunches as long as other program requirements are fulfilled. Additionally, schools receiving all-day kindergarten program support shall agree to the following conditions:

(a) Provide at least a one thousand-hour instructional program;

(b) Provide a curriculum that offers a rich, varied set of experiences that assist students in:

(i) Developing initial skills in the academic areas of reading, mathematics, and writing;

(ii) Developing a variety of communication skills;

(iii) Providing experiences in science, social studies, arts, health and physical education, and a world language other than English;

(iv) Acquiring large and small motor skills;

(v) Acquiring social and emotional skills including successful participation in learning activities as an individual and as part of a group; and

(vi) Learning through hands-on experiences;

(c) Establish learning environments that are developmentally appropriate and promote creativity;

(d) Demonstrate strong connections and communication with early learning community providers; and

(e) Participate in kindergarten program readiness activities with early learning providers and parents.

(2) Subject to funds appropriated for this purpose, the superintendent of public instruction shall designate one or more school districts to serve as resources and examples of best practices in designing and operating a high-quality all-day kindergarten program. Designated school districts shall serve as lighthouse programs and provide technical assistance to other school districts in the initial stages of implementing an all-day kindergarten program. Examples of topics addressed by the technical assistance include strategic planning, developing the instructional program and curriculum, working with early learning providers to identify students and communicate with parents, and developing kindergarten program readiness activities. [2009 c 548 § 107; 2007 c 400 § 2.]

**Effective date—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Captions not law—2007 c 400:** See note following RCW 28A.150.210.

**28A.150.370 Repealed. (Effective September 1, 2011.)** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.150.380 Appropriations by legislature. (Effective until September 1, 2011.)** (1) The state legislature shall, at each regular session in an odd-numbered year, appropriate from the state general fund for the current use of the common schools such amounts as needed for state support to the common schools during the ensuing biennium as provided in this chapter, RCW 28A.160.150 through 28A.160.210, 28A.300.170, and 28A.500.010.

(2) The state legislature shall also, at each regular session in an odd-numbered year, appropriate from the general fund and education construction fund for the purposes of and in accordance with the provisions of the student achievement act during the ensuing biennium. [2009 c 479 § 16; 2001 c 3 § 10 (Initiative Measure No. 728, approved November 7, 2000); 1995 c 335 § 103; 1990 c 33 § 115; 1980 c 6 § 3; 1969

ex.s. c 223 § 28A.41.050. Prior: 1945 c 141 § 2; Rem. Supp. 1945 § 4940-2. Formerly RCW 28A.41.050, 28.41.050.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728):** See notes following RCW 28A.505.210.

**Part headings, table of contents not law—1995 c 335:** See note following RCW 28A.150.360.

**Severability—1980 c 6:** See note following RCW 28A.515.320.

**28A.150.380 Appropriations by legislature. (Effective September 1, 2011.)** (1) The state legislature shall, at each regular session in an odd-numbered year, appropriate for the current use of the common schools such amounts as needed for state support to school districts during the ensuing biennium for the program of basic education under RCW 28A.150.200.

(2) In addition to those state funds provided to school districts for basic education, the legislature may appropriate funds to be distributed to school districts for other factors and for other special programs to enhance or enrich the program of basic education.

(3) The state legislature shall also, at each regular session in an odd-numbered year, appropriate from the general fund and education construction fund for the purposes of and in accordance with the provisions of the student achievement act during the ensuing biennium. [2009 c 548 § 110; 2009 c 479 § 16; 2001 c 3 § 10 (Initiative Measure No. 728, approved November 7, 2000); 1995 c 335 § 103; 1990 c 33 § 115; 1980 c 6 § 3; 1969 ex.s. c 223 § 28A.41.050. Prior: 1945 c 141 § 2; Rem. Supp. 1945 § 4940-2. Formerly RCW 28A.41.050, 28.41.050.]

**Reviser's note:** This section was amended by 2009 c 479 § 16 and by 2009 c 548 § 110, 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—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728):** See notes following RCW 28A.505.210.

**Part headings, table of contents not law—1995 c 335:** See note following RCW 28A.150.360.

**Severability—1980 c 6:** See note following RCW 28A.515.320.

**28A.150.390 Appropriations for special education programs. (Effective September 1, 2011.)** (1) The superintendent of public instruction shall submit to each regular session of the legislature during an odd-numbered year a programmed budget request for special education programs for students with disabilities. Funding for programs operated by local school districts shall be on an excess cost basis from appropriations provided by the legislature for special education programs for students with disabilities and shall take account of state funds accruing through RCW 28A.150.260 (3) (b), (c)(i), and (d), (4), and (8) and federal medical assistance and private funds accruing under \*RCW 74.09.5249 through 74.09.5253 and 74.09.5254 through 74.09.5256.

(2) The excess cost allocation to school districts shall be based on the following:

(a) A district's annual average headcount enrollment of students ages birth through four and those five year olds not yet enrolled in kindergarten who are eligible for and enrolled in special education, multiplied by the district's base allocation per full-time equivalent student, multiplied by 1.15; and

(b) A district's annual average full-time equivalent basic education enrollment, multiplied by the district's funded enrollment percent, multiplied by the district's base allocation per full-time equivalent student, multiplied by 0.9309.

(3) As used in this section:

(a) "Base allocation" means the total state allocation to all schools in the district generated by the distribution formula under RCW 28A.150.260 (3) (b), (c)(i), and (d), (4), and (8), to be divided by the district's full-time equivalent enrollment.

(b) "Basic education enrollment" means enrollment of resident students including nonresident students enrolled under RCW 28A.225.225 and students from nonhigh districts enrolled under RCW 28A.225.210 and excluding students residing in another district enrolled as part of an interdistrict cooperative program under RCW 28A.225.250.

(c) "Enrollment percent" means the district's resident special education annual average enrollment, excluding students ages birth through four and those five year olds not yet enrolled in kindergarten, as a percent of the district's annual average full-time equivalent basic education enrollment.

(d) "Funded enrollment percent" means the lesser of the district's actual enrollment percent or twelve and seven-tenths percent. [2009 c 548 § 108; 1995 c 77 § 6; 1994 c 180 § 8; 1993 c 149 § 9; 1990 c 33 § 116; 1989 c 400 § 2; 1980 c 87 § 5; 1971 ex.s. c 66 § 11. Formerly RCW 28A.41.053.]

\***Reviser's note:** RCW 74.09.5249 through 74.09.5256 were repealed by 2009 c 73 § 1.

**Effective date—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Conflict with federal requirements—Severability—1994 c 180:** See notes following RCW 74.09.5243.

**Conflict with federal requirements—Severability—Effective dates—1993 c 149:** See notes following RCW 74.09.5241.

**Intent—1989 c 400:** "The legislature finds that there is increasing demand for school districts' special education programs to include medical services necessary for handicapped children's participation and educational progress. In some cases, these services could qualify for federal funding under Title XIX of the social security act. The legislature intends to establish a process for school districts to obtain reimbursement for eligible services from medical assistance funds. In this way, state dollars for handicapped education can be leveraged to generate federal matching funds, thereby increasing the overall level of resources available for school districts' special education programs." [1989 c 400 § 1.]

**Severability—Effective date—1971 ex.s. c 66:** See notes following RCW 28A.155.010.

**28A.150.392 Special education funding—Safety net awards—Rules—Annual survey and report—Safety net oversight committee. (Effective September 1, 2011.)** (1) To the extent necessary, funds shall be made available for safety net awards for districts with demonstrated needs for special education funding beyond the amounts provided

through the special education funding formula under RCW 28A.150.390. If the federal safety net awards based on the federal eligibility threshold exceed the federal appropriation in any fiscal year, then the superintendent shall expend all available federal discretionary funds necessary to meet this need. Safety net funds shall be awarded by the state safety net oversight committee subject to the following conditions and limitations:

(a) The committee shall consider additional funds for districts that can convincingly demonstrate that all legitimate expenditures for special education exceed all available revenues from state funding formulas. In the determination of need, the committee shall also consider additional available revenues from federal sources. Differences in program costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards. In the determination of need, the committee shall require that districts demonstrate that they are maximizing their eligibility for all state revenues related to services for special education-eligible students and all federal revenues from federal impact aid, medicaid, and the individuals with disabilities education act-Part B and appropriate special projects. Awards associated with (b) and (c) of this subsection shall not exceed the total of a district's specific determination of need.

(b) The committee shall then consider the extraordinary high cost needs of one or more individual special education students. Differences in costs attributable to district philosophy, service delivery choice, or accounting practices are not a legitimate basis for safety net awards.

(c) Using criteria developed by the committee, the committee shall then consider extraordinary costs associated with communities that draw a larger number of families with children in need of special education services, which may include consideration of proximity to group homes, military bases, and regional hospitals. Safety net awards under this subsection (1)(c) shall be adjusted to reflect amounts awarded under (b) of this subsection.

(d) The maximum allowable indirect cost for calculating safety net eligibility may not exceed the federal restricted indirect cost rate for the district plus one percent.

(e) Safety net awards shall be adjusted based on the percent of potential medicaid eligible students billed as calculated by the superintendent of public instruction in accordance with chapter 318, Laws of 1999.

(f) Safety net awards must be adjusted for any audit findings or exceptions related to special education funding.

(2) The superintendent of public instruction may adopt such rules and procedures as are necessary to administer the special education funding and safety net award process. Before revising any standards, procedures, or rules, the superintendent shall consult with the office of financial management and the fiscal committees of the legislature. In adopting and revising the rules, the superintendent shall ensure the application process to access safety net funding is streamlined, timelines for submission are not in conflict, feedback to school districts is timely and provides sufficient information to allow school districts to understand how to correct any deficiencies in a safety net application, and that there is consistency between awards approved by school district and by application period. The office of the superintendent

dent of public instruction shall also provide technical assistance to school districts in preparing and submitting special education safety net applications.

(3) On an annual basis, the superintendent shall survey districts regarding their satisfaction with the safety net process and consider feedback from districts to improve the safety net process. Each year by December 1st, the superintendent shall prepare and submit a report to the office of financial management and the appropriate policy and fiscal committees of the legislature that summarizes the survey results and those changes made to the safety net process as a result of the school district feedback.

(4) The safety net oversight committee appointed by the superintendent of public instruction shall consist of:

(a) One staff member from the office of the superintendent of public instruction;

(b) Staff of the office of the state auditor who shall be nonvoting members of the committee; and

(c) One or more representatives from school districts or educational service districts knowledgeable of special education programs and funding. [2009 c 548 § 109.]

**Effective date—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

## Chapter 28A.155 RCW SPECIAL EDUCATION

### Sections

28A.155.160 Assistive devices and services—Interagency cooperative agreements—Definitions.

28A.155.180 Repealed. (*Effective September 1, 2011.*)

**28A.155.160 Assistive devices and services—Interagency cooperative agreements—Definitions.** Notwithstanding any other provision of law, the office of the superintendent of public instruction, the department of early learning, the Washington state center for childhood deafness and hearing loss, the Washington state school for the blind, school districts, educational service districts, and all other state and local government educational agencies and the department of services for the blind, the department of social and health services, and all other state and local government agencies concerned with the care, education, or habilitation or rehabilitation of children with disabilities may enter into interagency cooperative agreements for the purpose of providing assistive technology devices and services to children with disabilities. Such arrangements may include but are not limited to interagency agreements for the acquisition, including joint funding, maintenance, loan, sale, lease, or transfer of assistive technology devices and for the provision of assistive technology services including but not limited to assistive technology assessments and training.

For the purposes of this section, "assistive device" means any item, piece of equipment, or product system, whether acquired commercially off-the-shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of children with disabilities. The term "assistive technology service" means any service that directly assists a

child with a disability in the selection, acquisition, or use of an assistive technology device. Assistive technology service includes:

(1) The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment;

(2) Purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by children with disabilities;

(3) Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing of assistive technology devices;

(4) Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs;

(5) Training or technical assistance for a child with a disability or if appropriate, the child's family; and

(6) Training or technical assistance for professionals, including individuals providing education and rehabilitation services to, employ, or are otherwise substantially involved in the major life functions of children with disabilities. [2009 c 381 § 24; 2007 c 115 § 15; 1997 c 104 § 3.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**28A.155.180 Repealed. (*Effective September 1, 2011.*)**  
See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 28A.160 RCW STUDENT TRANSPORTATION

### Sections

28A.160.117 Transportation efficiency reviews—Reports. (*Effective September 1, 2013.*)

28A.160.130 Transportation vehicle fund—Deposits in—Use—Rules for establishment and use.

28A.160.150 Student transportation allocation—Operating costs, determination and funding. (*Effective September 1, 2013.*)

28A.160.160 Student transportation allocation—Definitions. (*Effective September 1, 2013.*)

28A.160.170 Student transportation allocation—District's reports to superintendent. (*Effective September 1, 2013.*)

28A.160.180 Student transportation allocation determination—Report. (*Effective September 1, 2013.*)

28A.160.190 Student transportation allocation—Notice—Payment schedule. (*Effective September 1, 2013.*)

28A.160.191 Student transportation allocation—Adequacy for certain districts—Adjustment. (*Effective September 1, 2013.*)

28A.160.192 Student transportation allocation—Distribution formula—Reporting requirements—Updates and progress reports. (*Effective September 1, 2013.*)

**28A.160.117 Transportation efficiency reviews—Reports. (*Effective September 1, 2013.*)** (1) The superintendent of public instruction shall encourage efficient use of state resources by providing a linear programming process that compares school district transportation operations. If a school district's operation is calculated to be less than ninety percent efficient, the regional transportation coordinators shall provide an individual review to determine what measures are available to the school district to improve efficiency. The evaluation shall include such measures as:

(a) Efficient routing of buses;

- (b) Efficient use of vehicle capacity; and
- (c) Reasonable controls on compensation costs.

(2) The superintendent shall submit to the fiscal and education committees of the legislature no later than December 1st of each year a report summarizing the efficiency reviews and the resulting changes implemented by school districts in response to the recommendations of the regional transportation coordinators. [2009 c 548 § 310.]

**Effective date—2009 c 548 §§ 304-311:** See note following RCW 28A.160.150.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**28A.160.130 Transportation vehicle fund—Deposits in—Use—Rules for establishment and use.** (1) There is created a fund on deposit with each county treasurer for each school district of the county, which shall be known as the transportation vehicle fund. Money to be deposited into the transportation vehicle fund shall include, but is not limited to, the following:

(a) The balance of accounts held in the general fund of each school district for the purchase of approved transportation equipment and for major transportation equipment repairs under RCW 28A.150.280. The amount transferred shall be the balance of the account as of September 1, 1982;

(b) Reimbursement payments provided for in RCW 28A.160.200 except those provided under RCW 28A.160.200(3) that are necessary for contracted payments to private carriers;

(c) Earnings from transportation vehicle fund investments as authorized in RCW 28A.320.300; and

(d) The district's share of the proceeds from the sale of transportation vehicles, as determined by the superintendent of public instruction.

(2) Funds in the transportation vehicle fund may be used for the following purposes:

(a) Purchase of pupil transportation vehicles pursuant to RCW 28A.160.200 and 28A.150.280;

(b) Payment of conditional sales contracts as authorized in RCW 28A.335.200 or payment of obligations authorized in RCW 28A.530.080, entered into or issued for the purpose of pupil transportation vehicles;

(c) Major repairs to pupil transportation vehicles;

(d) For the 2009-2011 biennium, a school district that is wholly contained on an island and has a student enrollment greater than two hundred fifty students and fewer than five hundred and fifty students may transfer from the transportation vehicle fund to the school district's general fund such amounts as necessary for instructional costs.

The superintendent of public instruction shall adopt rules which shall establish the standards, conditions, and procedures governing the establishment and use of the transportation vehicle fund. The rules shall not permit the transfer of funds from the transportation vehicle fund to any other fund of the district, except as provided under subsection (2)(d) of this section. [2009 c 564 § 919; 1991 c 114 § 2; 1990 c 33 § 139; 1981 c 265 § 7. Formerly RCW 28A.58.428.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Effective date—Severability—1981 c 265:** See notes following RCW 28A.160.150.

**28A.160.150 Student transportation allocation—Operating costs, determination and funding.** (*Effective September 1, 2013.*) Funds allocated for transportation costs, except for funds provided for transportation and transportation services to and from school shall be in addition to the basic education allocation. The distribution formula developed in RCW 28A.160.150 through 28A.160.180 shall be for allocation purposes only and shall not be construed as mandating specific levels of pupil transportation services by local districts. Operating costs as determined under RCW 28A.160.150 through 28A.160.180 shall be funded at one hundred percent or as close thereto as reasonably possible for transportation of an eligible student to and from school as defined in RCW 28A.160.160(3). In addition, funding shall be provided for transportation services for students living within the walk area as determined under RCW 28A.160.160(5). [2009 c 548 § 304; 1996 c 279 § 1; 1990 c 33 § 141; 1983 1st ex.s. c 61 § 2; 1981 c 265 § 1. Formerly RCW 28A.41.505.]

**Effective date—2009 c 548 §§ 304-311:** "Sections 304 through 311 of this act take effect September 1, 2013." [2009 c 548 § 805.]

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Application—1996 c 279:** "This act shall be effective for school transportation programs in the 1996-97 school year and thereafter." [1996 c 279 § 4.]

**Severability—1983 1st ex.s. c 61:** See note following RCW 28A.160.010.

**Effective date—1981 c 265:** "With the exception of sections 8 and 13 of this amendatory act, the effective date of this amendatory act is September 1, 1982. The superintendent of public instruction and the office thereof prior to the effective date of this amendatory act may take such actions as necessary for the orderly implementation thereof and during such period may carry out such data collection activities and district notification provisions as provided for herein." [1981 c 265 § 16.]

**Severability—1981 c 265:** "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 265 § 17.]

**28A.160.160 Student transportation allocation—Definitions.** (*Effective September 1, 2013.*) For purposes of RCW 28A.160.150 through 28A.160.190, except where the context shall clearly indicate otherwise, the following definitions apply:

(1) "Eligible student" means any student served by the transportation program of a school district or compensated for individual transportation arrangements authorized by RCW 28A.160.030 whose route stop is outside the walk area for a student's school, except if the student to be transported is disabled under RCW 28A.155.020 and is either not ambulatory or not capable of protecting his or her own welfare while traveling to or from the school or agency where special education services are provided, in which case no mileage distance restriction applies.

(2) "Superintendent" means the superintendent of public instruction.

(3) "To and from school" means the transportation of students for the following purposes:

(a) Transportation to and from route stops and schools;

(b) Transportation to and from schools pursuant to an interdistrict agreement pursuant to RCW 28A.335.160;

(c) Transportation of students between schools and learning centers for instruction specifically required by statute; and

(d) Transportation of students with disabilities to and from schools and agencies for special education services.

Academic extended day transportation for the instructional program of basic education under RCW 28A.150.220 shall be considered part of transportation of students "to and from school" for the purposes of this section. Transportation for field trips may not be considered part of transportation of students "to and from school" under this section.

(4) "Transportation services" for students living within the walk area includes the coordination of walk-to-school programs, the funding of crossing guards, and matching funds for local and state transportation projects intended to mitigate hazardous walking conditions. Priority for transportation services shall be given to students in grades kindergarten through five.

(5) As used in this section, "walk area" means that area around a school with an adequate roadway configuration to provide students access to school with a walking distance of less than one mile. Mileage must be measured along the shortest roadway or maintained public walkway where hazardous conditions do not exist. The hazardous conditions must be documented by a process established in rule by the superintendent of public instruction and must include roadway, environmental, and social conditions. Each elementary school shall identify walk routes within the walk area. [2009 c 548 § 305; 1996 c 279 § 2; 1995 c 77 § 17; 1990 c 33 § 142; 1983 1st ex.s. c 61 § 3; 1981 c 265 § 2. Formerly RCW 28A.41.510.]

**Effective date—2009 c 548 §§ 304-311:** See note following RCW 28A.160.150.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Application—1996 c 279:** See note following RCW 28A.160.150.

**Severability—1983 1st ex.s. c 61:** See note following RCW 28A.160.010.

**Effective date—Severability—1981 c 265:** See notes following RCW 28A.160.150.

**28A.160.170 Student transportation allocation—District's reports to superintendent. (Effective September 1, 2013.)** Each district shall submit three times each year to the superintendent of public instruction during October, February, and May of each year a report containing the following:

(1)(a) The number of eligible students transported to and from school as provided for in RCW 28A.160.150, along with identification of stop locations and school locations, and (b) the number of miles driven for pupil transportation services as authorized in RCW 28A.160.150 the previous school year; and

(2) Other operational data and descriptions as required by the superintendent to determine allocation requirements for each district. The superintendent shall require that districts separate the costs of operating the program for the transportation of eligible students to and from school as defined by RCW 28A.160.160(3) from non-to-and-from-school pupil transportation costs in the annual financial statement. The cost, quantity, and type of all fuel purchased by

school districts for use in to-and-from-school transportation shall be included in the annual financial statement.

Each district shall submit the information required in this section on a timely basis as a condition of the continuing receipt of school transportation moneys. [2009 c 548 § 306; 2007 c 139 § 1; 1990 c 33 § 143; 1983 1st ex.s. c 61 § 4; 1981 c 265 § 3. Formerly RCW 28A.41.515.]

**Effective date—2009 c 548 §§ 304-311:** See note following RCW 28A.160.150.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Effective date—2007 c 139 § 1:** "Section 1 of this act takes effect September 1, 2007." [2007 c 139 § 3.]

**Severability—1983 1st ex.s. c 61:** See note following RCW 28A.160.010.

**Effective date—Severability—1981 c 265:** See notes following RCW 28A.160.150.

**28A.160.180 Student transportation allocation determination—Report. (Effective September 1, 2013.)** Each district's annual student transportation allocation shall be determined by the superintendent of public instruction in the following manner:

(1) The superintendent shall annually calculate the transportation allocation for those services provided for in RCW 28A.160.150. The allocation formula may be adjusted to include such additional differential factors as basic and special passenger counts as defined by the superintendent of public instruction, average distance to school, and number of locations served.

(2) The allocation shall be based on a regression analysis of the number of basic and special students transported and as many other site characteristics that are identified as being statistically significant.

(3) The transportation allocation for transporting students in district-owned passenger cars, as defined in RCW 46.04.382, pursuant to RCW 28A.160.010 for services provided for in RCW 28A.160.150 if a school district deems it advisable to use such vehicles after the school district board of directors has considered the safety of the students being transported as well as the economy of utilizing a district-owned passenger car in lieu of a school bus is the private vehicle reimbursement rate in effect on September 1st of each school year. Students transported in district-owned passenger cars must be included in the corresponding basic or special passenger counts.

(4) Prior to June 1st of each year the superintendent shall submit to the office of financial management, and the education and fiscal committees of the legislature, a report outlining the methodology and rationale used in determining the statistical coefficients for each site characteristic used to determine the allocation for the following year. [2009 c 548 § 307; 1996 c 279 § 3; 1995 c 77 § 18; 1990 c 33 § 144; 1985 c 59 § 1; 1983 1st ex.s. c 61 § 5; 1982 1st ex.s. c 24 § 2; 1981 c 265 § 4. Formerly RCW 28A.41.520.]

**Effective date—2009 c 548 §§ 304-311:** See note following RCW 28A.160.150.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Application—1996 c 279:** See note following RCW 28A.160.150.

**Severability—1983 1st ex.s. c 61:** See note following RCW 28A.160.010.

**Effective date—Severability—1982 1st ex.s. c 24:** See notes following RCW 28A.150.370.

**Effective date—Severability—1981 c 265:** See notes following RCW 28A.160.150.

**28A.160.190 Student transportation allocation—Notice—Payment schedule. (Effective September 1, 2013.)** The superintendent shall notify districts of their student transportation allocation before January 15th. The superintendent shall recalculate and prorate the district's allocation for the transportation of pupils to and from school.

The superintendent shall make the student transportation allocation in accordance with the apportionment payment schedule in RCW 28A.510.250. Such allocation payments may be based on the prior school year's ridership report for payments to be made in September, October, November, December, and January. [2009 c 548 § 308; 1990 c 33 § 145; 1985 c 59 § 2; 1983 1st ex.s. c 61 § 6; 1982 1st ex.s. c 24 § 3; 1981 c 265 § 5. Formerly RCW 28A.41.525.]

**Effective date—2009 c 548 §§ 304-311:** See note following RCW 28A.160.150.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Severability—1983 1st ex.s. c 61:** See note following RCW 28A.160.010.

**Effective date—Severability—1982 1st ex.s. c 24:** See notes following RCW 28A.150.370.

**Effective date—Severability—1981 c 265:** See notes following RCW 28A.160.150.

**28A.160.191 Student transportation allocation—Adequacy for certain districts—Adjustment. (Effective September 1, 2013.)** The superintendent of public instruction shall ensure that the allocation formula results in adequate appropriation for low enrollment districts, nonhigh districts, districts involved in cooperative transportation agreements, and cooperative special transportation services operated by educational service districts. If necessary, the superintendent shall develop a separate process to adjust the allocation of the districts. [2009 c 548 § 309.]

**Effective date—2009 c 548 §§ 304-311:** See note following RCW 28A.160.150.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**28A.160.192 Student transportation allocation—Distribution formula—Reporting requirements—Updates and progress reports. (Effective September 1, 2013.)** (1) The superintendent of public instruction shall phase-in the implementation of the distribution formula under this chapter for allocating state funds to school districts for the transportation of students to and from school. The phase-in shall be according to the implementation schedule adopted by the legislature and shall begin no later than the 2013-14 school year.

(a) The formula must be developed and revised on an ongoing basis using the major cost factors in student trans-

portation, including basic and special student loads, school district land area, average distance to school, roadway miles, and number of locations served. Factors must include all those site characteristics that are statistically significant after analysis of the data required by the revised reporting process.

(b) The formula must allocate funds to school districts based on the average predicted costs of transporting students to and from school, using a regression analysis.

(2) During the phase-in period, funding provided to school districts for student transportation operations shall be distributed on the following basis:

(a) Annually, each school district shall receive the lesser of the previous school year's pupil transportation operations allocation, or the total of allowable pupil transportation expenditures identified on the previous school year's final expenditure report to the state plus district indirect expenses using the state recovery rate identified by the superintendent; and

(b) Annually, any funds appropriated by the legislature in excess of the maintenance level funding amount for student transportation shall be distributed among school districts on a prorated basis using the difference between the amount identified in (a) of this subsection and the amount determined under the formula in RCW 28A.160.180.

(3) The superintendent shall develop, implement, and provide a copy of the rules specifying the student transportation reporting requirements to the legislature and school districts no later than December 1, 2009.

(4) Beginning in December 2009, and continuing until December 2014, the superintendent shall provide quarterly updates and progress reports to the fiscal committees of the legislature on the implementation and testing of the distribution formula. [2009 c 548 § 311.]

**Effective date—2009 c 548 §§ 304-311:** See note following RCW 28A.160.150.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

## Chapter 28A.165 RCW

### LEARNING ASSISTANCE PROGRAM

#### Sections

28A.165.005	Purpose. ( <i>Effective September 1, 2011.</i> )
28A.165.015	Definitions. ( <i>Effective September 1, 2011.</i> )
28A.165.025	School district program plan.
28A.165.045	Plan approval process.
28A.165.055	Funds—Eligibility. ( <i>Effective September 1, 2011.</i> )

#### **28A.165.005 Purpose. (Effective September 1, 2011.)**

This chapter is designed to: (1) Promote the use of assessment data when developing programs to assist underachieving students; and (2) guide school districts in providing the most effective and efficient practices when implementing supplemental instruction and services to assist underachieving students. [2009 c 548 § 701; 2004 c 20 § 1.]

**Effective date—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**28A.165.015 Definitions.** (*Effective September 1, 2011.*) Unless the context clearly indicates otherwise the definitions in this section apply throughout this chapter.

(1) "Approved program" means a program submitted to and approved by the office of the superintendent of public instruction and conducted pursuant to the plan that addresses the required elements as provided for in this chapter.

(2) "Basic skills areas" means reading, writing, and mathematics as well as readiness associated with these skills.

(3) "Participating student" means a student in kindergarten through grade twelve who scores below standard for his or her grade level on the statewide assessments and who is identified in the approved plan to receive services.

(4) "Statewide assessments" means one or more of the several basic skills assessments administered as part of the state's student assessment system, and assessments in the basic skills areas administered by local school districts.

(5) "Underachieving students" means students with the greatest academic deficits in basic skills as identified by the statewide assessments. [2009 c 548 § 702; 2004 c 20 § 2.]

**Effective date—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**28A.165.025 School district program plan.** (1) A participating school district shall submit the district's plan for using learning assistance funds to the office of the superintendent of public instruction for approval, to the extent required under subsection (2) of this section. The program plan must identify the program activities to be implemented from RCW 28A.165.035 and implement all of the elements in (a) through (h) of this subsection. The school district plan shall include the following:

(a) District and school-level data on reading, writing, and mathematics achievement as reported pursuant to chapter 28A.655 RCW and relevant federal law;

(b) Processes used for identifying the underachieving students to be served by the program, including the identification of school or program sites providing program activities;

(c) How accelerated learning plans are developed and implemented for participating students. Accelerated learning plans may be developed as part of existing student achievement plan process such as student plans for achieving state high school graduation standards, individual student academic plans, or the achievement plans for groups of students. Accelerated learning plans shall include:

(i) Achievement goals for the students;

(ii) Roles of the student, parents, or guardians and teachers in the plan;

(iii) Communication procedures regarding student accomplishment; and

(iv) Plan reviews and adjustments processes;

(d) How state level and classroom assessments are used to inform instruction;

(e) How focused and intentional instructional strategies have been identified and implemented;

(f) How highly qualified instructional staff are developed and supported in the program and in participating schools;

(g) How other federal, state, district, and school resources are coordinated with school improvement plans and the district's strategic plan to support underachieving students; and

(h) How a program evaluation will be conducted to determine direction for the following school year.

(2) If a school district has received approval of its plan once, it is not required to submit a plan for approval under RCW 28A.165.045 or this section unless the district has made a significant change to the plan. If a district has made a significant change to only a portion of the plan the district need only submit a description of the changes made and not the entire plan. Plans or descriptions of changes to the plan must be submitted by July 1st as required under this section. The office of the superintendent of public instruction shall establish guidelines for what a "significant change" is. [2009 c 556 § 1; 2004 c 20 § 3.]

**28A.165.045 Plan approval process.** A participating school district shall submit a program plan to the office of the superintendent of public instruction for approval to the extent required by RCW 28A.165.025. The program plan must address all of the elements in RCW 28A.165.025 and identify the program activities to be implemented from RCW 28A.165.035.

School districts achieving state reading and mathematics goals as prescribed in chapter 28A.655 RCW shall have their program approved once the program plan and activities submittal is completed.

School districts not achieving state reading and mathematics goals as prescribed in chapter 28A.655 RCW and that are not in a state or federal program of school improvement shall be subject to program approval once the plan components are reviewed by the office of the superintendent of public instruction for the purpose of receiving technical assistance in the final development of the plan.

School districts with one or more schools in a state or federal program of school improvement shall have their plans and activities reviewed and approved in conjunction with the state or federal program school improvement program requirements. [2009 c 556 § 2; 2004 c 20 § 5.]

**28A.165.055 Funds—Eligibility.** (*Effective September 1, 2011.*) Each school district with an approved program is eligible for state funds provided for the learning assistance program. The funds shall be appropriated for the learning assistance program in accordance with RCW 28A.150.260 and the omnibus appropriations act. The distribution formula is for school district allocation purposes only, but funds appropriated for the learning assistance program must be expended for the purposes of RCW 28A.165.005 through 28A.165.065. [2009 c 548 § 703; 2008 c 321 § 10; 2005 c 489 § 1; 2004 c 20 § 6.]

**Effective date—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.



**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.  
**Findings—2008 c 321:** See note following RCW 28A.655.061.

**Chapter 28A.180 RCW**  
**TRANSITIONAL BILINGUAL**  
**INSTRUCTION PROGRAM**

Sections

- 28A.180.010 Short title—Purpose. (*Effective September 1, 2011.*)
- 28A.180.040 School board duties.
- 28A.180.080 Allocation of moneys for bilingual instruction program. (*Effective September 1, 2011.*)

**28A.180.010 Short title—Purpose.** (*Effective September 1, 2011.*) RCW 28A.180.010 through 28A.180.080 shall be known and cited as "the transitional bilingual instruction act." The legislature finds that there are large numbers of children who come from homes where the primary language is other than English. The legislature finds that a transitional bilingual education program can meet the needs of these children. Pursuant to the policy of this state to insure equal educational opportunity to every child in this state, it is the purpose of RCW 28A.180.010 through 28A.180.080 to provide for the implementation of transitional bilingual education programs in the public schools. [2009 c 548 § 704; 1990 c 33 § 163; 1984 c 124 § 1; 1979 c 95 § 1. Formerly RCW 28A.58.800.]

**Effective date—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Severability—1979 c 95:** "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 95 § 9.]

**28A.180.040 School board duties.** (1) Every school district board of directors shall:

(a) Make available to each eligible pupil transitional bilingual instruction to achieve competency in English, in accord with rules of the superintendent of public instruction;

(b) Wherever feasible, ensure that communications to parents emanating from the schools shall be appropriately bilingual for those parents of pupils in the bilingual instruction program;

(c) Determine, by administration of an English test approved by the superintendent of public instruction the number of eligible pupils enrolled in the school district at the beginning of a school year and thereafter during the year as necessary in individual cases;

(d) Ensure that a student who is a child of a military family in transition and who has been assessed as in need of, or enrolled in, a bilingual instruction program, the receiving school shall initially honor placement of the student into a like program.

(i) The receiving school shall determine whether the district's program is a like program when compared to the sending school's program; and

(ii) The receiving school may conduct subsequent assessments pursuant to RCW 28A.180.090 to determine

appropriate placement and continued enrollment in the program;

(e) Before the conclusion of each school year, measure each eligible pupil's improvement in learning the English language by means of a test approved by the superintendent of public instruction; and

(f) Provide in-service training for teachers, counselors, and other staff, who are involved in the district's transitional bilingual program. Such training shall include appropriate instructional strategies for children of culturally different backgrounds, use of curriculum materials, and program models.

(2) The definitions in Article II of RCW 28A.705.010 apply to subsection (1)(d) of this section. [2009 c 380 § 5; 2001 1st sp.s. c 6 § 4; 1984 c 124 § 3; 1979 c 95 § 3. Formerly RCW 28A.58.804.]

**Effective date—1979 c 95 § 3:** "Section 3 of this act shall take effect September 1, 1980." [1979 c 95 § 7.]

**Severability—1979 c 95:** See note following RCW 28A.180.010.

**28A.180.080 Allocation of moneys for bilingual instruction program.** (*Effective September 1, 2011.*) Moneys appropriated by the legislature for the purposes of RCW 28A.180.010 through 28A.180.080 shall be allocated by the superintendent of public instruction to school districts for the sole purpose of operating an approved bilingual instruction program. [2009 c 548 § 705; 1995 c 335 § 601; 1990 c 33 § 167; 1979 c 95 § 6. Formerly RCW 28A.58.810.]

**Effective date—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Part headings, table of contents not law—1995 c 335:** See note following RCW 28A.150.360.

**Severability—1979 c 95:** See note following RCW 28A.180.010.

**Chapter 28A.185 RCW**  
**HIGHLY CAPABLE STUDENTS**

Sections

- 28A.185.010 Program—Duties of superintendent of public instruction. (*Effective September 1, 2011.*)
- 28A.185.020 Funding. (*Effective September 1, 2011.*)
- 28A.185.030 Programs—Authority of local school districts—Selection of students.

**28A.185.010 Program—Duties of superintendent of public instruction.** (*Effective September 1, 2011.*) Pursuant to rules adopted by the superintendent of public instruction for the administration of this chapter, the superintendent of public instruction shall carry out a program for highly capable students. Such program may include conducting, coordinating and aiding in research (including pilot programs), disseminating information to local school districts, providing statewide staff development, and allocating to school districts supplementary funds for additional costs of district programs, as provided by RCW 28A.150.260. [2009 c 548 § 707; 1984 c 278 § 12. Formerly RCW 28A.16.040.]

**Effective date—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Severability—1984 c 278:** "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 278 § 24.]

**28A.185.020 Funding. (Effective September 1, 2011.)**

(1) The legislature finds that, for highly capable students, access to accelerated learning and enhanced instruction is access to a basic education. There are multiple definitions of highly capable, from intellectual to academic to artistic. The research literature strongly supports using multiple criteria to identify highly capable students, and therefore, the legislature does not intend to prescribe a single method. Instead, the legislature intends to allocate funding based on two and three hundred fourteen one-thousandths percent of each school district's population and authorize school districts to identify through the use of multiple, objective criteria those students most highly capable and eligible to receive accelerated learning and enhanced instruction in the program offered by the district. Access to accelerated learning and enhanced instruction through the program for highly capable students does not constitute an individual entitlement for any particular student.

(2) Supplementary funds provided by the state for the program for highly capable students under RCW 28A.150.260 shall be categorical funding to provide services to highly capable students as determined by a school district under RCW 28A.185.030. [2009 c 548 § 708; 1990 c 33 § 168; 1984 c 278 § 14. Formerly RCW 28A.16.050.]

**Effective date—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Severability—1984 c 278:** See note following RCW 28A.185.010.

**28A.185.030 Programs—Authority of local school districts—Selection of students.** Local school districts may establish and operate, either separately or jointly, programs for highly capable students. Such authority shall include the right to employ and pay special instructors and to operate such programs jointly with a public institution of higher education. Local school districts which establish and operate programs for highly capable students shall adopt identification procedures and provide educational opportunities as follows:

(1) In accordance with rules adopted by the superintendent of public instruction, school districts shall implement procedures for nomination, assessment and selection of their most highly capable students. Nominations shall be based upon data from teachers, other staff, parents, students, and members of the community. Assessment shall be based upon a review of each student's capability as shown by multiple criteria intended to reveal, from a wide variety of sources and data, each student's unique needs and capabilities. Selection shall be made by a broadly based committee of professionals, after consideration of the results of the multiple criteria assessment.

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(2) When a student, who is a child of a military family in transition, has been assessed or enrolled as highly capable by a sending school, the receiving school shall initially honor placement of the student into a like program.

(a) The receiving school shall determine whether the district's program is a like program when compared to the sending school's program; and

(b) The receiving school may conduct subsequent assessments to determine appropriate placement and continued enrollment in the program.

(3) Students selected pursuant to procedures outlined in this section shall be provided, to the extent feasible, an educational opportunity which takes into account each student's unique needs and capabilities and the limits of the resources and program options available to the district, including those options which can be developed or provided by using funds allocated by the superintendent of public instruction for that purpose.

(4) The definitions in Article II of RCW 28A.705.010 apply to subsection (2) of this section. [2009 c 380 § 4; 1984 c 278 § 13. Formerly RCW 28A.16.060.]

**Severability—1984 c 278:** See note following RCW 28A.185.010.

**Chapter 28A.195 RCW  
PRIVATE SCHOOLS**

Sections

28A.195.010 Private schools—Exemption from high school assessment requirements—Extension programs for parents to teach children in their custody.

**28A.195.010 Private schools—Exemption from high school assessment requirements—Extension programs for parents to teach children in their custody.** The legislature hereby recognizes that private schools should be subject only to those minimum state controls necessary to insure the health and safety of all the students in the state and to insure a sufficient basic education to meet usual graduation requirements. The state, any agency or official thereof, shall not restrict or dictate any specific educational or other programs for private schools except as hereinafter in this section provided.

Principals of private schools or superintendents of private school districts shall file each year with the state superintendent of public instruction a statement certifying that the minimum requirements hereinafter set forth are being met, noting any deviations. After review of the statement, the state superintendent will notify schools or school districts of those deviations which must be corrected. In case of major deviations, the school or school district may request and the state board of education may grant provisional status for one year in order that the school or school district may take action to meet the requirements. The state board of education shall not require private school students to meet the student learning goals, obtain a certificate of academic achievement, or a certificate of individual achievement to graduate from high school, to master the essential academic learning requirements, or to be assessed pursuant to RCW 28A.655.061. However, private schools may choose, on a voluntary basis, to have their students master these essential academic learning requirements, take the assessments, and obtain a certifi-

cate of academic achievement or a certificate of individual achievement. Minimum requirements shall be as follows:

(1) The minimum school year for instructional purposes shall consist of no less than one hundred eighty school days or the equivalent in annual minimum instructional hour offerings, with a school-wide annual average total instructional hour offering of one thousand hours for students enrolled in grades one through twelve, and at least four hundred fifty hours for students enrolled in kindergarten.

(2) The school day shall be the same as defined in RCW 28A.150.203.

(3) All classroom teachers shall hold appropriate Washington state certification except as follows:

(a) Teachers for religious courses or courses for which no counterpart exists in public schools shall not be required to obtain a state certificate to teach those courses.

(b) In exceptional cases, people of unusual competence but without certification may teach students so long as a certified person exercises general supervision. Annual written statements shall be submitted to the office of the superintendent of public instruction reporting and explaining such circumstances.

(4) An approved private school may operate an extension program for parents, guardians, or persons having legal custody of a child to teach children in their custody. The extension program shall require at a minimum that:

(a) The parent, guardian, or custodian be under the supervision of an employee of the approved private school who is certified under chapter 28A.410 RCW;

(b) The planning by the certified person and the parent, guardian, or person having legal custody include objectives consistent with this subsection and subsections (1), (2), (5), (6), and (7) of this section;

(c) The certified person spend a minimum average each month of one contact hour per week with each student under his or her supervision who is enrolled in the approved private school extension program;

(d) Each student's progress be evaluated by the certified person; and

(e) The certified employee shall not supervise more than thirty students enrolled in the approved private school's extension program.

(5) Appropriate measures shall be taken to safeguard all permanent records against loss or damage.

(6) The physical facilities of the school or district shall be adequate to meet the program offered by the school or district: PROVIDED, That each school building shall meet reasonable health and fire safety requirements. A residential dwelling of the parent, guardian, or custodian shall be deemed to be an adequate physical facility when a parent, guardian, or person having legal custody is instructing his or her child under subsection (4) of this section.

(7) Private school curriculum shall include instruction of the basic skills of occupational education, science, mathematics, language, social studies, history, health, reading, writing, spelling, and the development of appreciation of art and music, all in sufficient units for meeting state board of education graduation requirements.

(8) Each school or school district shall be required to maintain up-to-date policy statements related to the administration and operation of the school or school district.

All decisions of policy, philosophy, selection of books, teaching material, curriculum, except as in subsection (7) of this section provided, school rules and administration, or other matters not specifically referred to in this section, shall be the responsibility of the administration and administrators of the particular private school involved. [2009 c 548 § 303; 2004 c 19 § 106; 1993 c 336 § 1101; (1992 c 141 § 505 repealed by 1993 c 336 § 1102); 1990 c 33 § 176. Prior: 1985 c 441 § 4; 1985 c 16 § 1; 1983 c 56 § 1; 1977 ex.s. c 359 § 9; 1975 1st ex.s. c 275 § 71; 1974 ex.s. c 92 § 2. Formerly RCW 28A.02.201.]

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Part headings and captions not law—Severability—Effective date—2004 c 19:** See notes following RCW 28A.655.061.

**Findings—Intent—Part headings not law—1993 c 336:** See notes following RCW 28A.150.210.

**Findings—1993 c 336:** See note following RCW 28A.150.210.

**Findings—Part headings—Severability—1992 c 141:** See notes following RCW 28A.410.040.

**Severability—1985 c 441:** See note following RCW 28A.225.010.

**Severability—1983 c 56:** "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 56 § 18.]

**Effective date—Severability—1977 ex.s. c 359:** See notes following RCW 28A.150.200.

*Authorization for private school students to ride buses—Conditions:* RCW 28A.160.020.

*Basic Education Act, RCW 28A.195.010 as part of:* RCW 28A.150.200.

*Commencement exercises—Lip reading instruction—Joint purchasing, including issuing interest bearing warrants—Budgets:* RCW 28A.320.080.

*Home-based instruction:* RCW 28A.200.010.

*Immunization program, private schools as affecting:* RCW 28A.210.060 through 28A.210.170.

*Part-time students—Defined—Enrollment in public schools authorized:* RCW 28A.150.350.

*Real property—Sale—Notice and hearing—Appraisal—Broker or real estate appraiser services—Real estate sales contracts—Limitation:* RCW 28A.335.120.

*Surplus school property, rental, lease or use of—Authorized—Limitations:* RCW 28A.335.040.

*Surplus texts and other educational aids, notice of availability—Student priority as to texts:* RCW 28A.335.180.

**Chapter 28A.210 RCW**

**HEALTH—SCREENING AND REQUIREMENTS**

Sections

- 28A.210.010 Contagious diseases, limiting contact—Rules.
- 28A.210.020 Visual and auditory screening of pupils—Rules and regulations.
- 28A.210.040 Visual and auditory screening of pupils—Access to rules, records, and forms.
- 28A.210.045 Speech-language pathology services—Complaints.
- 28A.210.180 Repealed.
- 28A.210.190 Repealed.
- 28A.210.200 Repealed.
- 28A.210.210 Repealed.
- 28A.210.220 Repealed.
- 28A.210.240 Repealed.
- 28A.210.250 Repealed.

**28A.210.010 Contagious diseases, limiting contact—Rules.** The state board of health, after consultation with the superintendent of public instruction, shall adopt reasonable rules regarding the presence of persons on or about any school premises who have, or who have been exposed to, contagious diseases deemed by the state board of health as dangerous to the public health. Such rules shall specify reasonable and precautionary procedures as to such presence and/or readmission of such persons and may include the requirement for a certificate from a licensed physician that there is no danger of contagion. The superintendent of public instruction shall provide to appropriate school officials and personnel, access and notice of these rules of the state board of health. Providing online access to these rules satisfies the requirements of this section. The superintendent of public instruction is required to provide this notice only when there are significant changes to the rules. [2009 c 556 § 3; 1971 c 32 § 1; 1969 ex.s. c 223 § 28A.31.010. Prior: 1909 c 97 p 262 § 5; RRS § 4689; prior: 1897 c 118 § 68; 1890 p 372 § 47. Formerly RCW 28A.31.010, 28.31.010.]

**28A.210.020 Visual and auditory screening of pupils—Rules and regulations.** Every board of school directors shall have the power, and it shall be its duty to provide for and require screening for the visual and auditory acuity of all children attending schools in their districts to ascertain which if any of such children have defects sufficient to retard them in their studies. Auditory and visual screening shall be made in accordance with procedures and standards adopted by rule or regulation of the state board of health. Prior to the adoption or revision of such rules or regulations the state board of health shall seek the recommendations of the superintendent of public instruction regarding the administration of visual and auditory screening and the qualifications of persons competent to administer such screening. Persons performing visual screening may include, but are not limited to, ophthalmologists, optometrists, or opticians who donate their professional services to schools or school districts. If a vision professional who donates his or her services identifies a vision defect sufficient to affect a student's learning, the vision professional must notify the school nurse and/or the school principal in writing and may not contact the student's parents or guardians directly. A school official shall inform parents or guardians of students in writing that a visual examination was recommended, but may not communicate the name or contact information of the vision professional conducting the screening. [2009 c 556 § 18; 1971 c 32 § 2; 1969 ex.s. c 223 § 28A.31.030. Prior: 1941 c 202 § 1; Rem. Supp. 1941 § 4689-1. Formerly RCW 28A.31.030, 28.31.030.]

**28A.210.040 Visual and auditory screening of pupils—Access to rules, records, and forms.** The superintendent of public instruction shall provide access to appropriate school officials the rules adopted by the state board of health pursuant to RCW 28A.210.020 and the recommended records and forms to be used in making and reporting such screenings. Providing online access to the materials satisfies the requirements of this section. [2009 c 556 § 4; 1990 c 33 § 189; 1973 c 46 § 1. Prior: 1971 c 48 § 12; 1971 c 32 § 4;

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1969 ex.s. c 223 § 28A.31.050; prior: 1941 c 202 § 3; RRS § 4689-3. Formerly RCW 28A.31.050, 28.31.050.]

**Severability—1973 c 46:** "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 46 § 5.]

**Severability—1971 c 48:** See note following RCW 28A.310.250.

**28A.210.045 Speech-language pathology services—Complaints.** (1) The superintendent of public instruction shall report to the department of health:

(a) Any complaint or disciplinary action taken against a certified educational staff associate providing speech-language pathology services in a school setting; and

(b) Any complaint the superintendent receives regarding a speech-language pathology assistant certified under chapter 18.35 RCW.

(2) The superintendent of public instruction shall make the reports required by this section as soon as practicable, but in no case later than five business days after the complaint or disciplinary action. [2009 c 301 § 13.]

**Intent—Implementation—2009 c 301:** See notes following RCW 18.35.010.

**Speech-language pathology assistants—Certification requirements—2009 c 301:** See note following RCW 18.35.040.

**28A.210.180 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.210.190 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.210.200 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.210.210 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.210.220 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.210.240 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.210.250 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 28A.225 RCW

### COMPULSORY SCHOOL ATTENDANCE AND ADMISSION

#### Sections

28A.225.005	Compulsory education, requirements—Informing students and parents annually.
28A.225.020	School's duties upon child's failure to attend school.
28A.225.025	Community truancy boards.
28A.225.035	Petition to juvenile court—Contents—Court action—Referral to community truancy board—Transfer of jurisdiction upon relocation.
28A.225.090	Court orders—Penalties—Parents' defense.
28A.225.160	Qualification for admission to district's schools—Fees for preadmission screening.

- 28A.225.200 Education of pupils in another district—Limitation as to state apportionment—Exemption. (*Effective September 1, 2011.*)
- 28A.225.210 Admission of district pupils tuition free.
- 28A.225.217 Children of military families—Continued enrollment in district schools.
- 28A.225.225 Applications from nonresident students or students receiving home-based instruction to attend district school—School employees' children—Acceptance and rejection standards—Notification.
- 28A.225.290 Enrollment options information booklet (*as amended by 2009 c 450*).
- 28A.225.290 Enrollment options information booklet—Posting on web site (*as amended by 2009 c 524*).
- 28A.225.290 Enrollment options information (*as amended by 2009 c 556*).
- 28A.225.300 Enrollment options information to parents.
- 28A.225.330 Enrolling students from other districts—Requests for information and permanent records—Withheld transcripts—Immunity from liability—Notification to teachers and security personnel—Rules.

**28A.225.005 Compulsory education, requirements—Informing students and parents annually.** Each school within a school district shall inform the students and the parents of the students enrolled in the school about the compulsory education requirements under this chapter. The school shall provide access to the information at least annually. Providing online access to the information satisfies the requirements of this section unless a parent or guardian specifically requests information to be provided in written form. [2009 c 556 § 5; 1992 c 205 § 201.]

**Part headings not law—Severability—1992 c 205:** See notes following RCW 13.40.010.

**28A.225.020 School's duties upon child's failure to attend school.** (1) If a child required to attend school under RCW 28A.225.010 fails to attend school without valid justification, the public school in which the child is enrolled shall:

(a) Inform the child's custodial parent, parents, or guardian by a notice in writing or by telephone whenever the child has failed to attend school after one unexcused absence within any month during the current school year. School officials shall inform the parent of the potential consequences of additional unexcused absences. If the custodial parent, parents, or guardian is not fluent in English, the preferred practice is to provide this information in a language in which the custodial parent, parents, or guardian is fluent;

(b) Schedule a conference or conferences with the custodial parent, parents, or guardian and child at a time reasonably convenient for all persons included for the purpose of analyzing the causes of the child's absences after two unexcused absences within any month during the current school year. If a regularly scheduled parent-teacher conference day is to take place within thirty days of the second unexcused absence, then the school district may schedule this conference on that day; and

(c) Take steps to eliminate or reduce the child's absences. These steps shall include, where appropriate, adjusting the child's school program or school or course assignment, providing more individualized or remedial instruction, providing appropriate vocational courses or work experience, referring the child to a community truancy board, if available, requiring the child to attend an alternative school or program, or assisting the parent or child to obtain supplementary services that might eliminate or ameliorate the cause or causes for the absence from school. If the child's parent

does not attend the scheduled conference, the conference may be conducted with the student and school official. However, the parent shall be notified of the steps to be taken to eliminate or reduce the child's absence.

(2) For purposes of this chapter, an "unexcused absence" means that a child:

(a) Has failed to attend the majority of hours or periods in an average school day or has failed to comply with a more restrictive school district policy; and

(b) Has failed to meet the school district's policy for excused absences.

(3) If a child transfers from one school district to another during the school year, the receiving school or school district shall include the unexcused absences accumulated at the previous school or from the previous school district for purposes of this section, RCW 28A.225.030, and 28A.225.015. [2009 c 266 § 1; 1999 c 319 § 1; 1996 c 134 § 2; 1995 c 312 § 67; 1992 c 205 § 202; 1986 c 132 § 2; 1979 ex.s. c 201 § 1. Formerly RCW 28A.27.020.]

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**Part headings not law—Severability—1992 c 205:** See notes following RCW 13.40.010.

**28A.225.025 Community truancy boards.** (1) For purposes of this chapter, "community truancy board" means a board composed of members of the local community in which the child attends school. Juvenile courts may establish and operate community truancy boards. If the juvenile court and the school district agree, a school district may establish and operate a community truancy board under the jurisdiction of the juvenile court. Juvenile courts may create a community truancy board or may use other entities that exist or are created, such as diversion units. However, a diversion unit or other existing entity must agree before it is used as a truancy board. Duties of a community truancy board shall include, but not be limited to, recommending methods for improving school attendance such as assisting the parent or the child to obtain supplementary services that might eliminate or ameliorate the causes for the absences or suggesting to the school district that the child enroll in another school, an alternative education program, an education center, a skill center, a dropout prevention program, or another public or private educational program.

(2) The legislature finds that utilization of community truancy boards, or other diversion units that fulfill a similar function, is the preferred means of intervention when preliminary methods of notice and parent conferences and taking appropriate steps to eliminate or reduce unexcused absences have not been effective in securing the child's attendance at school. The legislature intends to encourage and support the development and expansion of community truancy boards and other diversion programs which are effective in promoting school attendance and preventing the need for more intrusive intervention by the court. Operation of a school truancy board does not excuse a district from the obligation of filing a petition within the requirements of RCW 28A.225.015(3). [2009 c 266 § 2; 1999 c 319 § 5; 1996 c 134 § 9; 1995 c 312 § 66.]

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**28A.225.035 Petition to juvenile court—Contents—Court action—Referral to community truancy board—Transfer of jurisdiction upon relocation.** (1) A petition for a civil action under RCW 28A.225.030 or 28A.225.015 shall consist of a written notification to the court alleging that:

(a) The child has unexcused absences during the current school year;

(b) Actions taken by the school district have not been successful in substantially reducing the child's absences from school; and

(c) Court intervention and supervision are necessary to assist the school district or parent to reduce the child's absences from school.

(2) The petition shall set forth the name, date of birth, school, address, gender, race, and ethnicity of the child and the names and addresses of the child's parents, and shall set forth whether the child and parent are fluent in English and whether there is an existing individualized education program.

(3) The petition shall set forth facts that support the allegations in this section and shall generally request relief available under this chapter and provide information about what the court might order under RCW 28A.225.090.

(4) When a petition is filed under RCW 28A.225.030 or 28A.225.015, the juvenile court shall schedule a hearing at which the court shall consider the petition, or if the court determines that a referral to an available community truancy board would substantially reduce the child's unexcused absences, the court may refer the case to a community truancy board under the jurisdiction of the juvenile court.

(5) If a referral is made to a community truancy board, the truancy board must meet with the child, a parent, and the school district representative and enter into an agreement with the petitioner and respondent regarding expectations and any actions necessary to address the child's truancy within twenty days of the referral. If the petition is based on RCW 28A.225.015, the child shall not be required to attend and the agreement under this subsection shall be between the truancy board, the school district, and the child's parent. The court may permit the truancy board or truancy prevention counselor to provide continued supervision over the student, or parent if the petition is based on RCW 28A.225.015.

(6) If the truancy board fails to reach an agreement, or the parent or student does not comply with the agreement, the truancy board shall return the case to the juvenile court for a hearing.

(7)(a) Notwithstanding the provisions in subsection (4) of this section, a hearing shall not be required if other actions by the court would substantially reduce the child's unexcused absences. When a juvenile court hearing is held, the court shall:

(i) Separately notify the child, the parent of the child, and the school district of the hearing. If the parent is not fluent in English, the preferred practice is for notice to be provided in a language in which the parent is fluent;

(ii) Notify the parent and the child of their rights to present evidence at the hearing; and

(iii) Notify the parent and the child of the options and rights available under chapter 13.32A RCW.

(b) If the child is not provided with counsel, the advisement of rights must take place in court by means of a collo-

quy between the court, the child if eight years old or older, and the parent.

(8) The court may require the attendance of the child if eight years old or older, the parents, and the school district at any hearing on a petition filed under RCW 28A.225.030.

(9) A school district is responsible for determining who shall represent the school district at hearings on a petition filed under RCW 28A.225.030 or 28A.225.015.

(10) The court may permit the first hearing to be held without requiring that either party be represented by legal counsel, and to be held without a guardian ad litem for the child under RCW 4.08.050. At the request of the school district, the court shall permit a school district representative who is not an attorney to represent the school district at any future hearings.

(11) If the child is in a special education program or has a diagnosed mental or emotional disorder, the court shall inquire as to what efforts the school district has made to assist the child in attending school.

(12) If the allegations in the petition are established by a preponderance of the evidence, the court shall grant the petition and enter an order assuming jurisdiction to intervene for the period of time determined by the court, after considering the facts alleged in the petition and the circumstances of the juvenile, to most likely cause the juvenile to return to and remain in school while the juvenile is subject to this chapter. In no case may the order expire before the end of the school year in which it is entered.

(13) If the court assumes jurisdiction, the school district shall regularly report to the court any additional unexcused absences by the child.

(14) Community truancy boards and the courts shall coordinate, to the extent possible, proceedings and actions pertaining to children who are subject to truancy petitions and at-risk youth petitions in RCW 13.32A.191 or child in need of services petitions in RCW 13.32A.140.

(15) If after a juvenile court assumes jurisdiction in one county the child relocates to another county, the juvenile court in the receiving county shall, upon the request of a school district or parent, assume jurisdiction of the petition filed in the previous county. [2009 c 266 § 3; 2001 c 162 § 1; 1999 c 319 § 3; 1997 c 68 § 1. Prior: 1996 c 134 § 4; 1996 c 133 § 31; 1995 c 312 § 69.]

**Findings—Short title—Intent—Construction—1996 c 133:** See notes following RCW 13.32A.197.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**28A.225.090 Court orders—Penalties—Parents' defense.** (1) A court may order a child subject to a petition under RCW 28A.225.035 to do one or more of the following:

(a) Attend the child's current school, and set forth minimum attendance requirements, including suspensions;

(b) If there is space available and the program can provide educational services appropriate for the child, order the child to attend another public school, an alternative education program, center, a skill center, dropout prevention program, or another public educational program;

(c) Attend a private nonsectarian school or program including an education center. Before ordering a child to attend an approved or certified private nonsectarian school or program, the court shall: (i) Consider the public and private

programs available; (ii) find that placement is in the best interest of the child; and (iii) find that the private school or program is willing to accept the child and will not charge any fees in addition to those established by contract with the student's school district. If the court orders the child to enroll in a private school or program, the child's school district shall contract with the school or program to provide educational services for the child. The school district shall not be required to contract for a weekly rate that exceeds the state general apportionment dollars calculated on a weekly basis generated by the child and received by the district. A school district shall not be required to enter into a contract that is longer than the remainder of the school year. A school district shall not be required to enter into or continue a contract if the child is no longer enrolled in the district;

(d) Be referred to a community truancy board, if available; or

(e) Submit to testing for the use of controlled substances or alcohol based on a determination that such testing is appropriate to the circumstances and behavior of the child and will facilitate the child's compliance with the mandatory attendance law and, if any test ordered under this subsection indicates the use of controlled substances or alcohol, order the minor to abstain from the unlawful consumption of controlled substances or alcohol and adhere to the recommendations of the drug assessment at no expense to the school.

(2) If the child fails to comply with the court order, the court may order the child to be subject to detention, as provided in RCW 7.21.030(2)(e), or may impose alternatives to detention such as community restitution. Failure by a child to comply with an order issued under this subsection shall not be subject to detention for a period greater than that permitted pursuant to a civil contempt proceeding against a child under chapter 13.32A RCW. Detention ordered under this subsection may be for no longer than seven days. A warrant of arrest for a child under this subsection may not be served on a child inside of school during school hours in a location where other students are present.

(3) Any parent violating any of the provisions of either RCW 28A.225.010, 28A.225.015, or 28A.225.080 shall be fined not more than twenty-five dollars for each day of unexcused absence from school. The court shall remit fifty percent of the fine collected under this section to the child's school district. It shall be a defense for a parent charged with violating RCW 28A.225.010 to show that he or she exercised reasonable diligence in attempting to cause a child in his or her custody to attend school or that the child's school did not perform its duties as required in RCW 28A.225.020. The court may order the parent to provide community restitution instead of imposing a fine. Any fine imposed pursuant to this section may be suspended upon the condition that a parent charged with violating RCW 28A.225.010 shall participate with the school and the child in a supervised plan for the child's attendance at school or upon condition that the parent attend a conference or conferences scheduled by a school for the purpose of analyzing the causes of a child's absence.

(4) If a child continues to be truant after entering into a court-approved order with the truancy board under RCW 28A.225.035, the juvenile court shall find the child in contempt, and the court may order the child to be subject to detention, as provided in RCW 7.21.030(2)(e), or may

impose alternatives to detention such as meaningful community restitution. Failure by a child to comply with an order issued under this subsection may not subject a child to detention for a period greater than that permitted under a civil contempt proceeding against a child under chapter 13.32A RCW.

(5) Subsections (1), (2), and (4) of this section shall not apply to a six or seven year-old child required to attend public school under RCW 28A.225.015. [2009 c 266 § 4; 2008 c 171 § 1; 2002 c 175 § 29. Prior: 2000 c 162 § 15; 2000 c 162 § 6; 2000 c 61 § 1; 1999 c 319 § 4; 1998 c 296 § 39; 1997 c 68 § 2; prior: 1996 c 134 § 6; 1996 c 133 § 32; 1995 c 312 § 74; 1992 c 205 § 204; 1990 c 33 § 226; 1987 c 202 § 189; 1986 c 132 § 5; 1979 ex.s. c 201 § 6; 1969 ex.s. c 223 § 28A.27.100; prior: 1909 c 97 p 365 § 3; RRS § 5074; prior: 1907 c 231 § 3; 1905 c 162 § 3. Formerly RCW 28A.27.100, 28.27.100.]

**Effective date—2002 c 175:** See note following RCW 7.80.130.

**Effective date—2000 c 162 §§ 11-17:** See note following RCW 13.32A.060.

**Findings—Intent—1998 c 296 §§ 36-39:** See note following RCW 7.21.030.

**Findings—Intent—Part headings not law—Short title—1998 c 296:** See notes following RCW 74.13.025.

**Findings—Short title—Intent—Construction—1996 c 133:** See notes following RCW 13.32A.197.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

**Part headings not law—Severability—1992 c 205:** See notes following RCW 13.40.010.

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

**28A.225.160 Qualification for admission to district's schools—Fees for preadmission screening.** (1) Except as provided in subsection (2) of this section and otherwise provided by law, it is the general policy of the state that the common schools shall be open to the admission of all persons who are five years of age and less than twenty-one years residing in that school district. Except as otherwise provided by law or rules adopted by the superintendent of public instruction, districts may establish uniform entry qualifications, including but not limited to birth date requirements, for admission to kindergarten and first grade programs of the common schools. Such rules may provide for exceptions based upon the ability, or the need, or both, of an individual student. For the purpose of complying with any rule adopted by the superintendent of public instruction that authorizes a preadmission screening process as a prerequisite to granting exceptions to the uniform entry qualifications, a school district may collect fees to cover expenses incurred in the administration of any preadmission screening process: PROVIDED, That in so establishing such fee or fees, the district shall adopt rules for waiving and reducing such fees in the cases of those persons whose families, by reason of their low income, would have difficulty in paying the entire amount of such fees.

(2) A student who meets the definition of a child of a military family in transition under Article II of RCW 28A.705.010 shall be permitted to continue enrollment at the grade level in the common schools commensurate with the grade level of the student when attending school in the sending state as defined in Article II of RCW 28A.705.010, regardless of age or birthdate requirements. [2009 c 380 § 3;

2006 c 263 § 703; 1999 c 348 § 5; 1986 c 166 § 1; 1979 ex.s. c 250 § 4; 1977 ex.s. c 359 § 14; 1969 ex.s. c 223 § 28A.58.190. Prior: 1909 c 97 p 261 § 1, part; RRS § 4680, part; prior: 1897 c 118 § 64, part; 1890 p 371 § 44, part. Formerly RCW 28A.58.190, 28.58.190 part, 28.01.060.]

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Intent—1999 c 348:** See note following RCW 28A.205.010.

**Effective date—Severability—1979 ex.s. c 250:** See notes following RCW 28A.150.220.

**Effective date—Severability—1977 ex.s. c 359:** See notes following RCW 28A.150.200.

*Basic Education Act, RCW 28A.225.160 as part of: RCW 28A.150.200.*

**28A.225.200 Education of pupils in another district—Limitation as to state apportionment—Exemption. (Effective September 1, 2011.)** (1) A local district may be authorized by the educational service district superintendent to transport and educate its pupils in other districts for one year, either by payment of a compensation agreed upon by such school districts, or under other terms mutually satisfactory to the districts concerned when this will afford better educational facilities for the pupils and when a saving may be effected in the cost of education. Notwithstanding any other provision of law, the amount to be paid by the state to the resident school district for apportionment purposes and otherwise payable pursuant to RCW 28A.150.250 through 28A.150.290, 28A.150.350 through 28A.150.410, 28A.160.150 through 28A.160.200, 28A.300.035, and 28A.300.170 shall not be greater than the regular apportionment for each high school student of the receiving district. Such authorization may be extended for an additional year at the discretion of the educational service district superintendent.

(2) Subsection (1) of this section shall not apply to districts participating in a cooperative project established under RCW 28A.340.030 which exceeds two years in duration. [2009 c 548 § 706; 1990 c 33 § 234; 1988 c 268 § 6; 1979 ex.s. c 140 § 1; 1975 1st ex.s. c 275 § 111; 1969 ex.s. c 176 § 141; 1969 ex.s. c 223 § 28A.58.225. Prior: 1965 ex.s. c 154 § 10. Formerly RCW 28A.58.225, 28.24.110.]

**Effective date—2009 c 548 §§ 101-110 and 701-710:** See note following RCW 28A.150.200.

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Findings—Severability—1988 c 268:** See notes following RCW 28A.340.010.

**Severability—1979 ex.s. c 140:** "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." [1979 ex.s. c 140 § 4.]

**Rights preserved—Severability—1969 ex.s. c 176:** See notes following RCW 28A.310.010.

**28A.225.210 Admission of district pupils tuition free.** Every school district shall admit on a tuition free basis: (1) All persons of school age who reside within this state, and do not reside within another school district carrying the grades for which they are eligible to enroll: PROVIDED, That nothing in this subsection shall be construed as affecting RCW

28A.225.220 or 28A.225.250; and (2) all students who meet the definition of children of military families in transition under Article II of RCW 28A.705.010 who are in the care of a noncustodial parent or other person standing in loco parentis and who lives in another state while the parent is under military orders. [2009 c 380 § 6; 1990 c 33 § 235; 1983 c 3 § 37; 1969 c 130 § 9; 1969 ex.s. c 223 § 28A.58.230. Prior: 1917 c 21 § 9; RRS § 4718. Formerly RCW 28A.58.230, 28.58.230.]

*Designation of high school district nonhigh district students shall attend—Effect when attendance otherwise: RCW 28A.540.110.*

*Education of children with disabilities: RCW 28A.155.050.*

**28A.225.217 Children of military families—Continued enrollment in district schools.** (1) A student shall be permitted to remain enrolled in the school in which the student was enrolled while residing with the custodial parent if the student:

(a) Meets the definition of a child of a military family in transition under Article II of RCW 28A.705.010; and

(b) Is placed in the care of a noncustodial parent or guardian when the custodial parent is required to relocate due to military orders.

(2) A nonresident school district shall not be required to provide transportation to and from the school unless otherwise required by state or federal law. [2009 c 380 § 8.]

**28A.225.225 Applications from nonresident students or students receiving home-based instruction to attend district school—School employees' children—Acceptance and rejection standards—Notification.** (1) Except for students who reside out-of-state and students under RCW 28A.225.217, a district shall accept applications from nonresident students who are the children of full-time certificated and classified school employees, and those children shall be permitted to enroll:

(a) At the school to which the employee is assigned;

(b) At a school forming the district's K through 12 continuum which includes the school to which the employee is assigned; or

(c) At a school in the district that provides early intervention services pursuant to RCW 28A.155.065 or preschool services pursuant to RCW 28A.155.070, if the student is eligible for such services.

(2) A district may reject applications under this section if:

(a) The student's disciplinary records indicate a history of convictions for offenses or crimes, violent or disruptive behavior, or gang membership;

(b) The student has been expelled or suspended from a public school for more than ten consecutive days. Any policy allowing for readmission of expelled or suspended students under this subsection (2)(b) must apply uniformly to both resident and nonresident applicants; or

(c) Enrollment of a child under this section would displace a child who is a resident of the district, except that if a child is admitted under subsection (1) of this section, that child shall be permitted to remain enrolled at that school, or in that district's kindergarten through twelfth grade continuum, until he or she has completed his or her schooling.



(3) Except as provided in subsection (1) of this section, all districts accepting applications from nonresident students or from students receiving home-based instruction for admission to the district's schools shall consider equally all applications received. Each school district shall adopt a policy establishing rational, fair, and equitable standards for acceptance and rejection of applications by June 30, 1990. The policy may include rejection of a nonresident student if:

(a) Acceptance of a nonresident student would result in the district experiencing a financial hardship;

(b) The student's disciplinary records indicate a history of convictions for offenses or crimes, violent or disruptive behavior, or gang membership; or

(c) The student has been expelled or suspended from a public school for more than ten consecutive days. Any policy allowing for readmission of expelled or suspended students under this subsection (3)(c) must apply uniformly to both resident and nonresident applicants.

For purposes of subsections (2)(a) and (3)(b) of this section, "gang" means a group which: (i) Consists of three or more persons; (ii) has identifiable leadership; and (iii) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

(4) The district shall provide to applicants written notification of the approval or denial of the application in a timely manner. If the application is rejected, the notification shall include the reason or reasons for denial and the right to appeal under RCW 28A.225.230(3). [2009 c 380 § 7; 2008 c 192 § 1; 2003 c 36 § 1; 1999 c 198 § 2; 1997 c 265 § 3; 1995 c 52 § 3; 1994 c 293 § 1; 1990 1st ex.s. c 9 § 203.]

**Severability—1997 c 265:** See note following RCW 13.40.160.

**Captions, headings not law—1990 1st ex.s. c 9:** "Part headings and section headings do not constitute any part of the law." [1990 1st ex.s. c 9 § 501.]

**Finding—Severability—1990 1st ex.s. c 9:** See notes following RCW 28A.225.220.

**28A.225.290 Enrollment options information booklet (as amended by 2009 c 450).** (1) The superintendent of public instruction shall prepare and annually distribute an information booklet outlining parents' and guardians' enrollment options for their children.

(2) Before the 1991-92 school year, the booklet shall be distributed to all school districts by the office of the superintendent of public instruction. School districts shall have a copy of the information booklet available for public inspection at each school in the district, at the district office, and in public libraries.

(3) The booklet shall include:

(a) Information about enrollment options and program opportunities, including but not limited to programs in RCW 28A.225.220, 28A.185.040, 28A.225.200 through 28A.225.215, 28A.225.230 through 28A.225.250, ((28A.175.090,)) 28A.340.010 through 28A.340.070 (small high school cooperative projects), and 28A.335.160;

(b) Information about the running start ((community college or vocational-technical institute)) choice program under RCW 28A.600.300 through ((28A.600.395)) 28A.600.400; and

(c) Information about the seventh and eighth grade choice program under RCW 28A.230.090. [2009 c 450 § 5; 1990 1st ex.s. c 9 § 207.]

**Findings—Intent—2009 c 450:** See note following RCW 28A.600.280.

**28A.225.290 Enrollment options information booklet—Posting on web site (as amended by 2009 c 524).** (1) The superintendent of public instruction shall prepare and annually distribute an information booklet outlining parents' and guardians' enrollment options for their children.

(2) ((Before the 1991-92 school year,)) The booklet shall be distributed to all school districts by the office of the superintendent of public instruction

and shall be posted on the web site of the office of the superintendent of public instruction. School districts shall have a copy of the information booklet available for public inspection at each school in the district, at the district office, and in public libraries.

(3) The booklet shall include:

(a) Information about enrollment options and program opportunities, including but not limited to programs in RCW 28A.225.220, 28A.185.040, 28A.225.200 through 28A.225.215, 28A.225.230 through 28A.225.250, ((28A.175.090,)) 28A.340.010 through 28A.340.070 (small high school cooperative projects), and 28A.335.160;

(b) Information about the running start((community college or vocational-technical institute choice)) program under RCW 28A.600.300 through ((28A.600.395)) 28A.600.400; ((and))

(c) Information about the seventh and eighth grade choice program under RCW 28A.230.090; and

(d) Information about the college high school diploma options under RCW 28B.50.535. [2009 c 524 § 3; 1990 1st ex.s. c 9 § 207.]

**Intent—2009 c 524:** See note following RCW 28B.50.535.

**28A.225.290 Enrollment options information (as amended by 2009 c 556).** (1) The superintendent of public instruction shall prepare and annually ((distribute an)) provide access to information ((booklet)) outlining parents' and guardians' enrollment options for their children. Providing online access to the information satisfies the requirements of this section unless a parent or guardian specifically requests information to be provided in written form.

(2) ((Before the 1991-92 school year, the booklet shall be distributed to all school districts by the office of the superintendent of public instruction. School districts shall have a copy of the information booklet available for public inspection at each school in the district, at the district office, and in public libraries.)) School districts shall provide access to the information in this section to the public. Providing online access to the information satisfies the requirements of this subsection unless a parent or guardian specifically requests the information be provided in written form.

(3) The booklet shall include:

(a) Information about enrollment options and program opportunities, including but not limited to programs in RCW 28A.225.220, 28A.185.040, 28A.225.200 through 28A.225.215, 28A.225.230 through 28A.225.250, \*28A.175.090, 28A.340.010 through 28A.340.070 (small high school cooperative projects), and 28A.335.160;

(b) Information about \*\*the running start - community college or vocational-technical institute choice program under RCW 28A.600.300 through ((28A.600.395)) 28A.600.390; and

(c) Information about the seventh and eighth grade choice program under RCW 28A.230.090. [2009 c 556 § 6; 1990 1st ex.s. c 9 § 207.]

**Reviser's note:** \*(1) RCW 28A.175.090 expired December 31, 1994.

\*\* (2) The program was named "the running start program" by 2009 c 450 § 7.

(3) RCW 28A.225.290 was amended three times during the 2009 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.

**Captions, headings not law—1990 1st ex.s. c 9:** See note following RCW 28A.225.225.

**Finding—Severability—1990 1st ex.s. c 9:** See notes following RCW 28A.225.220.

**28A.225.300 Enrollment options information to parents.** Each school district board of directors annually shall inform parents of the district's intradistrict and interdistrict enrollment options and parental involvement opportunities. Information on intradistrict enrollment options and interdistrict acceptance policies shall be provided to nonresidents on request. Providing online access to the information satisfies the requirements of this section unless a parent or guardian specifically requests information to be provided in written form. [2009 c 556 § 7; 1990 1st ex.s. c 9 § 208.]

**Captions, headings not law—1990 1st ex.s. c 9:** See note following RCW 28A.225.225.

**Finding—Severability—1990 1st ex.s. c 9:** See notes following RCW 28A.225.220.

**28A.225.330 Enrolling students from other districts—Requests for information and permanent records—Withheld transcripts—Immunity from liability—Notification to teachers and security personnel—Rules.**

(1) When enrolling a student who has attended school in another school district, the school enrolling the student may request the parent and the student to briefly indicate in writing whether or not the student has:

- (a) Any history of placement in special educational programs;
- (b) Any past, current, or pending disciplinary action;
- (c) Any history of violent behavior, or behavior listed in RCW 13.04.155;
- (d) Any unpaid fines or fees imposed by other schools; and
- (e) Any health conditions affecting the student's educational needs.

(2) The school enrolling the student shall request the school the student previously attended to send the student's permanent record including records of disciplinary action, history of violent behavior or behavior listed in RCW 13.04.155, attendance, immunization records, and academic performance. If the student has not paid a fine or fee under RCW 28A.635.060, or tuition, fees, or fines at approved private schools the school may withhold the student's official transcript, but shall transmit information about the student's academic performance, special placement, immunization records, records of disciplinary action, and history of violent behavior or behavior listed in RCW 13.04.155. If the official transcript is not sent due to unpaid tuition, fees, or fines, the enrolling school shall notify both the student and parent or guardian that the official transcript will not be sent until the obligation is met, and failure to have an official transcript may result in exclusion from extracurricular activities or failure to graduate.

(3) Upon request, school districts shall furnish a set of unofficial educational records to a parent or guardian of a student who is transferring out of state and who meets the definition of a child of a military family in transition under Article II of RCW 28A.705.010. School districts may charge the parent or guardian the actual cost of providing the copies of the records.

(4) If information is requested under subsection (2) of this section, the information shall be transmitted within two school days after receiving the request and the records shall be sent as soon as possible. The records of a student who meets the definition of a child of a military family in transition under Article II of RCW 28A.705.010 shall be sent within ten days after receiving the request. Any school district or district employee who releases the information in compliance with this section is immune from civil liability for damages unless it is shown that the school district employee acted with gross negligence or in bad faith. The professional educator standards board shall provide by rule for the discipline under chapter 28A.410 RCW of a school principal or other chief administrator of a public school building who fails to make a good faith effort to assure compliance with this subsection.

(5) Any school district or district employee who releases the information in compliance with federal and state law is immune from civil liability for damages unless it is shown that the school district or district employee acted with gross negligence or in bad faith.

(6) When a school receives information under this section or RCW 13.40.215 that a student has a history of disciplinary actions, criminal or violent behavior, or other behavior that indicates the student could be a threat to the safety of educational staff or other students, the school shall provide this information to the student's teachers and security personnel. [2009 c 380 § 2; 2006 c 263 § 805; 1999 c 198 § 3; 1997 c 266 § 4. Prior: 1995 c 324 § 2; 1995 c 311 § 25; 1994 c 304 § 2.]

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Findings—Intent—Severability—1997 c 266:** See notes following RCW 28A.600.455.

**Effective date—1994 c 304:** See note following RCW 28A.635.060.

## Chapter 28A.230 RCW

### COMPULSORY COURSE WORK AND ACTIVITIES

#### Sections

- 28A.230.090 High school graduation requirements or equivalencies—Reevaluation of graduation requirements—Review and authorization of proposed changes—Credit for courses taken before attending high school—Postsecondary credit equivalencies.
- 28A.230.092 Repealed.
- 28A.230.093 Social studies course credits—Civics coursework.
- 28A.230.095 Essential academic learning requirements and assessments—Verification reports.
- 28A.230.125 Development of standardized high school transcripts.
- 28A.230.130 Program to help students meet minimum entrance requirements at baccalaureate-granting institutions or to pursue career or other opportunities.
- 28A.230.185 Repealed.
- 28A.230.205 Repealed.

**28A.230.090 High school graduation requirements or equivalencies—Reevaluation of graduation requirements—Review and authorization of proposed changes—Credit for courses taken before attending high school—Postsecondary credit equivalencies.** (1) The state board of education shall establish high school graduation requirements or equivalencies for students, except those equivalencies established by local high schools or school districts under RCW 28A.230.097. The purpose of a high school diploma is to declare that a student is ready for success in postsecondary education, gainful employment, and citizenship, and is equipped with the skills to be a lifelong learner.

(a) Any course in Washington state history and government used to fulfill high school graduation requirements shall consider including information on the culture, history, and government of the American Indian peoples who were the first inhabitants of the state.

(b) The certificate of academic achievement requirements under RCW 28A.655.061 or the certificate of individual achievement requirements under RCW 28A.155.045 are required for graduation from a public high school but are not the only requirements for graduation.

(c) Any decision on whether a student has met the state board's high school graduation requirements for a high school and beyond plan shall remain at the local level.

(2)(a) In recognition of the statutory authority of the state board of education to establish and enforce minimum high school graduation requirements, the state board shall periodically reevaluate the graduation requirements and shall report such findings to the legislature in a timely manner as determined by the state board.

(b) The state board shall reevaluate the graduation requirements for students enrolled in vocationally intensive and rigorous career and technical education programs, particularly those programs that lead to a certificate or credential that is state or nationally recognized. The purpose of the evaluation is to ensure that students enrolled in these programs have sufficient opportunity to earn a certificate of academic achievement, complete the program and earn the program's certificate or credential, and complete other state and local graduation requirements.

(c) The state board shall forward any proposed changes to the high school graduation requirements to the education committees of the legislature for review and to the quality education council established under RCW 28A.290.010. The legislature shall have the opportunity to act during a regular legislative session before the changes are adopted through administrative rule by the state board. Changes that have a fiscal impact on school districts, as identified by a fiscal analysis prepared by the office of the superintendent of public instruction, shall take effect only if formally authorized and funded by the legislature through the omnibus appropriations act or other enacted legislation.

(3) Pursuant to any requirement for instruction in languages other than English established by the state board of education or a local school district, or both, for purposes of high school graduation, students who receive instruction in American sign language or one or more American Indian languages shall be considered to have satisfied the state or local school district graduation requirement for instruction in one or more languages other than English.

(4) If requested by the student and his or her family, a student who has completed high school courses before attending high school shall be given high school credit which shall be applied to fulfilling high school graduation requirements if:

(a) The course was taken with high school students, if the academic level of the course exceeds the requirements for seventh and eighth grade classes, and the student has successfully passed by completing the same course requirements and examinations as the high school students enrolled in the class; or

(b) The academic level of the course exceeds the requirements for seventh and eighth grade classes and the course would qualify for high school credit, because the course is similar or equivalent to a course offered at a high school in the district as determined by the school district board of directors.

(5) Students who have taken and successfully completed high school courses under the circumstances in subsection (4) of this section shall not be required to take an additional competency examination or perform any other additional assignment to receive credit.

(6) At the college or university level, five quarter or three semester hours equals one high school credit. [2009 c 548 § 111; 2009 c 223 § 2; 2006 c 114 § 3; 2005 c 205 § 3; 2004 c 19 § 103; 1997 c 222 § 2; 1993 c 371 § 3. Prior: 1992 c 141 § 402; 1992 c 60 § 1; 1990 1st ex.s. c 9 § 301; 1988 c 172 § 1; 1985 c 384 § 2; 1984 c 278 § 6. Formerly RCW 28A.05.060.]

**Reviser's note:** This section was amended by 2009 c 223 § 2 and by 2009 c 548 § 111, 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—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Finding—2009 c 223:** "The legislature finds that although the United States has long exemplified democratic practice to the rest of the world, we ought not to neglect it at home. Two-thirds of our nation's twelfth graders scored below proficient on the last national civics assessment, and fewer than ten percent could list two ways that a democracy benefits from citizen participation. A healthy democracy depends on the participation of citizens. But participation is learned behavior, and in recent years civic learning has been pushed aside. Preparation for citizenship is as important as preparation for college and a career, and should take its place as a requirement for receiving a high school diploma." [2009 c 223 § 1.]

**Finding—Intent—2006 c 114:** See note following RCW 28A.230.097.

**Intent—Findings—2005 c 205:** See note following RCW 28A.320.170.

**Part headings and captions not law—Severability—Effective date—2004 c 19:** See notes following RCW 28A.655.061.

**Intent—1997 c 222:** "In 1994, the legislature directed the higher education board and the state board of education to convene a task force to examine and provide recommendations on establishing credit equivalencies. In November 1994, the task force recommended unanimously that the state board of education maintain the definition of five quarter or three semester college credits as equivalent to one high school credit. Therefore, the legislature intends to adopt the recommendations of the task force." [1997 c 222 § 1.]

**Findings—Part headings—Severability—1992 c 141:** See notes following RCW 28A.410.040.

**Finding—Severability—1990 1st ex.s. c 9:** See notes following RCW 28A.225.220.

**Severability—1984 c 278:** See note following RCW 28A.320.220.

**28A.230.092 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.230.093 Social studies course credits—Civics coursework.** (1) If, after July 26, 2009, the state board of education increases the number of course credits in social studies that are required for high school graduation under RCW 28A.230.090, the board shall also require that at least one-half credit of that requirement be coursework in civics.

(2) The content of the civics requirement must include, but not be limited to:

(a) Federal, state, and local government organization and procedures;

(b) Rights and responsibilities of citizens addressed in the Washington state and United States Constitutions;

(c) Current issues addressed at each level of government; and

(d) Electoral issues, including elections, ballot measures, initiatives, and referenda. [2009 c 223 § 3.]

**Finding—2009 c 223:** See note following RCW 28A.230.090.

**28A.230.095 Essential academic learning requirements and assessments—Verification reports.** (1) By the end of the 2008-09 school year, school districts shall have in place in elementary schools, middle schools, and high schools assessments or other strategies chosen by the district to assure that students have an opportunity to learn the essential academic learning requirements in social studies, the arts, and health and fitness. Social studies includes history, geography, civics, economics, and social studies skills. Beginning with the 2008-09 school year, school districts shall annually submit an implementation verification report to the office of the superintendent of public instruction. The office of the superintendent of public instruction may not require school districts to use a classroom-based assessment in social studies, the arts, and health and fitness to meet the requirements of this section and shall clearly communicate to districts their option to use other strategies chosen by the district.

(2) Beginning with the 2008-09 school year, school districts shall require students in the seventh or eighth grade, and the eleventh or twelfth grade to each complete at least one classroom-based assessment in civics. Beginning with the 2010-11 school year, school districts shall require students in the fourth or fifth grade to complete at least one classroom-based assessment in civics. The civics assessment may be selected from a list of classroom-based assessments approved by the office of the superintendent of public instruction. Beginning with the 2008-09 school year, school districts shall annually submit implementation verification reports to the office of the superintendent of public instruction documenting the use of the classroom-based assessments in civics.

(3) Verification reports shall require school districts to report only the information necessary to comply with this section. [2009 c 556 § 8; 2006 c 113 § 2; 2004 c 19 § 203.]

**Findings—2006 c 113:** "The legislature finds that instruction in social studies, arts, health, and fitness is important to ensure a well-rounded and complete education. In particular, the civic mission of schools is strengthened and enhanced by comprehensive civics education and assessments. The legislature finds that effective and accountable democratic government depends upon an informed and engaged citizenry, and therefore, students should learn their rights and responsibilities as citizens, where those rights and responsibilities come from, and how to exercise them." [2006 c 113 § 1.]

**Part headings and captions not law—Severability—Effective date—2004 c 19:** See notes following RCW 28A.655.061.

**28A.230.125 Development of standardized high school transcripts.** (1) The superintendent of public instruction, in consultation with the higher education coordinating board, the state board for community and technical colleges, and the workforce training and education coordinating board, shall develop for use by all public school districts a standardized high school transcript. The superintendent shall establish clear definitions for the terms "credits" and "hours" so that school programs operating on the quarter, semester, or trimester system can be compared.

(2) The standardized high school transcript shall include a notation of whether the student has earned a certificate of individual achievement or a certificate of academic achievement. [2009 c 556 § 9. Prior: 2006 c 263 § 401; 2006 c 115 § 6; 2004 c 19 § 108; 1984 c 178 § 1. Formerly RCW 28A.305.220, 28A.04.155.]

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

[2009 RCW Supp—page 380]

**Part headings and captions not law—Severability—Effective date—2004 c 19:** See notes following RCW 28A.655.061.

*High school diplomas—Receiving final transcript optional:* RCW 28A.230.120.

**28A.230.130 Program to help students meet minimum entrance requirements at baccalaureate-granting institutions or to pursue career or other opportunities.**

(1) All public high schools of the state shall provide a program, directly or in cooperation with a community college or another school district, for students whose educational plans include application for entrance to a baccalaureate-granting institution after being granted a high school diploma. The program shall help these students to meet at least the minimum entrance requirements under RCW 28B.10.050.

(2) All public high schools of the state shall provide a program, directly or in cooperation with a community or technical college, a skills center, an apprenticeship committee, or another school district, for students who plan to pursue career or work opportunities other than entrance to a baccalaureate-granting institution after being granted a high school diploma. These programs may:

(a) Help students demonstrate the application of essential academic learning requirements to the world of work, occupation-specific skills, knowledge of more than one career in a chosen pathway, and employability and leadership skills; and

(b) Help students demonstrate the knowledge and skill needed to prepare for industry certification, and/or have the opportunity to articulate to postsecondary education and training programs.

(3) A middle school that receives approval from the office of the superintendent of public instruction to provide a career and technical program in science, technology, engineering, or mathematics directly to students shall receive funding at the same rate as a high school operating a similar program. Additionally, a middle school that provides a hands-on experience in science, technology, engineering, or mathematics with an integrated curriculum of academic content and career and technical education, and includes a career and technical education exploratory component shall also qualify for the career and technical education funding. [2009 c 212 § 2; 2007 c 396 § 14; (2007 c 396 § 13 expired September 1, 2009); 2006 c 263 § 407; 2003 c 49 § 2; 1991 c 116 § 9; 1988 c 172 § 2; 1984 c 278 § 16. Formerly RCW 28A.05.070.]

**Effective date—2009 c 212 § 2:** "Section 2 of this act takes effect September 1, 2009." [2009 c 212 § 3.]

**Finding—2009 c 212:** "The legislature finds that significant efforts are under way to improve mathematics and science instruction in Washington's public schools through development and adoption of new learning standards, identification of aligned curriculum, and expanded opportunities for professional development for teachers. A significant emphasis has also been made on improving career and technical education programs focused on high-demand programs. Middle schools have successfully served one thousand four hundred full-time equivalent students in career and technical programs rich in science, technology, engineering, and mathematics through a grant program. The legislature concludes that opportunities for hands-on and applied learning in these programs should be extended to middle school students on an ongoing, statewide basis so that students are prepared to take advantage of more advanced coursework in high school and postsecondary education." [2009 c 212 § 1.]

**Effective date—2007 c 396 § 14:** "Section 14 of this act takes effect September 1, 2009." [2007 c 396 § 21.]

**Expiration date—2007 c 396 § 13:** "Section 13 of this act expires September 1, 2009." [2007 c 396 § 20.]

**Captions not law—2007 c 396:** See note following RCW 28A.305.215.

**Finding—Intent—2007 c 396:** See note following RCW 28A.300.515.

**Effective date—2006 c 263 § 407:** "Section 407 of this act takes effect September 1, 2009." [2006 c 263 § 1002.]

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Effective date—1984 c 278:** "Sections 16, 18, and 19 of this act shall take effect July 1, 1986." [1984 c 278 § 23.]

**Severability—1984 c 278:** See note following RCW 28A.185.010.

**28A.230.185 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.230.205 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 28A.245 RCW

### SKILL CENTERS

Sections

28A.245.060 Director of skill centers.

**28A.245.060 Director of skill centers.** To the extent funds are available, the superintendent of public instruction shall assign at least one full-time equivalent staff position within the office of the superintendent of public instruction to serve as the director of skill centers. [2009 c 578 § 7; 2007 c 463 § 7.]

## Chapter 28A.250 RCW

### ONLINE LEARNING

Sections

28A.250.005 Findings—Intent.  
 28A.250.010 Definitions.  
 28A.250.020 Multidistrict online providers—Approval criteria—Advisory committee.  
 28A.250.030 Office of online learning—Duties.  
 28A.250.040 Duties of the superintendent of public instruction.  
 28A.250.050 Student access to online courses and online learning programs—Policies and procedures—Dissemination of information—Development of local or regional online learning programs.  
 28A.250.060 Availability of state basic education funding for students enrolled in online courses or programs.  
 28A.250.070 Rights of students to attend nonresident school district for the purposes of enrolling in online courses or programs.

**28A.250.005 Findings—Intent.** (1) The legislature finds that online learning provides tremendous opportunities for students to access curriculum, courses, and a unique learning environment that might not otherwise be available. The legislature supports and encourages online learning opportunities.

(2) However, the legislature also finds that there is a need to assure quality in online learning, both for the programs and the administration of those programs. The legislature is the steward of public funds that support students enrolled in online learning and must ensure an appropriate accountability system at the state level.

(3) Therefore, the legislature intends to take a first step in improving oversight and quality assurance of online learning programs, and intends to examine possible additional steps that may need to be taken to improve financial accountability.

(4) The first step in improving quality assurance is to:

(a) Provide objective information to students, parents, and educators regarding available online learning opportunities, including program and course content, how to register for programs and courses, teacher qualifications, student-to-teacher ratios, prior course completion rates, and other evaluative information;

(b) Create an approval process for multidistrict online providers;

(c) Enhance statewide equity of student access to high quality online learning opportunities; and

(d) Require school district boards of directors to develop policies and procedures for student access to online learning opportunities. [2009 c 542 § 1.]

**28A.250.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Multidistrict online provider" means:

(i) A private or nonprofit organization that enters into a contract with a school district to provide online courses or programs to K-12 students from more than one school district;

(ii) A private or nonprofit organization that enters into contracts with multiple school districts to provide online courses or programs to K-12 students from those districts; or

(iii) Except as provided in (b) of this subsection, a school district that provides online courses or programs to students who reside outside the geographic boundaries of the school district.

(b) "Multidistrict online provider" does not include a school district online learning program in which fewer than ten percent of the students enrolled in the program are from other districts under the interdistrict student transfer provisions of RCW 28A.225.225. "Multidistrict online provider" also does not include regional online learning programs that are jointly developed and implemented by two or more school districts or an educational service district through an interdistrict cooperative program agreement that addresses, at minimum, how the districts share student full-time equivalency for state basic education funding purposes and how categorical education programs, including special education, are provided to eligible students.

(2)(a) "Online course" means a course that:

(i) Is delivered primarily electronically using the internet or other computer-based methods; and

(ii) Is taught by a teacher primarily from a remote location. Students enrolled in an online course may have access to the teacher synchronously, asynchronously, or both.

(b) "Online school program" means a school program that:

(i) Is delivered primarily electronically using the internet or other computer-based methods;

(ii) Is taught by a teacher primarily from a remote location. Students enrolled in an online program may have access to the teacher synchronously, asynchronously, or both;

(iii) Delivers a part-time or full-time sequential program; and

(iv) Has an online component of the program with online lessons and tools for student and data management.

(c) An online course or online school program may be delivered to students at school as part of the regularly scheduled school day. An online course or online school program also may be delivered to students, in whole or in part, independently from a regular classroom schedule, but such courses or programs must comply with RCW 28A.150.262 to qualify for state basic education funding. [2009 c 542 § 2.]

**28A.250.020 Multidistrict online providers—Approval criteria—Advisory committee.** (1) The superintendent of public instruction, in collaboration with the state board of education, shall develop and implement approval criteria and a process for approving multidistrict online providers; a process for monitoring and if necessary rescinding the approval of courses or programs offered by an online course provider; and an appeals process. The criteria and processes shall be adopted by rule by December 1, 2009.

(2) When developing the approval criteria, the superintendent of public instruction shall require that providers offering online courses or programs have accreditation through the Northwest association of accredited schools or another national, regional, or state accreditation program listed by the office of the superintendent of public instruction after consultation with the Washington coalition for online learning. In addition to other criteria, the approval criteria shall include the degree of alignment with state academic standards and require that all teachers be certificated in accordance with Washington state law. When reviewing multidistrict online providers that offer high school courses, the superintendent of public instruction shall assure that the courses offered by the provider are eligible for high school credit. However, final decisions regarding the awarding of high school credit shall remain the responsibility of school districts.

(3) Initial approval of multidistrict online providers by the superintendent of public instruction shall be for four years. The superintendent of public instruction shall develop a process for the renewal of approvals and for rescinding approvals based on noncompliance with approval requirements. Any multidistrict online provider that was approved by the digital learning commons or accredited by the Northwest association of accredited schools before July 26, 2009, and that meets the teacher certification requirements of subsection (2) of this section, is exempt from the initial approval process under this section until August 31, 2012, but must comply with the process for renewal of approvals and must comply with approval requirements.

(4) The superintendent of public instruction shall make the first round of decisions regarding approval of multidistrict online providers by April 1, 2010. Thereafter, the superintendent of public instruction shall make annual approval decisions no later than November 1st of each year.

(5) The superintendent of public instruction shall establish an online learning advisory committee within existing resources that shall provide advice to the superintendent regarding the approval criteria, major components of the web site, the model school district policy, model agreements, and

other related matters. The committee shall include a representative of each of the following groups: Private and public online providers, parents of online students, accreditation organizations, educational service districts, school principals, teachers, school administrators, school board members, institutions of higher education, and other individuals as determined by the superintendent. Members of the advisory committee shall be selected by the superintendent based on nominations from statewide organizations, shall serve three-year terms, and may be reappointed. The superintendent shall select the chair of the committee. [2009 c 542 § 3.]

**28A.250.030 Office of online learning—Duties.** The superintendent of public instruction shall create an office of online learning. In the initial establishment of the office, the superintendent shall hire staff who have been employed by the digital learning commons to the extent such hiring is in accordance with state law and to the extent funds are available. The office shall:

(1) Develop and maintain a web site that provides objective information for students, parents, and educators regarding online learning opportunities offered by multidistrict online providers that have been approved in accordance with RCW 28A.250.020. The web site shall include information regarding the online course provider's overall instructional program, specific information regarding the content of individual online courses and online school programs, a direct link to each online course provider's web site, how to register for online learning programs and courses, teacher qualifications, student-to-teacher ratios, course completion rates, and other evaluative and comparative information. The web site shall also provide information regarding the process and criteria for approving multidistrict online providers. To the greatest extent possible, the superintendent shall use the framework of the course offering component of the web site developed by the digital learning commons;

(2) Develop model agreements with approved multidistrict online providers that address standard contract terms and conditions that may apply to contracts between a school district and the approved provider. The purpose of the agreements is to provide a template to assist individual school districts, at the discretion of the district, in contracting with multidistrict online providers to offer the multidistrict online provider's courses and programs to students in the district. The agreements may address billing, fees, responsibilities of online course providers and school districts, and other issues; and

(3) In collaboration with the educational service districts:

(a) Provide technical assistance and support to school district personnel through the educational technology centers in the development and implementation of online learning programs in their districts; and

(b) To the extent funds are available, provide online learning tools for students, teachers, administrators, and other educators. [2009 c 542 § 4.]

**28A.250.040 Duties of the superintendent of public instruction.** The superintendent of public instruction shall:

(1) Develop model policies and procedures, in consultation with the Washington state school directors' association, that may be used by school district boards of directors in the development of the school district policies and procedures required in RCW 28A.250.050. The model policies and procedures shall be disseminated to school districts by February 1, 2010;

(2) By December 1, 2009, modify the standards for school districts to report course information to the office of the superintendent of public instruction under RCW 28A.300.500 to designate if the course was an online course. The reporting standards shall be required beginning with the 2010-11 school year; and

(3) Beginning January 15, 2011, and annually thereafter, submit a report regarding online learning to the state board of education, the governor, and the legislature. The report shall cover the previous school year and include but not be limited to student demographics, course enrollment data, aggregated student course completion and passing rates, and activities and outcomes of course and provider approval reviews. [2009 c 542 § 5.]

**28A.250.050 Student access to online courses and online learning programs—Policies and procedures—Dissemination of information—Development of local or regional online learning programs.** (1) By August 31, 2010, all school district boards of directors shall develop policies and procedures regarding student access to online courses and online learning programs. The policies and procedures shall include but not be limited to: Student eligibility criteria; the types of online courses available to students through the school district; the methods districts will use to support student success, which may include a local advisor; when the school district will and will not pay course fees and other costs; the granting of high school credit; and a process for students and parents or guardians to formally acknowledge any course taken for which no credit is given. The policies and procedures shall take effect beginning with the 2010-11 school year. School districts shall submit their policies to the superintendent of public instruction by September 15, 2010. By December 1, 2010, the superintendent of public instruction shall summarize the school district policies regarding student access to online courses and submit a report to the legislature.

(2) School districts shall provide students with information regarding online courses that are available through the school district. The information shall include the types of information described in subsection (1) of this section.

(3) When developing local or regional online learning programs, school districts shall incorporate into the program design the approval criteria developed by the superintendent of public instruction under RCW 28A.250.020. [2009 c 542 § 6.]

**28A.250.060 Availability of state basic education funding for students enrolled in online courses or programs.** (1) Beginning with the 2011-12 school year, school districts may claim state basic education funding, to the extent otherwise allowed by state law, for students enrolled in

online courses or programs only if the online courses or programs are:

(a) Offered by a multidistrict online provider approved under RCW 28A.250.020 by the superintendent of public instruction;

(b) Offered by a school district online learning program if the program serves students who reside within the geographic boundaries of the school district, including school district programs in which fewer than ten percent of the program's students reside outside the school district's geographic boundaries; or

(c) Offered by a regional online learning program where courses are jointly developed and offered by two or more school districts or an educational service district through an interdistrict cooperative program agreement.

(2) Criteria shall be established by the superintendent of public instruction to allow online courses that have not been approved by the superintendent of public instruction to be eligible for state funding if the course is in a subject matter in which no courses have been approved and, if it is a high school course, the course meets Washington high school graduation requirements. [2009 c 542 § 7.]

**28A.250.070 Rights of students to attend nonresident school district for the purposes of enrolling in online courses or programs.** Nothing in this chapter is intended to diminish the rights of students to attend a nonresident school district in accordance with RCW 28A.225.220 through 28A.225.230 for the purposes of enrolling in online courses or programs. [2009 c 542 § 8.]

## Chapter 28A.290 RCW

### QUALITY EDUCATION COUNCIL

#### Sections

28A.290.010 Quality education council.

**28A.290.010 Quality education council.** (1) The quality education council is created to recommend and inform the ongoing implementation by the legislature of an evolving program of basic education and the financing necessary to support such program. The council shall develop strategic recommendations on the program of basic education for the common schools. The council shall take into consideration the capacity report produced under RCW 28A.300.172 and the availability of data and progress of implementing the data systems required under RCW 28A.655.210. Any recommendations for modifications to the program of basic education shall be based on evidence that the programs effectively support student learning. The council shall update the statewide strategic recommendations every four years. The recommendations of the council are intended to:

(a) Inform future educational policy and funding decisions of the legislature and governor;

(b) Identify measurable goals and priorities for the educational system in Washington state for a ten-year time period, including the goals of basic education and ongoing strategies for coordinating statewide efforts to eliminate the achievement gap and reduce student dropout rates; and

(c) Enable the state of Washington to continue to implement an evolving program of basic education.

(2) The council may request updates and progress reports from the office of the superintendent of public instruction, the state board of education, the professional educator standards board, and the department of early learning on the work of the agencies as well as educational working groups established by the legislature.

(3) The chair of the council shall be selected from the councilmembers. The council shall be composed of the following members:

(a) Four members of the house of representatives, with two members representing each of the major caucuses and appointed by the speaker of the house of representatives;

(b) Four members of the senate, with two members representing each of the major caucuses and appointed by the president of the senate; and

(c) One representative each from the office of the governor, office of the superintendent of public instruction, state board of education, professional educator standards board, and department of early learning.

(4) In the 2009 fiscal year, the council shall meet as often as necessary as determined by the chair. In subsequent years, the council shall meet no more than four times a year.

(5)(a) The council shall submit an initial report to the governor and the legislature by January 1, 2010, detailing its recommendations, including recommendations for resolving issues or decisions requiring legislative action during the 2010 legislative session, and recommendations for any funding necessary to continue development and implementation of chapter 548, Laws of 2009.

(b) The initial report shall, at a minimum, include:

(i) Consideration of how to establish a statewide beginning teacher mentoring and support system;

(ii) Recommendations for a program of early learning for at-risk children;

(iii) A recommended schedule for the concurrent phase-in of the changes to the instructional program of basic education and the implementation of the funding formulas and allocations to support the new instructional program of basic education as established under chapter 548, Laws of 2009. The phase-in schedule shall have full implementation completed by September 1, 2018; and

(iv) A recommended schedule for phased-in implementation of the new distribution formula for allocating state funds to school districts for the transportation of students to and from school, with phase-in beginning no later than September 1, 2013.

(6) The council shall be staffed by the office of the superintendent of public instruction and the office of financial management. Additional staff support shall be provided by the state entities with representatives on the committee. Senate committee services and the house of representatives office of program research may provide additional staff support.

(7) Legislative members of the council shall serve without additional compensation but may be reimbursed for travel expenses in accordance with RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council may be

reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2009 c 548 § 114.]

**Technical working group—Supplemental funding options—2009 c 548:** "(1) Beginning July 1, 2010, the office of financial management, with assistance and support from the office of the superintendent of public instruction, shall convene a technical working group to develop options for a new system of supplemental school funding through local school levies and local effort assistance.

(2) The working group shall consider the impact on overall school district revenues of the new basic education funding system established under this act and shall recommend a phase-in plan that ensures that no school district suffers a decrease in funding from one school year to the next due to implementation of the new system of supplemental funding.

(3) The working group shall be composed of representatives from the department of revenue, the legislative evaluation and accountability program committee, school district and educational service district financial managers, and representatives of the Washington association of school business officers, the Washington education association, the Washington association of school administrators, the association of Washington school principals, the Washington state school directors' association, the public school employees of Washington, and other interested stakeholders with expertise in education finance. The working group may convene advisory subgroups on specific topics as necessary to assure participation and input from a broad array of diverse stakeholders.

(4) The local funding working group shall be monitored and overseen by the legislature and by the quality education council created in section 114 of this act. The working group shall report to the legislature December 1, 2011." [2009 c 548 § 302.]

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

## Chapter 28A.300 RCW

### SUPERINTENDENT OF PUBLIC INSTRUCTION

#### Sections

28A.300.040	Powers and duties.
28A.300.041	Statewide student assessment system—Redesign—Reports to the legislature.
28A.300.042	Student data-related reports—Disaggregation of data by subgroups.
28A.300.130	Center for the improvement of student learning—Educational improvement and research—Clearinghouse for information regarding educational improvement and parental involvement programs—Web site development and maintenance—Reports to the legislature.
28A.300.136	Achievement gap oversight and accountability committee—Policy and strategy recommendations.
28A.300.1361	Closing the achievement gap—Enhancing data collection and data system capacity—Securing federal funds.
28A.300.137	Strategies to address the achievement gap—Improvement of education performance measures—Annual report.
28A.300.172	Prototypical funding allocation model—Determination of educational system's capacity to accommodate increased resources—Identification of limitations—Reports.
28A.300.412	Repealed.
28A.300.450	Financial education public-private partnership—Established.
28A.300.455	Repealed.
28A.300.460	Financial education public-private partnership responsibilities—Annual report.
28A.300.462	Financial education public-private partnership—Financial education learning standards—Technical assistance and grants for demonstration projects—Report.
28A.300.464	Financial education public-private partnership—Contents of report.
28A.300.465	Financial education public-private partnership account.
28A.300.470	Repealed.
28A.300.507	K-12 data governance group—Duties—Reports.
28A.300.520	Policies to support children of incarcerated parents.
28A.300.525	Students in children's administration out-of-home care—Report on educational experiences. ( <i>Expires July 1, 2011.</i> )
28A.300.530	Individuals with dyslexia—Identification and instruction—Handbook—Reports.



- 28A.300.540 Uniform process to track expenditures for transporting homeless students—Rules—Information to agency council on coordinated transportation.
- 28A.300.801 Legislative youth advisory council.

**28A.300.040 Powers and duties.** In addition to any other powers and duties as provided by law, the powers and duties of the superintendent of public instruction shall be:

(1) To have supervision over all matters pertaining to the public schools of the state;

(2) To report to the governor and the legislature such information and data as may be required for the management and improvement of the schools;

(3) To prepare and have printed such forms, registers, courses of study, rules for the government of the common schools, and such other material and books as may be necessary for the discharge of the duties of teachers and officials charged with the administration of the laws relating to the common schools, and to distribute the same to educational service district superintendents;

(4) To travel, without neglecting his or her other official duties as superintendent of public instruction, for the purpose of attending educational meetings or conventions, of visiting schools, and of consulting educational service district superintendents or other school officials;

(5) To prepare and from time to time to revise a manual of the Washington state common school code, copies of which shall be made available online and which shall be sold at approximate actual cost of publication and distribution per volume to public and nonpublic agencies or individuals, said manual to contain Titles 28A and 28C RCW, rules related to the common schools, and such other matter as the state superintendent or the state board of education shall determine. Proceeds of the sale of such code shall be transmitted to the public printer who shall credit the state superintendent's account within the state printing plant revolving fund by a like amount;

(6) To file all papers, reports and public documents transmitted to the superintendent by the school officials of the several counties or districts of the state, each year separately. Copies of all papers filed in the superintendent's office, and the superintendent's official acts, may, or upon request, shall be certified by the superintendent and attested by the superintendent's official seal, and when so certified shall be evidence of the papers or acts so certified to;

(7) To require annually, on or before the 15th day of August, of the president, manager, or principal of every educational institution in this state, a report as required by the superintendent of public instruction; and it is the duty of every president, manager, or principal, to complete and return such forms within such time as the superintendent of public instruction shall direct;

(8) To keep in the superintendent's office a record of all teachers receiving certificates to teach in the common schools of this state;

(9) To issue certificates as provided by law;

(10) To keep in the superintendent's office at the capital of the state, all books and papers pertaining to the business of the superintendent's office, and to keep and preserve in the superintendent's office a complete record of statistics, as well as a record of the meetings of the state board of education;

(11) With the assistance of the office of the attorney general, to decide all points of law which may be submitted to the superintendent in writing by any educational service district superintendent, or that may be submitted to the superintendent by any other person, upon appeal from the decision of any educational service district superintendent; and the superintendent shall publish his or her rulings and decisions from time to time for the information of school officials and teachers; and the superintendent's decision shall be final unless set aside by a court of competent jurisdiction;

(12) To administer oaths and affirmations in the discharge of the superintendent's official duties;

(13) To deliver to his or her successor, at the expiration of the superintendent's term of office, all records, books, maps, documents and papers of whatever kind belonging to the superintendent's office or which may have been received by the superintendent's for the use of the superintendent's office;

(14) To administer family services and programs to promote the state's policy as provided in RCW 74.14A.025;

(15) To promote the adoption of school-based curricula and policies that provide quality, daily physical education for all students, and to encourage policies that provide all students with opportunities for physical activity outside of formal physical education classes;

(16) To perform such other duties as may be required by law. [2009 c 556 § 10; 2006 c 263 § 104; 2005 c 360 § 6; 1999 c 348 § 6; 1992 c 198 § 6; 1991 c 116 § 2; 1990 c 33 § 251; 1982 c 160 § 2; 1981 c 249 § 1; 1977 c 75 § 17; 1975 1st ex.s. c 275 § 47; 1971 ex.s. c 100 § 1; 1969 ex.s. c 176 § 102; 1969 ex.s. c 223 § 28A.03.030. Prior: 1967 c 158 § 4; 1909 c 97 p 231 § 3; RRS § 4523; prior: 1907 c 240 § 1; 1903 c 104 § 9; 1901 c 177 § 5; 1901 c 41 § 1; 1899 c 142 § 4; 1897 c 118 § 22; 1891 c 127 §§ 1, 2; 1890 pp 348-351 §§ 3, 4; Code 1881 §§ 3155-3160; 1873 p 419 §§ 2-6; 1861 p 55 §§ 2, 3, 4. Formerly RCW 28A.03.030, 28.03.030, 43.11.030.]

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Findings—Intent—2005 c 360:** See note following RCW 36.70A.070.

**Intent—1999 c 348:** See note following RCW 28A.205.010.

**Severability—Effective date—1992 c 198:** See RCW 70.190.910 and 70.190.920.

**Severability—1982 c 160:** "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 c 160 § 4.]

**Rights preserved—Severability—1969 ex.s. c 176:** See notes following RCW 28A.310.010.

**Studies—1969 ex.s. c 283:** "The superintendent of public instruction is directed to develop, prepare and make available information as follows:

(1) A budgetary study of the fiscal impact which would result from payment to substitute teachers, who are on a continuing basis of twelve or more days within any calendar month, at a rate of pay commensurate with their training and experience and at a per diem salary in proportion to the salary for which that teacher would be eligible as a full time teacher;

(2) A study showing the percentage of high school graduates who go on to an institution of higher education, including community colleges, the distribution of such students, and the percentage thereof which continue in higher education through the various grades or years thereof; and

(3) A study of the fiscal impact of establishing one hundred and eighty days as the base salary period for all contracts with certificated employees." [1969 ex.s. c 283 § 8.]

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**28A.300.041 Statewide student assessment system—Redesign—Reports to the legislature.** (1) The legislature finds that a statewide student assessment system should improve and inform classroom instruction, support accountability, and provide useful information to all levels of the educational system, including students, parents, teachers, schools, school districts, and the state. The legislature intends to redesign the current statewide system, in accordance with the recommendations of the Washington assessment of student learning legislative work group, to:

(a) Include multiple assessment formats, including both formative and summative, as necessary to provide information to help improve instruction and inform accountability;

(b) Enable collection of data that allows both statewide and nationwide comparisons of student learning and achievement; and

(c) Be balanced so that the information used to make significant decisions that affect school accountability or student educational progress includes many data points and does not rely on solely the results of a single assessment.

(2) The legislature further finds that one component of the assessment system should be instructionally supportive formative assessments. The key design elements or characteristics of an instructionally supportive assessment must:

(a) Be aligned to state standards in areas that are being assessed;

(b) Measure student growth and competency at multiple points throughout the year in a manner that allows instructors to monitor student progress and have the necessary trend data with which to improve instruction;

(c) Provide rapid feedback;

(d) Link student growth with instructional elements in order to gauge the effectiveness of educators and curricula;

(e) Provide tests that are appropriate to the skill level of the student;

(f) Support instruction for students of all abilities, including highly capable students and students with learning disabilities;

(g) Be culturally, linguistically, and cognitively relevant, appropriate, and understandable to each student taking the assessment;

(h) Inform parents and draw parents into greater participation of the student's study plan;

(i) Provide a way to analyze the assessment results relative to characteristics of the student such as, but not limited to, English language learners, gender, ethnicity, poverty, age, and disabilities;

(j) Strive to be computer-based and adaptive; and

(k) Engage students in their learning.

(3) The legislature further finds that a second component of the assessment system should be a state-administered summative achievement assessment that can be used as a check on the educational system in order to guide state expectations for the instruction of children and satisfy legislative demands for accountability. The key design elements or characteristics of the state administered achievement assessment must:

(a) Be aligned to state standards in areas that are being assessed;

(b) Maintain and increase academic rigor;

(c) Measure student learning growth over years; and

(d) Strengthen curriculum.

(4) The legislature further finds that a third component of the assessment system should include classroom-based assessments, which may be formative, summative, or both. Depending on their use, classroom-based assessments should have the same design elements and characteristics described in this section for formative and summative assessments.

(5) The legislature further finds that to sustain a strong and viable assessment system, preservice and ongoing training should be provided for teachers and administrators on the effective use of different types of assessments.

(6) The legislature further finds that as the statewide data system is developed, data should be collected for all state-required statewide assessments to be used for accountability and to monitor overall student achievement.

(7) The superintendent of public instruction, in consultation with the state board of education, shall begin design and development of an overall assessment system that meets the principles and characteristics described in this section. In designing formative and summative assessments, the superintendent shall solicit bids for the use of computerized adaptive testing methodologies.

(8) Beginning December 1, 2009, and annually thereafter, the superintendent and state board shall jointly report to the legislature regarding the assessment system, including a cost analysis of any changes and costs to expand availability and use of instructionally supportive formative assessments. [2009 c 310 § 1.]

**28A.300.042 Student data-related reports—Disaggregation of data by subgroups.** All student data-related reports required of the superintendent of public instruction in this title must be disaggregated by at least the following subgroups of students: White, Black, Hispanic, American Indian/Alaskan Native, Asian, Pacific Islander/Hawaiian Native, low income, transitional bilingual, migrant, special education, and students covered by section 504 of the federal rehabilitation act of 1973, as amended (29 U.S.C. Sec. 794). [2009 c 468 § 4.]

**Findings—Intent—2009 c 468:** See note following RCW 28A.300.136.

**28A.300.130 Center for the improvement of student learning—Educational improvement and research—Clearinghouse for information regarding educational improvement and parental involvement programs—Web site development and maintenance—Reports to the legislature.** (1) To facilitate access to information and materials on educational improvement and research, the superintendent of public instruction, to the extent funds are appropriated, shall establish the center for the improvement of student learning. The center shall work in conjunction with parents, educational service districts, institutions of higher education, and education, parent, community, and business organizations.

(2) The center, to the extent funds are appropriated for this purpose, and in conjunction with other staff in the office of the superintendent of public instruction, shall:

(a) Serve as a clearinghouse for information regarding successful educational improvement and parental involvement programs in schools and districts, and information about efforts within institutions of higher education in the

state to support educational improvement initiatives in Washington schools and districts;

(b) Provide best practices research that can be used to help schools develop and implement: Programs and practices to improve instruction; systems to analyze student assessment data, with an emphasis on systems that will combine the use of state and local data to monitor the academic progress of each and every student in the school district; comprehensive, school-wide improvement plans; school-based shared decision-making models; programs to promote lifelong learning and community involvement in education; school-to-work transition programs; programs to meet the needs of highly capable students; programs and practices to meet the needs of students with disabilities; programs and practices to meet the diverse needs of students based on gender, racial, ethnic, economic, and special needs status; research, information, and technology systems; and other programs and practices that will assist educators in helping students learn the essential academic learning requirements;

(c) Develop and maintain an internet web site to increase the availability of information, research, and other materials;

(d) Work with appropriate organizations to inform teachers, district and school administrators, and school directors about the waivers available and the broadened school board powers under RCW 28A.320.015;

(e) Provide training and consultation services, including conducting regional summer institutes;

(f) Identify strategies for improving the success rates of ethnic and racial student groups and students with disabilities, with disproportionate academic achievement;

(g) Work with parents, teachers, and school districts in establishing a model absentee notification procedure that will properly notify parents when their student has not attended a class or has missed a school day. The office of the superintendent of public instruction shall consider various types of communication with parents including, but not limited to, electronic mail, phone, and postal mail; and

(h) Perform other functions consistent with the purpose of the center as prescribed in subsection (1) of this section.

(3) The superintendent of public instruction shall select and employ a director for the center.

(4) The superintendent may enter into contracts with individuals or organizations including but not limited to: School districts; educational service districts; educational organizations; teachers; higher education faculty; institutions of higher education; state agencies; business or community-based organizations; and other individuals and organizations to accomplish the duties and responsibilities of the center. In carrying out the duties and responsibilities of the center, the superintendent, whenever possible, shall use practitioners to assist agency staff as well as assist educators and others in schools and districts.

(5) The office of the superintendent of public instruction shall report to the legislature by September 1, 2007, and thereafter biennially, regarding the effectiveness of the center for the improvement of student learning, how the services provided by the center for the improvement of student learning have been used and by whom, and recommendations to improve the accessibility and application of knowledge and information that leads to improved student learning and greater family and community involvement in the public edu-

cation system. [2009 c 578 § 6; 2008 c 165 § 1; 2006 c 116 § 2; 1999 c 388 § 401; 1996 c 273 § 5; 1993 c 336 § 501; 1986 c 180 § 1. Formerly RCW 28A.03.510.]

**Findings—Intent—2006 c 116:** "The legislature finds that expanding activity in educational research, educational restructuring, and educational improvement initiatives has produced and continues to produce much valuable information. The legislature finds that such information should be shared with the citizens and educational community of the state as widely as possible. The legislature further finds that students and schools benefit from increased parental, guardian, and community involvement in education and increased knowledge of and input regarding the delivery of public education. The legislature further finds that increased community involvement with, knowledge of, and input regarding the public education system is particularly needed in low-income and ethnic minority communities.

The legislature finds that the center for the improvement of student learning, created by the legislature in 1993 under the auspices of the superintendent of public instruction, has not been allocated funding since the 2001-2003 biennium, and in effect no longer exists. It is the intent of the legislature to reactivate the center for the improvement of student learning, and to create an educational ombudsman to increase parent, guardian, and community involvement in public education and to serve as a resource for parents and students and as an advocate for students in the public education system." [2006 c 116 § 1.]

**Part headings and captions not law—Severability—1999 c 388:** See RCW 28A.655.901 and 28A.655.902.

**Effective date—1996 c 273:** See note following RCW 28A.300.290.

**Findings—Intent—Part headings not law—1993 c 336:** See notes following RCW 28A.150.210.

**Findings—1993 c 336:** See note following RCW 28A.150.210.

*Definitions: RCW 28A.655.010.*

**28A.300.136 Achievement gap oversight and accountability committee—Policy and strategy recommendations.** (1) An achievement gap oversight and accountability committee is created to synthesize the findings and recommendations from the 2008 achievement gap studies into an implementation plan, and to recommend policies and strategies to the superintendent of public instruction, the professional educator standards board, and the state board of education to close the achievement gap.

(2) The committee shall recommend specific policies and strategies in at least the following areas:

(a) Supporting and facilitating parent and community involvement and outreach;

(b) Enhancing the cultural competency of current and future educators and the cultural relevance of curriculum and instruction;

(c) Expanding pathways and strategies to prepare and recruit diverse teachers and administrators;

(d) Recommending current programs and resources that should be redirected to narrow the gap;

(e) Identifying data elements and systems needed to monitor progress in closing the gap;

(f) Making closing the achievement gap part of the school and school district improvement process; and

(g) Exploring innovative school models that have shown success in closing the achievement gap.

(3) Taking a multidisciplinary approach, the committee may seek input and advice from other state and local agencies and organizations with expertise in health, social services, gang and violence prevention, substance abuse prevention, and other issues that disproportionately affect student achievement and student success.

(4) The achievement gap oversight and accountability committee shall be composed of the following members:

(a) The chairs and ranking minority members of the house and senate education committees, or their designees;

(b) One additional member of the house of representatives appointed by the speaker of the house and one additional member of the senate appointed by the president of the senate;

(c) A representative of the office of the education ombudsman;

(d) A representative of the center for the improvement of student learning in the office of the superintendent of public instruction;

(e) A representative of federally recognized Indian tribes whose traditional lands and territories lie within the borders of Washington state, designated by the federally recognized tribes; and

(f) Four members appointed by the governor in consultation with the state ethnic commissions, who represent the following populations: African-Americans, Hispanic Americans, Asian Americans, and Pacific Islander Americans.

(5) The governor and the tribes are encouraged to designate members who have experience working in and with schools.

(6) The committee may convene ad hoc working groups to obtain additional input and participation from community members. Members of ad hoc working groups shall serve without compensation and shall not be reimbursed for travel or other expenses.

(7) The chair or cochairs of the committee shall be selected by the members of the committee. Staff support for the committee shall be provided by the center for the improvement of student learning. Members of the committee shall serve without compensation but must be reimbursed as provided in RCW 43.03.050 and 43.03.060. Legislative members of the committee shall be reimbursed for travel expenses in accordance with RCW 44.04.120. [2009 c 468 § 2.]

**Findings—Intent—2009 c 468:** "(1) The legislature finds compelling evidence from five commissioned studies that additional progress must be made to address the achievement gap. Many students are in demographic groups that are overrepresented in measures such as school disciplinary sanctions; failure to meet state academic standards; failure to graduate; enrollment in special education and underperforming schools; enrollment in advanced placement courses, honors programs, and college preparatory classes; and enrollment in and completion of college. The studies contain specific recommendations that are data-driven and drawn from education research, as well as the personal, professional, and cultural experience of those who contributed to the studies. The legislature finds there is no better opportunity to make a strong commitment to closing the achievement gap and to affirm the state's constitutional obligation to provide opportunities to learn for all students without distinction or preference on account of race, ethnicity, socioeconomic status, or gender.

(2) The legislature further finds that access to comprehensive and consistent data that is disaggregated in the smallest units allowable by law is important in closing the achievement gap. Policymakers and educators need as much information as possible not only about students' academic progress, but also about other factors across multiple disciplines that affect student performance.

(3) A consistent and powerful theme throughout the achievement gap studies was the need for cultural competency in instruction, curriculum, assessment, and professional development. Cultural competency forms a foundation for efforts to address the achievement gap, and more work is needed to embed it into the public school system.

(4) Therefore, following the priority recommendations from the achievement gap studies, the legislature intends to:

(a) Provide resources to support parent and community involvement and outreach efforts by public schools, including such items as additional notices and communication to parents, translations, translators, parent and community meetings, and school events within the community. The legislature encourages school districts to consult with the office of the education ombudsman in developing plans for parent and community involvement and outreach;

(b) Require that teachers demonstrate cultural competency in the classroom and with students at each level of state teacher certification, and provide additional opportunities for professional development in cultural competency for current teachers;

(c) Create local alternative routes to teacher certification for paraeducators and individuals in the communities surrounding schools and school districts that are struggling to address the achievement gap;

(d) Reexamine the study recommendations regarding data and accountability and identify ways for the education data system to address these needs; and

(e) Sustain efforts to close the achievement gap over the long term by creating a high profile achievement gap oversight and accountability committee that will provide ongoing advice to education agencies and report annually to the legislature and the governor." [2009 c 468 § 1.]

**28A.300.1361 Closing the achievement gap—Enhancing data collection and data system capacity—Securing federal funds.** The superintendent of public instruction shall take all actions necessary to secure federal funds to support enhancing data collection and data system capacity in order to monitor progress in closing the achievement gap and to support other innovations and model programs that align education reform and address disproportionality in the public school system. [2009 c 468 § 7.]

**Findings—Intent—2009 c 468:** See note following RCW 28A.300.136.

**28A.300.137 Strategies to address the achievement gap—Improvement of education performance measures—Annual report.** Beginning in January 2010, the achievement gap oversight and accountability committee shall report annually to the superintendent of public instruction, the state board of education, the professional educator standards board, the governor, and the education committees of the legislature on the strategies to address the achievement gap and on the progress in improvement of education performance measures for African-American, Hispanic, American Indian/Alaskan Native, Asian, and Pacific Islander/Hawaiian Native students. [2009 c 468 § 3; 2008 c 298 § 3.]

**Findings—Intent—2009 c 468:** See note following RCW 28A.300.136.

**Findings—Intent—2008 c 298:** "(1) The legislature finds that of all the challenges confronting the African-American community, perhaps none is more critical to the future than the education of African-American children. The data regarding inequities, disproportionality, and gaps in achievement is alarming no matter which indicators are used:

(a) The gap in reading test scores between African-American and white students on the tenth grade Washington assessment of student learning is twenty percentage points, with only two-thirds of African-American students able to meet the upcoming graduation standard in reading on the first attempt compared to eighty-five percent of white students. African-American students are lagging behind other student groups in reading improvement.

(b) African-American students continue to score lowest among student groups in high school mathematics, with only twenty-three percent able to meet state standard on the first attempt, a thirty-three percentage point lag behind white students who have a fifty-six percent met-standard rate.

(c) One-fourth of African-American students who enter ninth grade will have dropped out of school by the time their peers graduate in twelfth grade. This measure does not account for the children who, facing significant educational challenges and barriers, have already grown disparaged before the end of middle or junior high school.

(2) The legislature further finds that although there are multiple initiatives broadly intended to improve student achievement, including a small number of initiatives to address the achievement gap for disadvantaged students generally, there are only a select few efforts targeted to the challenges of African-American students or designed specifically to engage parents and leaders in the African-American community. The efficacy of general supplemental programs in helping African-American students is unknown. A thoughtful, comprehensive, and inclusive strategy for African-American students has not been created.

(3) Therefore, the legislature intends to commission and then implement a clear, concise, and intentional plan of action, with specific strategies and performance benchmarks, to ensure that African-American students meet or exceed all academic standards and are prepared for a quality life and responsible citizenship in the twenty-first century." [2008 c 298 § 1.]

**28A.300.172 Prototypical funding allocation model—Determination of educational system's capacity to accommodate increased resources—Identification of limitations—Reports.** (1) As part of the estimates and information submitted to the governor by the superintendent of public instruction under RCW 28A.300.170, the superintendent of public instruction shall biennially make determinations on the educational system's capacity to accommodate increased resources in relation to the elements in the prototypical funding allocation model. In areas where there are specific and significant capacity limitations to providing enhancements to a recommended element, the superintendent of public instruction shall identify those limitations and make recommendations on how to address the issue.

(2) The legislature shall:

(a) Review the recommendations of the superintendent of public instruction submitted under subsection (1) of this section; and

(b) Use the information as it continues to review, evaluate, and revise the definition and funding of basic education in a manner that serves the educational needs of the citizens of Washington; continues to fulfill the state's obligation under Article IX of the state Constitution and ensures that no enhancements are imposed on the educational system that cannot be accommodated by the existing system capacity.

(3) "System capacity" for purposes of this section includes, but is not limited to, the ability of schools and districts to provide the capital facilities necessary to support a particular instructional program, the staffing levels necessary to support an instructional program both in terms of actual numbers of staff as well as the experience level and types of staff available to fill positions, the higher education systems capacity to prepare the next generation of educators, and the availability of data and a data system capable of helping the state allocate its resources in a manner consistent with evidence-based practices that are shown to improve student learning.

(4) The office of the superintendent of public instruction shall report to the legislature on a biennial basis beginning December 1, 2010. [2009 c 548 § 113.]

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**28A.300.412 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.300.450 Financial education public-private partnership—Established.** (1) A financial education public-private partnership is established, composed of the following members:

(a) Four members of the legislature, with one member from each caucus of the house of representatives appointed by the speaker of the house of representatives, and one member from each caucus of the senate appointed by the president of the senate;

(b) Four representatives from the private for-profit and nonprofit financial services sector, including at least one representative from the jumpstart coalition, to be appointed by the governor;

(c) Four teachers to be appointed by the superintendent of public instruction, with one each representing the elementary, middle, secondary, and postsecondary education sectors;

(d) A representative from the department of financial institutions to be appointed by the director;

(e) Two representatives from the office of the superintendent of public instruction, with one involved in curriculum development and one involved in teacher professional development, to be appointed by the superintendent.

(2) The chair of the partnership shall be selected by the members of the partnership from among the legislative members.

(3) To the extent funds are appropriated or are available for this purpose, the partnership may hire a staff person who shall reside in the office of the superintendent of public instruction for administrative purposes. Additional technical and logistical support may be provided by the office of the superintendent of public instruction, the department of financial institutions, the organizations composing the partnership, and other participants in the financial education public-private partnership.

(4) The members of the partnership shall be appointed by August 1, 2009.

(5) Legislative members of the partnership shall receive per diem and travel under RCW 44.04.120.

(6) Travel and other expenses of members of the partnership shall be provided by the agency, association, or organization that member represents.

(7) This section shall be implemented to the extent funds are available. [2009 c 443 § 1; 2004 c 247 § 2.]

**Findings—Intent—2004 c 247:** "The legislature recognizes that the average high school student lacks a basic knowledge of personal finance. In addition, the legislature recognizes the damaging effects of not properly preparing youth for the financial challenges of modern life, including bankruptcy, poor retirement planning, unmanageable debt, and a lower standard of living for Washington families.

The legislature finds that the purpose of the state's system of public education is to help students acquire the skills and knowledge they will need to be productive and responsible 21st century citizens. The legislature further finds that responsible citizenship includes an ability to make wise financial decisions. The legislature further finds that financial literacy could easily be included in lessons, courses, and projects that demonstrate each student's understanding of the state's four learning goals, including goal four: Understanding the importance of work and how performance, effort, and decisions directly affect future opportunities.

The legislature intends to assist school districts in their efforts to ensure that students are financially literate through identifying critical financial literacy skills and knowledge, providing information on instructional materials, and creating a public-private partnership to help provide instructional tools and professional development to school districts that wish to increase the financial literacy of their students." [2004 c 247 § 1.]

**28A.300.455 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.300.460 Financial education public-private partnership responsibilities—Annual report.** (1) The task of the financial education public-private partnership is to seek out and determine the best methods of equipping students with the knowledge and skills they need, before they become self-supporting, in order for them to make critical decisions regarding their personal finances. The components of personal financial education shall include the achievement of skills and knowledge necessary to make informed judgments and effective decisions regarding earning, spending, and the management of money and credit.

(2) In carrying out its task, and to the extent funds are available, the partnership shall:

(a) Communicate to school districts the financial education standards adopted under RCW 28A.300.462, other important financial education skills and content knowledge, and strategies for expanding the provision and increasing the quality of financial education instruction;

(b) Review on an ongoing basis financial education curriculum that is available to school districts, including instructional materials and programs and schoolwide programs that include the important financial skills and content knowledge;

(c) Develop evaluation standards and a procedure for endorsing financial education curriculum that the partnership determines should be recommended for use in school districts;

(d) Identify assessments and outcome measures that schools and communities may use to determine whether students have met the financial education standards adopted under RCW 28A.300.462;

(e) Monitor and provide guidance for professional development for educators regarding financial education, including ways that teachers at different grade levels may integrate financial skills and content knowledge into mathematics, social studies, and other course content areas;

(f) Work with the office of the superintendent of public instruction and the professional educator standards board to create professional development that could lead to a certificate endorsement or other certification of competency in financial education;

(g) Develop academic guidelines and standards-based protocols for use by classroom volunteers who participate in delivering financial education to students in the public schools; and

(h) Provide an annual report beginning December 1, 2009, as provided in RCW 28A.300.464, to the governor, the superintendent of public instruction, and the committees of the legislature with oversight over K-12 education and higher education. [2009 c 443 § 2; 2007 c 459 § 2; 2004 c 247 § 5.]

**Effective date—2007 c 459:** See note following RCW 28A.300.455.

**Findings—Intent—2004 c 247:** See note following RCW 28A.300.450.

**28A.300.462 Financial education public-private partnership—Financial education learning standards—Technical assistance and grants for demonstration projects—Report.** (1) Subject to funds appropriated specifically for this purpose, the office of the superintendent of

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public instruction and the financial education public-private partnership shall provide technical assistance and grants to support demonstration projects for district-wide adoption and implementation of the financial education learning standards under this section.

(2) School districts may apply on a competitive basis to participate as a demonstration project. The office and the partnership shall select up to four school districts as demonstration projects, with two districts located in eastern Washington and two districts located in western Washington, if possible.

(3) Selected districts must:

(a) Adopt the jumpstart coalition national standards in K-12 personal finance education as the essential academic learning requirements for financial education and provide students with an opportunity to master the standards;

(b) Make a commitment to integrate financial education into instruction at all grade levels and in all schools in the district;

(c) Establish local partnerships within the community to promote financial education in the schools; and

(d) Conduct pre and posttesting of students' financial literacy.

(4) The office of the superintendent of public instruction, with the advice of the financial education public-private partnership, shall provide assistance to the demonstration projects regarding curriculum, professional development, and innovative instructional programs to implement the financial education standards.

(5) The selected districts must report findings and results of the demonstration project to the office of the superintendent of public instruction and appropriate committees of the legislature by April 30, 2011. [2009 c 443 § 3.]

**28A.300.464 Financial education public-private partnership—Contents of report.** The annual report from the financial education public-private partnership, provided funds are available, shall include:

(1) Results from the jumpstart survey of personal financial literacy;

(2) Progress toward statewide adoption of financial education standards by school districts;

(3) Professional development activities related to equipping teachers with the knowledge and skills to teach financial education;

(4) Activities related to financial education curriculum development; and

(5) Any recommendations for policies or other activities to support financial education instruction in public schools. [2009 c 443 § 4.]

**28A.300.465 Financial education public-private partnership account.** The Washington financial education public-private partnership account is hereby created in the custody of the state treasurer. The purpose of the account is to support the financial education public-private partnership, and to provide financial education opportunities for students and financial education professional development opportunities for the teachers providing those educational opportunities. Revenues to the account may include gifts from the pri-

vate sector, federal funds, and any appropriations made by the legislature or other sources. Grants and their administration shall be paid from the account. Only the superintendent of public instruction or the superintendent's designee may authorize expenditures from the account, and only at the direction of the partnership. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2009 c 443 § 5; 2004 c 247 § 6.]

**Findings—Intent—2004 c 247:** See note following RCW 28A.300.450.

**28A.300.470 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.300.507 K-12 data governance group—Duties—Reports.** (1) A K-12 data governance group shall be established within the office of the superintendent of public instruction to assist in the design and implementation of a K-12 education data improvement system for financial, student, and educator data. It is the intent that the data system reporting specifically serve requirements for teachers, parents, superintendents, school boards, the office of the superintendent of public instruction, the legislature, and the public.

(2) The K-12 data governance group shall include representatives of the education data center, the office of the superintendent of public instruction, the legislative evaluation and accountability program committee, the professional educator standards board, the state board of education, and school district staff, including information technology staff. Additional entities with expertise in education data may be included in the K-12 data governance group.

(3) The K-12 data governance group shall:

(a) Identify the critical research and policy questions that need to be addressed by the K-12 education data improvement system;

(b) Identify reports and other information that should be made available on the internet in addition to the reports identified in subsection (5) of this section;

(c) Create a comprehensive needs requirement document detailing the specific information and technical capacity needed by school districts and the state to meet the legislature's expectations for a comprehensive K-12 education data improvement system as described under RCW 28A.655.210;

(d) Conduct a gap analysis of current and planned information compared to the needs requirement document, including an analysis of the strengths and limitations of an education data system and programs currently used by school districts and the state, and specifically the gap analysis must look at the extent to which the existing data can be transformed into canonical form and where existing software can be used to meet the needs requirement document;

(e) Focus on financial and cost data necessary to support the new K-12 financial models and funding formulas, including any necessary changes to school district budgeting and accounting, and on assuring the capacity to link data across financial, student, and educator systems; and

(f) Define the operating rules and governance structure for K-12 data collections, ensuring that data systems are flexible and able to adapt to evolving needs for information, within an objective and orderly data governance process for

determining when changes are needed and how to implement them. Strong consideration must be made to the current practice and cost of migration to new requirements. The operating rules should delineate the coordination, delegation, and escalation authority for data collection issues, business rules, and performance goals for each K-12 data collection system, including:

(i) Defining and maintaining standards for privacy and confidentiality;

(ii) Setting data collection priorities;

(iii) Defining and updating a standard data dictionary;

(iv) Ensuring data compliance with the data dictionary;

(v) Ensuring data accuracy; and

(vi) Establishing minimum standards for school, student, financial, and teacher data systems. Data elements may be specified "to the extent feasible" or "to the extent available" to collect more and better data sets from districts with more flexible software. Nothing in RCW 43.41.400, this section, or RCW 28A.655.210 should be construed to require that a data dictionary or reporting should be hobbled to the lowest common set. The work of the K-12 data governance group must specify which data are desirable. Districts that can meet these requirements shall report the desirable data. Funding from the legislature must establish which subset data are absolutely required.

(4)(a) The K-12 data governance group shall provide updates on its work as requested by the education data center and the legislative evaluation and accountability program committee.

(b) The work of the K-12 data governance group shall be periodically reviewed and monitored by the educational data center and the legislative evaluation and accountability program committee.

(5) To the extent data is available, the office of the superintendent of public instruction shall make the following minimum reports available on the internet. The reports must either be run on demand against current data, or, if a static report, must have been run against the most recent data:

(a) The percentage of data compliance and data accuracy by school district;

(b) The magnitude of spending per student, by student estimated by the following algorithm and reported as the detailed summation of the following components:

(i) An approximate, prorated fraction of each teacher or human resource element that directly serves the student. Each human resource element must be listed or accessible through online tunneling in the report;

(ii) An approximate, prorated fraction of classroom or building costs used by the student;

(iii) An approximate, prorated fraction of transportation costs used by the student; and

(iv) An approximate, prorated fraction of all other resources within the district. District-wide components should be disaggregated to the extent that it is sensible and economical;

(c) The cost of K-12 basic education, per student, by student, by school district, estimated by the algorithm in (b) of this subsection, and reported in the same manner as required in (b) of this subsection;

(d) The cost of K-12 special education services per student, by student receiving those services, by school district,

estimated by the algorithm in (b) of this subsection, and reported in the same manner as required in (b) of this subsection;

(e) Improvement on the statewide assessments computed as both a percentage change and absolute change on a scale score metric by district, by school, and by teacher that can also be filtered by a student's length of full-time enrollment within the school district;

(f) Number of K-12 students per classroom teacher on a per teacher basis;

(g) Number of K-12 classroom teachers per student on a per student basis;

(h) Percentage of a classroom teacher per student on a per student basis; and

(i) The cost of K-12 education per student by school district sorted by federal, state, and local dollars.

(6) The superintendent of public instruction shall submit a preliminary report to the legislature by November 15, 2009, including the analyses by the K-12 data governance group under subsection (3) of this section and preliminary options for addressing identified gaps. A final report, including a proposed phase-in plan and preliminary cost estimates for implementation of a comprehensive data improvement system for financial, student, and educator data shall be submitted to the legislature by September 1, 2010.

(7) All reports and data referenced in this section and RCW 43.41.400 and 28A.655.210 shall be made available in a manner consistent with the technical requirements of the legislative evaluation and accountability program committee and the education data center so that selected data can be provided to the legislature, governor, school districts, and the public.

(8) Reports shall contain data to the extent it is available. All reports must include documentation of which data are not available or are estimated. Reports must not be suppressed because of poor data accuracy or completeness. Reports may be accompanied with documentation to inform the reader of why some data are missing or inaccurate or estimated. [2009 c 548 § 203.]

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**28A.300.520 Policies to support children of incarcerated parents.** (1) The superintendent of public instruction shall review current policies and assess the adequacy and availability of programs targeted at children who have a parent who is incarcerated in a department of corrections facility. The superintendent of public instruction shall adopt policies that support the children of incarcerated parents and meet their needs with the goal of facilitating normal child development, including maintaining adequate academic progress, while reducing intergenerational incarceration.

(2) To the extent funds are available, the superintendent shall conduct the following activities to assist in implementing the requirements of subsection (1) of this section:

(a) Gather information and data on the students who are the children of inmates incarcerated in department of corrections facilities; and

(b) Participate in the children of incarcerated parents advisory committee and report information obtained under this section to the advisory committee. [2009 c 578 § 9; 2007 c 384 § 5.]

**Intent—Finding—2007 c 384:** See note following RCW 72.09.495.

**28A.300.525 Students in children's administration out-of-home care—Report on educational experiences.** (*Expires July 1, 2011.*) (1) The superintendent of public instruction shall provide an annual aggregate report to the legislature on the educational experiences and progress of students in children's administration out-of-home care. This data should be disaggregated in the smallest units allowable by law that do not identify an individual student, in order to learn which school districts are experiencing the greatest success and challenges in achieving quality educational outcomes with students in children's administration out-of-home care.

(2) This section is suspended until July 1, 2011. [2009 c 556 § 11; 2008 c 297 § 2.]

**Expiration date—2009 c 556 §§ 11, 13, and 15:** "Sections 11, 13, and 15 of this act expire July 1, 2011." [2009 c 556 § 21.]

**28A.300.530 Individuals with dyslexia—Identification and instruction—Handbook—Reports.** (1) Within available resources, the office of the superintendent of public instruction, in consultation with the school districts that participated in the Lorraine Wojahn dyslexia pilot program, and with an international nonprofit organization dedicated to supporting efforts to provide appropriate identification of and instruction for individuals with dyslexia, shall:

(a) Develop an educator training program to enhance the reading, writing, and spelling skills of students with dyslexia. The training program must provide research-based, multisensory literacy intervention professional development in the areas of dyslexia and intervention implementation. The program shall be posted on the web site of the office of the superintendent of public instruction. The training program may be regionally delivered through the educational service districts. The educational service districts may seek assistance from the international nonprofit organization to deliver the training; and

(b) Develop a dyslexia handbook to be used as a reference for teachers and parents of students with dyslexia. The handbook shall be modeled after other state dyslexia handbooks, and shall include guidelines for school districts to follow as they identify and provide services for students with dyslexia. Additionally, the handbook shall provide school districts, and parents and guardians with information regarding the state's relevant statutes and their relation to federal special education laws. The handbook shall be posted on the web site of the office of the superintendent of public instruction.

(2) Beginning September 1, 2009, and annually thereafter, each educational service district shall report to the office of the superintendent of public instruction the number of individuals who participate in the training developed and offered by the educational service district. The office of the superintendent of public instruction shall report that information to the legislative education committees. [2009 c 546 § 2.]



**Finding—Intent—2009 c 546:** "Dyslexia is a language-based learning disability that affects individuals throughout their lives. Washington state has a long-standing tradition of working to serve its students with dyslexia. Since 2005, the legislature has provided funding for five pilot projects to implement research-based, multisensory literacy intervention for students with dyslexia. Participating schools were required to have a three-tiered reading structure in place, provide professional development training to teachers, assess students, and collect and maintain data on student progress.

The legislature finds that the students receiving intervention support through the dyslexia pilot projects have made substantial and steady academic gains. The legislature intends to sustain this work and expand the implementation to a level of statewide support for students with dyslexia by developing and providing information and training, including a handbook to continue to improve the skills of our students with dyslexia." [2009 c 546 § 1.]

**28A.300.540 Uniform process to track expenditures for transporting homeless students—Rules—Information to agency council on coordinated transportation.** By December 31, 2010, the office of the superintendent of public instruction shall establish a uniform process designed to track the additional expenditures for transporting homeless students, including expenditures required under the McKinney Vento act, reauthorized as Title X, Part C, of the no child left behind act, P.L. 107-110, in January 2002. Once established, the superintendent shall adopt the necessary administrative rules to direct each school district to adopt and use the uniform process and track these expenditures. The superintendent shall provide information annually to the agency council on coordinated transportation, created in chapter 47.06B RCW, on total expenditures related to the transportation of homeless students. [2009 c 515 § 12.]

**28A.300.801 Legislative youth advisory council.** (1) The legislative youth advisory council is established to examine issues of importance to youth, including but not limited to education, employment, strategies to increase youth participation in state and municipal government, safe environments for youth, substance abuse, emotional and physical health, foster care, poverty, homelessness, and youth access to services on a statewide and municipal basis.

(2) The council consists of twenty-two members as provided in this subsection who, at the time of appointment, are aged fourteen to eighteen. The council shall select a chair from among its members.

(3) Except for initial members, members shall serve two-year terms, and if eligible, may be reappointed for subsequent two-year terms. One-half of the initial members shall be appointed to one-year terms, and these appointments shall be made in such a way as to preserve overall representation on the committee.

(4)(a) By July 2, 2007, and annually thereafter, students may apply to be considered for participation in the program by completing an online application form and submitting the application to the legislative youth advisory council. The council may develop selection criteria and an application review process. The council shall recommend candidates whose names will be submitted to the office of the lieutenant governor for final selection. Beginning May 7, 2009, the office of the lieutenant governor shall notify all applicants of the final selections using existing staff and resources.

(b) Within existing staff and resources, the office of the lieutenant governor shall make the application available on the lieutenant governor's web site.

(5) If the council has sufficient funds from any source, then the council shall have the following duties:

(a) Advising the legislature on proposed and pending legislation, including state budget expenditures and policy matters relating to youth;

(b) Advising the standing committees of the legislature and study commissions, committees, and task forces regarding issues relating to youth;

(c) Conducting periodic seminars for its members regarding leadership, government, and the legislature;

(d) Accepting and soliciting for grants and donations from public and private sources to support the activities of the council; and

(e) Reporting annually by December 1st to the legislature on its activities, including proposed legislation that implements recommendations of the council.

(6) If the council has sufficient funds from any source, then in carrying out its duties under this section, the council may meet at least three times but not more than six times per year. The council shall consider conducting at least some of the meetings via the K-20 telecommunications network. The council is encouraged to invite local state legislators to participate in the meetings. The council is encouraged to poll other students in order to get a broad perspective on the various issues. The council is encouraged to use technology to conduct the polling, including the council's web site, if the council has a web site.

(7) If the council has sufficient funds from any source, then members shall be reimbursed as provided in RCW 43.03.050 and 43.03.060.

(8) If sufficient funds are available from any source, beginning with May 7, 2009, the office of superintendent of public instruction shall provide administration, coordination, and facilitation assistance to the council. The senate and house of representatives may provide policy and fiscal briefings and assistance with drafting proposed legislation. The senate and the house of representatives shall each develop internal policies relating to staff assistance provided to the council. Such policies may include applicable internal personnel and practices guidelines, resource use and expense reimbursement guidelines, and applicable ethics mandates. Provision of funds, resources, and staff, as well as the assignment and direction of staff, remains at all times within the sole discretion of the chamber making the provision.

(9) The office of the lieutenant governor, the office of the superintendent of public instruction, the legislature, any agency of the legislature, and any official or employee of such office or agency are immune from liability for any injury that is incurred by or caused by a member of the youth advisory council and that occurs while the member of the council is performing duties of the council or is otherwise engaged in activities or receiving services for which reimbursement is allowed under subsection (7) of this section. The immunity provided by this subsection does not apply to an injury intentionally caused by the act or omission of an employee or official of the superintendent of public instruction or the legislature or any agency of the legislature. [2009 c 410 § 1; 2007 c 291 § 2; 2005 c 355 § 1.]

**Effective date—2009 c 410:** "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 7, 2009]." [2009 c 410 § 2.]

**Finding—2007 c 291:** "The legislature finds that the legislative youth advisory council provides a unique opportunity for middle and high school students to be actively involved in government. Councilmembers not only learn about, but exercise, the core values and democratic principles of our state and nation, along with the rights and responsibilities of citizenship and democratic civic involvement. As such, they are engaged in authentic practice of the essential academic learning requirements in civics. In the short time since its creation, the legislative youth advisory council has studied, debated, and begun to formulate positions and recommendations on such important topics as education reform, school finance, public school learning environments, health and fitness education, and standardized testing. The legislature continues to stress the importance of civics education and support the type of civic involvement by students exemplified by the legislative youth advisory council." [2007 c 291 § 1.]

**Effective date—2007 c 291:** "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 2, 2007]." [2007 c 291 § 4.]

## Chapter 28A.305 RCW STATE BOARD OF EDUCATION

### Sections

- 28A.305.130 Powers and duties—Purpose.  
 28A.305.141 Waiver from one hundred eighty-day school year requirement—Criteria—Recommendation to the legislature. (*Expires August 31, 2014.*)  
 28A.305.145 Repealed.  
 28A.305.215 Essential academic learning requirements and grade level expectations—Revised standards and curricula for mathematics and science—Duties of the state board of education and the superintendent of public instruction—Revised graduation requirements.  
 28A.305.225 Accountability framework—Accountability index—Comprehensive system of voluntary support and assistance for schools and districts—System for challenged schools—Use of state system to replace federal accountability system.

*Statewide student assessment system—Redesign—Reports to the legislature: RCW 28A.300.041.*

**28A.305.130 Powers and duties—Purpose.** The purpose of the state board of education is to provide advocacy and strategic oversight of public education; implement a standards-based accountability framework that creates a unified system of increasing levels of support for schools in order to improve student academic achievement; provide leadership in the creation of a system that personalizes education for each student and respects diverse cultures, abilities, and learning styles; and promote achievement of the goals of RCW 28A.150.210. In addition to any other powers and duties as provided by law, the state board of education shall:

(1) Hold regularly scheduled meetings at such time and place within the state as the board shall determine and may hold such special meetings as may be deemed necessary for the transaction of public business;

(2) Form committees as necessary to effectively and efficiently conduct the work of the board;

(3) Seek advice from the public and interested parties regarding the work of the board;

(4) For purposes of statewide accountability:

(a) Adopt and revise performance improvement goals in reading, writing, science, and mathematics, by subject and grade level, once assessments in these subjects are required

statewide; academic and technical skills, as appropriate, in secondary career and technical education programs; and student attendance, as the board deems appropriate to improve student learning. The goals shall be consistent with student privacy protection provisions of RCW 28A.655.090(7) and shall not conflict with requirements contained in Title I of the federal elementary and secondary education act of 1965, or the requirements of the Carl D. Perkins vocational education act of 1998, each as amended. The goals may be established for all students, economically disadvantaged students, limited English proficient students, students with disabilities, and students from disproportionately academically under-achieving racial and ethnic backgrounds. The board may establish school and school district goals addressing high school graduation rates and dropout reduction goals for students in grades seven through twelve. The board shall adopt the goals by rule. However, before each goal is implemented, the board shall present the goal to the education committees of the house of representatives and the senate for the committees' review and comment in a time frame that will permit the legislature to take statutory action on the goal if such action is deemed warranted by the legislature;

(b) Identify the scores students must achieve in order to meet the standard on the Washington assessment of student learning and, for high school students, to obtain a certificate of academic achievement. The board shall also determine student scores that identify levels of student performance below and beyond the standard. The board shall consider the incorporation of the standard error of measurement into the decision regarding the award of the certificates. The board shall set such performance standards and levels in consultation with the superintendent of public instruction and after consideration of any recommendations that may be developed by any advisory committees that may be established for this purpose. The initial performance standards and any changes recommended by the board in the performance standards for the tenth grade assessment shall be presented to the education committees of the house of representatives and the senate by November 30th of the school year in which the changes will take place to permit the legislature to take statutory action before the changes are implemented if such action is deemed warranted by the legislature. The legislature shall be advised of the initial performance standards and any changes made to the elementary level performance standards and the middle school level performance standards;

(c) Annually review the assessment reporting system to ensure fairness, accuracy, timeliness, and equity of opportunity, especially with regard to schools with special circumstances and unique populations of students, and a recommendation to the superintendent of public instruction of any improvements needed to the system; and

(d) Include in the biennial report required under RCW 28A.305.035, information on the progress that has been made in achieving goals adopted by the board;

(5) Accredited, subject to such accreditation standards and procedures as may be established by the state board of education, all private schools that apply for accreditation, and approve, subject to the provisions of RCW 28A.195.010, private schools carrying out a program for any or all of the grades kindergarten through twelve: PROVIDED, That no private school may be approved that operates a kindergarten

program only: PROVIDED FURTHER, That no private schools shall be placed upon the list of accredited schools so long as secret societies are knowingly allowed to exist among its students by school officials;

(6) Articulate with the institutions of higher education, workforce representatives, and early learning policymakers and providers to coordinate and unify the work of the public school system;

(7) Hire an executive director and an administrative assistant to reside in the office of the superintendent of public instruction for administrative purposes. Any other personnel of the board shall be appointed as provided by RCW 28A.300.020. The board may delegate to the executive director by resolution such duties as deemed necessary to efficiently carry on the business of the board including, but not limited to, the authority to employ necessary personnel and the authority to enter into, amend, and terminate contracts on behalf of the board. The executive director, administrative assistant, and all but one of the other personnel of the board are exempt from civil service, together with other staff as now or hereafter designated as exempt in accordance with chapter 41.06 RCW; and

(8) Adopt a seal that shall be kept in the office of the superintendent of public instruction. [2009 c 548 § 502; 2008 c 27 § 1; 2006 c 263 § 102; 2005 c 497 § 104; 2002 c 205 § 3; 1997 c 13 § 5; 1996 c 83 § 1; 1995 c 369 § 9; 1991 c 116 § 11; 1990 c 33 § 266. Prior: 1987 c 464 § 1; 1987 c 39 § 1; prior: 1986 c 266 § 86; 1986 c 149 § 3; 1984 c 40 § 2; 1979 ex.s. c 173 § 1; 1975-'76 2nd ex.s. c 92 § 1; 1975 1st ex.s. c 275 § 50; 1974 ex.s. c 92 § 1; 1971 ex.s. c 215 § 1; 1971 c 48 § 2; 1969 ex.s. c 223 § 28A.04.120; prior: 1963 c 32 § 1; 1961 c 47 § 1; prior: (i) 1933 c 80 § 1; 1915 c 161 § 1; 1909 c 97 p 236 § 5; 1907 c 240 § 3; 1903 c 104 § 12; 1897 c 118 § 27; 1895 c 150 § 1; 1890 p 352 § 8; Code 1881 § 3165; RRS § 4529. (ii) 1919 c 89 § 3; RRS § 4684. (iii) 1909 c 97 p 238 § 6; 1897 c 118 § 29; RRS § 4530. Formerly RCW 28A.04.120, 28.04.120, 28.58.280, 28.58.281, 28.58.282, 43.63.140.]

**Intent—Finding—2009 c 548:** "(1)(a) The legislature intends to develop a system in which the state and school districts share accountability for achieving state educational standards and supporting continuous school improvement. The legislature recognizes that comprehensive education finance reform and the increased investment of public resources necessary to implement that reform must be accompanied by a new mechanism for clearly defining the relationships and expectations for the state, school districts, and schools. It is the legislature's intent that this be accomplished through the development of a proactive, collaborative accountability system that focuses on a school improvement system that engages and serves the local school board, parents, students, staff in the schools and districts, and the community. The improvement system shall be based on progressive levels of support, with a goal of continuous improvement in student achievement and alignment with the federal system of accountability.

(b) The legislature further recognizes that it is the state's responsibility to provide schools and districts with the tools and resources necessary to improve student achievement. These tools include the necessary accounting and data reporting systems, assessment systems to monitor student achievement, and a system of general support, targeted assistance, recognition, and, if necessary, state intervention.

(2) The legislature has already charged the state board of education to develop criteria to identify schools and districts that are successful, in need of assistance, and those where students persistently fail, as well as to identify a range of intervention strategies and a performance incentive system. The legislature finds that the state board of education should build on the work that the board has already begun in these areas. As development of these formulas, processes, and systems progresses, the legislature should monitor the progress." [2009 c 548 § 501.]

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Effective date—2005 c 497 §§ 104, 302, 402, and 406 through 408:** "Sections 104, 302, 402, and 406 through 408 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 July 1, 2005." [2005 c 497 § 410.]

**Intent—Part headings not law—2005 c 497:** See notes following RCW 28A.305.011.

**Findings—Severability—Effective dates—2002 c 205 §§ 2, 3, and 4:** See notes following RCW 28A.320.125.

**Effective date—1995 c 369:** See note following RCW 43.43.930.

**Severability—1986 c 266:** See note following RCW 38.52.005.

**Severability—1984 c 40:** See note following RCW 28A.195.050.

**Severability—1975-'76 2nd ex.s. c 92:** "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 92 § 6.]

*Child abuse and neglect—Development of primary prevention program: RCW 28A.300.160.*

*Districts to develop programs and establish programs regarding child abuse and neglect prevention: RCW 28A.225.200.*

*Professional certification not required of superintendents or deputy or assistant superintendents: RCW 28A.410.120.*

*Use of force on children—Policy—Actions presumed unreasonable: RCW 9A.16.100.*

**28A.305.141 Waiver from one hundred eighty-day school year requirement—Criteria—Recommendation to the legislature. (Expires August 31, 2014.)** (1) In addition to waivers authorized under RCW 28A.305.140 and 28A.655.180, the state board of education may grant waivers from the requirement for a one hundred eighty-day school year under RCW 28A.150.220 and \*28A.150.250 to school districts that propose to operate one or more schools on a flexible calendar for purposes of economy and efficiency as provided in this section. The requirement under RCW 28A.150.220 that school districts offer an annual average instructional hour offering of at least one thousand hours shall not be waived.

(2) A school district seeking a waiver under this section must submit an application that includes:

(a) A proposed calendar for the school day and school year that demonstrates how the instructional hour requirement will be maintained;

(b) An explanation and estimate of the economies and efficiencies to be gained from compressing the instructional hours into fewer than one hundred eighty days;

(c) An explanation of how monetary savings from the proposal will be redirected to support student learning;

(d) A summary of comments received at one or more public hearings on the proposal and how concerns will be addressed;

(e) An explanation of the impact on students who rely upon free and reduced-price school child nutrition services and the impact on the ability of the child nutrition program to operate an economically independent program;

(f) An explanation of the impact on the ability to recruit and retain employees in education support positions;

(g) An explanation of the impact on students whose parents work during the missed school day; and

(h) Other information that the state board of education may request to assure that the proposed flexible calendar will not adversely affect student learning.

(3) The state board of education shall adopt criteria to evaluate waiver requests. No more than five districts may be granted waivers. Waivers may be granted for up to three years. After each school year, the state board of education shall analyze empirical evidence to determine whether the reduction is affecting student learning. If the state board of education determines that student learning is adversely affected, the school district shall discontinue the flexible calendar as soon as possible but not later than the beginning of the next school year after the determination has been made. All waivers expire August 31, 2014.

(a) Two of the five waivers granted under this subsection shall be granted to school districts with student populations of less than one hundred fifty students.

(b) Three of the five waivers granted under this subsection shall be granted to school districts with student populations of between one hundred fifty-one and five hundred students.

(4) The state board of education shall examine the waivers granted under this section and make a recommendation to the education committees of the legislature by December 15, 2013, regarding whether the waiver program should be continued, modified, or allowed to terminate. This recommendation should focus on whether the program resulted in improved student learning as demonstrated by empirical evidence. Such evidence includes, but is not limited to: Improved scores on the Washington assessment of student learning, results of the dynamic indicators of basic early literacy skills, student grades, and attendance.

(5) This section expires August 31, 2014. [2009 c 543 § 2.]

**\*Reviser's note:** The reference to a one hundred eighty-day school year in RCW 28A.150.250 was deleted by 2009 c 548 § 105.

**Finding—2009 c 543:** "The legislature continues to support school districts seeking innovations to further the educational experiences of students and staff while also realizing increased efficiencies in day-to-day operations. School districts have suggested that efficiencies in heating, lighting, or maintenance expenses could be possible if districts were given the ability to create a more flexible calendar. Furthermore, the legislature finds that a flexible calendar could be beneficial to student learning by allowing for the use of the unscheduled days for professional development activities, planning, tutoring, special programs, parent conferences, and athletic events. A flexible calendar also has the potential to ease the burden of long commutes on students in rural areas and to lower absenteeism.

School districts in several western states have operated on a four-day school week and report increased efficiencies, family support, and reduced absenteeism, with no negative impact on student learning. Small rural school districts in particular could benefit due to their high per-pupil costs for transportation and utilities. Therefore, the legislature intends to provide increased flexibility to a limited number of school districts to explore the potential value of operating on a flexible calendar, so long as adequate safeguards are put in place to prevent any negative impact on student learning." [2009 c 543 § 1.]

**28A.305.145 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.305.215 Essential academic learning requirements and grade level expectations—Revised standards and curricula for mathematics and science—Duties of the state board of education and the superintendent of public**

**instruction—Revised graduation requirements.** (1) The activities in this section revise and strengthen the state learning standards that implement the \*goals of RCW 28A.150.210, known as the essential academic learning requirements, and improve alignment of school district curriculum to the standards.

(2) The state board of education shall be assisted in its work under subsections (3), (4), and (5) of this section by: (a) An expert national consultant in each of mathematics and science retained by the state board; and (b) the mathematics and science advisory panels created under RCW 28A.305.219, as appropriate, which shall provide review and formal comment on proposed recommendations to the superintendent of public instruction and the state board of education on new revised standards and curricula.

(3) By September 30, 2007, the state board of education shall recommend to the superintendent of public instruction revised essential academic learning requirements and grade level expectations in mathematics. The recommendations shall be based on:

(a) Considerations of clarity, rigor, content, depth, coherence from grade to grade, specificity, accessibility, and measurability;

(b) Study of:

(i) Standards used in countries whose students demonstrate high performance on the trends in international mathematics and science study and the programme for international student assessment;

(ii) College readiness standards;

(iii) The national council of teachers of mathematics focal points and the national assessment of educational progress content frameworks; and

(iv) Standards used by three to five other states, including California, and the nation of Singapore; and

(c) Consideration of information presented during public comment periods.

(4)(a) By February 29, 2008, the superintendent of public instruction shall revise the essential academic learning requirements and the grade level expectations for mathematics and present the revised standards to the state board of education and the education committees of the senate and the house of representatives as required by RCW 28A.655.070(4).

(b) The state board of education shall direct an expert national consultant in mathematics to:

(i) Analyze the February 2008 version of the revised standards, including a comparison to exemplar standards previously reviewed under this section;

(ii) Recommend specific language and content changes needed to finalize the revised standards; and

(iii) Present findings and recommendations in a draft report to the state board of education.

(c) By May 15, 2008, the state board of education shall review the consultant's draft report, consult the mathematics advisory panel, hold a public hearing to receive comment, and direct any subsequent modifications to the consultant's report. After the modifications are made, the state board of education shall forward the final report and recommendations to the superintendent of public instruction for implementation.

(d) By July 1, 2008, the superintendent of public instruction shall revise the mathematics standards to conform precisely to and incorporate each of the recommendations of the state board of education under (c) of this subsection and submit the revisions to the state board of education.

(e) By July 31, 2008, the state board of education shall either approve adoption by the superintendent of public instruction of the final revised standards as the essential academic learning requirements and grade level expectations for mathematics, or develop a plan for ensuring that the recommendations under (c) of this subsection are implemented so that final revised mathematics standards can be adopted by September 25, 2008.

(5) By June 30, 2008, the state board of education shall recommend to the superintendent of public instruction revised essential academic learning requirements and grade level expectations in science. The recommendations shall be based on:

(a) Considerations of clarity, rigor, content, depth, coherence from grade to grade, specificity, accessibility, and measurability;

(b) Study of standards used by three to five other states and in countries whose students demonstrate high performance on the trends in international mathematics and science study and the programme for international student assessment; and

(c) Consideration of information presented during public comment periods.

(6) By December 1, 2008, the superintendent of public instruction shall revise the essential academic learning requirements and the grade level expectations for science and present the revised standards to the state board of education and the education committees of the senate and the house of representatives as required by RCW 28A.655.070(4). The superintendent shall adopt the revised essential academic learning requirements and grade level expectations unless otherwise directed by the legislature during the 2009 legislative session.

(7)(a) Within six months after the standards under subsection (4) of this section are adopted, the superintendent of public instruction shall present to the state board of education recommendations for no more than three basic mathematics curricula each for elementary, middle, and high school grade spans.

(b) Within two months after the presentation of the recommended curricula, the state board of education shall provide official comment and recommendations to the superintendent of public instruction regarding the recommended mathematics curricula. The superintendent of public instruction shall make any changes based on the comment and recommendations from the state board of education and adopt the recommended curricula.

(c) By June 30, 2009, the superintendent of public instruction shall present to the state board of education recommendations for no more than three basic science curricula each for elementary and middle school grade spans and not more than three recommendations for each of the major high school courses within the following science domains: Earth and space science, physical science, and life science.

(d) Within two months after the presentation of the recommended curricula, the state board of education shall pro-

vide official comment and recommendations to the superintendent of public instruction regarding the recommended science curricula. The superintendent of public instruction shall make any changes based on the comment and recommendations from the state board of education and adopt the recommended curricula.

(e) In selecting the recommended curricula under this subsection (7), the superintendent of public instruction shall provide information to the mathematics and science advisory panels created under RCW 28A.305.219, as appropriate, and seek the advice of the appropriate panel regarding the curricula that shall be included in the recommendations.

(f) The recommended curricula under this subsection (7) shall align with the revised essential academic learning requirements and grade level expectations. In addition to the recommended basic curricula, appropriate diagnostic and supplemental materials shall be identified as necessary to support each curricula.

(g) Subject to funds appropriated for this purpose and availability of the curricula, at least one of the curricula in each grade span and in each of mathematics and science shall be available to schools and parents online at no cost to the school or parent.

(8) By December 1, 2007, the state board of education shall revise the high school graduation requirements under RCW 28A.230.090 to include a minimum of three credits of mathematics, one of which may be a career and technical course equivalent in mathematics, and prescribe the mathematics content in the three required credits.

(9) Nothing in this section requires a school district to use one of the recommended curricula under subsection (7) of this section. However, the statewide accountability plan adopted by the state board of education under RCW 28A.305.130 shall recommend conditions under which school districts should be required to use one of the recommended curricula. The plan shall also describe the conditions for exception to the curriculum requirement, such as the use of integrated academic and career and technical education curriculum. Required use of the recommended curricula as an intervention strategy must be authorized by the legislature as required by **\*\*RCW 28A.305.130(4)(e)** before implementation.

(10) The superintendent of public instruction shall conduct a comprehensive survey of the mathematics curricula being used by school districts at all grade levels and the textbook and curriculum purchasing cycle of the districts and report the results of the survey to the education committees of the legislature by November 15, 2008. [2009 c 310 § 5. Prior: 2008 c 274 § 2; 2008 c 172 § 2; 2007 c 396 § 1.]

**Reviser's note:** \*(1) Reference to "goals" was deleted by 2009 c 548 § 101.

\*\* (2) RCW 28A.305.130 was amended by 2009 c 548 § 502, deleting subsection (4)(e).

**Effective date—2009 c 310 § 5:** "Section 5 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 takes effect immediately [April 30, 2009]." [2009 c 310 § 6.]

**Intent—2008 c 172:** "The legislature intends that the revised mathematics standards by the office of the superintendent of public instruction will set higher expectations for Washington's students by fortifying content and increasing rigor; provide greater clarity, specificity, and measurability about what is expected of students in each grade; supply more explicit guidance to educators about what to teach and when; enhance the relevance of mathemat-

ics to students' lives; and ultimately result in more Washington students having the opportunity to be successful in mathematics. Additionally, the revised mathematics standards should restructure the standards to make clear the importance of all aspects of mathematics: Mathematics content including the standard algorithms, conceptual understanding of the content, and the application of mathematical processes within the content." [2008 c 172 § 1.]

**Effective date—2008 c 172:** "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 26, 2008]." [2008 c 172 § 3.]

**Effective date—2007 c 396 §§ 1 and 2:** "Sections 1 and 2 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 [May 9, 2007]." [2007 c 396 § 22.]

**Captions not law—2007 c 396:** "Captions used in this act are not any part of the law." [2007 c 396 § 19.]

**Finding—Intent—2007 c 396:** See note following RCW 28A.300.515.

**28A.305.225 Accountability framework—Accountability index—Comprehensive system of voluntary support and assistance for schools and districts—System for challenged schools—Use of state system to replace federal accountability system.** (1) The state board of education shall continue to refine the development of an accountability framework that creates a unified system of support for challenged schools, that aligns with basic education, increases the level of support based upon the magnitude of need, and uses data for decisions.

(2) The state board of education shall develop an accountability index to identify schools and districts for recognition and for additional state support. The index shall be based on criteria that are fair, consistent, and transparent. Performance shall be measured using multiple outcomes and indicators including, but not limited to, graduation rates and results from statewide assessments. The index shall be developed in such a way as to be easily understood by both employees within the schools and districts, as well as parents and community members. It is the legislature's intent that the index provide feedback to schools and districts to self-assess their progress, and enable the identification of schools with exemplary student performance and those that need assistance to overcome challenges in order to achieve exemplary student performance. Once the accountability index has identified schools that need additional help, a more thorough analysis will be done to analyze specific conditions in the district including but not limited to the level of state resources a school or school district receives in support of the basic education system, achievement gaps for different groups of students, and community support.

(3) Based on the accountability index and in consultation with the superintendent of public instruction, the state board of education shall develop a proposal and timeline for implementation of a comprehensive system of voluntary support and assistance for schools and districts. The timeline must take into account and accommodate capacity limitations of the K-12 educational system. Changes that have a fiscal impact on school districts, as identified by a fiscal analysis prepared by the office of the superintendent of public instruction, shall take effect only if formally authorized by the legislature through the omnibus appropriations act or other enacted legislation.

(4)(a) The state board of education shall develop a proposal and implementation timeline for a more formalized

comprehensive system improvement targeted to challenged schools and districts that have not demonstrated sufficient improvement through the voluntary system. The timeline must take into account and accommodate capacity limitations of the K-12 educational system. The proposal and timeline shall be submitted to the education committees of the legislature by December 1, 2009, and shall include recommended legislation and recommended resources to implement the system according to the timeline developed.

(b) The proposal shall outline a process for addressing performance challenges that will include the following features: (i) An academic performance audit using peer review teams of educators that considers school and community factors in addition to other factors in developing recommended specific corrective actions that should be undertaken to improve student learning; (ii) a requirement for the local school board plan to develop and be responsible for implementation of corrective action plan taking into account the audit findings, which plan must be approved by the state board of education at which time the plan becomes binding upon the school district to implement; and (iii) monitoring of local district progress by the office of the superintendent of public instruction. The proposal shall take effect only if formally authorized by the legislature through the omnibus appropriations act or other enacted legislation.

(5) In coordination with the superintendent of public instruction, the state board of education shall seek approval from the United States department of education for use of the accountability index and the state system of support, assistance, and intervention, to replace the federal accountability system under P.L. 107-110, the no child left behind act of 2001.

(6) The state board of education shall work with the education data center established within the office of financial management and the technical working group established in section 112, chapter 548, Laws of 2009 to determine the feasibility of using the prototypical funding allocation model as not only a tool for allocating resources to schools and districts but also as a tool for schools and districts to report to the state legislature and the state board of education on how the state resources received are being used. [2009 c 548 § 503.]

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

## Chapter 28A.310 RCW EDUCATIONAL SERVICE DISTRICTS

### Sections

28A.310.010	Purpose.
28A.310.180	ESD board—Compliance with rules and regulations— Depository and distribution center—Cooperative service programs, joint purchasing programs, and direct student service programs including pupil transportation.
28A.310.200	ESD board—Powers and duties—Rules.
28A.310.240	Employee leave policy required.
28A.310.250	Certificated employees of district—Contracts of employ- ment—Nonrenewal of contracts—Notice.

**28A.310.010 Purpose.** It shall be the intent and purpose of this chapter to establish educational service districts as regional agencies which are intended to:

(1) Provide cooperative and informational services to local school districts;

(2) Assist the superintendent of public instruction and the state board of education in the performance of their respective statutory or constitutional duties; and

(3) Provide services to school districts and to the Washington state center for childhood deafness and hearing loss and the school for the blind to assure equal educational opportunities. [2009 c 381 § 25; 1988 c 65 § 1; 1977 ex.s. c 283 § 1; 1975 1st ex.s. c 275 § 1; 1971 ex.s. c 282 § 1; 1969 ex.s. c 176 § 1. Formerly RCW 28A.21.010, 28.19.500.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**Severability—1977 ex.s. c 283:** "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 283 § 26.]

**Severability—1971 ex.s. c 282:** "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 282 § 45.]

**Rights preserved—1969 ex.s. c 176:** "The amendment or repeal of any section referred to herein shall not be construed as affecting any existing right acquired under the provisions of the statutes amended or repealed nor any rule, regulation or order adopted pursuant thereto nor as affecting any proceeding as instituted thereunder." [1969 ex.s. c 176 § 160.]

**Severability—1969 ex.s. c 176:** "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 ex.s. c 176 § 161.]

**28A.310.180 ESD board—Compliance with rules and regulations—Depository and distribution center—Cooperative service programs, joint purchasing programs, and direct student service programs including pupil transportation.** In addition to other powers and duties as provided by law, every educational service district board shall:

(1) Comply with rules or regulations of the state board of education and the superintendent of public instruction.

(2) If the district board deems necessary, establish and operate for the schools within the boundaries of the educational service district a depository and distribution center for films, tapes, charts, maps, and other instructional material as recommended by the school district superintendents within the service area of the educational service district: PROVIDED, That the district may also provide the services of the depository and distribution center to private schools within the district so long as such private schools pay such fees that reflect actual costs for services and the use of instructional materials as may be established by the educational service district board.

(3) Establish cooperative service programs for school districts within the educational service district and joint purchasing programs for schools within the educational service district pursuant to RCW 28A.320.080(3): PROVIDED, That on matters relating to cooperative service programs the board and superintendent of the educational service district shall seek the prior advice of the superintendents of local school districts within the educational service district.

(4) Establish direct student service programs for school districts within the educational service district including pupil transportation. However, for the provision of state-funded pupil transportation for special education coopera-

tives programs for special education conducted under RCW 28A.155.010 through 28A.155.100, the educational service district, with the consent of the participating school districts, shall be entitled to receive directly state apportionment funds for that purpose: PROVIDED, That the board of directors and superintendent of a local school district request the educational service district to perform said service or services: PROVIDED FURTHER, That the educational service district board of directors and superintendents agree to provide the requested services: PROVIDED, FURTHER, That the provisions of chapter 39.34 RCW are strictly adhered to: PROVIDED FURTHER, That the educational service district board of directors may contract with the Washington state center for childhood deafness and hearing loss and the school for the blind to provide transportation services or other services necessary for the regional delivery of educational services for children who are deaf or hearing impaired. [2009 c 381 § 26; 1990 c 33 § 276; 1988 c 65 § 2; 1987 c 508 § 3; 1982 c 46 § 1; 1979 ex.s. c 66 § 1; 1975 1st ex.s. c 275 § 16; 1971 ex.s. c 282 § 11. Formerly RCW 28A.21.086.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**Severability—1979 ex.s. c 66:** "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." [1979 ex.s. c 66 § 3.]

**Severability—1971 ex.s. c 282:** See note following RCW 28A.310.010.

**28A.310.200 ESD board—Powers and duties—Rules.** In addition to other powers and duties as provided by law, every educational service district board shall:

(1) Approve the budgets of the educational service district in accordance with the procedures provided for in this chapter;

(2) Meet regularly according to the schedule adopted at the organization meeting and in special session upon the call of the chair or a majority of the board;

(3) Approve the selection of educational service district personnel and clerical staff as provided in RCW 28A.310.230;

(4) Fix the amount of and approve the bonds for those educational service district employees designated by the board as being in need of bonding;

(5) Keep in the educational service district office a full and correct transcript of the boundaries of each school district within the educational service district;

(6) Acquire by borrowing funds or by purchase, lease, devise, bequest, and gift and otherwise contract for real and personal property necessary for the operation of the educational service district and to the execution of the duties of the board and superintendent thereof and sell, lease, or otherwise dispose of that property not necessary for district purposes. No real property shall be acquired or alienated without the prior approval of the superintendent of public instruction and the acquisition or alienation of all such property shall be subject to such provisions as the superintendent may establish. When borrowing funds for the purpose of acquiring property, the educational service district board shall pledge as collateral the property to be acquired. Borrowing shall be evidenced by a note or other instrument between the district and the lender;

(7) Under RCW 28A.310.010, upon the written request of the board of directors of a local school district or districts served by the educational service district, the educational service district board of directors may provide cooperative and informational services not in conflict with other law that provide for the development and implementation of programs, activities, services, or practices that support the education of preschool through twelfth grade students in the public schools or that support the effective, efficient, or safe management and operation of the school district or districts served by the educational service district;

(8) Adopt such bylaws and rules for its own operation as it deems necessary or appropriate; and

(9) Enter into contracts, including contracts with common and educational service districts and the Washington state center for childhood deafness and hearing loss and the school for the blind for the joint financing of cooperative service programs conducted pursuant to RCW 28A.310.180(3), and employ consultants and legal counsel relating to any of the duties, functions, and powers of the educational service districts. [2009 c 381 § 27; 2006 c 263 § 610; 2001 c 143 § 1; 1993 c 298 § 1. Prior: 1990 c 159 § 1; 1990 c 33 § 278; 1988 c 65 § 3; 1983 c 56 § 3; 1975 1st ex.s. c 275 § 18; 1971 ex.s. c 282 § 13; 1971 c 53 § 1; 1969 ex.s. c 176 § 9. Formerly RCW 28A.21.090, 28.19.540.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Severability—1983 c 56:** See note following RCW 28A.195.010.

**Severability—1971 ex.s. c 282:** See note following RCW 28A.310.010.

**Severability—1971 c 53:** See note following RCW 28A.323.060.

**Severability—Rights preserved—1969 ex.s. c 176:** See notes following RCW 28A.310.010.

**28A.310.240 Employee leave policy required.** (1) Every educational service district board shall adopt written policies granting leaves to persons under contracts of employment with the district in positions requiring either certification or classified qualifications, including but not limited to leaves for attendance at official or private institutes and conferences and sabbatical leaves for employees in positions requiring certification qualification, and leaves for illness, injury, bereavement, and emergencies for both certificated and classified employees, with such compensation as the board prescribes. The board shall adopt written policies granting annual leave with compensation for illness, injury, and emergencies as follows:

(a) For persons under contract with the district for a full fiscal year, at least ten days;

(b) For persons under contract with the district as part-time employees, at least that portion of ten days as the total number of days contracted for bears to one hundred eighty days;

(c) For certificated and classified employees, annual leave with compensation for illness, injury, and emergencies shall be granted and accrue at a rate not to exceed twelve days per fiscal year. Provisions of any contract in force on July 23, 1989, which conflict with requirements of this subsection shall continue in effect until contract expiration; after expiration,

any new contract executed between the parties shall be consistent with this subsection;

(d) Compensation for leave for illness or injury actually taken shall be the same as the compensation the person would have received had the person not taken the leave provided in this section;

(e) Leave provided in this section not taken shall accumulate from fiscal year to fiscal year up to a maximum of one hundred eighty days for the purposes of RCW 28A.310.490, and for leave purposes up to a maximum of the number of contract days agreed to in a given contract, but not greater than one fiscal year. Such accumulated time may be taken at any time during the fiscal year, or up to twelve days per year may be used for the purpose of payments for unused sick leave; and

(f) Accumulated leave under this section shall be transferred to educational service districts, school districts, the office of the superintendent of public instruction, the state school for the blind, the school for the deaf, institutions of higher education, and community and technical colleges, and from any such district, school, or office to another such district, school, office, institution of higher education, or community or technical college. An intervening customary summer break in employment or the performance of employment duties shall not preclude such a transfer.

(2) Leave accumulated by a person in a district prior to leaving the district may, under rules of the board, be granted to the person when the person returns to the employment of the district.

(3) Leave for illness or injury accumulated before July 23, 1989, under the administrative practices of an educational service district, and such leave transferred before July 23, 1989, to or from an educational service district, school district, or the office of the superintendent of public instruction under the administrative practices of the district or office, is declared valid and shall be added to such leave for illness or injury accumulated after July 23, 1989. [2009 c 47 § 1; 2008 c 174 § 1; 1997 c 13 § 6; 1990 c 33 § 279; 1989 c 208 § 1. Formerly RCW 28A.21.102.]

**28A.310.250 Certificated employees of district—Contracts of employment—Nonrenewal of contracts—Notice.** No certificated employee of an educational service district shall be employed as such except by written contract, which shall be in conformity with the laws of this state. Every such contract shall be made in duplicate, one copy of which shall be retained by the educational service district superintendent and the other shall be delivered to the employee.

Every educational service district superintendent or board determining that there is probable cause or causes that the employment contract of a certificated employee thereof is not to be renewed for the next ensuing term shall be notified in writing on or before May 15th preceding the commencement of such term of that determination or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June 15th, which notification shall specify the cause or causes for nonrenewal of contract. Such notice shall be served upon that employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with



some person of suitable age and discretion then resident therein. The procedure and standards for the review of the decision of the hearing officer, superintendent or board and appeal therefrom shall be as prescribed for nonrenewal cases of teachers in RCW 28A.405.210, 28A.405.300 through 28A.405.380, and 28A.645.010. Appeals may be filed in the superior court of any county in the educational service district. [2009 c 57 § 4; 1996 c 201 § 4; 1990 c 33 § 280; 1977 ex.s. c 283 § 7; 1975 1st ex.s. c 275 § 22; 1974 ex.s. c 75 § 11; 1971 c 48 § 6; 1969 ex.s. c 34 § 19. Formerly RCW 28A.21.105.]

**Effective date—2009 c 57:** See note following RCW 28A.405.210.

**Severability—1977 ex.s. c 283:** See note following RCW 28A.310.010.

**Severability—1974 ex.s. c 75:** See note following RCW 28A.310.030.

**Severability—1971 c 48:** "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 c 48 § 55.]

## Chapter 28A.320 RCW

### PROVISIONS APPLICABLE TO ALL DISTRICTS

#### Sections

28A.320.092	Unsolicited information about learning programs—Prohibition on providing to persons who file a declaration of intent to cause a child to receive home-based instruction—Exceptions.
28A.320.125	Safe school plans—Requirements—Duties of school districts, schools, and educational service districts—Reports—Drills—Rules.
28A.320.165	Notice of pesticide use.
28A.320.180	Mathematics college readiness test—Costs. ( <i>Expires July 1, 2011.</i> )
28A.320.190	Extended learning opportunities program.
28A.320.330	School funds enumerated—Deposits—Uses.

**28A.320.092 Unsolicited information about learning programs—Prohibition on providing to persons who file a declaration of intent to cause a child to receive home-based instruction—Exceptions.** School districts are prohibited from advertising, marketing, and otherwise providing unsolicited information about learning programs offered by the school district, including but not limited to digital learning programs, part-time enrollment opportunities, and other alternative learning programs, to students and their parents who have filed a declaration of intent to cause a child to receive home-based instruction under RCW 28A.200.010. School districts may respond to requests for information that are initiated by a parent. This section does not apply to general mailings or newsletters sent by the school district to all households in the district. [2009 c 190 § 1.]

**28A.320.125 Safe school plans—Requirements—Duties of school districts, schools, and educational service districts—Reports—Drills—Rules.** (1) The legislature considers it to be a matter of public safety for public schools and staff to have current safe school plans and procedures in place, fully consistent with federal law. The legislature further finds and intends, by requiring safe school plans to be in place, that school districts will become eligible for federal assistance. The legislature further finds that schools are in a position to serve the community in the event of an emergency resulting from natural disasters or man-made disasters.

(2) Schools and school districts shall consider the guidance provided by the superintendent of public instruction, including the comprehensive school safety checklist and the model comprehensive safe school plans that include prevention, intervention, all hazard/crisis response, and postcrisis recovery, when developing their own individual comprehensive safe school plans. Each school district shall adopt, no later than September 1, 2008, and implement a safe school plan consistent with the school mapping information system pursuant to RCW 36.28A.060. The plan shall:

(a) Include required school safety policies and procedures;

(b) Address emergency mitigation, preparedness, response, and recovery;

(c) Include provisions for assisting and communicating with students and staff, including those with special needs or disabilities;

(d) Use the training guidance provided by the Washington emergency management division of the state military department in collaboration with the Washington state office of the superintendent of public instruction school safety center and the school safety center advisory committee;

(e) Require the building principal to be certified on the incident command system;

(f) Take into account the manner in which the school facilities may be used as a community asset in the event of a community-wide emergency; and

(g) Set guidelines for requesting city or county law enforcement agencies, local fire departments, emergency service providers, and county emergency management agencies to meet with school districts and participate in safety-related drills.

(3) To the extent funds are available, school districts shall annually:

(a) Review and update safe school plans in collaboration with local emergency response agencies;

(b) Conduct an inventory of all hazardous materials;

(c) Update information on the school mapping information system to reflect current staffing and updated plans, including:

(i) Identifying all staff members who are trained on the national incident management system, trained on the incident command system, or are certified on the incident command system; and

(ii) Identifying school transportation procedures for evacuation, to include bus staging areas, evacuation routes, communication systems, parent-student reunification sites, and secondary transportation agreements consistent with the school mapping information system; and

(d) Provide information to all staff on the use of emergency supplies and notification and alert procedures.

(4) To the extent funds are available, school districts shall annually record and report on the information and activities required in subsection (3) of this section to the Washington association of sheriffs and police chiefs.

(5) School districts are encouraged to work with local emergency management agencies and other emergency responders to conduct one tabletop exercise, one functional exercise, and two full-scale exercises within a four-year period.

(6) Schools shall conduct no less than one safety-related drill each month that school is in session. Schools shall complete no less than one drill using the school mapping information system, one drill for lockdowns, one drill for shelter-in-place, and six drills for fire evacuation in accordance with the state fire code. Schools should consider drills for earthquakes, tsunamis, or other high-risk local events. Schools shall document the date and time of such drills. This subsection is intended to satisfy all federal requirements for comprehensive school emergency drills and evacuations.

(7) Educational service districts are encouraged to apply for federal emergency response and crisis management grants with the assistance of the superintendent of public instruction and the Washington emergency management division of the state military department.

(8) The superintendent of public instruction may adopt rules to implement provisions of this section. These rules may include, but are not limited to, provisions for evacuations, lockdowns, or other components of a comprehensive safe school plan. [2009 c 578 § 10; 2007 c 406 § 1; 2002 c 205 § 2.]

**Findings—2002 c 205:** "Following the tragic events of September 11, 2001, the government's primary role in protecting the health, safety, and well-being of its citizens has been underscored. The legislature recognizes that there is a need to focus on the development and implementation of comprehensive safe school plans for each public school. The legislature recognizes that comprehensive safe school plans for each public school are an integral part of rebuilding public confidence. In developing these plans, the legislature finds that a coordinated effort is essential to ensure the most effective response to any type of emergency. Further, the legislature recognizes that comprehensive safe school plans for each public school are of paramount importance and will help to assure students, parents, guardians, school employees, and school administrators that our schools provide the safest possible learning environment." [2002 c 205 § 1.]

**Severability—2002 c 205:** "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." [2002 c 205 § 5.]

**Effective dates—2002 c 205 §§ 2, 3, and 4:** "(1) Sections 2 and 4 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 [March 27, 2002].

(2) Section 3 of this act takes effect September 1, 2002." [2002 c 205 § 6.]

**28A.320.165 Notice of pesticide use.** Schools as defined in RCW 17.21.415 shall provide notice of pesticide use to parents or guardians of students and employees pursuant to chapter 17.21 RCW, upon the request of the parent or guardian. [2009 c 556 § 12; 2001 c 333 § 4.]

**Effective date—2001 c 333:** See note following RCW 17.21.020.

**28A.320.180 Mathematics college readiness test—Costs. (Expires July 1, 2011.)** (1) Subject to funding appropriated for this purpose and beginning in the fall of 2009, school districts shall provide all high school students enrolled in the district the option of taking the mathematics college readiness test developed under RCW 28B.10.679 once at no cost to the students. Districts shall encourage, but not require, students to take the test in their junior or senior year of high school.

(2) Subject to funding appropriated for this purpose, the office of the superintendent of public instruction shall reimburse each district for the costs incurred by the district in pro-

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viding students the opportunity to take the mathematics placement test.

(3) This section is suspended until July 1, 2011. [2009 c 556 § 13; 2007 c 396 § 11.]

**Expiration date—2009 c 556 §§ 11, 13, and 15:** See note following RCW 28A.300.525.

**Captions not law—2007 c 396:** See note following RCW 28A.305.215.

**Finding—Intent—2007 c 396:** See note following RCW 28A.300.515.

**28A.320.190 Extended learning opportunities program.** (1) The extended learning opportunities program is created for eligible eleventh and twelfth grade students who are not on track to meet local or state graduation requirements as well as eighth grade students who need additional assistance in order to have the opportunity for a successful entry into high school. The program shall provide early notification of graduation status and information on education opportunities including preapprenticeship programs that are available.

(2) Under the extended learning opportunities program and to the extent funds are available for that purpose, districts shall make available to students in grade twelve who have failed to meet one or more local or state graduation requirements the option of continuing enrollment in the school district in accordance with RCW 28A.225.160. Districts are authorized to use basic education program funding to provide instruction to eligible students under \*RCW 28A.150.220(3).

(3) Under the extended learning opportunities program, instructional services for eligible students can occur during the regular school day, evenings, on weekends, or at a time and location deemed appropriate by the school district, including the educational service district, in order to meet the needs of these students. Instructional services provided under this section do not include services offered at private schools. Instructional services can include, but are not limited to, the following:

- (a) Individual or small group instruction;
- (b) Instruction in English language arts and/or mathematics that eligible students need to pass all or part of the Washington assessment of student learning;
- (c) Attendance in a public high school or public alternative school classes or at a skill center;
- (d) Inclusion in remediation programs, including summer school;
- (e) Language development instruction for English language learners;
- (f) Online curriculum and instructional support, including programs for credit retrieval and Washington assessment of student learning preparatory classes; and
- (g) Reading improvement specialists available at the educational service districts to serve eighth, eleventh, and twelfth grade educators through professional development in accordance with RCW 28A.415.350. The reading improvement specialist may also provide direct services to eligible students and those students electing to continue a fifth year in a high school program who are still struggling with basic reading skills. [2009 c 578 § 2; 2008 c 321 § 3.]

**\*Reviser's note:** RCW 28A.150.220 was amended by 2009 c 548 § 104, changing subsection (3) to subsection (5).

**Findings—2008 c 321:** See note following RCW 28A.655.061.

**28A.320.330 School funds enumerated—Deposits—**

**Uses.** School districts shall establish the following funds in addition to those provided elsewhere by law:

(1) A general fund for maintenance and operation of the school district to account for all financial operations of the school district except those required to be accounted for in another fund.

(2) A capital projects fund shall be established for major capital purposes. All statutory references to a "building fund" shall mean the capital projects fund so established. Money to be deposited into the capital projects fund shall include, but not be limited to, bond proceeds, proceeds from excess levies authorized by RCW 84.52.053, state apportionment proceeds as authorized by RCW 28A.150.270, earnings from capital projects fund investments as authorized by RCW 28A.320.310 and 28A.320.320, and state forest revenues transferred pursuant to subsection (3) of this section.

Money derived from the sale of bonds, including interest earnings thereof, may only be used for those purposes described in RCW 28A.530.010, except that accrued interest paid for bonds shall be deposited in the debt service fund.

Money to be deposited into the capital projects fund shall include but not be limited to rental and lease proceeds as authorized by RCW 28A.335.060, and proceeds from the sale of real property as authorized by RCW 28A.335.130.

Money legally deposited into the capital projects fund from other sources may be used for the purposes described in RCW 28A.530.010, and for the purposes of:

(a) Major renovation and replacement of facilities and systems where periodical repairs are no longer economical or extend the useful life of the facility or system beyond its original planned useful life. Such renovation and replacement shall include, but shall not be limited to, major repairs, exterior painting of facilities, replacement and refurbishment of roofing, exterior walls, windows, heating and ventilating systems, floor covering in classrooms and public or common areas, and electrical and plumbing systems.

(b) Renovation and rehabilitation of playfields, athletic fields, and other district real property.

(c) The conduct of preliminary energy audits and energy audits of school district buildings. For the purpose of this section:

(i) "Preliminary energy audits" means a determination of the energy consumption characteristics of a building, including the size, type, rate of energy consumption, and major energy using systems of the building.

(ii) "Energy audit" means a survey of a building or complex which identifies the type, size, energy use level, and major energy using systems; which determines appropriate energy conservation maintenance or operating procedures and assesses any need for the acquisition and installation of energy conservation measures, including solar energy and renewable resource measures.

(iii) "Energy capital improvement" means the installation, or modification of the installation, of energy conservation measures in a building which measures are primarily intended to reduce energy consumption or allow the use of an alternative energy source.

(d) Those energy capital improvements which are identified as being cost-effective in the audits authorized by this section.

(e) Purchase or installation of additional major items of equipment and furniture: PROVIDED, That vehicles shall not be purchased with capital projects fund money.

(f)(i) Costs associated with implementing technology systems, facilities, and projects, including acquiring hardware, licensing software, and online applications and training related to the installation of the foregoing. However, the software or applications must be an integral part of the district's technology systems, facilities, or projects.

(ii) Costs associated with the application and modernization of technology systems for operations and instruction including, but not limited to, the ongoing fees for online applications, subscriptions, or software licenses, including upgrades and incidental services, and ongoing training related to the installation and integration of these products and services. However, to the extent the funds are used for the purpose under this subsection (2)(f)(ii), the school district shall transfer to the district's general fund the portion of the capital projects fund used for this purpose. The office of the superintendent of public instruction shall develop accounting guidelines for these transfers in accordance with internal revenue service regulations.

(g) Major equipment repair, painting of facilities, and other major preventative maintenance purposes. However, to the extent the funds are used for the purpose under this subsection (2)(g), the school district shall transfer to the district's general fund the portion of the capital projects fund used for this purpose. The office of the superintendent of public instruction shall develop accounting guidelines for these transfers in accordance with internal revenue service regulations. Based on the district's most recent two-year history of general fund maintenance expenditures, funds used for this purpose may not replace routine annual preventive maintenance expenditures made from the district's general fund.

(3) A debt service fund to provide for tax proceeds, other revenues, and disbursements as authorized in chapter 39.44 RCW. State forest land revenues that are deposited in a school district's debt service fund pursuant to RCW 79.64.110 and to the extent not necessary for payment of debt service on school district bonds may be transferred by the school district into the district's capital projects fund.

(4) An associated student body fund as authorized by RCW 28A.325.030.

(5) Advance refunding bond funds and refunded bond funds to provide for the proceeds and disbursements as authorized in chapter 39.53 RCW. [2009 c 460 § 1. Prior: 2007 c 503 § 2; 2007 c 129 § 2; 2002 c 275 § 2; 1990 c 33 § 337; 1983 c 59 § 13; 1982 c 191 § 6; 1981 c 250 § 2. Formerly RCW 28A.58.441.]

**Intent—2007 c 129:** "The legislature recognizes that technology has become an integral part of the facilities and educational delivery systems in our schools. In order to prepare our state's students to participate fully in our state's economy, school districts are making substantial capital investments in their technology systems, facilities, and projects. Districts are implementing, applying, and modernizing their technology systems. Software companies are shifting from selling software as a one-time package to a license or an extended contractual relationship requiring a subscription and ongoing payments. School districts must be empowered to respond to the changing business models in the software industry and be given flexibility and authority to use capital projects funds to pay for licenses or online application fees. It is the intent of the legislature that these investments be deemed major capital purpose and are also permitted uses of the district's two to six-year levies authorized by RCW 84.52.053." [2007 c 129 § 1.]

**Declaration—2002 c 275:** "The legislature recognizes and acknowledges that technology has become an integral part of the facilities and educational delivery systems in our schools. In order to prepare our state's students to participate fully in our state's economy, substantial capital investments must continue to be made in our schools' comprehensive technology systems, facilities, and projects. These investments are declared to be a major capital purpose." [2002 c 275 § 1.]

**Application—Effective date—Severability—1983 c 59:** See notes following RCW 28A.505.010.

**Severability—1982 c 191:** See note following RCW 28A.335.210.

**Effective date—1981 c 250:** See note following RCW 28A.335.060.

## Chapter 28A.335 RCW SCHOOL DISTRICTS' PROPERTY

### Sections

- 28A.335.205 Assistive devices—Transfer for benefit of children with disabilities—Record, inventory.  
28A.335.230 Vacant school plant facilities—Lease by contiguous district—Eligibility for funding assistance.

**28A.335.205 Assistive devices—Transfer for benefit of children with disabilities—Record, inventory.** Notwithstanding any other provision of law, the office of the superintendent of public instruction, the Washington state school for the blind, the Washington state center for childhood deafness and hearing loss, school districts, educational service districts, and all other state or local governmental agencies concerned with education may loan, lease, sell, or transfer assistive devices for the use and benefit of children with disabilities to children with disabilities or their parents or to any other public or private nonprofit agency providing services to or on behalf of individuals with disabilities including but not limited to any agency providing educational, health, or rehabilitation services. The notice requirement in RCW 28A.335.180 does not apply to the loan, lease, sale, or transfer of such assistive devices. The sale or transfer of such devices is authorized under this section regardless of whether or not the devices have been declared surplus. The sale or transfer shall be recorded in an agreement between the parties and based upon the item's depreciated value.

For the purposes of this section, "assistive device" means any item, piece of equipment, or product system, whether acquired commercially off-the-shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of children with disabilities.

For the purpose of implementing this section, each educational agency shall establish and maintain an inventory of assistive technology devices in its possession that exceed one hundred dollars and, for each such device, shall establish a value, which shall be adjusted annually to reflect depreciation.

This section shall not enhance or diminish the obligation of school districts to provide assistive technology to children with disabilities where needed to achieve a free and appropriate public education and equal opportunity in accessing academic and extracurricular activities. [2009 c 381 § 28; 1997 c 104 § 2.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**28A.335.230 Vacant school plant facilities—Lease by contiguous district—Eligibility for funding assistance.**

[2009 RCW Supp—page 404]

School districts shall be required to lease for a reasonable fee vacant school plant facilities from a contiguous school district wherever possible.

No school district with unhoused students may be eligible for state funding assistance for the construction of school plant facilities if:

(1) The school district contiguous to the school district applying for the state funding assistance percentage has vacant school plant facilities;

(2) The superintendent of public instruction has determined the vacant school plant facilities available in the contiguous district will fulfill the needs of the applicant district in housing unhoused students. In determining whether the contiguous district school plant facilities meet the needs of the applicant district, consideration shall be given, but not limited to the geographic location of the vacant facilities as they relate to the applicant district; and

(3) A lease of the vacant school plant facilities can be negotiated. [2009 c 129 § 2; 2006 c 263 § 328; 1987 c 112 § 1. Formerly RCW 28A.47.105.]

**Intent—2009 c 129:** "The intent of this act is to adopt more accurate and descriptive names for the components of the state funding formula for the allotment of appropriations for school plant facilities, as recommended by the joint legislative task force on school construction funding, to promote clarity and transparency in the funding formula. It is not the intent of this act to make substantive changes to the funding formula or policies." [2009 c 129 § 1.]

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

*Surplus school property: RCW 28A.335.040 through 28A.335.080.*

## Chapter 28A.343 RCW SCHOOL DIRECTOR DISTRICTS

### Sections

- 28A.343.300 Directors—Terms—Number.  
28A.343.600 Certain first-class districts—Staggered terms.  
28A.343.640 First-class districts containing more than one former first-class district—Number and terms of directors.

**28A.343.300 Directors—Terms—Number.** The governing board of a school district shall be known as the board of directors of the district.

Unless otherwise specifically provided, as in RCW 29A.04.340, each member of a board of directors shall be elected by ballot by the registered voters of the school district and shall hold office for a term of four years and until a successor is elected and qualified. Terms of school directors shall be staggered, and insofar as possible, not more than a majority of one shall be elected to full terms at any regular election. In case a member or members of a board of directors are to be elected to fill an unexpired term or terms, the ballot shall specify the term for which each such member is to be elected.

Except for a school district of the first class having within its boundaries a city with a population of four hundred thousand people or more which shall have a board of directors of seven members, the board of directors of every school district of the first class or school district of the second class shall consist of five members. [2009 c 107 § 1; 1991 c 363 § 20; 1980 c 35 § 1; 1980 c 47 § 1. Prior: 1979 ex.s. c 183 § 1; 1979 ex.s. c 126 § 4; 1975 c 43 § 5; 1973 2nd ex.s. c 21 § 1;

1969 c 131 § 8; 1969 ex.s. c 223 § 28A.57.312; prior: 1957 c 67 § 1; 1955 c 55 § 11; 1947 c 266 § 10; Rem. Supp. 1947 § 4693-29; prior: 1909 pp 289, 290 §§ 1,2; RRS §§ 4790, 4791. Formerly RCW 28A.315.450, 28A.57.312, 28.57.338, 28.58.080.]

**Retroactive application—2009 c 107 §§ 1-4:** "Sections 1 through 4 of this act are retroactive and shall be applied from July 1, 2004, the date that RCW 29.13.060 was inadvertently repealed as part of a reorganization and recodification of the statutes on elections." [2009 c 107 § 6.]

**Effective date—2009 c 107:** "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 16, 2009]." [2009 c 107 § 7.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—1980 c 35:** "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 35 § 10.]

**Severability—1980 c 47:** "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 47 § 5.]

**Effective date—Severability—1979 ex.s. c 183:** See notes following RCW 28A.343.020.

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**Effective date—Severability—1975 c 43:** See notes following RCW 28A.535.050.

**28A.343.600 Certain first-class districts—Staggered terms.** Any first-class school district having a board of directors of five members as provided in RCW 28A.343.300 and which elects directors for a term of six years under the provisions of RCW 29A.04.340 shall cause the office of at least one director and no more than two directors to be up for election at each regular school district election held hereafter and, except as provided in RCW 28A.343.670, any first-class school district having a board of directors of seven members as provided in RCW 28A.343.300 shall cause the office of two directors and no more than three directors to be up for election at each regular school district election held hereafter. [2009 c 107 § 2; 1990 c 33 § 318; 1969 c 131 § 11; 1969 ex.s. c 223 § 28A.57.336. Prior: 1959 c 268 § 13. Formerly RCW 28A.315.570, 28A.57.336, 28.57.430.]

**Retroactive application—2009 c 107 §§ 1-4:** See note following RCW 28A.343.300.

**Effective date—2009 c 107:** See note following RCW 28A.343.300.

**28A.343.640 First-class districts containing more than one former first-class district—Number and terms of directors.** Upon the establishment of a new school district of the first class as provided for in RCW 28A.343.020 containing more than one former first-class district, the directors of the largest former first-class district and three directors representative of the other former first-class districts selected by a majority of the board members of the former first-class districts and two directors representative of former second-class districts selected by a majority of the board members of former second-class districts shall meet at the call of the educational service district superintendent and shall constitute the board of directors of the new district. Vacancies once such a board has been reconstituted shall not be filled unless the number of remaining board members is less than seven,

and such vacancies shall be filled in the manner otherwise provided by law.

Each board of directors so constituted shall proceed at once to organize in the manner prescribed by law and thereafter shall have all of the powers and authority conferred by law upon boards of first-class districts until the next regular school election and until their successors are elected and qualified. At such election other than districts electing directors for six-year terms as provided in RCW 29A.04.340, five directors shall be elected either at large or by director districts, as the case may be, two for a term of two years and three for a term of four years. At such election for districts electing directors for six years other than a district having within its boundaries a city with a population of four hundred thousand people or more and electing directors for six year terms, five directors shall be elected either at large or by director districts, as the case may be, one for a term of two years, two for a term of four years, and two for a term of six years. [2009 c 107 § 3; 1991 c 363 § 26; 1990 c 33 § 322; 1980 c 35 § 5; 1980 c 47 § 2. Prior: 1979 ex.s. c 183 § 4; 1979 ex.s. c 126 § 8; 1975-76 2nd ex.s. c 15 § 7; prior: 1975 1st ex.s. c 275 § 104; 1975 c 43 § 11; 1973 2nd ex.s. c 21 § 10; 1973 c 19 § 1; 1971 c 67 § 5. Formerly RCW 28A.315.620, 28A.57.357.]

**Retroactive application—2009 c 107 §§ 1-4:** See note following RCW 28A.343.300.

**Effective date—2009 c 107:** See note following RCW 28A.343.300.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—1980 c 35:** See note following RCW 28A.343.300.

**Severability—1980 c 47:** See note following RCW 28A.343.300.

**Effective date—Severability—1979 ex.s. c 183:** See notes following RCW 28A.343.020.

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**Effective date—Severability—1975 c 43:** See notes following RCW 28A.535.050.

## Chapter 28A.350 RCW SCHOOL DISTRICT WARRANTS— AUDITOR'S DUTIES

### Sections

28A.350.010 through 28A.350.070 Repealed.

**28A.350.010 through 28A.350.070 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 28A.400 RCW EMPLOYEES

### Sections

28A.400.205 Cost-of-living increases for employees.  
28A.400.300 Hiring and discharging of employees—Written leave policies—Seniority and leave benefits of employees transferring between school districts and other educational employers.  
28A.400.303 Record checks for employees.  
28A.400.305 Record check information—Access—Rules.  
28A.400.320 Crimes against children—Mandatory termination of classified employees—Appeal—Recovery of salary or compensation by district.  
28A.400.322 Crimes against children—Crimes specified.

28A.400.330 Crimes against children—Contractor employees—Termination of contract.

28A.400.332 Use of persons, money, or property for private gain.

**28A.400.205 Cost-of-living increases for employees.**

(1) School district employees shall be provided an annual salary cost-of-living increase in accordance with this section.

(a) The cost-of-living increase shall be calculated by applying the rate of the yearly increase in the cost-of-living index to any state-funded salary base used in state funding formulas for teachers and other school district employees. Beginning with the 2001-02 school year, and for each subsequent school year, except for the 2009-10 and 2010-11 school years, each school district shall be provided a cost-of-living allocation sufficient to grant this cost-of-living increase.

(b) A school district shall distribute its cost-of-living allocation for salaries and salary-related benefits in accordance with the district's salary schedules, collective bargaining agreements, and compensation policies. No later than the end of the school year, each school district shall certify to the superintendent of public instruction that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) Any funded cost-of-living increase shall be included in the salary base used to determine cost-of-living increases for school employees in subsequent years. For teachers and other certificated instructional staff, the rate of the annual cost-of-living increase funded for certificated instructional staff shall be applied to the base salary used with the statewide salary allocation schedule established under RCW 28A.150.410 and to any other salary models used to recognize school district personnel costs.

(d) During the 2011-2013 and 2013-2015 fiscal biennia, in addition to cost-of-living allocations required by (a) of this subsection, school districts shall receive additional cost-of-living allocations in equal increments such that by the end of the 2014-15 school year school district employee base salaries used with the statewide salary allocation schedule established under RCW 28A.150.410 and any other state salary models used to recognize school district personnel costs are, at a minimum, equal to what they would have been if cost-of-living allocations had not been suspended during the 2009-10 or 2010-11 school years.

(2) For the purposes of this section, "cost-of-living index" means, for any school year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section. [2009 c 573 § 1; 2003 1st sp.s. c 20 § 1; 2001 c 4 § 2 (Initiative Measure No. 732, approved November 7, 2000).]

**Effective date—2009 c 573:** "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, 2009." [2009 c 573 § 4.]

**Severability—2001 c 4 (Initiative Measure No. 732):** "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." [2001 c 4 § 5 (Initiative Measure No. 732, approved November 7, 2000).]

**28A.400.300 Hiring and discharging of employees—Written leave policies—Seniority and leave benefits of employees transferring between school districts and other educational employers.** Every board of directors, unless otherwise specially provided by law, shall:

(1) Employ for not more than one year, and for sufficient cause discharge all certificated and classified employees;

(2) Adopt written policies granting leaves to persons under contracts of employment with the school district(s) in positions requiring either certification or classified qualifications, including but not limited to leaves for attendance at official or private institutes and conferences and sabbatical leaves for employees in positions requiring certification qualification, and leaves for illness, injury, bereavement and emergencies for both certificated and classified employees, and with such compensation as the board of directors prescribe: PROVIDED, That the board of directors shall adopt written policies granting to such persons annual leave with compensation for illness, injury and emergencies as follows:

(a) For such persons under contract with the school district for a full year, at least ten days;

(b) For such persons under contract with the school district as part time employees, at least that portion of ten days as the total number of days contracted for bears to one hundred eighty days;

(c) For certificated and classified employees, annual leave with compensation for illness, injury, and emergencies shall be granted and accrue at a rate not to exceed twelve days per year; provisions of any contract in force on June 12, 1980, which conflict with requirements of this subsection shall continue in effect until contract expiration; after expiration, any new contract executed between the parties shall be consistent with this subsection;

(d) Compensation for leave for illness or injury actually taken shall be the same as the compensation such person would have received had such person not taken the leave provided in this proviso;

(e) Leave provided in this proviso not taken shall accumulate from year to year up to a maximum of one hundred eighty days for the purposes of RCW 28A.400.210 and 28A.400.220, and for leave purposes up to a maximum of the number of contract days agreed to in a given contract, but not greater than one year. Such accumulated time may be taken at any time during the school year or up to twelve days per year may be used for the purpose of payments for unused sick leave;

(f) Sick leave heretofore accumulated under section 1, chapter 195, Laws of 1959 (former RCW 28.58.430) and sick leave accumulated under administrative practice of school districts prior to the effective date of section 1, chapter 195, Laws of 1959 (former RCW 28.58.430) is hereby declared valid, and shall be added to leave for illness or injury accumulated under this proviso;

(g) Any leave for injury or illness accumulated up to a maximum of forty-five days shall be creditable as service rendered for the purpose of determining the time at which an employee is eligible to retire, if such leave is taken it may not

be compensated under the provisions of RCW 28A.400.210 and 28A.310.490;

(h) Accumulated leave under this proviso shall be transferred to and from one district to another, the office of superintendent of public instruction, offices of educational service district superintendents and boards, the state school for the blind, the school for the deaf, institutions of higher education, and community and technical colleges, to and from such districts, schools, offices, institutions of higher education, and community and technical colleges;

(i) Leave accumulated by a person in a district prior to leaving said district may, under rules of the board, be granted to such person when the person returns to the employment of the district.

When any certificated or classified employee leaves one school district within the state and commences employment with another school district within the state, the employee shall retain the same seniority, leave benefits and other benefits that the employee had in his or her previous position: PROVIDED, That classified employees who transfer between districts after July 28, 1985, shall not retain any seniority rights other than longevity when leaving one school district and beginning employment with another. If the school district to which the person transfers has a different system for computing seniority, leave benefits, and other benefits, then the employee shall be granted the same seniority, leave benefits and other benefits as a person in that district who has similar occupational status and total years of service. [2009 c 47 § 2; 2008 c 174 § 2; 1997 c 13 § 10; 1990 c 33 § 382. Prior: 1985 c 210 § 1; 1985 c 46 § 1; 1983 c 275 § 3. Formerly RCW 28A.58.099.]

**Intent—Construction—1983 c 275:** See note following RCW 28A.400.210.

**28A.400.303 Record checks for employees.** (1) School districts, educational service districts, the Washington state center for childhood deafness and hearing loss, the state school for the blind, and their contractors hiring employees who will have regularly scheduled unsupervised access to children shall require a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of investigation before hiring an employee. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. The requesting entity shall provide a copy of the record report to the applicant. When necessary, applicants may be employed on a conditional basis pending completion of the investigation. If the applicant has had a record check within the previous two years, the district, the Washington state center for childhood deafness and hearing loss, the state school for the blind, or contractor may waive the requirement. Except as provided in subsection (2) of this section, the district, pursuant to chapter 41.59 or 41.56 RCW, the Washington state center for childhood deafness and hearing loss, the state school for the blind, or contractor hiring the employee shall determine who shall pay costs associated with the record check.

(2) Federal bureau of Indian affairs-funded schools may use the process in subsection (1) of this section to perform record checks for their employees and applicants for employ-

ment. [2009 c 381 § 29; 2007 c 35 § 1; 2001 c 296 § 3; 1992 c 159 § 2.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**Intent—2001 c 296:** See note following RCW 9.96A.060.

**Findings—1992 c 159:** "The legislature finds that additional safeguards are necessary to ensure the safety of Washington's school children. The legislature further finds that the results from state patrol record checks are more complete when fingerprints of individuals are provided, and that information from the federal bureau of investigation also is necessary to obtain information on out-of-state criminal records. The legislature further finds that confidentiality safeguards in state law are in place to ensure that the rights of applicants for certification or jobs and newly hired employees are protected." [1992 c 159 § 1.]

*Criminal history record information—School volunteers:* RCW 28A.320.155.

**28A.400.305 Record check information—Access—Rules.** The superintendent of public instruction shall adopt rules as necessary under chapter 34.05 RCW on record check information. The rules shall include, but not be limited to the following:

(1) Written procedures providing a school district, Washington state center for childhood deafness and hearing loss, state school for the blind, or federal bureau of Indian affairs-funded school employee or applicant for certification or employment access to and review of information obtained based on the record check required under RCW 28A.400.303; and

(2) Written procedures limiting access to the superintendent of public instruction record check database to only those individuals processing record check information at the office of the superintendent of public instruction, the appropriate school district or districts, the Washington state center for childhood deafness and hearing loss, the state school for the blind, the appropriate educational service district or districts, and the appropriate federal bureau of Indian affairs-funded schools. [2009 c 381 § 30; 2007 c 35 § 2; 2001 c 296 § 4; 1996 c 126 § 5.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**Intent—2001 c 296:** See note following RCW 9.96A.060.

**Effective date—1996 c 126:** "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, 1996]." [1996 c 126 § 7.]

**28A.400.320 Crimes against children—Mandatory termination of classified employees—Appeal—Recovery of salary or compensation by district.** (1) The school district board of directors shall immediately terminate the employment of any classified employee who has contact with children during the course of his or her employment upon a guilty plea or conviction of any felony crime specified under RCW 28A.400.322.

(2) The employee shall have a right of appeal under chapter 28A.645 RCW including any right of appeal under a collective bargaining agreement. A school district board of directors is entitled to recover from the employee any salary or other compensation that may have been paid to the employee for the period between such time as the employee was placed on administrative leave, based upon criminal charges that the employee committed a felony crime specified under RCW 28A.400.322, and the time termination

becomes final. [2009 c 396 § 2; 1990 c 33 § 383; 1989 c 320 § 3. Formerly RCW 28A.58.1001.]

**Severability—1989 c 320:** See note following RCW 28A.410.090.

*Crimes against children—Notification of conviction or guilty plea of school employee: RCW 43.43.845.*

**28A.400.322 Crimes against children—Crimes specified.** (1) RCW 28A.400.320, 28A.400.330, 28A.405.470, 28A.410.090(3), 28A.410.110, 9.96A.020, and 43.43.845 apply upon a guilty plea or conviction occurring after July 23, 1989, and before July 26, 2009, for any of the following felony crimes:

(a) Any felony crime involving the physical neglect of a child under chapter 9A.42 RCW;

(b) The physical injury or death of a child under chapter 9A.32 or 9A.36 RCW, except motor vehicle violations under chapter 46.61 RCW;

(c) Sexual exploitation of a child under chapter 9.68A RCW;

(d) Sexual offenses under chapter 9A.44 RCW where a minor is the victim;

(e) Promoting prostitution of a minor under chapter 9A.88 RCW;

(f) The sale or purchase of a minor child under RCW 9A.64.030;

(g) Violation of laws of another jurisdiction that are similar to those specified in (a) through (f) of this subsection.

(2) RCW 28A.400.320, 28A.400.330, 28A.405.470, 28A.410.090(3), 28A.410.110, 9.96A.020, and 43.43.845 apply upon a guilty plea or conviction occurring on or after July 26, 2009, for any of the following felony crimes or attempts, conspiracies, or solicitations to commit any of the following felony crimes:

(a) A felony violation of RCW 9A.88.010, indecent exposure;

(b) A felony violation of chapter 9A.42 RCW involving physical neglect;

(c) A felony violation of chapter 9A.32 RCW;

(d) A violation of RCW 9A.36.011, assault 1; 9A.36.021, assault 2; 9A.36.120, assault of a child 1; 9A.36.130, assault of a child 2; or any other felony violation of chapter 9A.36 RCW involving physical injury except assault 3 where the victim is eighteen years of age or older;

(e) A sex offense as defined in RCW 9.94A.030;

(f) A violation of RCW 9A.40.020, kidnapping 1; or 9A.40.030, kidnapping 2;

(g) A violation of RCW 9A.64.030, child selling or child buying;

(h) A violation of RCW 9A.88.070, promoting prostitution 1;

(i) A violation of RCW 9A.56.200, robbery 1; or

(j) A violation of laws of another jurisdiction that are similar to those specified in (a) through (i) of this subsection. [2009 c 396 § 1.]

**28A.400.330 Crimes against children—Contractor employees—Termination of contract.** The school district board of directors shall include in any contract for services with an entity or individual other than an employee of the school district a provision requiring the contractor to prohibit any employee of the contractor from working at a public

school who has contact with children at a public school during the course of his or her employment and who has pled guilty to or been convicted of any felony crime specified under RCW 28A.400.322. The contract shall also contain a provision that any failure to comply with this section shall be grounds for the school district immediately terminating the contract. [2009 c 396 § 3; 1989 c 320 § 4. Formerly RCW 28A.58.1002.]

**Severability—1989 c 320:** See note following RCW 28A.410.090.

**28A.400.332 Use of persons, money, or property for private gain.** (1) No school district employee may employ or use any person, money, or property under the employee's official control or direction, in his or her official custody, without authorization, for the private benefit or gain of the employee or another.

(2) This section does not prohibit the use of public resources to benefit others as part of the employee's official duties.

(3) Each school district board of directors may adopt policies providing exceptions to this section for occasional use of the employee, of de minimis cost and value, if the activity does not result in interference with the proper performance of public duties.

(4) The office of the superintendent of public instruction shall adopt disciplinary guidelines for violations of this section. [2009 c 224 § 1.]

## Chapter 28A.405 RCW

### CERTIFICATED EMPLOYEES

#### Sections

28A.405.210	Conditions and contracts of employment—Determination of probable cause for nonrenewal of contracts—Nonrenewal due to enrollment decline or revenue loss—Notice—Opportunity for hearing.
28A.405.220	Conditions and contracts of employment—Nonrenewal of provisional employees—Notice—Procedure.
28A.405.230	Conditions and contracts of employment—Transfer of administrator to subordinate certificated position—Notice—Procedure.
28A.405.415	Bonuses—National board for professional standards certification.
28A.405.470	Crimes against children—Mandatory termination of certificated employees—Appeal—Recovery of salary or compensation by district.
28A.405.475	Termination of certificated employee based on guilty plea or conviction of certain felonies—Notice to superintendent of public instruction—Record of notices.

**28A.405.210 Conditions and contracts of employment—Determination of probable cause for nonrenewal of contracts—Nonrenewal due to enrollment decline or revenue loss—Notice—Opportunity for hearing.** No teacher, principal, supervisor, superintendent, or other certificated employee, holding a position as such with a school district, hereinafter referred to as "employee", shall be employed except by written order of a majority of the directors of the district at a regular or special meeting thereof, nor unless he or she is the holder of an effective teacher's certificate or other certificate required by law or the Washington professional educator standards board for the position for which the employee is employed.



The board shall make with each employee employed by it a written contract, which shall be in conformity with the laws of this state, and except as otherwise provided by law, limited to a term of not more than one year. Every such contract shall be made in duplicate, one copy to be retained by the school district superintendent or secretary and one copy to be delivered to the employee. No contract shall be offered by any board for the employment of any employee who has previously signed an employment contract for that same term in another school district of the state of Washington unless such employee shall have been released from his or her obligations under such previous contract by the board of directors of the school district to which he or she was obligated. Any contract signed in violation of this provision shall be void.

In the event it is determined that there is probable cause or causes that the employment contract of an employee should not be renewed by the district for the next ensuing term such employee shall be notified in writing on or before May 15th preceding the commencement of such term of that determination, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June 15th, which notification shall specify the cause or causes for nonrenewal of contract. Such determination of probable cause for certificated employees, other than the superintendent, shall be made by the superintendent. Such notice shall be served upon the employee personally, or by certified or registered mail, or by leaving a copy of the notice at the house of his or her usual abode with some person of suitable age and discretion then resident therein. Every such employee so notified, at his or her request made in writing and filed with the president, chair or secretary of the board of directors of the district within ten days after receiving such notice, shall be granted opportunity for hearing pursuant to RCW 28A.405.310 to determine whether there is sufficient cause or causes for nonrenewal of contract: PROVIDED, That any employee receiving notice of nonrenewal of contract due to an enrollment decline or loss of revenue may, in his or her request for a hearing, stipulate that initiation of the arrangements for a hearing officer as provided for by RCW 28A.405.310(4) shall occur within ten days following July 15 rather than the day that the employee submits the request for a hearing. If any such notification or opportunity for hearing is not timely given, the employee entitled thereto shall be conclusively presumed to have been reemployed by the district for the next ensuing term upon contractual terms identical with those which would have prevailed if his or her employment had actually been renewed by the board of directors for such ensuing term.

This section shall not be applicable to "provisional employees" as so designated in RCW 28A.405.220; transfer to a subordinate certificated position as that procedure is set forth in RCW 28A.405.230 shall not be construed as a nonrenewal of contract for the purposes of this section. [2009 c 57 § 1; 2005 c 497 § 216; 1996 c 201 § 1; 1990 c 33 § 390. Prior: 1983 c 83 § 1; 1983 c 56 § 11; 1975-'76 2nd ex.s. c 114 § 4; 1975 1st ex.s. c 275 § 133; 1973 c 49 § 2; 1970 ex.s. c 15 § 16; prior: 1969 ex.s. c 176 § 143; 1969 ex.s. c 34 § 12; 1969 ex.s. c 15 § 2; 1969 ex.s. c 223 § 28A.67.070; prior: 1961 c 241 § 1; 1955 c 68 § 3; prior: (i) 1909 c 97 p 307 § 5; 1897 c 118 § 55; 1891 c 127 § 14; 1890 p 369 § 37; 1886 p 18 § 47; Code 1881 § 3200; RRS § 4851. (ii) 1943 c 52 § 1, part; 1941

c 179 § 1, part; 1939 c 131 § 1, part; 1925 ex.s. c 57 § 1, part; 1919 c 89 § 3, part; 1915 c 44 § 1, part; 1909 c 97 p 285 § 2, part; 1907 c 240 § 5, part; 1903 c 104 § 17, part; 1901 c 41 § 3, part; 1897 c 118 § 40, part; 1890 p 364 § 26, part; Rem. Supp. 1943 § 4776, part. Formerly RCW 28A.67.070, 28.67.070.]

**Effective date—2009 c 57:** "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 10, 2009]." [2009 c 57 § 5.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Severability—1983 c 56:** See note following RCW 28A.195.010.

**Savings—Severability—1975-'76 2nd ex.s. c 114:** See notes following RCW 28A.400.010.

**Severability—1970 ex.s. c 15:** See note following RCW 28A.230.160.

**Rights preserved—Severability—1969 ex.s. c 176:** See notes following RCW 28A.310.010.

*Minimum criteria for the evaluation of certificated employees, including administrators—Procedure—Scope—Penalty: RCW 28A.405.100.*

*School superintendent—RCW 28A.405.210 not applicable to contract renewal: RCW 28A.400.010.*

**28A.405.220 Conditions and contracts of employment—Nonrenewal of provisional employees—Notice—Procedure.** Notwithstanding the provisions of RCW 28A.405.210, every person employed by a school district in a teaching or other nonsupervisory certificated position shall be subject to nonrenewal of employment contract as provided in this section during the first two years of employment by such district, unless the employee has previously completed at least two years of certificated employment in another school district in the state of Washington, in which case the employee shall be subject to nonrenewal of employment contract pursuant to this section during the first year of employment with the new district. Employees as defined in this section shall hereinafter be referred to as "provisional employees".

In the event the superintendent of the school district determines that the employment contract of any provisional employee should not be renewed by the district for the next ensuing term such provisional employee shall be notified thereof in writing on or before May 15th preceding the commencement of such school term, or if the omnibus appropriations act has not passed the legislature by May 15th, then notification shall be no later than June 15th, which notification shall state the reason or reasons for such determination. Such notice shall be served upon the provisional employee personally, or by certified or registered mail, or by leaving a copy of the notice at the place of his or her usual abode with some person of suitable age and discretion then resident therein. The determination of the superintendent shall be subject to the evaluation requirements of RCW 28A.405.100.

Every such provisional employee so notified, at his or her request made in writing and filed with the superintendent of the district within ten days after receiving such notice, shall be given the opportunity to meet informally with the superintendent for the purpose of requesting the superintendent to reconsider his or her decision. Such meeting shall be held no later than ten days following the receipt of such request, and the provisional employee shall be given written notice of the date, time and place of meeting at least three

days prior thereto. At such meeting the provisional employee shall be given the opportunity to refute any facts upon which the superintendent's determination was based and to make any argument in support of his or her request for reconsideration.

Within ten days following the meeting with the provisional employee, the superintendent shall either reinstate the provisional employee or shall submit to the school district board of directors for consideration at its next regular meeting a written report recommending that the employment contract of the provisional employee be nonrenewed and stating the reason or reasons therefor. A copy of such report shall be delivered to the provisional employee at least three days prior to the scheduled meeting of the board of directors. In taking action upon the recommendation of the superintendent, the board of directors shall consider any written communication which the provisional employee may file with the secretary of the board at any time prior to that meeting.

The board of directors shall notify the provisional employee in writing of its final decision within ten days following the meeting at which the superintendent's recommendation was considered. The decision of the board of directors to nonrenew the contract of a provisional employee shall be final and not subject to appeal.

This section applies to any person employed by a school district in a teaching or other nonsupervisory certificated position after June 25, 1976. This section provides the exclusive means for nonrenewing the employment contract of a provisional employee and no other provision of law shall be applicable thereto, including, without limitation, RCW 28A.405.210 and chapter 28A.645 RCW. [2009 c 57 § 2; 1996 c 201 § 2; 1992 c 141 § 103; 1990 c 33 § 391; 1975-'76 2nd ex.s. c 114 § 1. Formerly RCW 28A.67.072.]

**Effective date—2009 c 57:** See note following RCW 28A.405.210.

**Effective date—1992 c 141 § 103:** "Section 103 of this act shall take effect July 1, 1992." [1992 c 141 § 105.]

**Findings—Part headings—Severability—1992 c 141:** See notes following RCW 28A.410.040.

**Savings—Severability—1975-'76 2nd ex.s. c 114:** See notes following RCW 28A.400.010.

**28A.405.230 Conditions and contracts of employment—Transfer of administrator to subordinate certificated position—Notice—Procedure.** Any certificated employee of a school district employed as an assistant superintendent, director, principal, assistant principal, coordinator, or in any other supervisory or administrative position, hereinafter in this section referred to as "administrator", shall be subject to transfer, at the expiration of the term of his or her employment contract, to any subordinate certificated position within the school district. "Subordinate certificated position" as used in this section, shall mean any administrative or non-administrative certificated position for which the annual compensation is less than the position currently held by the administrator.

Every superintendent determining that the best interests of the school district would be served by transferring any administrator to a subordinate certificated position shall notify that administrator in writing on or before May 15th preceding the commencement of such school term of that determination, or if the omnibus appropriations act has not

passed the legislature by May 15th, then notification shall be no later than June 15th, which notification shall state the reason or reasons for the transfer, and shall identify the subordinate certificated position to which the administrator will be transferred. Such notice shall be served upon the administrator personally, or by certified or registered mail, or by leaving a copy of the notice at the place of his or her usual abode with some person of suitable age and discretion then resident therein.

Every such administrator so notified, at his or her request made in writing and filed with the president or chair, or secretary of the board of directors of the district within ten days after receiving such notice, shall be given the opportunity to meet informally with the board of directors in an executive session thereof for the purpose of requesting the board to reconsider the decision of the superintendent. Such board, upon receipt of such request, shall schedule the meeting for no later than the next regularly scheduled meeting of the board, and shall notify the administrator in writing of the date, time and place of the meeting at least three days prior thereto. At such meeting the administrator shall be given the opportunity to refute any facts upon which the determination was based and to make any argument in support of his or her request for reconsideration. The administrator and the board may invite their respective legal counsel to be present and to participate at the meeting. The board shall notify the administrator in writing of its final decision within ten days following its meeting with the administrator. No appeal to the courts shall lie from the final decision of the board of directors to transfer an administrator to a subordinate certificated position: PROVIDED, That in the case of principals such transfer shall be made at the expiration of the contract year and only during the first three consecutive school years of employment as a principal by a school district; except that if any such principal has been previously employed as a principal by another school district in the state of Washington for three or more consecutive school years the provisions of this section shall apply only to the first full school year of such employment.

This section applies to any person employed as an administrator by a school district on June 25, 1976, and to all persons so employed at any time thereafter. This section provides the exclusive means for transferring an administrator to a subordinate certificated position at the expiration of the term of his or her employment contract. [2009 c 57 § 3; 1996 c 201 § 3; 1990 c 33 § 392; 1975-'76 2nd ex.s. c 114 § 9. Formerly RCW 28A.67.073.]

**Effective date—2009 c 57:** See note following RCW 28A.405.210.

**Savings—Severability—1975-'76 2nd ex.s. c 114:** See notes following RCW 28A.400.010.

**28A.405.415 Bonuses—National board for professional standards certification.** (1) Certificated instructional staff who have attained certification from the national board for professional teaching standards shall receive a bonus each year in which they maintain the certification. The bonus shall be calculated as follows: The annual bonus shall be five thousand dollars in the 2007-08 school year. Thereafter, the annual bonus shall increase by inflation. For the 2009-10 and 2010-11 school years the annual bonus shall be subject to the availability of amounts appropriated for this purpose. During

the 2011-2013 and 2013-2015 fiscal biennia, in addition to annual adjustments for inflation, the bonus amount shall be additionally increased such that, by the end of the 2014-15 school year, national board bonus amounts are, at a minimum, equal to what they would have been if annual adjustments for inflation had not been suspended during the 2009-10 or 2010-11 school year.

(2) Certificated instructional staff who have attained certification from the national board for professional teaching standards shall be eligible for bonuses in addition to that provided by subsection (1) of this section if the individual is in an instructional assignment in a school in which at least seventy percent of the students qualify for the free and reduced-price lunch program.

(3) The amount of the additional bonus under subsection (2) of this section for those meeting the qualifications of subsection (2) of this section is five thousand dollars.

(4) The bonuses provided under this section are in addition to compensation received under a district's salary schedule adopted in accordance with RCW 28A.405.200 and shall not be included in calculations of a district's average salary and associated salary limitations under RCW 28A.400.200.

(5) The bonuses provided under this section shall be paid in a lump sum amount. [2009 c 539 § 6; 2008 c 175 § 2; 2007 c 398 § 2.]

**Effective date—2009 c 539:** See note following RCW 28A.655.200.

**Findings—2007 c 398:** "The legislature finds and declares:

(1) The national board for professional teaching standards has established high and rigorous standards for what highly accomplished teachers should know and be able to do in order to increase student learning results;

(2) The national board certifies teachers who meet these standards through a rigorous, performance-based assessment process;

(3) A certificate awarded by the national board attests that a teacher has met high and rigorous standards and has demonstrated the ability to make sound professional judgments about how to best meet students' learning needs and effectively help students meet challenging academic standards; and

(4) Teachers who attain national board certification should be acknowledged and rewarded in order to encourage more teachers to pursue certification for the benefit of Washington students." [2007 c 398 § 1.]

**28A.405.470 Crimes against children—Mandatory termination of certificated employees—Appeal—Recovery of salary or compensation by district.** The school district shall immediately terminate the employment of any person whose certificate or permit authorized under chapter 28A.405 or 28A.410 RCW is subject to revocation under RCW 28A.410.090(3) upon a guilty plea or conviction of any felony crime specified under RCW 28A.400.322. Employment shall remain terminated unless the employee successfully prevails on appeal. A school district board of directors is entitled to recover from the employee any salary or other compensation that may have been paid to the employee for the period between such time as the employee was placed on administrative leave, based upon criminal charges that the employee committed a felony crime specified under RCW 28A.400.322, and the time termination becomes final. This section shall only apply to employees holding a certificate or permit who have contact with children during the course of their employment. [2009 c 396 § 4; 1990 c 33 § 405; 1989 c 320 § 5. Formerly RCW 28A.58.1003.]

**Severability—1989 c 320:** See note following RCW 28A.410.090.

**28A.405.475 Termination of certificated employee based on guilty plea or conviction of certain felonies—Notice to superintendent of public instruction—Record of notices.** (1) A school district superintendent shall immediately notify the office of the superintendent of public instruction when the district terminates the employment contract of a certificated employee on the basis of a guilty plea or a conviction of any felony crime specified under RCW 28A.400.322.

(2) The office of the superintendent of public instruction shall maintain a record of the notices received under this section.

(3) This section applies only to employees holding a certificate or permit authorized under this chapter or chapter 28A.410 RCW who have contact with children during the course of employment. [2009 c 396 § 9.]

**Chapter 28A.410 RCW  
CERTIFICATION**

Sections

28A.410.090	Revocation or suspension of certificate or permit to teach—Criminal basis—Complaints—Investigation—Process.
28A.410.100	Revocation of authority to teach—Hearings.
28A.410.110	Limitation on reinstatement after revocation—Reinstatement prohibited for certain felony crimes.
28A.410.200	Washington professional educator standards board—Creation—Membership—Executive director.
28A.410.210	Washington professional educator standards board—Purpose—Powers and duties.
28A.410.212	Washington professional educator standards board—Duties.
28A.410.260	Washington professional educator standards board—Model standards for cultural competency—Recommendations.
28A.410.270	Washington professional educator standards board—Performance standards—Certification levels—Teacher effectiveness evaluations—Update—Proposal—Recommendation—Requirements for professional certificate and residency teaching certificate.

**28A.410.090 Revocation or suspension of certificate or permit to teach—Criminal basis—Complaints—Investigation—Process.** (1)(a) Any certificate or permit authorized under the provisions of this chapter, chapter 28A.405 RCW, or rules promulgated thereunder may be revoked or suspended by the authority authorized to grant the same based upon a criminal records report authorized by law, or upon the complaint of any school district superintendent, educational service district superintendent, or private school administrator for immorality, violation of written contract, unprofessional conduct, intemperance, or crime against the law of the state. School district superintendents, educational service district superintendents, or private school administrators may file a complaint concerning any certificated employee of a school district, educational service district, or private school and this filing authority is not limited to employees of the complaining superintendent or administrator. Such written complaint shall state the grounds and summarize the factual basis upon which a determination has been made that an investigation by the superintendent of public instruction is warranted.

(b) If the superintendent of public instruction has reasonable cause to believe that an alleged violation of this chapter or rules adopted under it has occurred based on a written complaint alleging physical abuse or sexual misconduct by a certificated school employee filed by a parent or another per-

son, but no complaint has been forwarded to the superintendent by a school district superintendent, educational service district superintendent, or private school administrator, and that a school district superintendent, educational service district superintendent, or private school administrator has sufficient notice of the alleged violation and opportunity to file a complaint, the superintendent of public instruction may cause an investigation to be made of the alleged violation, together with such other matters that may be disclosed in the course of the investigation related to certificated personnel.

(2) A parent or another person may file a written complaint with the superintendent of public instruction alleging physical abuse or sexual misconduct by a certificated school employee if:

(a) The parent or other person has already filed a written complaint with the educational service district superintendent concerning that employee;

(b) The educational service district superintendent has not caused an investigation of the allegations and has not forwarded the complaint to the superintendent of public instruction for investigation; and

(c) The written complaint states the grounds and factual basis upon which the parent or other person believes an investigation should be conducted.

(3)(a) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be revoked by the authority authorized to grant the certificate upon a guilty plea or the conviction of any felony crime specified under RCW 28A.400.322, in accordance with this section. The person whose certificate is in question shall be given an opportunity to be heard.

(b) Mandatory permanent revocation upon a guilty plea or the conviction of felony crimes specified under RCW 28A.400.322(1) shall apply to such convictions or guilty pleas which occur after July 23, 1989, and before July 26, 2009.

(c) Mandatory permanent revocation upon a guilty plea or conviction of felony crimes specified under RCW 28A.400.322(2) shall apply to such convictions or guilty pleas that occur on or after July 26, 2009.

(d) Revocation of any certificate or permit authorized under this chapter or chapter 28A.405 RCW for a guilty plea or criminal conviction of a crime specified under RCW 28A.400.322 occurring prior to July 23, 1989, shall be subject to the provisions of subsection (1) of this section.

(4)(a) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be suspended or revoked, according to the provisions of this subsection, by the authority authorized to grant the certificate upon a finding that an employee has engaged in an unauthorized use of school equipment to intentionally access material depicting sexually explicit conduct or has intentionally possessed on school grounds any material depicting sexually explicit conduct; except for material used in conjunction with established curriculum. A first time violation of this subsection shall result in either suspension or revocation of the employee's certificate or permit as determined by the office of the superintendent of public instruction. A second violation shall result in a mandatory revocation of the certificate or permit.

(b) In all cases under this subsection (4), the person whose certificate is in question shall be given an opportunity

to be heard and has the right to appeal as established in \*RCW 28A.410.100. Certificates or permits shall be suspended or revoked under this subsection only if findings are made on or after July 24, 2005. For the purposes of this subsection, "sexually explicit conduct" has the same definition as provided in RCW 9.68A.011.

(5) Any such certificate or permit authorized under this chapter or chapter 28A.405 RCW shall be revoked by the authority authorized to grant the certificate upon a finding that the certificate holder obtained the certificate through fraudulent means, including fraudulent misrepresentation of required academic credentials or prior criminal record. In all cases under this subsection, the person whose certificate is in question shall be given an opportunity to be heard and has the right to appeal as established in \*RCW 28A.410.100. Certificates or permits shall be revoked under this subsection only if findings are made on or after July 26, 2009. [2009 c 396 § 5; 2005 c 461 § 2; 2004 c 134 § 2; 1996 c 126 § 2; 1992 c 159 § 4; 1990 c 33 § 408; 1989 c 320 § 1; 1975 1st ex.s. c 275 § 137; 1974 ex.s. c 55 § 2; 1971 c 48 § 51; 1969 ex.s. c 223 § 28A.70.160. Prior: 1909 c 97 p 345 § 1; RRS § 4992; prior: 1897 c 118 § 148. Formerly RCW 28A.70.160, 28.70.160.]

\*Reviser's note: The right to appeal was eliminated from RCW 28A.410.100 by 2009 c 531 § 3.

**Effective date—1996 c 126:** See note following RCW 28A.400.305.

**Findings—1992 c 159:** See note following RCW 28A.400.303.

**Severability—1989 c 320:** "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 320 § 7.]

**Severability—1971 c 48:** See note following RCW 28A.310.250.

*Crimes against children—Notification of conviction or guilty plea of school employee: RCW 43.43.845.*

**28A.410.100 Revocation of authority to teach—Hearings.** Any teacher whose certificate to teach has been questioned under RCW 28A.410.090 shall have a right to be heard by the issuing authority before his or her certificate is revoked. [2009 c 531 § 3; 2005 c 497 § 207; 1992 c 159 § 6; 1990 c 33 § 409; 1975 1st ex.s. c 275 § 138; 1971 c 48 § 52; 1969 ex.s. c 223 § 28A.70.170. Prior: 1909 c 97 p 346 § 3; RRS § 4994. Formerly RCW 28A.70.170, 28.70.170.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Findings—1992 c 159:** See note following RCW 28A.400.303.

**Severability—1971 c 48:** See note following RCW 28A.310.250.

**28A.410.110 Limitation on reinstatement after revocation—Reinstatement prohibited for certain felony crimes.** In case any certificate or permit authorized under this chapter or chapter 28A.405 RCW is revoked, the holder shall not be eligible to receive another certificate or permit for a period of twelve months after the date of revocation. However, if the certificate or permit authorized under this chapter or chapter 28A.405 RCW was revoked because of a guilty plea or the conviction of a felony crime specified under RCW 28A.400.322, the certificate or permit shall not be reinstated. [2009 c 396 § 6; 1990 c 33 § 410; 1989 c 320 § 2; 1969 ex.s. c 223 § 28A.70.180. Prior: 1909 c 97 p 346 § 2; RRS § 4993. Formerly RCW 28A.70.180, 28.70.180.]

**Severability—1989 c 320:** See note following RCW 28A.410.090.

**28A.410.200 Washington professional educator standards board—Creation—Membership—Executive director.**

(1)(a) The Washington professional educator standards board is created, consisting of twelve members to be appointed by the governor to four-year terms and the superintendent of public instruction. On August 1, 2009, the board shall be reduced to twelve members.

(b) Vacancies on the board shall be filled by appointment or reappointment by the governor to terms of four years.

(c) No person may serve as a member of the board for more than two consecutive full four-year terms.

(d) The governor shall biennially appoint the chair of the board. No board member may serve as chair for more than four consecutive years.

(2) A majority of the members of the board shall be active practitioners with the majority being classroom based. Membership on the board shall include individuals having one or more of the following:

(a) Experience in one or more of the education roles for which state preparation program approval is required and certificates issued;

(b) Experience providing or leading a state-approved teacher or educator preparation program;

(c) Experience providing mentoring and coaching to education professionals or others; and

(d) Education-related community experience.

(3) In appointing board members, the governor shall consider the individual's commitment to quality education and the ongoing improvement of instruction, experiences in the public schools or private schools, involvement in developing quality teaching preparation and support programs, and vision for the most effective yet practical system of assuring teaching quality. The governor shall also consider the diversity of the population of the state.

(4) All appointments to the board made by the governor are subject to confirmation by the senate.

(5) Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060.

(6) The governor may remove a member of the board for neglect of duty, misconduct, malfeasance or misfeasance in office, or for incompetency or unprofessional conduct as defined in chapter 18.130 RCW. In such a case, the governor shall file with the secretary of state a statement of the causes for and the order of removal from office, and the secretary of state shall send a certified copy of the statement of causes and order of removal to the last known post office address of the member.

(7) Members of the board shall hire an executive director and an administrative assistant to reside in the office of the superintendent of public instruction for administrative purposes only.

(8) Members of the board may create informal advisory groups as needed to inform the board's work. [2009 c 531 § 2; 2005 c 497 § 202; 2003 1st sp.s. c 22 § 1; 2002 c 92 § 1; 2000 c 39 § 102.]

**Effective date—2009 c 531 § 2:** "Section 2 of this act takes effect August 1, 2009." [2009 c 531 § 5.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Findings—2000 c 39:** "The legislature finds and declares:

(1) Creation of a public body whose focus is educator quality would be likely to bring greater focus and attention to the profession;

(2) Professional educator standards boards are consumer protection boards, establishing assessment policies to ensure the public that its new practitioners have the knowledge to be competent;

(3) The highest possible standards for all educators are essential in ensuring attainment of high academic standards by all students;

(4) Teacher assessment for certification can guard against admission to the teaching profession of persons who have not demonstrated that they are knowledgeable in the subjects they will be assigned to teach; and

(5) Teacher assessment for certification should be implemented as an additional element to the system of teacher preparation and certification." [2000 c 39 § 101.]

**Part headings and section captions not law—2000 c 39:** "Part headings and section captions used in this act are not any part of the law." [2000 c 39 § 301.]

*Joint report to the legislature: RCW 28A.305.035.*

**28A.410.210 Washington professional educator standards board—Purpose—Powers and duties.**

The purpose of the professional educator standards board is to establish policies and requirements for the preparation and certification of educators that provide standards for competency in professional knowledge and practice in the areas of certification; a foundation of skills, knowledge, and attitudes necessary to help students with diverse needs, abilities, cultural experiences, and learning styles meet or exceed the learning goals outlined in RCW 28A.150.210; knowledge of research-based practice; and professional development throughout a career. The Washington professional educator standards board shall:

(1) Establish policies and practices for the approval of programs of courses, requirements, and other activities leading to educator certification including teacher, school administrator, and educational staff associate certification;

(2) Establish policies and practices for the approval of the character of work required to be performed as a condition of entrance to and graduation from any educator preparation program including teacher, school administrator, and educational staff associate preparation program as provided in subsection (1) of this section;

(3) Establish a list of accredited institutions of higher education of this and other states whose graduates may be awarded educator certificates as teacher, school administrator, and educational staff associate and establish criteria and enter into agreements with other states to acquire reciprocal approval of educator preparation programs and certification, including teacher certification from the national board for professional teaching standards;

(4) Establish policies for approval of nontraditional educator preparation programs;

(5) Conduct a review of educator program approval standards at least every five years, beginning in 2006, to reflect research findings and assure continued improvement of preparation programs for teachers, administrators, and school specialized personnel;

(6) Specify the types and kinds of educator certificates to be issued and conditions for certification in accordance with subsection (1) of this section and RCW 28A.410.010;

(7) Apply for and receive federal or other funds on behalf of the state for purposes related to the duties of the board;

(8) Adopt rules under chapter 34.05 RCW that are necessary for the effective and efficient implementation of this chapter;

(9) Maintain data concerning educator preparation programs and their quality, educator certification, educator employment trends and needs, and other data deemed relevant by the board;

(10) Serve as an advisory body to the superintendent of public instruction on issues related to educator recruitment, hiring, mentoring and support, professional growth, retention, educator evaluation including but not limited to peer evaluation, and revocation and suspension of licensure;

(11) Submit, by October 15th of each even-numbered year, a joint report with the state board of education to the legislative education committees, the governor, and the superintendent of public instruction. The report shall address the progress the boards have made and the obstacles they have encountered, individually and collectively, in the work of achieving the goals set out in RCW 28A.150.210;

(12) Establish the prospective teacher assessment system for basic skills and subject knowledge that shall be required to obtain residency certification pursuant to RCW 28A.410.220 through 28A.410.240;

(13) By January 2010, set performance standards and develop, pilot, and implement a uniform and externally administered professional-level certification assessment based on demonstrated teaching skill. In the development of this assessment, consideration shall be given to changes in professional certification program components such as the culminating seminar; and

(14) Conduct meetings under the provisions of chapter 42.30 RCW. [2009 c 531 § 4; 2008 c 176 § 1; 2005 c 497 § 201; 2000 c 39 § 103.]

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Findings—Part headings and section captions not law—2000 c 39:** See notes following RCW 28A.410.200.

**28A.410.212 Washington professional educator standards board—Duties.** The professional educator standards board shall:

(1) Develop and maintain a research base of educator preparation best practices;

(2) Develop and coordinate initiatives for educator preparation in high-demand fields as well as outreach and recruitment initiatives for underrepresented populations;

(3) Provide program improvement technical assistance to providers of educator preparation programs;

(4) Assure educator preparation program compliance; and

(5) Prepare and maintain a cohesive educator development policy framework. [2009 c 531 § 1.]

**28A.410.260 Washington professional educator standards board—Model standards for cultural competency—Recommendations.** (1) The professional educator standards board, in consultation and collaboration with the achievement gap oversight and accountability committee established under RCW 28A.300.136, shall identify a list of model standards for cultural competency and make recom-

mendations to the education committees of the legislature on the strengths and weaknesses of those standards.

(2) For the purposes of this section, "cultural competency" includes knowledge of student cultural histories and contexts, as well as family norms and values in different cultures; knowledge and skills in accessing community resources and community and parent outreach; and skills in adapting instruction to students' experiences and identifying cultural contexts for individual students. [2009 c 468 § 5.]

**Findings—Intent—2009 c 468:** See note following RCW 28A.300.136.

**28A.410.270 Washington professional educator standards board—Performance standards—Certification levels—Teacher effectiveness evaluations—Update—Proposal—Recommendation—Requirements for professional certificate and residency teaching certificate.** (1)(a) By January 1, 2010, the professional educator standards board shall adopt a set of articulated teacher knowledge, skill, and performance standards for effective teaching that are evidence-based, measurable, meaningful, and documented in high quality research as being associated with improved student learning. The standards shall be calibrated for each level of certification and along the entire career continuum. In developing the standards, the board shall, to the extent possible, incorporate standards for cultural competency along the entire continuum. For the purposes of this subsection, "cultural competency" includes knowledge of student cultural histories and contexts, as well as family norms and values in different cultures; knowledge and skills in accessing community resources and community and parent outreach; and skills in adapting instruction to students' experiences and identifying cultural contexts for individual students.

(b) By January 1, 2010, the professional educator standards board shall adopt a definition of master teacher, with a comparable level of increased competency between professional certification level and master level as between professional certification level and national board certification. Within the definition established by the professional educator standards board, teachers certified through the national board for professional teaching standards shall be considered master teachers.

(2) By January 1, 2010, the professional educator standards board shall submit to the governor and the education and fiscal committees of the legislature:

(a) An update on the status of implementation of the professional certificate external and uniform assessment authorized in \*RCW 28A.410.210;

(b) A proposal for a uniform, statewide, valid, and reliable classroom-based means of evaluating teacher effectiveness as a culminating measure at the preservice level that is to be used during the student-teaching field experience. This assessment shall include multiple measures of teacher performance in classrooms, evidence of positive impact on student learning, and shall include review of artifacts, such as use of a variety of assessment and instructional strategies, and student work. The proposal shall establish a timeline for when the assessment will be required for successful completion of a Washington state-approved teacher preparation program. The timeline shall take into account the capacity of the K-12 education and higher education systems to accommodate the

new assessment. The proposal and timeline shall also address how the assessment will be included in state-reported data on preparation program quality; and

(c) A recommendation on the length of time that a residency certificate issued to a teacher is valid and within what time period a teacher must meet the minimum level of performance for and receive a professional certificate in order to continue being certified as a teacher. In developing this recommendation, the professional educator standards board shall consult with interested stakeholders including the Washington education association, the Washington association of school administrators, association of Washington school principals, and the Washington state school directors' association and shall include with its recommendation a description of each stakeholder's comments on the recommendation.

(3) The update and proposal in subsection (2)(a) and (b) of this section shall include, at a minimum, descriptions of:

(a) Estimated costs and statutory authority needed for further development and implementation of these assessments;

(b) A common and standardized rubric for determining whether a teacher meets the minimum level of performance of the assessments; and

(c) Administration and management of the assessments.

(4) To the extent that funds are appropriated for this purpose and in accordance with the timeline established in subsection (2) of this section, recognizing the capacity limitations of the education systems, the professional educator standards board shall develop the system and process as established in subsections (1), (2), and (3) of this section throughout the remainder of the 2010-11 and 2011-12 school years.

(5) Beginning no earlier than September 1, 2011, award of a professional certificate shall be based on a minimum of two years of successful teaching experience as defined by the board and on the results of the evaluation authorized under \*\*RCW 28A.410.210(14) and under this section, and may not require candidates to enroll in a professional certification program.

(6) Beginning July 1, 2011, educator preparation programs approved to offer the residency teaching certificate shall be required to demonstrate how the program produces effective teachers as evidenced by the measures established under this section and other criteria established by the professional educator standards board. [2009 c 548 § 402.]

**Reviser's note:** \*(1) RCW 28A.410.210(12) refers to a "uniform and externally administered professional-level certification assessment."

\*\* (2) RCW 28A.410.210 was amended by 2009 c 531 § 4, changing subsection (14) to subsection (13).

**Finding—2009 c 548:** "The legislature recognizes that the key to providing all students the opportunity to achieve the basic education goal is effective teaching and leadership. Teachers, principals, and administrators must be provided with access to the opportunities they need to gain the knowledge and skills that will enable them to be increasingly successful in their classroom and schools. A system that clearly defines, supports, measures, and recognizes effective teaching and leadership is one of the most important investments to be made." [2009 c 548 § 401.]

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Chapter 28A.415 RCW**

**INSTITUTES, WORKSHOPS, AND TRAINING**

Sections

28A.415.250	Teacher assistance program—Provision for mentor teachers.
28A.415.315	Classified instructional assistants—Training.
28A.415.350	Professional development learning opportunities—Partnerships.
28A.415.360	Learning improvement days—Eligibility—Reports.
28A.415.380	Mathematics and science instructional coach program—Evaluation—Reports.

**28A.415.250 Teacher assistance program—Provision for mentor teachers.** Subject to the availability of amounts appropriated for this purpose, the superintendent of public instruction shall adopt rules to establish and operate a teacher assistance program. For the purposes of this section, the terms "mentor teachers," "beginning teachers," and "experienced teachers" may include any person possessing any one of the various certificates issued by the superintendent of public instruction under RCW 28A.410.010. Subject to the availability of amounts appropriated for this purpose, the program shall provide for:

(1) Assistance by mentor teachers who will provide a source of continuing and sustained support to beginning teachers, or experienced teachers who are having difficulties, or both, both in and outside the classroom. A mentor teacher may not be involved in evaluations under RCW 28A.405.100 of a teacher who receives assistance from said mentor teacher under the teacher assistance program established under this section. The mentor teachers shall also periodically inform their principals respecting the contents of training sessions and other program activities;

(2) Stipends for mentor teachers and beginning and experienced teachers which shall not be deemed compensation for the purposes of salary lid compliance under RCW 28A.400.200: PROVIDED, That stipends shall not be subject to the continuing contract provisions of this title;

(3) Workshops for the training of mentor and beginning teachers;

(4) The use of substitutes to give mentor teachers, beginning teachers, and experienced teachers opportunities to jointly observe and evaluate teaching situations and to give mentor teachers opportunities to observe and assist beginning and experienced teachers in the classroom;

(5) Mentor teachers who are superior teachers based on their evaluations, pursuant to RCW 28A.410.025 and 28A.405.030 through 28A.405.240, and who hold valid continuing certificates;

(6) Mentor teachers shall be selected by the district and may serve as mentors up to and including full time. If a bargaining unit, certified pursuant to RCW 41.59.090 exists within the district, classroom teachers representing the bargaining unit shall participate in the mentor teacher selection process; and

(7) Periodic consultation by the superintendent of public instruction or the superintendent's designee with representatives of educational organizations and associations, including educational service districts and public and private institutions of higher education, for the purposes of improving communication and cooperation and program review. [2009 c 539 § 5; 1993 c 336 § 401; 1991 c 116 § 19; 1990 c 33 § 403;

1987 c 507 § 1; 1985 c 399 § 1. Formerly RCW 28A.405.450, 28A.67.240.]

**Effective date—2009 c 539:** See note following RCW 28A.655.200.

**Findings—Intent—Part headings not law—1993 c 336:** See notes following RCW 28A.150.210.

**Findings—1993 c 336:** See note following RCW 28A.150.210.

**Effective date—1987 c 507:** "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 15, 1987." [1987 c 507 § 4.]

**28A.415.315 Classified instructional assistants—Training.** Subject to the availability of amounts appropriated for this purpose, the office of the superintendent of public instruction, in consultation with various groups representing school district classified employees, shall develop and offer a training strand through the summer institutes and the winter conference targeted to classified instructional assistants and designed to help them maximize their effectiveness in improving student achievement. [2009 c 539 § 2; 2008 c 65 § 2.]

**Effective date—2009 c 539:** See note following RCW 28A.655.200.

**Findings—Intent—2008 c 65:** "The legislature finds that classified instructional assistants are key partners with classroom teachers in improving student achievement. Research on rigorous reading programs, including the reading first programs in our own state, proves that when instructional assistants are skilled, well-trained in a particular intervention, and positively supported by the classroom teacher or coach, they can have a significant impact on student reading attainment. The legislature further finds that school district practice provides sufficient evidence of the need for instructional assistants. Statewide, school districts relied on more than nineteen thousand classified instructional assistants, equal to nearly ten thousand full-time equivalent staff, during the 2006-07 school year. Therefore, the legislature intends to support instructional assistants by providing opportunities for high quality professional development to make them more effective partners in the classroom." [2008 c 65 § 1.]

**28A.415.350 Professional development learning opportunities—Partnerships.** Subject to the availability of amounts appropriated for this purpose, the office of the superintendent of public instruction shall:

(1) Create partnerships with the educational service districts or public or private institutions of higher education with approved educator preparation programs to develop and deliver professional development learning opportunities for educators that fulfill the goals and address the activities described in \*sections 3 through 6 of this act and RCW 28A.415.360. The partnerships shall:

(a) Support school districts by providing professional development leadership, courses, and consultation services to school districts in their implementation of professional development activities, including the activities described in \*sections 3 through 6 of this act and RCW 28A.415.360; and

(b) Support one another in the delivery of state-level and regional-level professional development activities such as state conferences and regional accountability institutes; and

(2) Enter into a performance agreement with each educational service district to clearly articulate partner responsibilities and assure fidelity for the delivery of professional development initiatives including job-embedded practices. Components of such performance agreements shall include:

(a) Participation in the development of various professional development workshops, programs, and activities;

(b) Characteristics and qualifications of professional development staff supported by the program;

(c) Methods to ensure consistent delivery of professional development services; and

(d) Reporting responsibilities related to services provided, program participation, outcomes, and recommendations for service improvement. [2009 c 539 § 4; 2007 c 402 § 7.]

**\*Reviser's note:** Sections 3 through 6 of this act were vetoed.

**Effective date—2009 c 539:** See note following RCW 28A.655.200.

**Captions not law—2007 c 402:** See note following RCW 28A.415.340.

**28A.415.360 Learning improvement days—Eligibility—Reports.** (1) Subject to funds appropriated for this purpose, targeted professional development programs, to be known as learning improvement days, are authorized to further the development of outstanding mathematics, science, and reading teaching and learning opportunities in the state of Washington. The intent of this section is to provide guidance for the learning improvement days in the omnibus appropriations act. The learning improvement days authorized in this section shall not be considered part of the definition of basic education.

(2) A school district is eligible to receive funding for learning improvement days that are limited to specific activities related to student learning that contribute to the following outcomes:

(a) Provision of meaningful, targeted professional development for all teachers in mathematics, science, or reading;

(b) Increased knowledge and instructional skill for mathematics, science, or reading teachers;

(c) Increased use of curriculum materials with supporting diagnostic and supplemental materials that align with state standards;

(d) Skillful guidance for students participating in alternative assessment activities;

(e) Increased rigor of course offerings especially in mathematics, science, and reading;

(f) Increased student opportunities for focused, applied mathematics and science classes;

(g) Increased student success on state achievement measures; and

(h) Increased student appreciation of the value and uses of mathematics, science, and reading knowledge and exploration of related careers.

(3) School districts receiving resources under this section shall submit reports to the superintendent of public instruction documenting how the use of the funds contributes to measurable improvement in the outcomes described under subsection (2) of this section; and how other professional development resources and programs authorized in statute or in the omnibus appropriations act contribute to the expected outcomes. The superintendent of public instruction and the office of financial management shall collaborate on required report content and format. [2009 c 548 § 403; 2007 c 402 § 9.]

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.



**Captions not law—2007 c 402:** See note following RCW 28A.415.340.

**28A.415.380 Mathematics and science instructional coach program—Evaluation—Reports.** (1) A mathematics and science instructional coach program is authorized, which shall consist of a coach development institute, coaching seminars, coaching activities in schools, and program evaluation.

(2) The office of the superintendent of public instruction shall develop a mathematics and science instructional coach program that includes an initial coach development experience for new coaches provided through an institute setting, coaching support seminars, and additional coach development services. The office shall draw upon the experiences of coaches in federally supported elementary literacy programs and other successful programs, research and policy briefs on adult professional development, and research that specifically addresses the instructional environments of middle, junior high, and high schools as well as the unique aspects of the fields of mathematics and science.

(3) The office of the superintendent of public instruction shall design the application process and select the program participants.

(4) Schools and school districts participating in the program shall carefully select the individuals to perform the role of mathematics or science instructional coach. Characteristics to be considered for a successful coach include:

- (a) Expertise in content area;
- (b) Expertise in various instructional methodologies and personalizing learning;
- (c) Personal skills that include skilled listening, questioning, trust-building, and problem-solving;
- (d) Understanding and appreciation for the differences in adult learners and student learners; and
- (e) Capacity for strategic planning and quality program implementation.

(5) The role of the mathematics or science instructional coach is focused on supporting teachers as they apply knowledge, develop skills, polish techniques, and deepen their understanding of content and instructional practices. This work takes a number of forms including: Individualized professional development, department-wide and school-wide professional development, guidance in student data interpretation, and using assessment to guide instruction. Each coach shall be assigned to two schools as part of the program.

(6) Program participants have the following responsibilities:

(a) Mathematics and science coaches shall participate in the coach development institute as well as in coaching support seminars that take place throughout the school year, practice coaching activities as guided by those articulated in the role of the coach in subsection (5) of this section, collect data, and participate in program evaluation activities as requested by the institute pursuant to subsection (7) of this section.

(b) School and district administrators in districts in which the mathematics and science coaches are practicing shall participate in program evaluation activities.

(7)(a) The Washington State University social and economic sciences research center shall conduct an evaluation of

the mathematics and science instructional coach program in this section. Data shall be collected through various instruments including surveys, program and activity reports, student performance measures, observations, interviews, and other processes. Findings shall include an evaluation of the coach development institute, coaching support seminars, and other coach support activities; recommendations with regard to the characteristics required of the coaches; identification of changes in teacher instruction related to coaching activities; and identification of the satisfaction level with coaching activities as experienced by classroom teachers and administrators.

(b) The Washington State University social and economic sciences research center shall report its findings to the governor, the office of the superintendent of public instruction, and the education and fiscal committees of the legislature. An interim report is due November 1, 2008. The final report is due December 1, 2009.

(8) The mathematics and science instructional coach program in this section shall be implemented to the extent funds are available for that purpose. [2009 c 578 § 1; 2007 c 396 § 4.]

**Captions not law—2007 c 396:** See note following RCW 28A.305.215.

**Finding—Intent—2007 c 396:** See note following RCW 28A.300.515.

## Chapter 28A.500 RCW LOCAL EFFORT ASSISTANCE

### Sections

28A.500.050 Finding—School finance component.

### **28A.500.050 Finding—School finance component.**

(1) The legislature finds that while the state has the responsibility to provide for a general and uniform system of public schools, there is also a need for some diversity in the public school system. A successful system of public education must permit some variation among school districts outside the basic education provided for by the state to respond to and reflect the unique desires of local communities. The opportunity for local communities to invest in enriched education programs promotes support for local public schools. Further, the ability of local school districts to experiment with enriched programs can inform the legislature's long-term evolution of the definition of basic education. Therefore, local levy authority remains an important component of the overall finance system in support of the public schools even though it is outside the state's obligation for basic education.

(2) However, the value of permitting local levies must be balanced with the value of equity and fairness to students and to taxpayers, neither of whom should be unduly disadvantaged due to differences in the tax bases used to support local levies. Equity and fairness require both an equitable basis for supplemental funding outside basic education and a mechanism for property tax-poor school districts to fairly access supplemental funding. As such, local effort assistance, while also outside the state's obligation for basic education, is another important component of school finance. [2009 c 548 § 301.]

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

## Chapter 28A.505 RCW SCHOOL DISTRICTS' BUDGETS

### Sections

- 28A.505.210 Student achievement funds—Use and accounting of funds—Public hearing—Report.  
28A.505.220 Student achievement program—General fund allocation.

**28A.505.210 Student achievement funds—Use and accounting of funds—Public hearing—Report.** School districts shall have the authority to decide the best use of funds distributed for the student achievement program under RCW 28A.505.220 to assist students in meeting and exceeding the new, higher academic standards in each district consistent with the provisions of chapter 3, Laws of 2001.

(1) Funds shall be allocated for the following uses:

(a) To reduce class size by hiring certificated elementary classroom teachers in grades K-4 and paying nonemployee-related costs associated with those new teachers;

(b) To make selected reductions in class size in grades 5-12, such as small high school writing classes;

(c) To provide extended learning opportunities to improve student academic achievement in grades K-12, including, but not limited to, extended school year, extended school day, before-and-after-school programs, special tutoring programs, weekend school programs, summer school, and all-day kindergarten;

(d) To provide additional professional development for educators, including additional paid time for curriculum and lesson redesign and alignment, training to ensure that instruction is aligned with state standards and student needs, reimbursement for higher education costs related to enhancing teaching skills and knowledge, and mentoring programs to match teachers with skilled, master teachers. The funding shall not be used for salary increases or additional compensation for existing teaching duties, but may be used for extended year and extended day teaching contracts;

(e) To provide early assistance for children who need prekindergarten support in order to be successful in school;

(f) To provide improvements or additions to school building facilities which are directly related to the class size reductions and extended learning opportunities under (a) through (c) of this subsection.

(2) Annually on or before May 1st, the school district board of directors shall meet at the time and place designated for the purpose of a public hearing on the proposed use of these funds to improve student achievement for the coming year. Any person may appear or by written submission have the opportunity to comment on the proposed plan for the use of these funds. No later than August 31st, as a part of the process under RCW 28A.505.060, each school district shall adopt a plan for the use of these funds for the upcoming school year. Annually, each school district shall provide to the citizens of their district a public accounting of the funds made available to the district during the previous school year under chapter 3, Laws of 2001, how the funds were used, and the progress the district has made in increasing student achievement, as measured by required state assessments and

other assessments deemed appropriate by the district. Copies of this report shall be provided to the superintendent of public instruction. [2009 c 479 § 17; 2005 c 497 § 105; 2001 c 3 § 3 (Initiative Measure No. 728, approved November 7, 2000).]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Intent—Part headings not law—Effective date—2005 c 497:** See notes following RCW 28A.305.011.

**Short title—2001 c 3 (Initiative Measure No. 728):** "This act may be known and cited as the K-12 2000 student achievement act." [2001 c 3 § 1 (Initiative Measure No. 728, approved November 7, 2000).]

**Purpose—Intent—2001 c 3 (Initiative Measure No. 728):** "The citizens of Washington state expect and deserve great public schools for our generation of school children and for those who will follow. A quality public education system is crucial for our state's future economic success and prosperity, and for our children and their children to lead successful lives.

The purpose of this act is to improve public education and to achieve higher academic standards for all students through smaller class sizes and other improvements. A portion of the state's surplus general fund revenues is dedicated to this purpose.

In 1993, Washington state made a major commitment to improved public education by passing the Washington education reform act. This act established new, higher standards of academic achievement for all students. It also established new levels of accountability for students, teachers, schools, and school districts. However, the K-12 finance system has not been changed to respond to the new standards and individual student needs.

To make higher student achievement a reality, schools need the additional resources and flexibility to provide all students with more individualized quality instruction, more time, and the extra support that they may require. We need to ensure that curriculum, instruction methods, and assessments of student performance are aligned with the new standards and student needs. The current level of state funding does not provide adequate resources to support higher academic achievement for all students. In fact, inflation-adjusted per-student state funding has declined since the legislature adopted the 1993 education reform act.

The erosion of state funding for K-12 education is directly at odds with the state's "paramount duty to make ample provision for the education of all children..." Now is the time to invest some of our surplus state revenues in K-12 education and redirect state lottery funds to education, as was originally intended, so that we can fulfill the state's paramount duty.

Conditions and needs vary across Washington's two hundred ninety-six school districts. School boards accountable to their local communities should therefore have the flexibility to decide which of the following strategies will be most effective in increasing student performance and in helping students meet the state's new, higher academic standards:

- (1) Major reductions in K-4 class size;
- (2) Selected class size reductions in grades 5-12, such as small high school writing classes;
- (3) Extended learning opportunities for students who need or want additional time in school;
- (4) Investments in educators and their professional development;
- (5) Early assistance for children who need prekindergarten support in order to be successful in school; and
- (6) Providing improvements or additions to facilities to support class size reductions and extended learning opportunities.

### REDUCING CLASS SIZE

Smaller classes in the early grades can significantly increase the amount of learning that takes place in the classroom. Washington state now ranks forty-eighth in the nation in its student-teacher ratio. This is unacceptable.

Significant class size reductions will provide our children with more individualized instruction and the attention they need and deserve and will reduce behavioral problems in classrooms. The state's long-term goal should be to reduce class size in grades K-4 to no more than eighteen students per teacher in a class.

The people recognize that class size reduction should be phased-in over several years. It should be accompanied by the necessary funds for school construction and modernization and for high-quality, well-trained teachers.

### EXTENDED LEARNING OPPORTUNITIES

Student achievement will also be increased if we expand learning opportunities beyond our traditional-length school day and year. In many school districts, educators and parents want a longer school day, a longer school year, and/or all-day kindergarten to help students improve their aca-

ademic performance or explore new learning opportunities. In addition, special programs such as before-and-after-school tutoring will help struggling students catch and keep up with their classmates. Extended learning opportunities will be increasingly important as attainment of a certificate of mastery becomes a high school graduation requirement.

#### TEACHER QUALITY

Key to every student's academic success is a quality teacher in every classroom. Washington state's new standards for student achievement make teacher quality more important than ever. We are asking our teachers to teach more demanding curriculum in new ways, and we are holding our educators and schools to new, higher levels of accountability for student performance. Resources are needed to give teachers the content knowledge and skills to teach to higher standards and to give school leaders the skills to improve instruction and manage organizational change.

The ability of school districts throughout the state to attract and retain the highest quality teaching corps by offering competitive salaries and effective working conditions is an essential element of basic education. The state legislature is responsible for establishing teacher salaries. It is imperative that the legislature fund salary levels that ensure school districts' ability to recruit and retain the highest quality teachers.

#### EARLY ASSISTANCE

The importance of a child's intellectual development in the first five years has been established by widespread scientific research. This is especially true for children with disabilities and special needs. Providing assistance appropriate to children's developmental needs will enhance the academic achievement of these children in grades K-12. Early assistance will also lessen the need for more expensive remedial efforts in later years.

#### NO SUPPLANTING OF EXISTING EDUCATION FUNDS

It is the intent of the people that existing state funding for education, including all sources of such funding, shall not be reduced, supplanted, or otherwise adversely impacted by appropriations or expenditures from the student achievement fund created in RCW 43.135.045 or the education construction fund.

#### INVESTING SURPLUS IN SCHOOLS UNTIL GOAL MET

It is the intent of the people to invest a portion of state surplus revenues in their schools. This investment should continue until the state's contribution to funding public education achieves a reasonable goal. The goal should reflect the state's paramount duty to make ample provision for the education of all children and our citizens' desire that all students receive a quality education. The people set a goal of per-student state funding for the maintenance and operation of K-12 education being equal to at least ninety percent of the national average per-student expenditure from all sources. When this goal is met, further deposits to the student achievement fund shall be required only to the extent necessary to maintain the ninety-percent level." [2001 c 3 § 2 (Initiative Measure No. 728, approved November 7, 2000).]

**Construction—2001 c 3 (Initiative Measure No. 728):** "The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act." [2001 c 3 § 11 (Initiative Measure No. 728, approved November 7, 2000).]

**Severability—2001 c 3 (Initiative Measure No. 728):** "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." [2001 c 3 § 12 (Initiative Measure No. 728, approved November 7, 2000).]

**Effective dates—2001 c 3 (Initiative Measure No. 728):** "This act takes effect January 1, 2001, except for section 4 of this act which takes effect July 1, 2001." [2001 c 3 § 13 (Initiative Measure No. 728, approved November 7, 2000).]

**28A.505.220 Student achievement program—General fund allocation.** (1) Total distributions for the student achievement program from the general fund to each school district shall be based upon the average number of full-time equivalent students in the school district during the previous school year as reported to the office of the superintendent of public instruction by August 31st of the previous school year. The superintendent of public instruction shall ensure that moneys generated by skill center students are returned to skill centers.

(2) The allocation rate per full-time equivalent student shall be three hundred dollars in the 2005-06 school year, three hundred seventy-five dollars in the 2006-07 school year, and four hundred fifty dollars in the 2007-08 school year. For each subsequent school year, the amount allocated per full-time equivalent student shall be adjusted for inflation by the implicit price deflator as published by the federal bureau of labor statistics. However, for the 2009-10 and 2010-11 school years, the amount allocated per full-time equivalent student shall be as specified in the omnibus appropriations act. For the 2011-12 school year and thereafter, amounts allocated shall be further adjusted so that the allocations are equal to what they would have been if allocations had not been reduced for the 2009-10 and 2010-11 school years. These allocations per full-time equivalent student shall be supported from the distributions from the education legacy trust account created in RCW 83.100.230 and the state general fund.

(3) The school district annual amounts as defined in subsection (2) of this section shall be distributed on the monthly apportionment schedule as defined in RCW 28A.510.250.

(4) However, during the 2008-09 school year, the school district annual amounts as defined in this section shall be distributed as follows:

September:	9.0 percent;
October:	9.0 percent;
November:	5.5 percent;
December:	9.0 percent;
January:	9.0 percent;
February:	9.0 percent;
March:	9.0 percent;
April:	9.0 percent;
May:	5.5 percent;
June:	4.2 percent;
July:	11.8 percent; and
August:	10.0 percent.

[2009 c 541 § 1; 2009 c 479 § 18; 2009 c 4 § 901; 2008 c 170 § 401; 2005 c 514 § 1103.]

**Reviser's note:** This section was amended by 2009 c 479 § 18 and by 2009 c 541 § 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).

**Effective date—2009 c 541:** "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, 2009." [2009 c 541 § 2.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Effective date—2009 c 4:** "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 [February 18, 2009]." [2009 c 4 § 911.]

**Effective date—2008 c 170 § 401:** "Section 401 of this act takes effect September 1, 2008." [2008 c 170 § 409.]

**Findings—Intent—Part headings not law—2008 c 170:** See RCW 28A.700.005 and 28A.700.901.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

## Chapter 28A.525 RCW

## BOND ISSUES

## Sections

28A.525.040	Portable buildings or classrooms.
28A.525.090	Construction management techniques—Rules—Use—Information and training.
28A.525.162	Allotment of appropriations for school plant facilities—Local school district participation—Computing state funding assistance—Rules.
28A.525.166	Allotment of appropriations for school plant facilities—Computation of state aid for school plant project.
28A.525.168	Allotment of appropriations for school plant facilities—Use of taxable valuation and state funding assistance percentage in determining eligibility.
28A.525.210	1984 bond issue for construction, modernization of school plant facilities—Intent.

**28A.525.040 Portable buildings or classrooms.** State funding assistance shall not be denied to any school district undertaking any construction, repairs[,] or improvements for school district purposes solely on the ground that said construction, repairs[,] and improvements are in connection with portable buildings or classrooms. [2009 c 129 § 3; 1969 ex.s. c 223 § 28A.47.075. Prior: 1953 c 158 § 1. Formerly RCW 28A.47.075, 28.47.075.]

**Intent—2009 c 129:** See note following RCW 28A.335.230.

**28A.525.090 Construction management techniques—Rules—Use—Information and training.** (1) The superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory panel, shall adopt rules for appropriate use of the following construction management techniques: Value engineering, constructibility review, building commissioning, and construction management. Rules adopted under this section shall:

- (a) Define each technique as it applies to school buildings;
- (b) Describe the scope of work for each technique;
- (c) Define the timing for implementing each technique in the construction process;
- (d) Determine the appropriate size of projects for the use of each technique; and
- (e) Determine standards for qualification and performance for each technique.

(2) Except as provided in rules adopted under subsection (1)(d) of this section, in allocating state moneys provided under this chapter, the superintendent of public instruction shall include in funding for each project, at the state funding assistance percentage, the cost of each of the construction management techniques listed in subsection (1) of this section.

(3) When assigning priority and allocating state funds for construction of common school facilities, the superintendent shall consider the adequacy of the construction management techniques used by a district and the compliance with the rules adopted under subsection (1) of this section.

(4) Except as provided in rules adopted under subsection (1)(d) of this section, the construction management techniques in subsection (1) of this section shall be used on each project submitted for approval by the superintendent.

(5)(a) School districts applying for state funding assistance for school facilities shall:

(i) Cause value engineering, constructibility review, and building commissioning to be performed by contract with a professional firm specializing in those construction management techniques; and

(ii) Contract or employ personnel to perform professional construction management.

(b) All recommendations from the value engineering and constructibility review construction techniques for a school project shall be presented to the school district's board of directors for acceptance or rejection. If the board of directors rejects a recommendation it shall provide a statement explaining the reasons for rejecting the recommendation and include the statement in the application for state funding assistance to the superintendent of public instruction.

(6) The office of the superintendent of public instruction shall provide:

(a) An information and training program for school districts on the use of the construction management techniques; and

(b) Consulting services to districts on the benefits and best uses of these construction management techniques. [2009 c 129 § 4; 2006 c 263 § 307; 1999 c 313 § 2.]

**Intent—2009 c 129:** See note following RCW 28A.335.230.

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Findings—1999 c 313:** "The legislature finds that certain construction management techniques will improve the effectiveness of construction and operation of new school buildings, and that such techniques, including value engineering, constructibility reviews, building commissioning, and professional construction management, will provide better value to the taxpayers by reducing construction costs, improving building operations, improving the building environment for the occupants, and reducing future replacement costs." [1999 c 313 § 1.]

**28A.525.162 Allotment of appropriations for school plant facilities—Local school district participation—Computing state funding assistance—Rules.** (1) Funds appropriated to the superintendent of public instruction from the common school construction fund shall be allotted by the superintendent of public instruction in accordance with student enrollment and the provisions of RCW 28A.525.200.

(2) No allotment shall be made to a school district until such district has provided local funds equal to or greater than the difference between the total approved project cost and the amount of state funding assistance to the district for financing the project computed pursuant to RCW 28A.525.166, with the following exceptions:

(a) The superintendent of public instruction may waive the local requirement for state funding assistance for districts which have provided funds for school building construction purposes through the authorization of bonds or through the authorization of excess tax levies or both in an amount equivalent to two and one-half percent of the value of its taxable property, as defined in RCW 39.36.015.

(b) No such local funds shall be required as a condition to the allotment of funds from the state for the purpose of making major or minor structural changes to existing school facilities in order to bring such facilities into compliance with the barrier free access requirements of section 504 of the federal rehabilitation act of 1973 (29 U.S.C. Sec. 706) and rules implementing the act.

(3) For the purpose of computing the state funding assistance percentage under RCW 28A.525.166 when a school district is granted authority to enter into contracts, adjusted valuation per pupil shall be calculated using headcount student enrollments from the most recent October enrollment reports submitted by districts to the superintendent of public instruction, adjusted as follows:

(a) In the case of projects for which local bonds were approved after May 11, 1989:

(i) For districts which have been designated as serving high school districts under RCW 28A.540.110, students residing in the nonhigh district so designating shall be excluded from the enrollment count if the student is enrolled in any grade level not offered by the nonhigh district;

(ii) The enrollment of nonhigh school districts shall be increased by the number of students residing within the district who are enrolled in a serving high school district so designated by the nonhigh school district under RCW 28A.540.110, including only students who are enrolled in grade levels not offered by the nonhigh school district; and

(iii) The number of preschool students with disabilities included in the enrollment count shall be multiplied by one-half;

(b) In the case of construction or modernization of high school facilities in districts serving students from nonhigh school districts, the adjusted valuation per pupil shall be computed using the combined adjusted valuations and enrollments of each district, each weighted by the percentage of the district's resident high school students served by the high school district; and

(c) The number of kindergarten students included in the enrollment count shall be multiplied by one-half.

(4) The superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory panel, shall prescribe such rules as are necessary to equate insofar as possible the efforts made by school districts to provide capital funds by the means aforesaid.

(5) For the purposes of this section, "preschool students with disabilities" means children of preschool age who have developmental disabilities who are entitled to services under RCW 28A.155.010 through 28A.155.100 and are not included in the kindergarten enrollment count of the district. [2009 c 129 § 5; 2006 c 263 § 309; 1995 c 77 § 24; 1990 c 33 § 455; 1989 c 321 § 1; 1980 c 154 § 18; 1974 ex.s. c 56 § 1; 1970 ex.s. c 42 § 5; 1969 ex.s. c 244 § 2. Formerly RCW 28A.47.801, 28.47.801.]

**Intent—2009 c 129:** See note following RCW 28A.335.230.

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Purpose—Effective dates—Savings—Disposition of certain funds—Severability—1980 c 154:** See notes following chapter 82.45 RCW digest.

**Severability—1974 ex.s. c 56:** "If any provision of this 1974 amendment 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 56 § 9.]

**Severability—Effective date—1970 ex.s. c 42:** See notes following RCW 39.36.015.

**Severability—1969 ex.s. c 244:** "If any section, paragraph, sentence, clause, phrase or word of this act should be held to be invalid or unconstitutional, such act shall not affect nor impair the validity or constitutionality of any other section, paragraph, sentence, clause, phrase or word of this act. It is hereby declared that had any section, paragraph, sentence, clause, phrase

or word as to which this act is declared invalid been eliminated from the act at the time the same was considered, the act would have nevertheless been enacted with such portions eliminated." [1969 ex.s. c 244 § 16.]

**28A.525.166 Allotment of appropriations for school plant facilities—Computation of state aid for school plant project.** Allocations to school districts of state funds provided by RCW 28A.525.162 through 28A.525.180 shall be made by the superintendent of public instruction and the amount of state funding assistance to a school district in financing a school plant project shall be determined in the following manner:

(1) The boards of directors of the districts shall determine the total cost of the proposed project, which cost may include the cost of acquiring and preparing the site, the cost of constructing the building or of acquiring a building and preparing the same for school use, the cost of necessary equipment, taxes chargeable to the project, necessary architects' fees, and a reasonable amount for contingencies and for other necessary incidental expenses: PROVIDED, That the total cost of the project shall be subject to review and approval by the superintendent.

(2) The state funding assistance percentage for a school district shall be computed by the following formula:

The ratio of the school district's adjusted valuation per pupil divided by the ratio of the total state adjusted valuation per pupil shall be subtracted from three, and then the result of the foregoing shall be divided by three plus (the ratio of the school district's adjusted valuation per pupil divided by the ratio of the total state adjusted valuation per pupil).

$$\begin{array}{r} \text{Computed} \\ \text{State} \\ \text{Ratio} \end{array} = \frac{\begin{array}{l} \text{District adjusted} \\ \text{3-valuation} \\ \text{per pupil} \end{array}}{\begin{array}{l} \text{Total state} \\ \text{adjusted valuation} \\ \text{per pupil} \end{array}} \div \frac{\begin{array}{l} \text{District adjusted} \\ \text{3+valuation} \\ \text{per pupil} \end{array}}{\begin{array}{l} \text{Total state} \\ \text{adjusted valuation} \\ \text{per pupil} \end{array}} = \text{- \% Funding} \\ \text{Assistance} \end{array}$$

PROVIDED, That in the event the state funding assistance percentage to any school district based on the above formula is less than twenty percent and such school district is otherwise eligible for state funding assistance under RCW 28A.525.162 through 28A.525.180, the superintendent may establish for such district a state funding assistance percentage not in excess of twenty percent of the approved cost of the project, if the superintendent finds that such additional assistance is necessary to provide minimum facilities for housing the pupils of the district.

(3) In addition to the computed state funding assistance percentage developed in subsection (2) of this section, a school district shall be entitled to additional percentage points determined by the average percentage of growth for the past three years. One percent shall be added to the computed state funding assistance percentage for each percent of growth, with a maximum of twenty percent.

(4) The approved cost of the project determined in the manner prescribed in this section multiplied by the state funding assistance percentage derived as provided for in this section shall be the amount of state funding assistance to the district for the financing of the project: PROVIDED, That need therefor has been established to the satisfaction of the superintendent: PROVIDED, FURTHER, That additional

state funding assistance may be allowed if it is found by the superintendent, considering policy recommendations from the school facilities citizen advisory panel that such assistance is necessary in order to meet (a) a school housing emergency resulting from the destruction of a school building by fire, the condemnation of a school building by properly constituted authorities, a sudden excessive and clearly foreseeable future increase in school population, or other conditions similarly emergent in nature; or (b) a special school housing burden resulting from projects of statewide significance or imposed by virtue of the admission of nonresident students into educational programs established, maintained and operated in conformity with the requirements of law; or (c) a deficiency in the capital funds of the district resulting from financing, subsequent to April 1, 1969, and without benefit of the state funding assistance provided by prior state assistance programs, the construction of a needed school building project or projects approved in conformity with the requirements of such programs, after having first applied for and been denied state funding assistance because of the inadequacy of state funds available for the purpose, or (d) a condition created by the fact that an excessive number of students live in state owned housing, or (e) a need for the construction of a school building to provide for improved school district organization or racial balance, or (f) conditions similar to those defined under (a), (b), (c), (d), and (e) of this subsection, creating a like emergency. [2009 c 421 § 5; 2009 c 129 § 6; 2006 c 263 § 311; 1997 c 369 § 9; 1990 c 33 § 457; 1989 c 321 § 3; 1975 1st ex.s. c 98 § 1; 1974 ex.s. c 56 § 3; 1969 ex.s. c 244 § 4. Formerly RCW 28A.47.803, 28.47.803.]

**Reviser's note:** This section was amended by 2009 c 129 § 6 and by 2009 c 421 § 5, 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—2009 c 421:** See note following RCW 43.157.005.

**Intent—2009 c 129:** See note following RCW 28A.335.230.

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Effective date—1975 1st ex.s. c 98:** "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 98 § 3.]

**Severability—1974 ex.s. c 56:** See note following RCW 28A.525.162.

**Severability—1969 ex.s. c 244:** See note following RCW 28A.525.162.

*Industrial project of statewide significance—Defined: RCW 43.157.010.*

**28A.525.168 Allotment of appropriations for school plant facilities—Use of taxable valuation and state funding assistance percentage in determining eligibility.** Whenever the voters of a school district authorize the issuance of bonds and/or the levying of excess taxes in an amount sufficient to meet the requirements of RCW 28A.525.162 respecting eligibility for state funding assistance in providing school facilities, the taxable valuation of the district and the state funding assistance percentage in providing school facilities prevailing at the time of such authorization shall be the valuation and the percentage used for the purpose of determining the eligibility of the district for an allotment of state funds and the amount or amounts of such allotments, respectively, for all projects for which the voters authorize capital funds as aforesaid, unless a higher state funding assistance

percentage prevails on the date that state funds for assistance in financing a project are allotted by the superintendent of public instruction in which case the percentage prevailing on the date of allotment by the superintendent of funds for each project shall govern: PROVIDED, That if the superintendent of public instruction, considering policy recommendations from the school facilities citizen advisory panel, determines at any time that there has been undue or unwarranted delay on the part of school district authorities in advancing a project to the point of readiness for an allotment of state funds, the taxable valuation of the school district and the state funding assistance percentage prevailing on the date that the allotment is made shall be used for the purposes aforesaid: PROVIDED, FURTHER, That the date specified in this section as applicable in determining the eligibility of an individual school district for state funding assistance and in determining the amount of such assistance shall be applicable also to cases where it is necessary in administering chapter 28A.540 RCW to determine eligibility for and the amount of state funding assistance for a group of school districts considered as a single school administrative unit. [2009 c 129 § 7; 2006 c 263 § 312; 1990 c 33 § 458; 1969 ex.s. c 244 § 5. Formerly RCW 28A.47.804, 28.47.804.]

**Intent—2009 c 129:** See note following RCW 28A.335.230.

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Severability—1969 ex.s. c 244:** See note following RCW 28A.525.162.

**28A.525.210 1984 bond issue for construction, modernization of school plant facilities—Intent.** It is the intent of the legislature to authorize general obligation bonds of the state of Washington for common school plant facilities which provides for the reimbursement of the state treasury for principal and interest payments. [2009 c 500 § 3; 1984 c 266 § 1. Formerly RCW 28A.47.840.]

**Effective date—2009 c 500:** See note following RCW 39.42.070.

**Severability—1984 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." [1984 c 266 § 8.]

## Chapter 28A.600 RCW STUDENTS

### Sections

28A.600.160	Educational pathways.
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**28A.600.160 Educational pathways.** Any middle school, junior high school, or high school using educational pathways shall ensure that all participating students will con-

tinue to have access to the courses and instruction necessary to meet admission requirements at baccalaureate institutions. Students shall be allowed to enter the educational pathway of their choice. Before accepting a student into an educational pathway, the school shall inform the student's parent of the pathway chosen, the opportunities available to the student through the pathway, and the career objectives the student will have exposure to while pursuing the pathway. Providing online access to the information satisfies the requirements of this section unless a parent or guardian specifically request [requests] information to be provided in written form. Parents and students dissatisfied with the opportunities available through the selected educational pathway shall be provided with the opportunity to transfer the student to any other pathway provided in the school. Schools may not develop educational pathways that retain students in high school beyond the date they are eligible to graduate, and may not require students who transfer between pathways to complete pathway requirements beyond the date the student is eligible to graduate. Educational pathways may include, but are not limited to, programs such as worksite learning, internships, tech prep, career and technical education, running start, college in the high school, running start for the trades, and preparation for technical college, community college, or university education. [2009 c 556 § 14; 2009 c 450 § 6; 1998 c 225 § 2.]

**Reviser's note:** This section was amended by 2009 c 450 § 6 and by 2009 c 556 § 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).

**Findings—Intent—2009 c 450:** See note following RCW 28A.600.280.

**28A.600.190 Youth sports—Concussion and head injury guidelines—Injured athlete restrictions—Short title.**

(1)(a) Concussions are one of the most commonly reported injuries in children and adolescents who participate in sports and recreational activities. The centers for disease control and prevention estimates that as many as three million nine hundred thousand sports-related and recreation-related concussions occur in the United States each year. A concussion is caused by a blow or motion to the head or body that causes the brain to move rapidly inside the skull. The risk of catastrophic injuries or death are significant when a concussion or head injury is not properly evaluated and managed.

(b) Concussions are a type of brain injury that can range from mild to severe and can disrupt the way the brain normally works. Concussions can occur in any organized or unorganized sport or recreational activity and can result from a fall or from players colliding with each other, the ground, or with obstacles. Concussions occur with or without loss of consciousness, but the vast majority occurs without loss of consciousness.

(c) Continuing to play with a concussion or symptoms of head injury leaves the young athlete especially vulnerable to greater injury and even death. The legislature recognizes that, despite having generally recognized return to play standards for concussion and head injury, some affected youth athletes are prematurely returned to play resulting in actual or potential physical injury or death to youth athletes in the state of Washington.

(2) Each school district's board of directors shall work in concert with the Washington interscholastic activities association to develop the guidelines and other pertinent information and forms to inform and educate coaches, youth athletes, and their parents and/or guardians of the nature and risk of concussion and head injury including continuing to play after concussion or head injury. On a yearly basis, a concussion and head injury information sheet shall be signed and returned by the youth athlete and the athlete's parent and/or guardian prior to the youth athlete's initiating practice or competition.

(3) A youth athlete who is suspected of sustaining a concussion or head injury in a practice or game shall be removed from competition at that time.

(4) A youth athlete who has been removed from play may not return to play until the athlete is evaluated by a licensed health care provider trained in the evaluation and management of concussion and receives written clearance to return to play from that health care provider. The health care provider may be a volunteer. A volunteer who authorizes a youth athlete to return to play is not liable for civil damages resulting from any act or omission in the rendering of such care, other than acts or omissions constituting gross negligence or willful or wanton misconduct.

(5) This section may be known and cited as the Zackery Lystedt law. [2009 c 475 § 2.]

**28A.600.280 Dual credit programs—Annual report.**

(1) The office of the superintendent of public instruction, in collaboration with the state board for community and technical colleges, the Washington state apprenticeship and training council, the workforce training and education coordinating board, the higher education coordinating board, and the public baccalaureate institutions, shall report by September 1, 2010, and annually thereafter to the education and higher education committees of the legislature regarding participation in dual credit programs. The report shall include:

(a) Data about student participation rates and academic performance including but not limited to running start, college in the high school, tech prep, international baccalaureate, advanced placement, and running start for the trades;

(b) Data on the total unduplicated head count of students enrolled in at least one dual credit program course; and

(c) The percentage of students who enrolled in at least one dual credit program as percent of all students enrolled in grades nine through twelve.

(2) Data on student participation shall be disaggregated by race, ethnicity, gender, and receipt of free or reduced-price lunch. [2009 c 450 § 2.]

**Findings—Intent—2009 c 450:** "(1) The legislature finds that the economy of the state of Washington requires a well-prepared workforce. To meet the need, more Washington students need to be prepared for postsecondary education and training. Further, the personal enrichment and success of Washington citizens increasingly relies on their ability to use the state's postsecondary education and training system. To accomplish those ends, the legislature desires to increase the number of students who begin earning college credits while still in high school.

(2) The legislature further finds that dual credit programs introduce students to college-level work, provide a jump start on getting a college degree, and, perhaps most importantly, show students that they can succeed in college. Dual credit programs also provide another avenue of student financial aid, since many programs are offered for little or no cost to students.

(3) The legislature also finds that students must be provided a choice

when selecting a dual credit program that is right for them. Options should be available for the student who wants to learn on a college campus and the student who wants to stay at the high school and take college-level courses. Options must also be available for the hands-on learner who seeks to complete an apprenticeship program.

(4) The legislature intends to blur the line between high school and college by articulating a vision to dramatically increase participation in dual credit programs. It is for this reason that the legislature should call on all education stakeholders to come together to coordinate resources, track outcomes, and improve program availability.

(5) The legislature further intends to provide high schools, colleges, and universities with a set of tools for growing and coordinating dual credit programs. Institutions should be given some flexibility in determining the best methods to secure long-term, ample financial support for these programs, while students should be given some help in offsetting instructional costs." [2009 c 450 § 1.]

**28A.600.285 Dual credit programs—Impact on financial aid eligibility—Guidelines.** The superintendent of public instruction and the higher education coordinating board shall develop advising guidelines to assure that students and parents understand that college credits earned in high school dual credit programs may impact eligibility for financial aid. [2009 c 450 § 4.]

**Findings—Intent—2009 c 450:** See note following RCW 28A.600.280.

**28A.600.290 College in the high school program—Rules.** (1) The superintendent of public instruction, the state board for community and technical colleges, the higher education coordinating board, and the public baccalaureate institutions shall jointly develop and each adopt rules governing the college in the high school program. The association of Washington school principals shall be consulted during the rules development. The rules shall be written to encourage the maximum use of the program and may not narrow or limit the enrollment options.

(2) College in the high school programs shall each be governed by a local contract between the district and the institution of higher education, in compliance with the guidelines adopted by the superintendent of public instruction, the state board for community and technical colleges, and the public baccalaureate institutions.

(3) The college in the high school program must include the provisions in this subsection.

(a) The high school and institution of higher education together shall define the criteria for student eligibility. The institution of higher education may charge tuition fees to participating students.

(b) School districts shall report no student for more than one full-time equivalent including college in the high school courses.

(c) The funds received by the institution of higher education may not be deemed tuition or operating fees and may be retained by the institution of higher education.

(d) Enrollment information on persons registered under this section must be maintained by the institution of higher education separately from other enrollment information and may not be included in official enrollment reports, nor may such persons be considered in any enrollment statistics that would affect higher education budgetary determinations.

(e) A school district must grant high school credit to a student enrolled in a program course if the student successfully completes the course. If no comparable course is

offered by the school district, the school district superintendent shall determine how many credits to award for the course. The determination shall be made in writing before the student enrolls in the course. The credits shall be applied toward graduation requirements and subject area requirements. Evidence of successful completion of each program course shall be included in the student's secondary school records and transcript.

(f) An institution of higher education must grant college credit to a student enrolled in a program course if the student successfully completes the course. The college credit shall be applied toward general education requirements or major requirements. If no comparable course is offered by the college, the institution of higher education at which the teacher of the program course is employed shall determine how many credits to award for the course and whether the course fulfills general education or major requirements. Evidence of successful completion of each program course must be included in the student's college transcript.

(g) Eleventh and twelfth grade students or students who have not yet received a high school diploma or its equivalent and are eligible to be in the eleventh or twelfth grades may participate in the college in the high school program.

(h) Participating school districts must provide general information about the college in the high school program to all students in grades ten, eleven, and twelve and to the parents and guardians of those students.

(i) Full-time and part-time faculty at institutions of higher education, including adjunct faculty, are eligible to teach program courses.

(4) The definitions in this subsection apply throughout this section.

(a) "Institution of higher education" has the meaning in RCW 28B.10.016 and also includes a public tribal college located in Washington and accredited by the Northwest commission on colleges and universities or another accrediting association recognized by the United States department of education.

(b) "Program course" means a college course offered in a high school under the college in the high school program. [2009 c 450 § 3.]

**Findings—Intent—2009 c 450:** See note following RCW 28A.600.280.

**28A.600.300 Running start program—Definition.**

(1) The program established in this section through RCW 28A.600.400 shall be known as the running start program.

(2) For the purposes of RCW 28A.600.310 through 28A.600.400, "participating institution of higher education" or "institution of higher education" means:

(a) A community or technical college as defined in RCW 28B.50.030;

(b) A public tribal college located in Washington and accredited by the northwest commission on colleges and universities or another accrediting association recognized by the United States department of education; and

(c) Central Washington University, Eastern Washington University, Washington State University, and The Evergreen State College, if the institution's governing board decides to participate in the program in RCW 28A.600.310 through



28A.600.400. [2009 c 450 § 7; 2005 c 207 § 5; 2002 c 80 § 1; 1994 c 205 § 1; 1990 1st ex.s. c 9 § 401.]

**Findings—Intent—2009 c 450:** See note following RCW 28A.600.280.

**Findings—Intent—2005 c 207:** "The legislature finds that the dropout rate of the state's Native American students is the highest in the state. Approximately one-half of all Native American high school students drop out before graduating with a diploma. The legislature also finds that culturally relevant educational opportunities are important contributors to other efforts to increase the rates of high school graduation for Native American students. The legislature further finds that the higher education participation rate for Native American students is the lowest in the state, and that more can be done to encourage Native American students to pursue higher educational opportunities. The legislature intends to authorize accredited public tribal colleges to participate in the running start program for the purposes of reducing the dropout rate of Native American students and encouraging greater participation rates in higher education." [2005 c 207 § 4.]

**Finding—Severability—1990 1st ex.s. c 9:** See notes following RCW 28A.225.220.

**28A.600.310 Running start program—Enrollment in institutions of higher education—Student fees—Fee waivers—Transmittal of funds—Report on program financial support.** (1) Eleventh and twelfth grade students or students who have not yet received the credits required for the award of a high school diploma and are eligible to be in the eleventh or twelfth grades may apply to a participating institution of higher education to enroll in courses or programs offered by the institution of higher education. A student receiving home-based instruction enrolling in a public high school for the sole purpose of participating in courses or programs offered by institutions of higher education shall not be counted by the school district in any required state or federal accountability reporting if the student's parents or guardians filed a declaration of intent to provide home-based instruction and the student received home-based instruction during the school year before the school year in which the student intends to participate in courses or programs offered by the institution of higher education. Students receiving home-based instruction under chapter 28A.200 RCW and students attending private schools approved under chapter 28A.195 RCW shall not be required to meet the student learning goals, obtain a certificate of academic achievement or a certificate of individual achievement to graduate from high school, or to master the essential academic learning requirements. However, students are eligible to enroll in courses or programs in participating universities only if the board of directors of the student's school district has decided to participate in the program. Participating institutions of higher education, in consultation with school districts, may establish admission standards for these students. If the institution of higher education accepts a secondary school pupil for enrollment under this section, the institution of higher education shall send written notice to the pupil and the pupil's school district within ten days of acceptance. The notice shall indicate the course and hours of enrollment for that pupil.

(2) In lieu of tuition and fees, as defined in RCW 28B.15.020 and 28B.15.041, running start students shall pay to the community or technical college all other mandatory fees as established by each community or technical college; and all other institutions of higher education operating a running start program may charge technology fees. The fees charged shall be prorated based on credit load.

(3) The institutions of higher education must make available fee waivers for low-income running start students. Each institution must establish a written policy for the determination of low-income students before offering the fee waiver. A student shall be considered low income and eligible for a fee waiver upon proof that the student is currently qualified to receive free or reduced-price lunch. Acceptable documentation of low-income status may also include, but is not limited to, documentation that a student has been deemed eligible for free or reduced-price lunches in the last five years, or other criteria established in the institution's policy.

(4) The pupil's school district shall transmit to the institution of higher education an amount per each full-time equivalent college student at statewide uniform rates for vocational and nonvocational students. The superintendent of public instruction shall separately calculate and allocate moneys appropriated for basic education under RCW 28A.150.260 to school districts for purposes of making such payments and for granting school districts seven percent thereof to offset program related costs. The calculations and allocations shall be based upon the estimated statewide annual average per full-time equivalent high school student allocations under RCW 28A.150.260, excluding small high school enhancements, and applicable rules adopted under chapter 34.05 RCW. The superintendent of public instruction, the higher education coordinating board, and the state board for community and technical colleges shall consult on the calculation and distribution of the funds. The funds received by the institution of higher education from the school district shall not be deemed tuition or operating fees and may be retained by the institution of higher education. A student enrolled under this subsection shall be counted for the purpose of meeting enrollment targets in accordance with terms and conditions specified in the omnibus appropriations act.

(5) The state board for community and technical colleges, in collaboration with the other institutions of higher education that participate in the running start program and the office of the superintendent of public instruction, shall identify, assess, and report on alternatives for providing ongoing and adequate financial support for the program. Such alternatives shall include but are not limited to student tuition, increased support from local school districts, and reallocation of existing state financial support among the community and technical college system to account for differential running start enrollment levels and impacts. The state board for community and technical colleges shall report the assessment of alternatives to the governor and to the appropriate fiscal and policy committees of the legislature by September 1, 2010. [2009 c 450 § 8; 2005 c 125 § 1; 1994 c 205 § 2; 1993 c 222 § 1; 1990 1st ex.s. c 9 § 402.]

**Findings—Intent—2009 c 450:** See note following RCW 28A.600.280.

**Effective date—1993 c 222:** "This act shall take effect September 1, 1993." [1993 c 222 § 2.]

**Finding—Severability—1990 1st ex.s. c 9:** See notes following RCW 28A.225.220.

**28A.600.320 Running start program—Information on enrollment.** A school district shall provide general information about the program to all pupils in grades ten, eleven,

and twelve and the parents and guardians of those pupils, including information about the opportunity to enroll in the program through online courses available at community and technical colleges and other state institutions of higher education and including the college high school diploma options under RCW 28B.50.535. To assist the district in planning, a pupil shall inform the district of the pupil's intent to enroll in courses at an institution of higher education for credit. Students are responsible for applying for admission to the institution of higher education. [2009 c 524 § 4; 2008 c 95 § 3; 1994 c 205 § 3; 1990 1st ex.s. c 9 § 403.]

**Intent—2009 c 524:** See note following RCW 28B.50.535.

**Finding—2008 c 95:** See note following RCW 28A.300.119.

**Finding—Severability—1990 1st ex.s. c 9:** See notes following RCW 28A.225.220.

**28A.600.415 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.600.420 Firearms on school premises, transportation, or facilities—Penalty—Exemptions.** (1) Any elementary or secondary school student who is determined to have carried a firearm onto, or to have possessed a firearm on, public elementary or secondary school premises, public school-provided transportation, or areas of facilities while being used exclusively by public schools, shall be expelled from school for not less than one year under RCW 28A.600.010. The superintendent of the school district, educational service district, or state school for the blind, or the director of the Washington state center for childhood deafness and hearing loss, or the director's designee, may modify the expulsion of a student on a case-by-case basis.

(2) For purposes of this section, "firearm" means a firearm as defined in 18 U.S.C. Sec. 921, and a "firearm" as defined in RCW 9.41.010.

(3) This section shall be construed in a manner consistent with the individuals with disabilities education act, 20 U.S.C. Sec. 1401 et seq.

(4) Nothing in this section prevents a public school district, educational service district, the Washington state center for childhood deafness and hearing loss, or the state school for the blind if it has expelled a student from such student's regular school setting from providing educational services to the student in an alternative setting.

(5) This section does not apply to:

(a) Any student while engaged in military education authorized by school authorities in which rifles are used but not other firearms; or

(b) Any student while involved in a convention, showing, demonstration, lecture, or firearms safety course authorized by school authorities in which the rifles of collectors or instructors are handled or displayed but not other firearms; or

(c) Any student while participating in a rifle competition authorized by school authorities.

(6) A school district may suspend or expel a student for up to one year subject to subsections (1), (3), (4), and (5) of this section, if the student acts with malice as defined under RCW 9A.04.110 and displays an instrument that appears to be a firearm, on public elementary or secondary school premises, public school-provided transportation, or areas of

facilities while being used exclusively by public schools. [2009 c 381 § 31; 1997 c 265 § 5; 1995 c 335 § 304; 1995 c 87 § 2.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**Severability—1997 c 265:** See note following RCW 13.40.160.

**Part headings, table of contents not law—1995 c 335:** See note following RCW 28A.150.360.

## Chapter 28A.625 RCW AWARDS

### Sections

28A.625.010 through 28A.625.050 Repealed.  
28A.625.350 through 28A.625.390 Repealed.  
28A.625.900 Repealed.

**28A.625.010 through 28A.625.050 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.625.350 through 28A.625.390 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.625.900 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 28A.630 RCW

### TEMPORARY PROVISIONS—SPECIAL PROJECTS

#### Sections

28A.630.035 Interactive high school civics curriculum—Pilot project—Rules—Reports. (*Expires January 31, 2010.*)  
28A.630.045 Repealed.  
28A.630.881 Repealed.

**28A.630.035 Interactive high school civics curriculum—Pilot project—Rules—Reports. (*Expires January 31, 2010.*)** (1) The legislature finds that the complexity of modern political life has created a demand for informed citizens who are willing not only to vote, but also to participate in the elections process.

(2) The purpose of this section is to create a pilot project to help graduate students who are better voters, better citizens, and who are ready to take an informed and responsible place in society.

(3) The office of the superintendent of public instruction, within funds available for this purpose, shall work with selected county auditors' offices to develop an interactive high school civics curriculum to help students learn how to become informed citizens. The curriculum shall meet the requirements for the office of the superintendent of public instruction's classroom-based assessments. Staff from the office of the superintendent of public instruction shall work directly in the curriculum development.

(4) Counties may apply to, and be selected by, the office of the superintendent of public instruction to participate in the pilot project under this section. A maximum of fifteen counties may participate.

(5) The curriculum shall include, but not be limited to:

(a) Local government organization;

(b) A discussion of ballot measures, initiatives, and referenda;

(c) The role of the precinct in defining ballots, candidates, and political activities;

(d) The roles and responsibilities of taxing jurisdictions in establishing ballot measures; and

(e) The work of conducting elections.

(6) The study may include in the curriculum civics essential academic learning requirements relating to examining representative government and citizen participation and analyzing the purposes and organization of government and laws.

(7) To the extent funds are available, a curriculum guide shall be developed that will help teachers and students maximize the learning of key issues in civics, and shall include strategies for helping students develop voters' guide information for ballot issues and candidates who appear on the ballot. This guide should incorporate ideas from other Washington state civics education programs, such as "We the People" and "Project Citizen." The guide should also present ideas for sharing the results of an election with the larger community and with local government officials in productive, meaningful ways.

(8) In addition to the required components of the pilot project under this section, other activities may be included in the project, such as:

(a) Conducting mock county elections at schools; and

(b) Preparing an advisory issue on which the school would vote, including issue preparation, conducting the election, and preparing a presentation to a local government official on the results of the advisory issue.

(9) The pilot project shall operate for the 2006-07 and 2007-08 school years.

[(10)] The office of the superintendent of public instruction shall adopt rules to implement this section, including rules specifying selection criteria for counties that wish to participate.

(11) The superintendent of public instruction shall provide an interim report to appropriate committees of the legislature by December 1, 2008, and a final report by December 1, 2009, detailing the results of the project and budget recommendations for expansion, if appropriate.

(12) This section expires January 31, 2010. [2009 c 578 § 5; 2006 c 113 § 3.]

**Findings—2006 c 113:** See note following RCW 28A.230.095.

**28A.630.045 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28A.630.881 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**Chapter 28A.650 RCW  
EDUCATION TECHNOLOGY**

Sections

28A.650.015 Education technology plan—Educational technology advisory committee.

**28A.650.015 Education technology plan—Educational technology advisory committee.** (1) The superintendent of public instruction, to the extent funds are appropriated, shall develop and implement a Washington state K-12 education technology plan. The technology plan shall be updated on at least a biennial basis, shall be developed to coordinate and expand the use of education technology in the common schools of the state. The plan shall be consistent with applicable provisions of chapter 43.105 RCW. The plan, at a minimum, shall address:

(a) The provision of technical assistance to schools and school districts for the planning, implementation, and training of staff in the use of technology in curricular and administrative functions;

(b) The continued development of a network to connect school districts, institutions of higher learning, and other sources of online information; and

(c) Methods to equitably increase the use of education technology by students and school personnel throughout the state.

(2) The superintendent of public instruction shall appoint an educational technology advisory committee to assist in the development and implementation of the technology plan in subsection (1) of this section. The committee shall include, but is not limited to, persons representing: The department of information services, educational service districts, school directors, school administrators, school principals, teachers, classified staff, higher education faculty, parents, students, business, labor, scientists and mathematicians, the higher education coordinating board, the workforce training and education coordinating board, and the state library.

(3) The plan adopted and implemented under this section may not impose on school districts any requirements that are not specifically required by federal law or regulation, including requirements to maintain eligibility for the federal schools and libraries program of the universal service fund. [2009 c 556 § 17; 2006 c 263 § 917; 1995 c 335 § 507; 1994 c 245 § 2; 1993 c 336 § 703.]

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Part headings, table of contents not law—1995 c 335:** See note following RCW 28A.150.360.

**Chapter 28A.655 RCW  
ACADEMIC ACHIEVEMENT  
AND ACCOUNTABILITY**

Sections

28A.655.061	High school assessment system—Certificate of academic achievement requirements—Exemptions—Options to retake high school assessment—Objective alternative assessment—Student learning plans.
28A.655.0611	Graduation without certificate of academic achievement or certificate of individual achievement. <i>(Expires August 31, 2013.)</i>
28A.655.065	Objective alternative assessment methods—Appeals from assessment scores—Waivers and appeals from assessment requirements—Rules.
28A.655.066	Statewide end-of-course assessments for high school mathematics—Use for Washington assessment of student learning.
28A.655.075	Essential academic learning requirements and grade level expectations for educational technology literacy and technology fluency—Assessments—Reports. <i>(Expires July 1, 2011.)</i>
28A.655.180	Waivers for educational restructuring programs.

28A.655.200 Norm-referenced assessments—Diagnostic assessments.  
 28A.655.210 K-12 education data improvement system.

**28A.655.061 High school assessment system—Certificate of academic achievement requirements—Exemptions—Options to retake high school assessment—Objective alternative assessment—Student learning plans.** (1)

The high school assessment system shall include but need not be limited to the Washington assessment of student learning, opportunities for a student to retake the content areas of the assessment in which the student was not successful, and if approved by the legislature pursuant to subsection (10) of this section, one or more objective alternative assessments for a student to demonstrate achievement of state academic standards. The objective alternative assessments for each content area shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the Washington assessment of student learning for each content area.

(2) Subject to the conditions in this section, a certificate of academic achievement shall be obtained by most students at about the age of sixteen, and is evidence that the students have successfully met the state standard in the content areas included in the certificate. With the exception of students satisfying the provisions of RCW 28A.155.045 or 28A.655.0611, acquisition of the certificate is required for graduation from a public high school but is not the only requirement for graduation.

(3) Beginning with the graduating class of 2008, with the exception of students satisfying the provisions of RCW 28A.155.045, a student who meets the state standards on the reading, writing, and mathematics content areas of the high school Washington assessment of student learning shall earn a certificate of academic achievement. If a student does not successfully meet the state standards in one or more content areas required for the certificate of academic achievement, then the student may retake the assessment in the content area up to four times at no cost to the student. If the student successfully meets the state standards on a retake of the assessment then the student shall earn a certificate of academic achievement. Once objective alternative assessments are authorized pursuant to subsection (10) of this section, a student may use the objective alternative assessments to demonstrate that the student successfully meets the state standards for that content area if the student has taken the Washington assessment of student learning at least once. If the student successfully meets the state standards on the objective alternative assessments then the student shall earn a certificate of academic achievement.

(4) Beginning no later than with the graduating class of 2013, a student must meet the state standards in science in addition to the other content areas required under subsection (3) of this section on the Washington assessment of student learning or the objective alternative assessments in order to earn a certificate of academic achievement. The state board of education may adopt a rule that implements the requirements of this subsection (4) beginning with a graduating class before the graduating class of 2013, if the state board of education adopts the rule by September 1st of the freshman school year of the graduating class to which the requirements of this subsection (4) apply. The state board of education's authority under this subsection (4) does not alter the require-

ment that any change in performance standards for the tenth grade assessment must comply with RCW 28A.305.130.

(5) The state board of education may not require the acquisition of the certificate of academic achievement for students in home-based instruction under chapter 28A.200 RCW, for students enrolled in private schools under chapter 28A.195 RCW, or for students satisfying the provisions of RCW 28A.155.045.

(6) A student may retain and use the highest result from each successfully completed content area of the high school assessment.

(7) School districts must make available to students the following options:

(a) To retake the Washington assessment of student learning up to four times in the content areas in which the student did not meet the state standards if the student is enrolled in a public school; or

(b) To retake the Washington assessment of student learning up to four times in the content areas in which the student did not meet the state standards if the student is enrolled in a high school completion program at a community or technical college. The superintendent of public instruction and the state board for community and technical colleges shall jointly identify means by which students in these programs can be assessed.

(8) Students who achieve the standard in a content area of the high school assessment but who wish to improve their results shall pay for retaking the assessment, using a uniform cost determined by the superintendent of public instruction.

(9) Opportunities to retake the assessment at least twice a year shall be available to each school district.

(10)(a) The office of the superintendent of public instruction shall develop options for implementing objective alternative assessments, which may include an appeals process for students' scores, for students to demonstrate achievement of the state academic standards. The objective alternative assessments shall be comparable in rigor to the skills and knowledge that the student must demonstrate on the Washington assessment of student learning and be objective in its determination of student achievement of the state standards. Before any objective alternative assessments in addition to those authorized in RCW 28A.655.065 or (b) of this subsection are used by a student to demonstrate that the student has met the state standards in a content area required to obtain a certificate, the legislature shall formally approve the use of any objective alternative assessments through the omnibus appropriations act or by statute or concurrent resolution.

(b)(i) A student's score on the mathematics, reading or English, or writing portion of the SAT or the ACT may be used as an objective alternative assessment under this section for demonstrating that a student has met or exceeded the state standards for the certificate of academic achievement. The state board of education shall identify the scores students must achieve on the relevant portion of the SAT or ACT to meet or exceed the state standard in the relevant content area on the Washington assessment of student learning. The state board of education shall identify the first scores by December 1, 2007. After the first scores are established, the state board may increase but not decrease the scores required for students to meet or exceed the state standards.

(ii) Until August 31, 2008, a student's score on the mathematics portion of the PSAT may be used as an objective alternative assessment under this section for demonstrating that a student has met or exceeded the state standard for the certificate of academic achievement. The state board of education shall identify the score students must achieve on the mathematics portion of the PSAT to meet or exceed the state standard in that content area on the Washington assessment of student learning.

(iii) A student who scores at least a three on the grading scale of one to five for selected AP examinations may use the score as an objective alternative assessment under this section for demonstrating that a student has met or exceeded state standards for the certificate of academic achievement. A score of three on the AP examinations in calculus or statistics may be used as an alternative assessment for the mathematics portion of the Washington assessment of student learning. A score of three on the AP examinations in English language and composition may be used as an alternative assessment for the writing portion of the Washington assessment of student learning. A score of three on the AP examinations in English literature and composition, macroeconomics, microeconomics, psychology, United States history, world history, United States government and politics, or comparative government and politics may be used as an alternative assessment for the reading portion of the Washington assessment of student learning.

(11) By December 15, 2004, the house of representatives and senate education committees shall obtain information and conclusions from recognized, independent, national assessment experts regarding the validity and reliability of the high school Washington assessment of student learning for making individual student high school graduation determinations.

(12) To help assure continued progress in academic achievement as a foundation for high school graduation and to assure that students are on track for high school graduation, each school district shall prepare plans for and notify students and their parents or legal guardians as provided in this subsection (12).

(a) Student learning plans are required for eighth through twelfth grade students who were not successful on any or all of the content areas of the Washington assessment for student learning during the previous school year or who may not be on track to graduate due to credit deficiencies or absences. The parent or legal guardian shall be notified about the information in the student learning plan, preferably through a parent conference and at least annually. To the extent feasible, schools serving English language learner students and their parents shall translate the plan into the primary language of the family. The plan shall include the following information as applicable:

(i) The student's results on the Washington assessment of student learning;

(ii) If the student is in the transitional bilingual program, the score on his or her Washington language proficiency test II;

(iii) Any credit deficiencies;

(iv) The student's attendance rates over the previous two years;

(v) The student's progress toward meeting state and local graduation requirements;

(vi) The courses, competencies, and other steps needed to be taken by the student to meet state academic standards and stay on track for graduation;

(vii) Remediation strategies and alternative education options available to students, including informing students of the option to continue to receive instructional services after grade twelve or until the age of twenty-one;

(viii) The alternative assessment options available to students under this section and RCW 28A.655.065;

(ix) School district programs, high school courses, and career and technical education options available for students to meet graduation requirements; and

(x) Available programs offered through skill centers or community and technical colleges, including the college high school diploma options under RCW 28B.50.535.

(b) All fifth grade students who were not successful in one or more of the content areas of the fourth grade Washington assessment of student learning shall have a student learning plan.

(i) The parent or guardian of the student shall be notified, preferably through a parent conference, of the student's results on the Washington assessment of student learning, actions the school intends to take to improve the student's skills in any content area in which the student was unsuccessful, and provide strategies to help them improve their student's skills.

(ii) Progress made on the student plan shall be reported to the student's parents or guardian at least annually and adjustments to the plan made as necessary. [2009 c 524 § 5; 2008 c 321 § 2. Prior: 2007 c 355 § 5; 2007 c 354 § 2; 2006 c 115 § 4; 2004 c 19 § 101.]

**Intent—2009 c 524:** See note following RCW 28B.50.535.

**Findings—2008 c 321:** "The legislature finds that high school students need to graduate with the skills necessary to be successful in college and work. The state graduation requirements help to ensure that Washington high school graduates have the basic skills to be competitive in a global economy. Under education reform started in 1993, time was to be the variable, obtaining the skills was to be the constant. Therefore, students who need additional time to gain the academic skills needed for college and the workplace should have the opportunities they need to reach high academic achievement, even if that takes more than the standard four years of high school.

Different students face different challenges and barriers to their academic success. Some students struggle to meet the standard on a single portion of the Washington assessment of student learning while excelling in the other subject areas; other students struggle to complete the necessary state or local graduation credits; while still others have their knowledge tested on the assessments and have completed all the credit requirements but are struggling because English is not their first language. The legislature finds that many of these students need additional time and support to achieve academic proficiency and meet all graduation requirements." [2008 c 321 § 1.]

**Finding—Intent—2007 c 355:** See note following RCW 28B.50.534.

**Findings—Intent—2007 c 354:** "(1) The legislature maintains a strong commitment to high expectations and high academic achievement for all students. The legislature finds that Washington schools and students are making significant progress in improving achievement in reading and writing. Schools are adapting instruction and providing remediation for students who need additional assistance. Reading and writing are being taught across the curriculum. Therefore, the legislature does not intend to make changes to the Washington assessment of student learning or high school graduation requirements in reading and writing.

(2) However, students are having difficulty improving their academic achievement in mathematics and science, particularly as measured by the high school Washington assessment of student learning. The legislature

finds that corrections are needed in the state's high school assessment system that will improve alignment between learning standards, instruction, diagnosis, and assessment of students' knowledge and skills in high school mathematics and science. The legislature further finds there is a sense of urgency to make these corrections and intends to revise high school graduation requirements in mathematics and science only for the minimum period for corrections to be fully implemented." [2007 c 354 § 1.]

**Alternative assessments—Reports—Evaluation—2006 c 115:** See note following RCW 28A.655.065.

**Part headings and captions not law—2004 c 19:** "Part headings and captions used in this act are not any part of the law." [2004 c 19 § 301.]

**Severability—2004 c 19:** "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." [2004 c 19 § 302.]

**Effective date—2004 c 19:** "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 18, 2004]." [2004 c 19 § 303.]

**28A.655.0611 Graduation without certificate of academic achievement or certificate of individual achievement. (Expires August 31, 2013.)** (1) Beginning with the graduating class of 2008 and through no later than the graduating class of 2012, students may graduate from high school without earning a certificate of academic achievement or a certificate of individual achievement if they:

(a) Have not successfully met the mathematics standard on the high school Washington assessment of student learning, an approved objective alternative assessment, or an alternate assessment developed for eligible special education students;

(b) Have successfully met the state standard in the other content areas required for a certificate under RCW 28A.655.061 or 28A.155.045;

(c) Have met all other state and school district graduation requirements; and

(d)(i) For the graduating class of 2008, successfully earn one high school mathematics credit or career and technical course equivalent, including courses offered at skill centers, after the student's eleventh grade year intended to increase the student's mathematics proficiency toward meeting or exceeding the mathematics standards assessed on the high school Washington assessment of student learning; and

(ii) For the remaining graduating classes under this section, successfully earn two mathematics credits or career and technical course equivalent, including courses offered at skill centers, after the student's tenth grade year intended to increase the student's mathematics proficiency toward meeting or exceeding the mathematics standards assessed on the high school Washington assessment of student learning.

(2) The state board of education may adopt a rule that ends the application of this section with a graduating class before the graduating class of 2012, if the state board of education adopts the rule by September 1st of the freshman school year of the graduating class to which the provisions of this section no longer apply. The state board of education's authority under this section does not alter the requirement that any change in performance standards for the tenth grade assessment must comply with RCW 28A.305.130.

(3) This section expires August 31, 2013. [2009 c 17 § 1; 2007 c 354 § 4.]

**Effective date—2009 c 17:** "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 30, 2009]." [2009 c 17 § 2.]

**Findings—Intent—2007 c 354:** See note following RCW 28A.655.061.

**28A.655.065 Objective alternative assessment methods—Appeals from assessment scores—Waivers and appeals from assessment requirements—Rules.** (1) The legislature has made a commitment to rigorous academic standards for receipt of a high school diploma. The primary way that students will demonstrate that they meet the standards in reading, writing, mathematics, and science is through the Washington assessment of student learning. Only objective assessments that are comparable in rigor to the state assessment are authorized as an alternative assessment. Before seeking an alternative assessment, the legislature expects students to make a genuine effort to meet state standards, through regular and consistent attendance at school and participation in extended learning and other assistance programs.

(2) Under RCW 28A.655.061, beginning in the 2006-07 school year, the superintendent of public instruction shall implement objective alternative assessment methods as provided in this section for students to demonstrate achievement of the state standards in content areas in which the student has not yet met the standard on the high school Washington assessment of student learning. A student may access an alternative if the student meets applicable eligibility criteria in RCW 28A.655.061 and this section and other eligibility criteria established by the superintendent of public instruction, including but not limited to attendance criteria and participation in the remediation or supplemental instruction contained in the student learning plan developed under RCW 28A.655.061. A school district may waive attendance and/or remediation criteria for special, unavoidable circumstances.

(3) For the purposes of this section, "applicant" means a student seeking to use one of the alternative assessment methods in this section.

(4) One alternative assessment method shall be a combination of the applicant's grades in applicable courses and the applicant's highest score on the high school Washington assessment of student learning, as provided in this subsection. A student is eligible to apply for the alternative assessment method under this subsection (4) if the student has a cumulative grade point average of at least 3.2 on a four point grading scale. The superintendent of public instruction shall determine which high school courses are applicable to the alternative assessment method and shall issue guidelines to school districts.

(a) Using guidelines prepared by the superintendent of public instruction, a school district shall identify the group of students in the same school as the applicant who took the same high school courses as the applicant in the applicable content area. From the group of students identified in this manner, the district shall select the comparison cohort that shall be those students who met or slightly exceeded the state standard on the Washington assessment of student learning.

(b) The district shall compare the applicant's grades in high school courses in the applicable content area to the

grades of students in the comparison cohort for the same high school courses. If the applicant's grades are equal to or above the mean grades of the comparison cohort, the applicant shall be deemed to have met the state standard on the alternative assessment.

(c) An applicant may not use the alternative assessment under this subsection (4) if there are fewer than six students in the comparison cohort.

(5) The superintendent of public instruction shall develop an alternative assessment method that shall be an evaluation of a collection of work samples prepared and submitted by the applicant. Effective September 1, 2009, collection of work samples may be submitted only in content areas where meeting the state standard on the high school assessment is required for purposes of graduation.

(a) The superintendent of public instruction shall develop guidelines for the types and number of work samples in each content area that may be submitted as a collection of evidence that the applicant has met the state standard in that content area. Work samples may be collected from academic, career and technical, or remedial courses and may include performance tasks as well as written products. The superintendent shall submit the guidelines for approval by the state board of education.

(b) The superintendent shall develop protocols for submission of the collection of work samples that include affidavits from the applicant's teachers and school district that the samples are the work of the applicant and a requirement that a portion of the samples be prepared under the direct supervision of a classroom teacher. The superintendent shall submit the protocols for approval by the state board of education.

(c) The superintendent shall develop uniform scoring criteria for evaluating the collection of work samples and submit the scoring criteria for approval by the state board of education. Collections shall be scored at the state level or regionally by a panel of educators selected and trained by the superintendent to ensure objectivity, reliability, and rigor in the evaluation. An educator may not score work samples submitted by applicants from the educator's school district. If the panel awards an applicant's collection of work samples the minimum required score, the applicant shall be deemed to have met the state standard on the alternative assessment.

(d) Using an open and public process that includes consultation with district superintendents, school principals, and other educators, the state board of education shall consider the guidelines, protocols, scoring criteria, and other information regarding the collection of work samples submitted by the superintendent of public instruction. The collection of work samples may be implemented as an alternative assessment after the state board of education has approved the guidelines, protocols, and scoring criteria and determined that the collection of work samples: (i) Will meet professionally accepted standards for a valid and reliable measure of the grade level expectations and the essential academic learning requirements; and (ii) is comparable to or exceeds the rigor of the skills and knowledge that a student must demonstrate on the Washington assessment of student learning in the applicable content area. The state board shall make an approval decision and determination no later than December 1, 2006, and thereafter may increase the required rigor of the collection of work samples.

(e) By September of 2006, the superintendent of public instruction shall develop informational materials for parents, teachers, and students regarding the collection of work samples and the status of its development as an alternative assessment method. The materials shall provide specific guidance regarding the type and number of work samples likely to be required, include examples of work that meets the state learning standards, and describe the scoring criteria and process for the collection. The materials shall also encourage students in the graduating class of 2008 to begin creating a collection if they believe they may seek to use the collection once it is implemented as an alternative assessment.

(6)(a) For students enrolled in a career and technical education program approved under RCW 28A.700.030, the superintendent of public instruction shall develop additional guidelines for collections of work samples that are tailored to different career and technical programs. The additional guidelines shall:

(i) Provide multiple examples of work samples that are related to the particular career and technical program;

(ii) Permit work samples based on completed activities or projects where demonstration of academic knowledge is inferred; and

(iii) Provide multiple examples of work samples drawn from career and technical courses.

(b) The purpose of the additional guidelines is to provide a clear pathway toward a certificate of academic achievement for career and technical students by showing them applied and relevant opportunities to demonstrate their knowledge and skills, and to provide guidance to teachers in integrating academic and career and technical instruction and assessment and assisting career and technical students in compiling a collection. The superintendent of public instruction shall develop and disseminate additional guidelines for no fewer than ten career and technical education programs representing a variety of program offerings by no later than September 1, 2008. Guidelines for ten additional programs shall be developed and disseminated no later than June 1, 2009.

(c) The superintendent shall consult with community and technical colleges, employers, the workforce training and education coordinating board, apprenticeship programs, and other regional and national experts in career and technical education to create appropriate guidelines and examples of work samples and other evidence of a career and technical student's knowledge and skills on the state academic standards.

(7) The superintendent of public instruction shall study the feasibility of using existing mathematics assessments in languages other than English as an additional alternative assessment option. The study shall include an estimation of the cost of translating the tenth grade mathematics assessment into other languages and scoring the assessments should they be implemented.

(8) The superintendent of public instruction shall implement:

(a) By June 1, 2006, a process for students to appeal the score they received on the high school assessments; and

(b) By January 1, 2007, guidelines and appeal processes for waiving specific requirements in RCW 28A.655.061 pertaining to the certificate of academic achievement and to the certificate of individual achievement for students who: (i)

Transfer to a Washington public school in their junior or senior year with the intent of obtaining a public high school diploma, or (ii) have special, unavoidable circumstances.

(9) The state board of education shall examine opportunities for additional alternative assessments, including the possible use of one or more standardized norm-referenced student achievement tests and the possible use of the reading, writing, or mathematics portions of the ACT ASSET and ACT COMPASS test instruments as objective alternative assessments for demonstrating that a student has met the state standards for the certificate of academic achievement. The state board shall submit its findings and recommendations to the education committees of the legislature by January 10, 2008.

(10) The superintendent of public instruction shall adopt rules to implement this section. [2009 c 556 § 19; 2008 c 170 § 205; 2007 c 354 § 6; 2006 c 115 § 1.]

**Findings—Intent—Part headings not law—2008 c 170:** See RCW 28A.700.005 and 28A.700.901.

**Findings—Intent—2007 c 354:** See note following RCW 28A.655.061.

**Alternative assessments—Reports—Evaluation—2006 c 115:** "(1) By September 10, 2006, the superintendent of public instruction shall report the following, in detail, to the education committees of the legislature:

(a) Results of the pilot testing of the alternative assessments authorized under section 1 of this act, particularly the pilot testing of the collection of work samples or collection of evidence;

(b) The proposed guidelines, protocols, and procedures to be used by the superintendent in implementing the alternative assessments, particularly the collection of evidence;

(c) The proposed criteria, rubrics, and methodology for scoring the collection of evidence;

(d) A description of the training to be provided for school districts, educators serving on scoring panels, and teachers assisting students with collections of evidence;

(e) Preliminary results of the feasibility study in section 1(7) of this act; and

(f) Updated estimates of the number of students likely to be eligible or apply for an alternative assessment method.

(2) By December 1, 2006, and again by February 1, 2007, the superintendent of public instruction shall provide the education committees of the legislature with an update on the number of students eligible for or participating in an alternative assessment method.

(3) The Washington state institute for public policy shall conduct an independent and objective evaluation of the reliability, validity, and rigor of the alternative assessment methods authorized under section 1 of this act, including an examination of a representative sample of the collections of work samples submitted by the graduating classes of 2008 and 2009. The institute shall submit its findings to the education committees of the legislature by September 1, 2009, to enable the legislature to develop and consider statutory changes to the alternative assessment during the 2010 legislative session." [2006 c 115 § 3.]

**28A.655.066 Statewide end-of-course assessments for high school mathematics—Use for Washington assessment of student learning.** (1)(a) In consultation with the state board of education, the superintendent of public instruction shall develop statewide end-of-course assessments for high school mathematics that measure student achievement of the state mathematics standards. The superintendent shall take steps to ensure that the language of the assessments is responsive to a diverse student population. The assessments shall be implemented statewide in the 2010-11 school year.

(b) The superintendent shall develop end-of-course assessments for the first year of high school mathematics that include the standards common to algebra I and integrated mathematics I and for the second year of high school mathe-

tics that include the standards common to geometry and integrated mathematics II. The assessments under this subsection (1)(b) shall be used to demonstrate that a student meets the state standard on the mathematics content area of the high school Washington assessment of student learning for purposes of RCW 28A.655.061.

(c) The superintendent of public instruction shall also develop subtests for the end-of-course assessments that measure standards for the first two years of high school mathematics that are unique to algebra I, integrated mathematics I, geometry, and integrated mathematics II. The results of the subtests shall be reported at the student, teacher, school, and district level.

(2) For the graduating classes of 2013 and 2014 and for purposes of the certificate of academic achievement under RCW 28A.655.061, a student may use: (a) Results from the end-of-course assessment for the first year of high school mathematics plus the results from the end-of-course assessment for the second year of high school mathematics; or (b) results from the comprehensive mathematics assessment to demonstrate that a student meets the state standard on the mathematics content area of the high school Washington assessment of student learning.

(3) Beginning with the graduating class of 2015 and for purposes of the certificate of academic achievement under RCW 28A.655.061, the mathematics content area of the Washington assessment of student learning shall be assessed using the end-of-course assessment for the first year of high school mathematics plus the end-of-course assessment for the second year of high school mathematics. All of the objective alternative assessments available to students under RCW 28A.655.061 and 28A.655.065 shall be available to any student who has taken the sequence of end-of-course assessments once but does not meet the state mathematics standard on the sequence of end-of-course assessments.

(4) The superintendent of public instruction shall report at least annually or more often if necessary to keep the education committees of the legislature informed on each step of the development and implementation process under this section. [2009 c 310 § 3; 2008 c 163 § 3.]

**Findings—2008 c 163:** "The legislature finds that, according to a recent report from a consultant retained by the state board of education, end-of-course assessments have certain advantages over comprehensive assessments such as the current form of the Washington assessment of student learning, and in most other areas end-of-course assessments are comparable to comprehensive assessments in meeting public policy objectives for a statewide assessment system. The legislature further finds that because the state's assessment contract will be renegotiated before the end of 2008, the 2008 legislature has an opportunity to provide policy direction in the design of the state assessment system and the design of the Washington assessment of student learning." [2008 c 163 § 1.]

**28A.655.075 Essential academic learning requirements and grade level expectations for educational technology literacy and technology fluency—Assessments—Reports. (Expires July 1, 2011.)** (1) Within funds specifically appropriated therefor, by December 1, 2008, the superintendent of public instruction shall develop essential academic learning requirements and grade level expectations for educational technology literacy and technology fluency that identify the knowledge and skills that all public school students need to know and be able to do in the areas of technol-



ogy and technology literacy. The development process shall include a review of current standards that have been developed or are used by other states and national and international technology associations. To the maximum extent possible, the superintendent shall integrate goal four and the knowledge and skill areas in the other goals in the technology essential academic learning requirements.

(a) As used in this section, "technology literacy" means the ability to responsibly, creatively, and effectively use appropriate technology to communicate; access, collect, manage, integrate, and evaluate information; solve problems and create solutions; build and share knowledge; and improve and enhance learning in all subject areas and experiences.

(b) Technology fluency builds upon technology literacy and is demonstrated when students: Apply technology to real-world experiences; adapt to changing technologies; modify current and create new technologies; and personalize technology to meet personal needs, interests, and learning styles.

(2)(a) Within funds specifically appropriated therefor, the superintendent shall obtain or develop education technology assessments that may be administered in the elementary, middle, and high school grades to assess the essential academic learning requirements for technology. The assessments shall be designed to be classroom or project-based so that they can be embedded in classroom instruction and be administered and scored by school staff throughout the regular school year using consistent scoring criteria and procedures. By the 2010-11 school year, these assessments shall be made available to school districts for the districts' voluntary use. If a school district uses the assessments created under this section, then the school district shall notify the superintendent of public instruction of the use. The superintendent shall report annually to the legislature on the number of school districts that use the assessments each school year.

(b) Beginning December 1, 2010, and annually thereafter, the superintendent of public instruction shall provide a report to the relevant legislative committees regarding the use of the assessments.

(3) This section is suspended until July 1, 2011. [2009 c 556 § 15; 2007 c 396 § 16.]

**Expiration date—2009 c 556 §§ 11, 13, and 15:** See note following RCW 28A.300.525.

**Captions not law—2007 c 396:** See note following RCW 28A.305.215.

**Finding—Intent—2007 c 396:** See note following RCW 28A.300.515.

*Essential academic learning requirements and grade level expectations—Revised standards and curricula for mathematics and science—Duties of the state board of education and the superintendent of public instruction: RCW 28A.305.215.*

**28A.655.180 Waivers for educational restructuring programs.** (1) The state board of education, where appropriate, or the superintendent of public instruction, where appropriate, may grant waivers to districts from the provisions of statutes or rules relating to: The length of the school year; student-to-teacher ratios; and other administrative rules that in the opinion of the state board of education or the opinion of the superintendent of public instruction may need to be waived in order for a district to implement a plan for restructuring

its educational program or the educational program of individual schools within the district.

(2) School districts may use the application process in RCW 28A.305.140 to apply for the waivers under this section. [2009 c 543 § 3; 1995 c 208 § 1; (1997 c 431 § 23 expired June 30, 1999). Formerly RCW 28A.630.945.]

**Finding—Intent—2009 c 543:** See note following RCW 28A.305.141.

**28A.655.200 Norm-referenced assessments—Diagnostic assessments.** (1) The legislature intends to permit school districts to offer norm-referenced assessments, make diagnostic tools available to school districts, and provide funding for diagnostic assessments to enhance student learning at all grade levels and provide early intervention before the high school Washington assessment of student learning.

(2) In addition to the diagnostic assessments provided under this section, school districts may, at their own expense, administer norm-referenced assessments to students.

(3) Subject to the availability of amounts appropriated for this purpose, the office of the superintendent of public instruction shall post on its web site for voluntary use by school districts, a guide of diagnostic assessments. The assessments in the guide, to the extent possible, shall include the characteristics listed in subsection (4) of this section.

(4) Subject to the availability of amounts appropriated for this purpose, beginning September 1, 2007, the office of the superintendent of public instruction shall make diagnostic assessments in reading, writing, mathematics, and science in elementary, middle, and high school grades available to school districts. Subject to funds appropriated for this purpose, the office of the superintendent of public instruction shall also provide funding to school districts for administration of diagnostic assessments to help improve student learning, identify academic weaknesses, enhance student planning and guidance, and develop targeted instructional strategies to assist students before the high school Washington assessment of student learning. To the greatest extent possible, the assessments shall be:

(a) Aligned to the state's grade level expectations;

(b) Individualized to each student's performance level;

(c) Administered efficiently to provide results either immediately or within two weeks;

(d) Capable of measuring individual student growth over time and allowing student progress to be compared to other students across the country;

(e) Readily available to parents; and

(f) Cost-effective.

(5) The office of the superintendent of public instruction shall offer training at statewide and regional staff development activities in:

(a) The interpretation of diagnostic assessments; and

(b) Application of instructional strategies that will increase student learning based on diagnostic assessment data. [2009 c 539 § 1; 2007 c 354 § 8; 2006 c 117 § 4; 2005 c 217 § 2.]

**Effective date—2009 c 539:** "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, 2009." [2009 c 539 § 7.]

**Findings—Intent—2007 c 354:** See note following RCW 28A.655.061.

**Intent—2006 c 117:** See note following RCW 28A.600.045.

**28A.655.210 K-12 education data improvement system.** (1) It is the legislature's intent to establish a comprehensive K-12 education data improvement system for financial, student, and educator data. The objective of the system is to monitor student progress, have information on the quality of the educator workforce, monitor and analyze the costs of programs, provide for financial integrity and accountability, and have the capability to link across these various data components by student, by class, by teacher, by school, by district, and statewide. Education data systems must be flexible and able to adapt to evolving needs for information, but there must be an objective and orderly data governance process for determining when changes are needed and how to implement them. It is the further intent of the legislature to provide independent review and evaluation of a comprehensive K-12 education data improvement system by assigning the review and monitoring responsibilities to the education data center and the legislative evaluation and accountability program committee.

(2) It is the intent that the data system specifically serve reporting requirements for teachers, parents, superintendents, school boards, the legislature, the office of the superintendent of public instruction, and the public.

(3) It is the legislature's intent that the K-12 education data improvement system used by school districts and the state include but not be limited to the following information and functionality:

(a) Comprehensive educator information, including grade level and courses taught, building or location, program, job assignment, years of experience, the institution of higher education from which the educator obtained his or her degree, compensation, class size, mobility of class population, socioeconomic data of class, number of languages and which languages are spoken by students, general resources available for curriculum and other classroom needs, and number and type of instructional support staff in the building;

(b) The capacity to link educator assignment information with educator certification information such as certification number, type of certification, route to certification, certification program, and certification assessment or evaluation scores;

(c) Common coding of secondary courses and major areas of study at the elementary level or standard coding of course content;

(d) Robust student information, including but not limited to student characteristics, course and program enrollment, performance on statewide and district summative and formative assessments to the extent district assessments are used, and performance on college readiness tests;

(e) A subset of student information elements to serve as a dropout early warning system;

(f) The capacity to link educator information with student information;

(g) A common, standardized structure for reporting the costs of programs at the school and district level with a focus on the cost of services delivered to students;

(h) Separate accounting of state, federal, and local revenues and costs;

(i) Information linking state funding formulas to school district budgeting and accounting, including procedures:

(i) To support the accuracy and auditing of financial data; and

(ii) Using the prototypical school model for school district financial accounting reporting;

(j) The capacity to link program cost information with student performance information to gauge the cost-effectiveness of programs;

(k) Information that is centrally accessible and updated regularly; and

(l) An anonymous, nonidentifiable replicated copy of data that is updated at least quarterly, and made available to the public by the state.

(4) It is the legislature's goal that all school districts have the capability to collect state-identified common data and export it in a standard format to support a statewide K-12 education data improvement system under this section.

(5) It is the legislature's intent that the K-12 education data improvement system be developed to provide the capability to make reports as required under RCW 28A.300.507 available.

(6) It is the legislature's intent that school districts collect and report new data elements to satisfy the requirements of RCW 43.41.400, this section, and RCW 28A.300.507, only to the extent funds are available for this purpose. [2009 c 548 § 202.]

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

## Chapter 28A.660 RCW

### ALTERNATIVE ROUTE TEACHER CERTIFICATION

#### Sections

- 28A.660.035 Partnership grant programs—Priority assistance in advancing cultural competency skills.  
 28A.660.040 Alternative route conditional scholarship program.  
 28A.660.050 Conditional scholarship programs—Requirements—Recipients.  
 28A.660.055 Eligible veteran or national guard member—Definition.

**28A.660.035 Partnership grant programs—Priority assistance in advancing cultural competency skills.** The office of the superintendent of public instruction shall identify school districts that have the most significant achievement gaps among subgroups of students and for large numbers of those students, and districts that should receive priority for assistance in advancing cultural competency skills in their workforce. The professional educator standards board shall provide assistance to the identified school districts to develop partnership grant programs between the districts and teacher preparation programs to provide one or more of the four alternative route programs under RCW 28A.660.040 and to recruit paraeducators and other individuals in the local community to become certified as teachers. A partnership grant program proposed by an identified school district shall receive priority eligibility for partnership grants under RCW 28A.660.020. To the maximum extent possible, the board shall coordinate the recruiting Washington teachers program

under RCW 28A.415.370 with the alternative route programs under this section. [2009 c 468 § 6.]

**Findings—Intent—2009 c 468:** See note following RCW 28A.300.136.

**28A.660.040 Alternative route conditional scholarship program.** Partnership grants funded under this chapter shall operate one to four specific route programs. Successful completion of the program shall make a candidate eligible for residency teacher certification. For route one and two candidates, the mentor of the teacher candidate at the school and the supervisor of the teacher candidate from the higher education teacher preparation program must both agree that the teacher candidate has successfully completed the program. For route three and four candidates, the mentor of the teacher candidate shall make the determination that the candidate has successfully completed the program.

(1) Partnership grant programs seeking funds to operate route one programs shall enroll currently employed classified instructional employees with transferable associate degrees seeking residency teacher certification with endorsements in special education, bilingual education, or English as a second language. It is anticipated that candidates enrolled in this route will complete both their baccalaureate degree and requirements for residency certification in two years or less, including a mentored internship to be completed in the final year. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) District or building validation of qualifications, including one year of successful student interaction and leadership as a classified instructional employee;

(b) Successful passage of the statewide basic skills exam, when available; and

(c) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers.

(2) Partnership grant programs seeking funds to operate route two programs shall enroll currently employed classified staff with baccalaureate degrees seeking residency teacher certification in subject matter shortage areas and areas with shortages due to geographic location. Candidates enrolled in this route must complete a mentored internship complemented by flexibly scheduled training and coursework offered at a local site, such as a school or educational service district, or online or via video-conference over the K-20 network, in collaboration with the partnership program's higher education partner. In addition, partnership grant programs shall uphold entry requirements for candidates that include:

(a) District or building validation of qualifications, including one year of successful student interaction and leadership as classified staff;

(b) A baccalaureate degree from a regionally accredited institution of higher education. The individual's college or university grade point average may be considered as a selection factor;

(c) Successful completion of the content test, once the state content test is available;

(d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(e) Successful passage of the statewide basic skills exam, when available.

(3) Partnership grant programs seeking funds to operate route three programs shall enroll individuals with baccalaureate degrees, who are not employed in the district at the time of application. When selecting candidates for certification through route three, districts shall give priority to individuals who are seeking residency teacher certification in subject matter shortage areas or shortages due to geographic locations. For route three only, the districts may include additional candidates in nonshortage subject areas if the candidates are seeking endorsements with a secondary grade level designation as defined by rule by the professional educator standards board. The districts shall disclose to candidates in nonshortage subject areas available information on the demand in those subject areas. Cohorts of candidates for this route shall attend an intensive summer teaching academy, followed by a full year employed by a district in a mentored internship, followed, if necessary, by a second summer teaching academy. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) A baccalaureate degree from a regionally accredited institution of higher education. The individual's grade point average may be considered as a selection factor;

(b) Successful completion of the content test, once the state content test is available;

(c) External validation of qualifications, including demonstrated successful experience with students or children, such as reference letters and letters of support from previous employers;

(d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(e) Successful passage of statewide basic skills exams, when available.

(4) Partnership grant programs seeking funds to operate route four programs shall enroll individuals with baccalaureate degrees, who are employed in the district at the time of application, or who hold conditional teaching certificates or emergency substitute certificates. Cohorts of candidates for this route shall attend an intensive summer teaching academy, followed by a full year employed by a district in a mentored internship. In addition, partnership programs shall uphold entry requirements for candidates that include:

(a) A baccalaureate degree from a regionally accredited institution of higher education. The individual's grade point average may be considered as a selection factor;

(b) Successful completion of the content test, once the state content test is available;

(c) External validation of qualifications, including demonstrated successful experience with students or children, such as reference letters and letters of support from previous employers;

(d) Meeting the age, good moral character, and personal fitness requirements adopted by rule for teachers; and

(e) Successful passage of statewide basic skills exams, when available.

(5) Applicants for alternative route programs who are eligible veterans or national guard members and who meet the entry requirements for the alternative route program for which application is made shall be given preference in admission. [2009 c 192 § 1; 2009 c 166 § 1; 2006 c 263 § 817; 2004 c 23 § 4; 2001 c 158 § 5.]

**Reviser's note:** This section was amended by 2009 c 166 § 1 and by 2009 c 192 § 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).

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**28A.660.050 Conditional scholarship programs—Requirements—Recipients.** Subject to the availability of amounts appropriated for these purposes, the conditional scholarship programs in this chapter are created under the following guidelines:

(1) The programs shall be administered by the higher education coordinating board. In administering the programs, the higher education coordinating board has the following powers and duties:

(a) To adopt necessary rules and develop guidelines to administer the programs;

(b) To collect and manage repayments from participants who do not meet their service obligations; and

(c) To accept grants and donations from public and private sources for the programs.

(2) Requirements for participation in the conditional scholarship programs are as provided in this subsection (2).

(a) The alternative route conditional scholarship program is limited to interns of the partnership grant programs under RCW 28A.660.040. In order to receive conditional scholarship awards, recipients shall:

(i) Be accepted and maintain enrollment in alternative certification routes through the partnership grant program;

(ii) Continue to make satisfactory progress toward completion of the alternative route certification program and receipt of a residency teaching certificate; and

(iii) Receive no more than the annual amount of the scholarship, not to exceed eight thousand dollars, for the cost of tuition, fees, and educational expenses, including books, supplies, and transportation for the alternative route certification program in which the recipient is enrolled. The board may adjust the annual award by the average rate of resident undergraduate tuition and fee increases at the state universities as defined in RCW 28B.10.016.

(b) The pipeline for paraeducators conditional scholarship program is limited to qualified paraeducators as provided by RCW 28A.660.042. In order to receive conditional scholarship awards, recipients shall:

(i) Be accepted and maintain enrollment at a community and technical college for no more than two years and attain an associate of arts degree;

(ii) Continue to make satisfactory progress toward completion of an associate of arts degree. This progress requirement is a condition for eligibility into a route one program of the alternative routes to teacher certification program for a mathematics, special education, or English as a second language endorsement; and

(iii) Receive no more than the annual amount of the scholarship, not to exceed four thousand dollars, for the cost of tuition, fees, and educational expenses, including books, supplies, and transportation for the alternative route certification program in which the recipient is enrolled. The board may adjust the annual award by the average rate of tuition

and fee increases at the state community and technical colleges.

(c) The retooling to teach mathematics and science conditional scholarship program is limited to current K-12 teachers and individuals having an elementary education certificate but who are not employed in positions requiring an elementary education certificate as provided by RCW 28A.660.045. In order to receive conditional scholarship awards:

(i) Individuals currently employed as teachers shall pursue a middle level mathematics or science, or secondary mathematics or science endorsement; or

(ii) Individuals who are certificated with an elementary education endorsement, but not employed in positions requiring an elementary education certificate, shall pursue an endorsement in middle level mathematics or science, or both; and

(iii) Individuals shall use one of the pathways to endorsement processes to receive a mathematics or science endorsement, or both, which shall include passing a mathematics or science endorsement test, or both tests, plus observation and completing applicable coursework to attain the proper endorsement; and

(iv) Individuals shall receive no more than the annual amount of the scholarship, not to exceed three thousand dollars, for the cost of tuition, test fees, and educational expenses, including books, supplies, and transportation for the endorsement pathway being pursued.

(3) The Washington professional educator standards board shall select individuals to receive conditional scholarships. In selecting recipients, preference shall be given to eligible veterans or national guard members.

(4) For the purpose of this chapter, a conditional scholarship is a loan that is forgiven in whole or in part in exchange for service as a certificated teacher employed in a Washington state K-12 public school. The state shall forgive one year of loan obligation for every two years a recipient teaches in a public school. Recipients who fail to continue a course of study leading to residency teacher certification or cease to teach in a public school in the state of Washington in their endorsement area are required to repay the remaining loan principal with interest.

(5) Recipients who fail to fulfill the required teaching obligation are required to repay the remaining loan principal with interest and any other applicable fees. The higher education coordinating board shall adopt rules to define the terms for repayment, including applicable interest rates, fees, and deferments.

(6) The higher education coordinating board may deposit all appropriations, collections, and any other funds received for the program in this chapter in the future teachers conditional scholarship account authorized in RCW 28B.102.080. [2009 c 539 § 3; 2009 c 192 § 2; 2007 c 396 § 8; 2004 c 23 § 5; 2003 c 410 § 3; 2001 c 158 § 6.]

**Reviser's note:** This section was amended by 2009 c 192 § 2 and by 2009 c 539 § 3, 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—2009 c 539:** See note following RCW 28A.655.200.

**Captions not law—2007 c 396:** See note following RCW 28A.305.215.

**Finding—Intent—2007 c 396:** See note following RCW 28A.300.515.

**28A.660.055 Eligible veteran or national guard member—Definition.** As used in this chapter, "eligible veteran or national guard member" means a Washington domiciliary who was an active or reserve member of the United States military or naval forces, or a national guard member called to active duty, who served in active federal service, under either Title 10 or Title 32 of the United States Code, in a war or conflict fought on foreign soil or in international waters or in another location in support of those serving on foreign soil or in international waters, and if discharged from service, has received an honorable discharge. [2009 c 192 § 3.]

### Chapter 28A.705 RCW

## INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

### Sections

28A.705.010 Compact provisions.

28A.705.020 Review of implementation—Recommendation.

### 28A.705.010 Compact provisions.

#### ARTICLE I PURPOSE

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

A. Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school districts or variations in entrance and age requirements;

B. Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment;

C. Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities;

D. Facilitating the on-time graduation of children of military families;

E. Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact;

F. Providing for the uniform collection and sharing of information between and among member states, schools, and military families under this compact;

G. Promoting coordination between this compact and other compacts affecting military children; and

H. Promoting flexibility and cooperation between the educational system, parents, and the student in order to achieve educational success for the student.

#### ARTICLE II DEFINITIONS

As used in this compact, unless the context clearly requires a different construction:

A. "Active duty" means full-time duty status in the active uniformed service of the United States, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. Secs. 1209 and 1211.

B. "Children of military families" means school-aged children, enrolled in kindergarten through twelfth grade, in the household of an active duty member.

C. "Compact commissioner" means the voting representative of each compacting state appointed pursuant to Article VIII of this compact.

D. "Deployment" means the period one month prior to the service members' departure from their home station on military orders through six months after return to their home station.

E. "Education records" or "educational records" means those official records, files, and data directly related to a student and maintained by the school or local education agency, including but not limited to, records encompassing all the material kept in the student's cumulative folder such as general identifying data, records of attendance and of academic work completed, records of achievement and results of evaluative tests, health data, disciplinary status, test protocols, and individualized education programs.

F. "Extracurricular activities" means a voluntary activity sponsored by the school or local education agency or an organization sanctioned by the local education agency. Extracurricular activities include, but are not limited to, preparation for and involvement in public performances, contests, athletic competitions, demonstrations, displays, and club activities.

G. "Interstate commission on educational opportunity for military children" means the commission that is created under Article IX of this compact, which is generally referred to as the interstate commission.

H. "Local education agency" means a public authority legally constituted by the state as an administrative agency to provide control of and direction for kindergarten through twelfth grade public educational institutions.

I. "Member state" means a state that has enacted this compact.

J. "Military installation" means a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the United States department of defense, including any leased facility, which is located within any of the several states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. territory. Such term does not include any facility used primarily for civil works, rivers and harbors projects, or flood control projects.

K. "Nonmember state" means a state that has not enacted this compact.

L. "Receiving state" means the state to which a child of a military family is sent, brought, or caused to be sent or brought.

M. "Rule" means a written statement by the interstate commission promulgated pursuant to Article XII of this compact that is of general applicability, implements, interprets, or prescribes a policy or provision of the compact, or an organizational, procedural, or practice requirement of the interstate commission, and has the force and effect of statutory law in a

member state, and includes the amendment, repeal, or suspension of an existing rule.

N. "Sending state" means the state from which a child of a military family is sent, brought, or caused to be sent or brought.

O. "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Northern Marianas Islands, and any other U.S. territory.

P. "Student" means the child of a military family for whom the local education agency receives public funding and who is formally enrolled in kindergarten through twelfth grade.

Q. "Transition" means: (1) The formal and physical process of transferring from school to school; or (2) the period of time in which a student moves from one school in the sending state to another school in the receiving state.

R. "Uniformed services" means the army, navy, air force, marine corps, and coast guard, as well as the commissioned corps of the national oceanic and atmospheric administration, and public health services.

S. "Veteran" means a person who served in the uniformed services and who was discharged or released therefrom under conditions other than dishonorable.

#### ARTICLE III APPLICABILITY

A. Except as otherwise provided in section B of this article, this compact shall apply to the children of:

1. Active duty members of the uniformed services as defined in this compact, including members of the national guard and reserve on active duty orders pursuant to 10 U.S.C. Secs. 1209 and 1211;

2. Members or veterans of the uniformed services who are severely injured and medically discharged or retired for a period of one year after medical discharge or retirement; and

3. Members of the uniformed services who die on active duty or as a result of injuries sustained on active duty for a period of one year after death.

B. The provisions of this interstate compact shall only apply to local education agencies as defined in this compact.

C. The provisions of this compact shall not apply to the children of:

1. Inactive members of the national guard and military reserves;

2. Members of the uniformed services now retired, except as provided in section A of this article;

3. Veterans of the uniformed services, except as provided in section A of this article; and

4. Other U.S. department of defense personnel and other federal agency civilian and contract employees not defined as active duty members of the uniformed services.

#### ARTICLE IV EDUCATIONAL RECORDS AND ENROLLMENT

A. Unofficial or "hand-carried" education records – In the event that official education records cannot be released to the parents for the purpose of transfer, the custodian of the records in the sending state shall prepare and furnish to the parent a complete set of unofficial educational records containing uniform information as determined by the interstate

commission. Upon receipt of the unofficial education records by a school in the receiving state, the school shall enroll and appropriately place the student based on the information provided in the unofficial records pending validation by the official records, as quickly as possible.

B. Official education records and transcripts – Simultaneous with the enrollment and conditional placement of the student, the school in the receiving state shall request the student's official education record from the school in the sending state. Upon receipt of this request, the school in the sending state will process and furnish the official education records to the school in the receiving state within ten days or within such time as is reasonably determined under the rules promulgated by the interstate commission. However, if the student has an unpaid fine at a public school or unpaid tuition, fees, or fines at a private school, then the sending school shall send the information requested but may withhold the official transcript until the monetary obligation is met.

C. Immunizations – On or before the first day of attendance, the parent or guardian must meet the immunization documentation requirements of the Washington board of health. Compacting states shall give thirty days from the date of enrollment or within such time as is reasonably determined under the rules promulgated by the interstate commission, for students to obtain any immunizations required by the receiving state. For a series of immunizations, initial vaccinations must be obtained within thirty days or within such time as is reasonably determined under the rules promulgated by the interstate commission.

D. Kindergarten and first grade entrance age – Students shall be allowed to continue their enrollment at grade level in the receiving state commensurate with their grade level (including kindergarten) from a local education agency in the sending state at the time of transition, regardless of age. A student who has satisfactorily completed the prerequisite grade level in the local education agency in the sending state shall be eligible for enrollment in the next highest grade level in the receiving state, regardless of age. A student transferring after the start of the school year in the receiving state shall enter the school in the receiving state on his or her validated level from an accredited school in the sending state.

#### ARTICLE V PLACEMENT AND ATTENDANCE

A. Course placement - When the student transfers before or during the school year, the receiving state school shall initially honor placement of the student in educational courses based on the student's enrollment in the sending state school and/or educational assessments conducted at the school in the sending state if the courses are offered and if space is available, as determined by the school district. Course placement includes but is not limited to honors, international baccalaureate, advanced placement, vocational, technical, and career pathways courses. Continuing the student's academic program from the previous school and promoting placement in academically and career challenging courses should be paramount when considering placement. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement and continued enrollment of the student in the courses.

B. Educational program placement – The receiving state school shall initially honor placement of the student in educational programs based on current educational assessments conducted at the school in the sending state or participation and placement in like programs in the sending state and if space is available, as determined by the school district. Such programs include, but are not limited to: (1) Gifted and talented programs; and (2) English as a second language (ESL). This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

C. Special education services – (1) In compliance with the federal requirements of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. Sec. 1400 et seq., the receiving state shall initially provide comparable services to a student with disabilities based on his or her current Individualized Education Program (IEP); and (2) in compliance with the requirements of section 504 of the rehabilitation act, 29 U.S.C. Sec. 794, and with Title II of the Americans with disabilities act, 42 U.S.C. Secs. 12131-12165, the receiving state shall make reasonable accommodations and modifications to address the needs of incoming students with disabilities, subject to an existing 504 or Title II plan, to provide the student with equal access to education. This does not preclude the school in the receiving state from performing subsequent evaluations to ensure appropriate placement of the student.

D. Placement flexibility – Local education agency administrative officials shall have flexibility in waiving course and program prerequisites, or other preconditions for placement in courses and programs offered under the jurisdiction of the local education agency.

E. Absence as related to deployment activities – A student whose parent or legal guardian is an active duty member of the uniformed services, as defined by this compact, and has been called to duty for, is on leave from, or immediately returned from deployment to a combat zone or combat support posting, shall be granted additional excused absences at the discretion of the local education agency superintendent to visit with his or her parent or legal guardian relative to such leave or deployment of the parent or guardian.

#### ARTICLE VI ELIGIBILITY

##### A. Eligibility for enrollment

1. Special power of attorney, relative to the guardianship of a child of a military family and executed under applicable law shall be sufficient for the purposes of enrollment and all other actions requiring parental participation and consent.

2. A local education agency shall be prohibited from charging local tuition to a transitioning military child placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent.

3. A transitioning military child, placed in the care of a noncustodial parent or other person standing in loco parentis who lives in a jurisdiction other than that of the custodial parent, may continue to attend the school in which he or she was enrolled while residing with the custodial parent.

B. Eligibility for extracurricular participation - Under RCW 28A.225.280, the Washington interscholastic activities association and local education agencies shall facilitate the

opportunity for transitioning military children's inclusion in extracurricular activities, regardless of application deadlines, to the extent they are otherwise qualified and space is available, as determined by the school district.

#### ARTICLE VII GRADUATION

In order to facilitate the on-time graduation of children of military families, states and local education agencies shall incorporate the following procedures:

A. Waiver requirements – Local education agency administrative officials shall waive specific courses required for graduation if similar coursework has been satisfactorily completed in another local education agency or shall provide reasonable justification for denial. Should a waiver not be granted to a student who would qualify to graduate from the sending school, the local education agency shall use best efforts to provide an alternative means of acquiring required coursework so that graduation may occur on time.

B. Exit exams - For students entering high school in eleventh or twelfth grade, states shall accept: (1) Exit or end-of-course exams required for graduation from the sending state; or (2) national norm-referenced achievement tests; or (3) alternative testing, in lieu of testing requirements for graduation in the receiving state. In the event the above alternatives cannot be accommodated by the receiving state for a student transferring in his or her senior year, then the provisions of section C of this article shall apply.

C. Transfers during senior year – Should a military student transferring at the beginning or during his or her senior year be ineligible to graduate from the receiving local education agency after all alternatives have been considered, the sending and receiving local education agencies shall ensure the receipt of a diploma from the sending local education agency, if the student meets the graduation requirements of the sending local education agency. In the event that one of the states in question is not a member of this compact, the member state shall use best efforts to facilitate the on-time graduation of the student in accordance with sections A and B of this article.

#### ARTICLE VIII STATE COORDINATION

A. Each member state shall, through the creation of a state council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies, and military installations concerning the state's participation in, and compliance with, this compact and interstate commission activities. While each member state may determine the membership of its own state council, its membership must include at least: The state superintendent of public instruction, a superintendent of a school district with a high concentration of military children, a representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the state council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the state council.

B. The state council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

C. The compact commissioner responsible for the administration and management of the state's participation in the compact shall be appointed by the governor or as otherwise determined by each member state. The governor is strongly encouraged to appoint a practicing K-12 educator as the compact commissioner.

D. The compact commissioner and the military family education liaison designated herein shall be ex officio members of the state council, unless either is already a full voting member of the state council.

#### ARTICLE IX INTERSTATE COMMISSION ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

The member states hereby create the "interstate commission on educational opportunity for military children." The activities of the interstate commission are the formation of public policy and are a discretionary state function. The interstate commission shall:

A. Be a body corporate and joint agency of the member states and shall have all the responsibilities, powers, and duties set forth herein, and such additional powers as may be conferred upon it by a subsequent concurrent action of the respective legislatures of the member states in accordance with the terms of this compact;

B. Consist of one interstate commission voting representative from each member state who shall be that state's compact commissioner.

1. Each member state represented at a meeting of the interstate commission is entitled to one vote.

2. A majority of the total member states shall constitute a quorum for the transaction of business, unless a larger quorum is required by the bylaws of the interstate commission.

3. A representative shall not delegate a vote to another member state. In the event the compact commissioner is unable to attend a meeting of the interstate commission, the governor or state council may delegate voting authority to another person from their state for a specified meeting.

4. The bylaws may provide for meetings of the interstate commission to be conducted by telecommunication or electronic communication;

C. Consist of ex officio, nonvoting representatives who are members of interested organizations. Such ex officio members, as defined in the bylaws, may include but not be limited to, members of the representative organizations of military family advocates, local education agency officials, parent and teacher groups, the U.S. department of defense, the education commission of the states, the interstate agreement on the qualification of educational personnel, and other interstate compacts affecting the education of children of military members;

D. Meet at least once each calendar year. The chairperson may call additional meetings and, upon the request of a simple majority of the member states, shall call additional meetings;

E. Establish an executive committee, whose members shall include the officers of the interstate commission and

such other members of the interstate commission as determined by the bylaws. Members of the executive committee shall serve a one-year term. Members of the executive committee shall be entitled to one vote each. The executive committee shall have the power to act on behalf of the interstate commission, with the exception of rule making, during periods when the interstate commission is not in session. The executive committee shall oversee the day-to-day activities of the administration of the compact including enforcement and compliance with the provisions of the compact, its bylaws and rules, and other such duties as deemed necessary. The U.S. department of defense shall serve as an ex officio, nonvoting member of the executive committee;

F. Establish bylaws and rules that provide for conditions and procedures under which the interstate commission shall make its information and official records available to the public for inspection or copying. The interstate commission may exempt from disclosure information or official records to the extent they would adversely affect personal privacy rights or proprietary interests;

G. Give public notice of all meetings and all meetings shall be open to the public, except as set forth in the rules or as otherwise provided in the compact. The interstate commission and its committees may close a meeting, or portion thereof, where it determines by two-thirds vote that an open meeting would be likely to:

1. Relate solely to the interstate commission's internal personnel practices and procedures;

2. Disclose matters specifically exempted from disclosure by federal and state statute;

3. Disclose trade secrets or commercial or financial information which is privileged or confidential;

4. Involve accusing a person of a crime, or formally censuring a person;

5. Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

6. Disclose investigative records compiled for law enforcement purposes; or

7. Specifically relate to the interstate commission's participation in a civil action or other legal proceeding;

H. Cause its legal counsel or designee to certify that a meeting may be closed and shall reference each relevant exemptible provision for any meeting, or portion of a meeting, which is closed pursuant to this provision. The interstate commission shall keep minutes which shall fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, and the reasons therefor, including a description of the views expressed and the record of a roll call vote. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the interstate commission;

I. Collect standardized data concerning the educational transition of the children of military families under this compact as directed through its rules which shall specify the data to be collected, the means of collection, and data exchange and reporting requirements. Such methods of data collection, exchange, and reporting shall, in so far as is reasonably possible, conform to current technology and coordinate its infor-



mation functions with the appropriate custodian of records as identified in the bylaws and rules;

J. Create a process that permits military officials, education officials, and parents to inform the interstate commission if and when there are alleged violations of the compact or its rules or when issues subject to the jurisdiction of the compact or its rules are not addressed by the state or local education agency. This section shall not be construed to create a private right of action against the interstate commission or any member state.

#### ARTICLE X POWERS AND DUTIES OF THE INTERSTATE COMMISSION

The interstate commission shall have the following powers:

A. To provide for dispute resolution among member states;

B. To promulgate rules and take all necessary actions to effect the goals, purposes, and obligations as enumerated in this compact. The rules shall have the force and effect of statutory law and shall be binding in the compact states to the extent and in the manner provided in this compact;

C. To issue, upon request of a member state, advisory opinions concerning the meaning or interpretation of the interstate compact, its bylaws, rules, and actions;

D. To enforce compliance with the compact provisions, the rules promulgated by the interstate commission, and the bylaws, using all necessary and proper means, including but not limited to the use of judicial process;

E. To establish and maintain offices which shall be located within one or more of the member states;

F. To purchase and maintain insurance and bonds;

G. To borrow, accept, hire, or contract for services of personnel;

H. To establish and appoint committees including, but not limited to, an executive committee as required by Article IX, section E of this compact, which shall have the power to act on behalf of the interstate commission in carrying out its powers and duties hereunder;

I. To elect or appoint such officers, attorneys, employees, agents, or consultants, and to fix their compensation, define their duties, and determine their qualifications; and to establish the interstate commission's personnel policies and programs relating to conflicts of interest, rates of compensation, and qualifications of personnel;

J. To accept any and all donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of it;

K. To lease, purchase, accept contributions or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed;

L. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;

M. To establish a budget and make expenditures;

N. To adopt a seal and bylaws governing the management and operation of the interstate commission;

O. To report annually to the legislatures, governors, judiciary, and state councils of the member states concerning the activities of the interstate commission during the preced-

ing year. Such reports shall also include any recommendations that may have been adopted by the interstate commission;

P. To coordinate education, training, and public awareness regarding the compact, its implementation, and operation for officials and parents involved in such activity;

Q. To establish uniform standards for the reporting, collecting, and exchanging of data;

R. To maintain corporate books and records in accordance with the bylaws;

S. To perform such functions as may be necessary or appropriate to achieve the purposes of this compact; and

T. To provide for the uniform collection and sharing of information between and among member states, schools, and military families under this compact.

#### ARTICLE XI ORGANIZATION AND OPERATION OF THE INTERSTATE COMMISSION

A. The interstate commission shall, by a majority of the members present and voting, within twelve months after the first interstate commission meeting, adopt bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes of the compact, including, but not limited to:

1. Establishing the fiscal year of the interstate commission;

2. Establishing an executive committee, and such other committees as may be necessary;

3. Providing for the establishment of committees and for governing any general or specific delegation of authority or function of the interstate commission;

4. Providing reasonable procedures for calling and conducting meetings of the interstate commission, and ensuring reasonable notice of each such meeting;

5. Establishing the titles and responsibilities of the officers and staff of the interstate commission;

6. Providing a mechanism for concluding the operations of the interstate commission and the return of surplus funds that may exist upon the termination of the compact after the payment and reserving of all of its debts and obligations; and

7. Providing "start up" rules for initial administration of the compact.

B. The interstate commission shall, by a majority of the members, elect annually from among its members a chairperson, a vice-chairperson, and a treasurer, each of whom shall have such authority and duties as may be specified in the bylaws. The chairperson or, in the chairperson's absence or disability, the vice-chairperson, shall preside at all meetings of the interstate commission. The officers so elected shall serve without compensation or remuneration from the interstate commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for ordinary and necessary costs and expenses incurred by them in the performance of their responsibilities as officers of the interstate commission.

C. Executive committee, officers, and personnel

1. The executive committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

a. Managing the affairs of the interstate commission in a manner consistent with the bylaws and purposes of the interstate commission;

b. Overseeing an organizational structure within, and appropriate procedures for the interstate commission to provide for the creation of rules, operating procedures, and administrative and technical support functions; and

c. Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the interstate commission.

2. The executive committee may, subject to the approval of the interstate commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation, as the interstate commission may deem appropriate. The executive director shall serve as secretary to the interstate commission, but shall not be a member of the interstate commission. The executive director shall hire and supervise such other persons as may be authorized by the interstate commission.

D. The interstate commission's executive director and its employees shall be immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused or arising out of or relating to an actual or alleged act, error, or omission that occurred, or that such person had a reasonable basis for believing occurred, within the scope of interstate commission employment, duties, or responsibilities; provided, that such person shall not be protected from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

1. The liability of the interstate commission's executive director and employees or interstate commission representatives, acting within the scope of such person's employment or duties for acts, errors, or omissions occurring within such person's state may not exceed the limits of liability set forth under the Constitution and laws of that state for state officials, employees, and agents. The interstate commission is considered to be an instrumentality of the states for the purposes of any such action. Nothing in this subsection shall be construed to protect such person from suit or liability for damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of such person.

2. The interstate commission shall defend the executive director and its employees and, subject to the approval of the attorney general or other appropriate legal counsel of the member state represented by an interstate commission representative, shall defend such interstate commission representative in any civil action seeking to impose liability arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such person.

3. To the extent not covered by the state involved, member state, or the interstate commission, the representatives or employees of the interstate commission shall be held harm-

less in the amount of a settlement or judgment, including attorneys' fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of interstate commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of interstate commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willful and wanton misconduct on the part of such persons.

## ARTICLE XII

### RULE-MAKING FUNCTIONS OF THE INTERSTATE COMMISSION

A. Rule-making authority - The interstate commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the interstate commission exercises its rule-making authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, then such an action by the interstate commission shall be invalid and have no force or effect.

B. Rule-making procedure - Rules shall be made pursuant to a rule-making process that substantially conforms to the "model state administrative procedure act," of 1981, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the interstate commission.

C. Not later than thirty days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the interstate commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the interstate commission's authority.

D. If a majority of the legislatures of the compacting states rejects a rule by enactment of a statute or resolution in the same manner used to adopt the compact, then such rule shall have no further force and effect in any compacting state.

## ARTICLE XIII

### OVERSIGHT, ENFORCEMENT, AND DISPUTE RESOLUTION

#### A. Oversight

1. The executive, legislative, and judicial branches of state government in each member state shall enforce this compact and shall take all actions necessary and appropriate to effectuate the compact's purposes and intent. The provisions of this compact and the rules promulgated hereunder shall have standing as statutory law.

2. All courts shall take judicial notice of the compact and the rules in any judicial or administrative proceeding in a member state pertaining to the subject matter of this compact which may affect the powers, responsibilities, or actions of the interstate commission.

3. The interstate commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the proceeding for all purposes. Failure to provide service of process to the interstate commission

shall render a judgment or order void as to the interstate commission, this compact, or promulgated rules.

B. Default, technical assistance, suspension, and termination - If the interstate commission determines that a member state has defaulted in the performance of its obligations or responsibilities under this compact, or the bylaws or promulgated rules, the interstate commission shall:

1. Provide written notice to the defaulting state and other member states of the nature of the default, the means of curing the default, and any action taken by the interstate commission. The interstate commission shall specify the conditions by which the defaulting state must cure its default;

2. Provide remedial training and specific technical assistance regarding the default;

3. If the defaulting state fails to cure the default, the defaulting state shall be terminated from the compact upon an affirmative vote of a majority of the member states and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of the default;

4. Suspension or termination of membership in the compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the interstate commission to the governor, the majority and minority leaders of the defaulting state's legislature, and each of the member states;

5. The state which has been suspended or terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of suspension or termination including obligations the performance of which extends beyond the effective date of suspension or termination;

6. The interstate commission shall not bear any costs relating to any state that has been found to be in default or which has been suspended or terminated from the compact, unless otherwise mutually agreed upon in writing between the interstate commission and the defaulting state;

7. The defaulting state may appeal the action of the interstate commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the interstate commission has its principal offices. The prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

#### C. Dispute Resolution

1. The interstate commission shall attempt, upon the request of a member state, to resolve disputes which are subject to the compact and which may arise among member states and between member and nonmember states.

2. The interstate commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

#### D. Enforcement

1. The interstate commission, in the reasonable exercise of its discretion, shall enforce the provisions and rules of this compact.

2. The interstate commission, may by majority vote of the members, initiate legal action in the United State[s] District Court for the District of Columbia or, at the discretion of the interstate commission, in the federal district where the interstate commission has its principal offices, to enforce compliance with the provisions of the compact, and its pro-

mulgated rules and bylaws, against a member state in default. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary the prevailing party shall be awarded all costs of such litigation including reasonable attorneys' fees.

3. The remedies herein shall not be the exclusive remedies of the interstate commission. The interstate commission may avail itself of any other remedies available under state law or the regulation of a profession.

## ARTICLE XIV

### FINANCING OF THE INTERSTATE COMMISSION

A. The interstate commission shall pay, or provide for the payment of the reasonable expenses of its establishment, organization, and ongoing activities.

B. The interstate commission may levy on and collect an annual assessment from each member state to cover the cost of the operations and activities of the interstate commission and its staff which must be in a total amount sufficient to cover the interstate commission's annual budget as approved each year. The aggregate annual assessment amount shall be allocated based upon a formula to be determined by the interstate commission, which shall promulgate a rule binding upon all member states.

C. The interstate commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the interstate commission pledge the credit of any of the member states, except by and with the authority of the member state.

D. The interstate commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the interstate commission shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the interstate commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become part of the annual report of the interstate commission.

## ARTICLE XV

### MEMBER STATES, EFFECTIVE DATE, AND AMENDMENT

A. Any state is eligible to become a member state.

B. The compact shall become effective and binding upon legislative enactment of the compact into law by no less than ten of the states. The effective date shall be no earlier than December 1, 2007.

Thereafter it shall become effective and binding as to any other member state upon enactment of the compact into law by that state. The governors of nonmember states or their designees shall be invited to participate in the activities of the interstate commission on a nonvoting basis prior to adoption of the compact by all states.

C. The interstate commission may propose amendments to the compact for enactment by the member states. No amendment shall become effective and binding upon the interstate commission and the member states unless and until it is enacted into law by unanimous consent of the member states.

ARTICLE XVI  
WITHDRAWAL AND DISSOLUTION

A. Withdrawal

1. Once effective, the compact shall continue in force and remain binding upon each and every member state; provided that a member state may withdraw from the compact by specifically repealing the statute, which enacted the compact into law.

2. Withdrawal from this compact shall be by the enactment of a statute repealing the same, but shall not take effect until one year after the effective date of such statute and until written notice of the withdrawal has been given by the withdrawing state to the governor of each other member jurisdiction.

3. The withdrawing state shall immediately notify the chairperson of the interstate commission in writing upon the introduction of legislation repealing this compact in the withdrawing state. The interstate commission shall notify the other member states of the withdrawing state's intent to withdraw within sixty days of its receipt thereof.

4. The withdrawing state is responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extend beyond the effective date of withdrawal.

5. Reinstatement following withdrawal of a member state shall occur upon the withdrawing state reenacting the compact or upon such later date as determined by the interstate commission.

B. Dissolution of compact

1. This compact shall dissolve effective upon the date of the withdrawal or default of the member state which reduces the membership in the compact to one member state.

2. Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the interstate commission shall be concluded and surplus funds shall be distributed in accordance with the bylaws.

ARTICLE XVII  
SEVERABILITY AND CONSTRUCTION

A. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

B. The provisions of this compact shall be liberally construed to effectuate its purposes.

C. Nothing in this compact shall be construed to prohibit the applicability of other interstate compacts to which the states are members.

ARTICLE XVIII  
BINDING EFFECT OF COMPACT AND OTHER LAWS

A. Other laws

1. Nothing herein prevents the enforcement of any other law of a member state that is not inconsistent with this compact.

2. All member states' laws conflicting with this compact are superseded to the extent of the conflict.

B. Binding effect of the compact

1. All lawful actions of the interstate commission, including all rules and bylaws promulgated by the interstate commission, are binding upon the member states.

2. All agreements between the interstate commission and the member states are binding in accordance with their terms.

3. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of any member state, such provision shall be ineffective to the extent of the conflict with the constitutional provision in question in that member state. [2009 c 380 § 1.]

**28A.705.020 Review of implementation—Recommendation.** By December 1, 2014, the state council, created in accordance with RCW 28A.705.010, shall conduct a review of the implementation of the interstate compact on educational opportunity for military children and recommend to the state legislature whether Washington should continue to be a member of the compact and whether any other actions should be taken. [2009 c 380 § 9.]

**Title 28B  
HIGHER EDUCATION**

**Chapters**

- 28B.04** Displaced homemaker act.
- 28B.10** Colleges and universities generally.
- 28B.12** State work-study program.
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**Chapter 28B.04 RCW  
DISPLACED HOMEMAKER ACT**

Sections

28B.04.085 Repealed.

**28B.04.085 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 28B.10 RCW

## COLLEGES AND UNIVERSITIES GENERALLY

## Sections

- 28B.10.115 Major lines common to University of Washington and Washington State University.
- 28B.10.350 Construction work, remodeling, or demolition—Public bid—Exemption—Waiver—Prevailing rate of wage—Universities and The Evergreen State College.
- 28B.10.590 Course materials—Cost savings.
- 28B.10.660 Insurance or protection—Premiums—Health benefits for graduate student appointees—Students participating in studies or research outside the United States.
- 28B.10.923 Online learning technologies—Common learning management system for institutions of higher education.
- 28B.10.980 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

*College in the high school program—Rules: RCW 28A.600.290.*

*Dual credit programs—Annual report: RCW 28A.600.280.*

**28B.10.115 Major lines common to University of Washington and Washington State University.**

The courses of instruction of both the University of Washington and Washington State University shall embrace as major lines, pharmacy, architecture, and forest management as distinguished from forest products and logging engineering which are exclusive to the University of Washington. These major lines shall be offered and taught at said institutions only. [2009 c 207 § 1; 2003 c 82 § 1; 1985 c 218 § 1; 1969 ex.s. c 223 § 28B.10.115. Prior: 1963 c 23 § 2; 1961 c 71 § 2; prior: (i) 1917 c 10 § 8; RRS § 4539. (ii) 1917 c 10 § 4; RRS § 4535. Formerly RCW 28.76.080.]

**28B.10.350 Construction work, remodeling, or demolition—Public bid—Exemption—Waiver—Prevailing rate of wage—Universities and The Evergreen State College.**

(1) When the cost to The Evergreen State College or any regional or state university of any building, construction, renovation, remodeling, or demolition, other than maintenance or repairs, will equal or exceed the sum of ninety thousand dollars, or forty-five thousand dollars if the work involves one trade or craft area, complete plans and specifications for the work shall be prepared, the work shall be put out for public bid, and the contract shall be awarded to the responsible bidder who submits the lowest responsive bid.

(2) Any building, construction, renovation, remodeling, or demolition project that exceeds the dollar amounts in subsection (1) of this section is subject to the provisions of chapter 39.12 RCW.

(3) The Evergreen State College or any regional or state university may require a project to be put to public bid even when it is not required to do so under subsection (1) of this section. Any project publicly bid under this subsection is subject to the provisions of chapter 39.12 RCW.

(4) Where the estimated cost of any building, construction, renovation, remodeling, or demolition is less than ninety thousand dollars or the contract is awarded by the small works roster procedure authorized in RCW 39.04.155, the publication requirements of RCW 39.04.020 do not apply.

(5) In the event of any emergency when the public interest or property of The Evergreen State College or a regional or state university would suffer material injury or damage by delay, the president of such college or university may declare

the existence of an emergency and, reciting the facts constituting the same, may waive the requirements of this section with reference to any contract in order to correct the condition causing the emergency. For the purposes of this section, "emergency" means a condition likely to result in immediate physical injury to persons or to property of the college or university in the absence of prompt remedial action or a condition which immediately impairs the institution's ability to perform its educational obligations.

(6) This section does not apply when a contract is awarded by the small works roster procedure authorized in RCW 39.04.155 or under any other procedure authorized for an institution of higher education. [2009 c 229 § 2; 2007 c 495 § 1; 2001 c 38 § 1; 2000 c 138 § 202; 1993 c 379 § 109; 1985 c 152 § 1; 1979 ex.s. c 12 § 1; 1977 ex.s. c 169 § 14; 1971 ex.s. c 258 § 1.]

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

**Intent—Severability—Effective date—1993 c 379:** See notes following RCW 28B.10.029.

**Severability—1979 ex.s. c 12:** "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 ex.s. c 12 § 3.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**Severability—1971 ex.s. c 258:** "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 258 § 3.]

*Subcontractors to be identified by bidder, when: RCW 39.30.060.*

**28B.10.590 Course materials—Cost savings.** (1) The boards of regents of the state universities, the boards of trustees of the regional universities and The Evergreen State College, and the boards of trustees of each community and technical college district, in collaboration with affiliated bookstores and student and faculty representatives, shall adopt rules requiring that:

(a) Affiliated bookstores:

(i) Provide students the option of purchasing materials that are unbundled when possible, disclose to faculty and staff the costs to students of purchasing materials, and disclose publicly how new editions vary from previous editions;

(ii) Actively promote and publicize book buy-back programs;

(iii) Disclose retail costs for course materials on a per course basis to faculty and staff and make this information publicly available; and

(iv) Disclose information to students on required course materials including but not limited to title, authors, edition, price, and International Standard Book Number (ISBN) at least four weeks before the start of the class for which the materials are required. The chief academic officer may waive the disclosure requirement provided in this subsection (1)(a)(iv), on a case-by-case basis, if students may reasonably expect that nearly all information regarding course materials is available four weeks before the start of the class for which the materials are required. The requirement provided in this subsection (1)(a)(iv) does not apply if the faculty member using the course materials is hired four weeks or less before the start of class; and

(b) Faculty and staff members consider the least costly practices in assigning course materials, such as adopting the least expensive edition available, adopting free, open textbooks when available, and working with college librarians to put together collections of free online web and library resources, when educational content is comparable as determined by the faculty.

(2) As used in this section:

(a) "Materials" means any supplies or texts required or recommended by faculty or staff for a given course.

(b) "Bundled" means a group of objects joined together by packaging or required to be purchased as an indivisible unit. [2009 c 241 § 1; 2007 c 457 § 1; 2006 c 81 § 2.]

**Findings—Intent—2006 c 81:** "The legislature finds that:

(1) Often the bundling of texts, workbooks, CD-ROMs, and other course related materials is unnecessary since many students do not use all of the materials included and may realize cost savings if materials are also offered independently one from the other; and

(2) Many faculty and staff select materials uninformed of the retail costs and differences between versions.

It is the intent of the legislature to give students more choices for purchasing educational materials and to encourage faculty and staff to work closely with bookstores and publishers to implement the least costly option without sacrificing educational content and to provide maximum cost savings to students." [2006 c 81 § 1.]

**28B.10.660 Insurance or protection—Premiums—Health benefits for graduate student appointees—Students participating in studies or research outside the United States.** (1) The governing boards of any of the state's institutions of higher education may make available liability, life, health, health care, accident, disability and salary protection or insurance or any one of, or a combination of, the enumerated types of insurance, or any other type of insurance or protection, for the regents or trustees and students of the institution. Except as provided in subsections (2) and (3) of this section, the premiums due on such protection or insurance shall be borne by the assenting regents, trustees, or students. The regents or trustees of any of the state institutions of higher education may make liability insurance available for employees of the institutions. The premiums due on such liability insurance shall be borne by the university or college.

(2) A governing board of a public four-year institution of higher education may make available, and pay the costs of, health benefits for graduate students holding graduate service appointments, designated as such by the institution. Such health benefits may provide coverage for spouses and dependents of such graduate student appointees.

(3) A governing board of a state institution of higher education may require its students who participate in studies or research outside of the United States sponsored, arranged, or approved by the institution to purchase, as a condition of participation, insurance approved by the governing board, that will provide coverage for expenses arising from emergency evacuation, repatriation of remains, injury, illness, or death sustained while participating in the study or research abroad. The governing board of the institution may bear all or part of the costs of the insurance. A student shall not be required to purchase insurance if the student is covered under an insurance policy that will provide coverage for expenses arising from emergency evacuation, repatriation of remains, injury, illness, or death sustained while participating in the study or research abroad. [2009 c 297 § 1; 1993 sp.s. c 9 § 1;

1979 ex.s. c 88 § 1. Prior: 1973 1st ex.s. c 147 § 4; 1973 1st ex.s. c 9 § 2; 1971 ex.s. c 269 § 3; 1969 ex.s. c 237 § 4; 1969 ex.s. c 223 § 28B.10.660; prior: 1967 c 135 § 2, part; 1959 c 187 § 1, part. Formerly RCW 28.76.410, part.]

**Effective date—Effect of veto—Savings—Severability—1973 1st ex.s. c 147:** See notes following RCW 41.05.050.

**Severability—1971 ex.s. c 269:** See note following RCW 28A.400.350.

**28B.10.923 Online learning technologies—Common learning management system for institutions of higher education.** All institutions of higher education are encouraged to use common online learning technologies including, but not limited to, existing learning management and web conferencing systems currently managed and governed by the state board for community and technical colleges; and share professional development materials and activities related to effective use of these tools. The state board for community and technical colleges may adjust existing vendor licenses to accommodate and provide enterprise services for any interested institutions of higher education. The common learning management system shall be designed in a way that allows for easy sharing of courses, learning objects, and other digital content among the institutions of higher education. Institutions of higher education may begin migration to these common systems immediately. The state board for community and technical colleges shall convene representatives from each four-year institution of higher education to develop a shared fee structure. [2009 c 407 § 2.]

**Intent—2009 c 407:** "The legislature recognizes that the state must educate more people to higher levels to adapt to the economic and social needs of the future. While our public colleges and universities have realized great success in helping students achieve their dreams, the legislature also recognizes that much more must be done to prepare current and future students for a twenty-first century economy. To raise the levels of skills and knowledge needed to sustain the state's economic prosperity and competitive position in a global environment, the public higher education system must reach out to every prospective student and citizen in unprecedented ways, with unprecedented focus.

To reach out to these citizens, the state must dismantle the barriers of geographic isolation, cost, and competing demands of work and family life. The state must create a more nimble system of learning that is student-centric, more welcoming of nontraditional and underserved students, easier to access and use, and more tailored to today's student needs and expectations.

Technology can play a key role in helping achieve this systemic goal. While only a decade ago access to personal computers was widely viewed a luxury, today computers, digital media, electronic information, and content have changed the nature of how students learn and instructors teach. This presents a vast, borderless opportunity to extend the reach and impact of the state's public educational institutions and educate more people to higher levels.

Each higher education institution and workforce program serves a unique group of students and as such, has customized its own technology solutions to meet its emerging needs. While local solutions may have served institutions of higher education in the past, paying for and operating multiple technology solutions, platforms, systems, models, agreements, and operational functionality for common applications and support services no longer serves students or the state.

Today's students access education differently. Rather than enrolling in one institution of higher education, staying two to four years and graduating, today's learners prefer a cafeteria approach; they often enroll in and move among multiple institutions - sometimes simultaneously. Rather than sitting in lecture halls taking notes, they may listen to podcasts of a lecture while grocery shopping or hold a virtual study group with classmates on a video chat room. They may prefer hybrid courses where part of their time is spent in the classroom and part is spent online. They prefer online access for commodity administrative services such as financial aid, admissions, transcript services, and more.

Institutions of higher education not only must rethink teaching and

learning in a digital-networked world, but also must tailor their administrative and student services technologies to serve the mobile student who requires dynamic, customized information online and in real time. Because these relationships are changing so fast and so fundamentally, it is incumbent on the higher education system to transform its practices just as profoundly.

Therefore, the legislature intends to both study and implement its findings regarding how the state's public institutions of higher education can share core resources in instructional, including library, resources, student services, and administrative information technology resources, user help desk services, faculty professional development, and more. The study will examine how public institutions of higher education can pursue a strategy of implementing single, shared, statewide commonly needed standards-based software, web hosting and support service solutions that are cost-effective, easily integrated, user-friendly, flexible, and constantly improving. The full range of applications that serve students, faculty, and administration shall be included. Expensive, proprietary, nonstandards-based customized applications, databases and services, and other resources that do not allow for the transparent sharing of information across institutions, agencies, and educational levels, including K-12, are inconsistent with the state's objective of educating more people to higher levels." [2009 c 407 § 1.]

**28B.10.980 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 73.]

## Chapter 28B.12 RCW

### STATE WORK-STUDY PROGRAM

#### Sections

- 28B.12.040 Board to develop and administer program—Agreements authorized, limitation.  
 28B.12.055 Work-study opportunity grant for high-demand occupations.  
 28B.12.060 Rules—Mandatory provisions.

**28B.12.040 Board to develop and administer program—Agreements authorized, limitation.** The higher education coordinating board shall develop and administer the state work-study program. The board shall be authorized to enter into agreements with employers and eligible institutions for the operation of the program. These agreements shall include such provisions as the higher education coordinating board may deem necessary or appropriate to carry out the purposes of this chapter.

With the exception of off-campus community service placements, the share from moneys disbursed under the state work-study program of the compensation of students employed under such program in accordance with such agreements shall not exceed eighty percent of the total such compensation paid such students.

By rule, the board shall define community service placements and may determine any salary matching requirements for any community service employers. [2009 c 560 § 21; 1994 c 130 § 4; 1993 c 385 § 3; 1985 c 370 § 58; 1974 ex.s. c 177 § 4.]

**Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560:** See notes following RCW 18.06.080.

**Severability—1974 ex.s. c 177:** See note following RCW 28B.12.010.

**Purpose—1974 ex.s. c 177:** See RCW 28B.12.020.

**28B.12.055 Work-study opportunity grant for high-demand occupations.** (1) Within existing resources, the higher education coordinating board shall establish the work-study opportunity grant for high-demand occupations, a competitive grant program to encourage job placements in high-demand fields. The board shall award grants to eligible institutions of higher education that have developed a partnership with a proximate organization willing to host work-study placements. Partner organizations may be nonprofit organizations, for-profit firms, or public agencies. Eligible institutions of higher education must verify that all job placements will last for a minimum of one academic quarter or one academic semester, depending on the system used by the eligible institution of higher education.

(2) The board may adopt rules to identify high-demand fields for purposes of this section. The legislature recognizes that the high-demand fields identified by the board may differ in different regions of the state.

(3) The board may award grants to eligible institutions of higher education that cover both student wages and program administration.

(4) The board shall develop performance benchmarks regarding program success including, but not limited to, the number of students served, the amount of employer contributions, and the number of participating high-demand employers. [2009 c 215 § 12.]

**Findings—Intent—Effective date—2009 c 215:** See notes following RCW 28B.92.030.

**28B.12.060 Rules—Mandatory provisions.** The higher education coordinating board shall adopt rules as may be necessary or appropriate for effecting the provisions of this chapter, and not in conflict with this chapter, in accordance with the provisions of chapter 34.05 RCW, the state higher education administrative procedure act. Such rules shall include provisions designed to make employment under the work-study program reasonably available, to the extent of available funds, to all eligible needy students in eligible post-secondary institutions. The rules shall include:

(1) Providing work under the state work-study program that will not result in the displacement of employed workers or impair existing contracts for services;

(2) Furnishing work only to a student who:

(a) Is capable, in the opinion of the eligible institution, of maintaining good standing in such course of study while employed under the program covered by the agreement; and

(b) Has been accepted for enrollment as at least a half-time student at the eligible institution or, in the case of a student already enrolled in and attending the eligible institution, is in good standing and in at least half-time attendance there

either as an undergraduate, graduate or professional student; and

(c) Is not pursuing a degree in theology;

(3) Placing priority on providing:

(a) Work opportunities for students who are residents of the state of Washington as defined in RCW 28B.15.012 and 28B.15.013, particularly former foster youth as defined in RCW 28B.92.060;

(b) Job placements in fields related to each student's academic or vocational pursuits, with an emphasis on off-campus job placements whenever appropriate; and

(c) Off-campus community service placements;

(4) To the extent practicable, limiting the proportion of state subsidy expended upon nonresident students to fifteen percent, or such less amount as specified in the biennial appropriations act;

(5) Provisions to assure that in the state institutions of higher education, utilization of this work-study program:

(a) Shall only supplement and not supplant classified positions under jurisdiction of chapter 41.06 RCW;

(b) That all positions established which are comparable shall be identified to a job classification under the director of personnel's classification plan and shall receive equal compensation;

(c) Shall not take place in any manner that would replace classified positions reduced due to lack of funds or work; and

(d) That work study positions shall only be established at entry level positions of the classified service unless the overall scope and responsibilities of the position indicate a higher level; and

(6) Provisions to encourage job placements in high employer demand occupations that meet Washington's economic development goals, including those in international trade and international relations. The board shall permit appropriate job placements in other states and other countries. [2009 c 172 § 1; 2005 c 93 § 4; 2002 c 354 § 224; 1994 c 130 § 6. Prior: 1993 sp.s. c 18 § 3; 1993 c 281 § 14; 1987 c 330 § 202; 1985 c 370 § 60; 1974 ex.s. c 177 § 6.]

**Findings—Intent—2005 c 93:** See note following RCW 74.13.570.

**Short title—Headings, captions not law—Severability—Effective dates—2002 c 354:** See RCW 41.80.907 through 41.80.910.

**Effective date—1993 sp.s. c 18:** "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 sp.s. c 18 § 38.]

**Effective date—1993 c 281:** See note following RCW 41.06.022.

**Construction—Application of rules—Severability—1987 c 330:** See notes following RCW 28B.12.050.

**Severability—1974 ex.s. c 177:** See note following RCW 28B.12.010.

## Chapter 28B.15 RCW

### COLLEGE AND UNIVERSITY FEES

#### Sections

28B.15.012	Classification as resident or nonresident student—Definitions.
28B.15.0139	Resident tuition rates—Border county higher education opportunity project.
28B.15.067	Tuition fees—Established.
28B.15.068	Tuition fees increase limitations—State funding goals—Reports—"Global challenge states"—Notification of availability of American opportunity tax credit.

28B.15.0681	Tuition billing statements—Disclosures to students—Notice of federal educational tax credits.
28B.15.210	Fees—University of Washington—Disposition of building fees.
28B.15.310	Fees—Washington State University—Disposition of building fees.
28B.15.610	Voluntary fees of students.
28B.15.621	Tuition waivers—Veterans and national guard members—Dependents—Private institutions.
28B.15.820	Institutional financial aid fund—"Eligible student" defined.
28B.15.821	Dual credit program—Definition.
28B.15.980	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )

#### **28B.15.012 Classification as resident or nonresident student—Definitions.** Whenever used in chapter 28B.15 RCW:

(1) The term "institution" shall mean a public university, college, or community college within the state of Washington.

(2) The term "resident student" shall mean:

(a) A financially independent student who has had a domicile in the state of Washington for the period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution and has in fact established a bona fide domicile in this state primarily for purposes other than educational;

(b) A dependent student, if one or both of the student's parents or legal guardians have maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the semester or quarter for which the student has registered at any institution;

(c) A student classified as a resident based upon domicile by an institution on or before May 31, 1982, who was enrolled at a state institution during any term of the 1982-1983 academic year, so long as such student's enrollment (excepting summer sessions) at an institution in this state is continuous;

(d) Any student who has spent at least seventy-five percent of both his or her junior and senior years in high schools in this state, whose parents or legal guardians have been domiciled in the state for a period of at least one year within the five-year period before the student graduates from high school, and who enrolls in a public institution of higher education within six months of leaving high school, for as long as the student remains continuously enrolled for three quarters or two semesters in any calendar year;

(e) Any person who has completed the full senior year of high school and obtained a high school diploma, both at a Washington public high school or private high school approved under chapter 28A.195 RCW, or a person who has received the equivalent of a diploma; who has lived in Washington for at least three years immediately prior to receiving the diploma or its equivalent; who has continuously lived in the state of Washington after receiving the diploma or its equivalent and until such time as the individual is admitted to an institution of higher education under subsection (1) of this section; and who provides to the institution an affidavit indicating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so and a willingness to engage in any other



activities necessary to acquire citizenship, including but not limited to citizenship or civics review courses;

(f) Any person who has lived in Washington, primarily for purposes other than educational, for at least one year immediately before the date on which the person has enrolled in an institution, and who holds lawful nonimmigrant status pursuant to 8 U.S.C. Sec. (a)(15) (E)(iii), (H)(i), or (L), or who holds lawful nonimmigrant status as the spouse or child of a person having nonimmigrant status under one of those subsections, or who, holding or having previously held such lawful nonimmigrant status as a principal or derivative, has filed an application for adjustment of status pursuant to 8 U.S.C. Sec. 1255(a);

(g) A student who is on active military duty stationed in the state or who is a member of the Washington national guard;

(h) A student who is the spouse or a dependent of a person who is on active military duty stationed in the state. If the person on active military duty is reassigned out-of-state, the student maintains the status as a resident student so long as the student is continuously enrolled in a degree program;

(i) A student who resides in the state of Washington and is the spouse or a dependent of a person who is a member of the Washington national guard;

(j) A student of an out-of-state institution of higher education who is attending a Washington state institution of higher education pursuant to a home tuition agreement as described in RCW 28B.15.725; or

(k) A student who meets the requirements of RCW 28B.15.0131: PROVIDED, That a nonresident student enrolled for more than six hours per semester or quarter shall be considered as attending for primarily educational purposes, and for tuition and fee paying purposes only such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in this state unless such student proves that the student has in fact established a bona fide domicile in this state primarily for purposes other than educational.

(3) The term "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of this section and RCW 28B.15.013. Except for students qualifying under subsection (2)(e) or (j) of this section, a nonresident student shall include:

(a) A student attending an institution with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one year after the completion of such semester or quarter.

(b) A person who is not a citizen of the United States of America who does not have permanent or temporary resident status or does not hold "Refugee-Parolee" or "Conditional Entrant" status with the United States immigration and naturalization service or is not otherwise permanently residing in the United States under color of law and who does not also meet and comply with all the applicable requirements in this section and RCW 28B.15.013.

(4) The term "domicile" shall denote a person's true, fixed and permanent home and place of habitation. It is the place where the student intends to remain, and to which the student expects to return when the student leaves without intending to establish a new domicile elsewhere. The burden of proof that a student, parent or guardian has established a

domicile in the state of Washington primarily for purposes other than educational lies with the student.

(5) The term "dependent" shall mean a person who is not financially independent. Factors to be considered in determining whether a person is financially independent shall be set forth in rules and regulations adopted by the higher education coordinating board and shall include, but not be limited to, the state and federal income tax returns of the person and/or the student's parents or legal guardian filed for the calendar year prior to the year in which application is made and such other evidence as the board may require.

(6) The term "active military duty" means the person is serving on active duty in:

(a) The armed forces of the United States government; or

(b) The Washington national guard; or

(c) The coast guard, merchant mariners, or other nonmilitary organization when such service is recognized by the United States government as equivalent to service in the armed forces. [2009 c 220 § 1; 2004 c 128 § 1; 2003 c 95 § 1; 2002 c 186 § 2. Prior: (2002 c 186 § 1 expired June 30, 2002); 2000 c 160 § 1; 2000 c 117 § 2; (2000 c 117 § 1 expired June 30, 2002); 1999 c 320 § 5; 1997 c 433 § 2; 1994 c 188 § 2; 1993 sp.s. c 18 § 4; prior: 1987 c 137 § 1; 1987 c 96 § 1; 1985 c 370 § 62; 1983 c 285 § 1; 1982 1st ex.s. c 37 § 1; 1972 ex.s. c 149 § 1; 1971 ex.s. c 273 § 2.]

**Effective date—2009 c 220:** "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, 2009." [2009 c 220 § 2.]

**Intent—2003 c 95:** "It is the intent of the legislature to ensure that students who receive a diploma from a Washington state high school or receive the equivalent of a diploma in Washington state and who have lived in Washington for at least three years prior to receiving their diploma or its equivalent are eligible for in-state tuition rates when they enroll in a public institution of higher education in Washington state." [2003 c 95 § 2.]

**Effective date—2003 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 takes effect July 1, 2003." [2003 c 95 § 4.]

**Expiration date—2002 c 186 § 1:** "Section 1 of this act expires June 30, 2002." [2002 c 186 § 4.]

**Effective date—2002 c 186 § 2:** "Section 2 of this act takes effect June 30, 2002." [2002 c 186 § 5.]

**Effective date—2000 c 117 § 2:** "Section 2 of this act takes effect June 30, 2002." [2000 c 117 § 5.]

**Expiration date—2000 c 117 § 1:** "Section 1 of this act expires June 30, 2002." [2000 c 117 § 4.]

**Intent—Severability—1997 c 433:** See notes following RCW 28B.15.725.

**Effective date—1993 sp.s. c 18:** See note following RCW 28B.12.060.

**Effective date—1982 1st ex.s. c 37:** "Sections 13 and 14 of this amendatory 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 immediately. All other sections of this amendatory act shall take effect on June 1, 1982." [1982 1st ex.s. c 37 § 24.]

**Severability—1982 1st ex.s. c 37:** "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 37 § 23.]

**Severability—1971 ex.s. c 273:** See note following RCW 28B.15.011.

**28B.15.0139 Resident tuition rates—Border county higher education opportunity project.** For the purposes of determining resident tuition rates, "resident student" includes

a resident of Oregon, residing in Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county, who meets the following conditions:

(1) The student is eligible to pay resident tuition rates under Oregon laws and has been domiciled in Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county for at least ninety days immediately before enrollment at a community college located in Asotin, Benton, Clark, Columbia, Cowlitz, Franklin, Garfield, Klickitat, Pacific, Skamania, Wahkiakum, or Walla Walla county, Washington;

(2) The student is enrolled in courses located at the Tri-Cities or Vancouver branch of Washington State University for eight credits or less; or

(3) The student is currently domiciled in Washington and:

(a) Was eligible to pay resident tuition rates under Oregon laws; and

(b) Had been domiciled in Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington county for at least ninety days immediately before being domiciled in Washington. [2009 c 158 § 2; 2003 c 159 § 4; 2002 c 130 § 3; 2000 c 160 § 2; 1999 c 320 § 4.]

**28B.15.067 Tuition fees—Established.** (1) Tuition fees shall be established under the provisions of this chapter.

(2) Beginning with the 2003-04 academic year and ending with the 2012-13 academic year, reductions or increases in full-time tuition fees for resident undergraduates shall be as provided in the omnibus appropriations act.

(3)(a) Beginning with the 2003-04 academic year and ending with the 2012-13 academic year, the governing boards of the state universities, the regional universities, The Evergreen State College, and the state board for community and technical colleges may reduce or increase full-time tuition fees for all students other than resident undergraduates, including summer school students and students in other self-supporting degree programs. Percentage increases in full-time tuition fees may exceed the fiscal growth factor. Reductions or increases may be made for all or portions of an institution's programs, campuses, courses, or students.

(b) Prior to reducing or increasing tuition for each academic year, the governing boards of the state universities, the regional universities, and The Evergreen State College shall consult with existing student associations or organizations with student undergraduate and graduate representatives regarding the impacts of potential tuition increases. Governing boards shall be required to provide data regarding the percentage of students receiving financial aid, the sources of aid, and the percentage of total costs of attendance paid for by aid.

(c) Prior to reducing or increasing tuition for each academic year, each college in the state board for community and technical college system shall consult with existing student associations or organizations with undergraduate student representation regarding the impacts of potential tuition increases. Colleges shall provide data regarding the percentage of students receiving financial aid, the sources of aid, and the percentage of total costs of attendance paid for by aid.

(4) Academic year tuition for full-time students at the state's institutions of higher education beginning with 2015-16, other than summer term, shall be as charged during the 2014-15 academic year unless different rates are adopted by the legislature.

(5) The tuition fees established under this chapter shall not apply to high school students enrolling in participating institutions of higher education under RCW 28A.600.300 through 28A.600.400.

(6) The tuition fees established under this chapter shall not apply to eligible students enrolling in a community or technical college under RCW 28C.04.610.

(7) The tuition fees established under this chapter shall not apply to eligible students enrolling in a community or technical college participating in the pilot program under RCW 28B.50.534 for the purpose of obtaining a high school diploma.

(8) For the academic years 2003-04 through 2008-09, the University of Washington shall use an amount equivalent to ten percent of all revenues received as a result of law school tuition increases beginning in academic year 2000-01 through academic year 2008-09 to assist needy low and middle-income resident law students.

(9) For the academic years 2003-04 through 2008-09, institutions of higher education shall use an amount equivalent to ten percent of all revenues received as a result of graduate academic school tuition increases beginning in academic year 2003-04 through academic year 2008-09 to assist needy low and middle-income resident graduate academic students.

(10) Any tuition increases above seven percent shall fund costs of instruction, library and student services, utilities and maintenance, other costs related to instruction as well as institutional financial aid. Through 2010-11, any funding reductions to instruction, library and student services, utilities and maintenance and other costs related to instruction shall be proportionally less than other program areas including administration. [2009 c 574 § 1; 2007 c 355 § 7; 2006 c 161 § 6; 2003 c 232 § 4; 1997 c 403 § 1; 1996 c 212 § 1; 1995 1st sp.s. c 9 § 4; 1992 c 231 § 4; 1990 1st ex.s. c 9 § 413; 1986 c 42 § 1; 1985 c 390 § 15; 1982 1st ex.s. c 37 § 15; 1981 c 257 § 2.]

**Finding—Intent—2007 c 355:** See note following RCW 28B.50.534.

**Effective date—2006 c 161:** See note following RCW 49.04.160.

**Finding—Intent—2003 c 232:** See note following RCW 28B.15.031.

**Severability—1996 c 212:** "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." [1996 c 212 § 2.]

**Intent—Purpose—Effective date—1995 1st sp.s. c 9:** See notes following RCW 28B.15.031.

**Effective date—1992 c 231:** See note following RCW 28B.10.016.

**Finding—Severability—1990 1st ex.s. c 9:** See notes following RCW 28A.225.220.

**Effective date—Severability—1982 1st ex.s. c 37:** See notes following RCW 28B.15.012.

**Severability—1981 c 257:** See note following RCW 28B.15.031.

**28B.15.068 Tuition fees increase limitations—State funding goals—Reports—"Global challenge states"—Notification of availability of American opportunity tax credit.** (1) Beginning with the 2007-08 academic year and

ending with the 2016-17 academic year, tuition fees charged to full-time resident undergraduate students, except in academic years 2009-10 and 2010-11, may increase no greater than seven percent over the previous academic year in any institution of higher education. Annual reductions or increases in full-time tuition fees for resident undergraduate students shall be as provided in the omnibus appropriations act, within the seven percent increase limit established in this section. For academic years 2009-10 and 2010-11 the omnibus appropriations act may provide tuition increases greater than seven percent. To the extent that state appropriations combined with tuition and fee revenues are insufficient to achieve the total per-student funding goals established in subsection (2) of this section, the legislature may revisit state appropriations, authorized enrollment levels, and changes in tuition fees for any given fiscal year.

(2) The state shall adopt as its goal total per-student funding levels, from state appropriations plus tuition and fees, of at least the sixtieth percentile of total per-student funding at similar public institutions of higher education in the global challenge states. In defining comparable per-student funding levels, the office of financial management shall adjust for regional cost-of-living differences; for differences in program offerings and in the relative mix of lower division, upper division, and graduate students; and for accounting and reporting differences among the comparison institutions. The office of financial management shall develop a funding trajectory for each four-year institution of higher education and for the community and technical college system as a whole that when combined with tuition and fees revenue allows the state to achieve its funding goal for each four-year institution and the community and technical college system as a whole no later than fiscal year 2017. The state shall not reduce enrollment levels below fiscal year 2007 budgeted levels in order to improve or alter the per-student funding amount at any four-year institution of higher education or the community and technical college system as a whole. The state recognizes that each four-year institution of higher education and the community and technical college system as a whole have different funding requirements to achieve desired performance levels, and that increases to the total per-student funding amount may need to exceed the minimum funding goal.

(3) By September 1st of each year beginning in 2008, the office of financial management shall report to the governor, the higher education coordinating board, and appropriate committees of the legislature with updated estimates of the total per-student funding level that represents the sixtieth percentile of funding for comparable institutions of higher education in the global challenge states, and the progress toward that goal that was made for each of the public institutions of higher education.

(4) As used in this section, "global challenge states" are the top performing states on the new economy index published by the progressive policy institute as of July 22, 2007. The new economy index ranks states on indicators of their potential to compete in the new economy. At least once every five years, the office of financial management shall determine if changes to the list of global challenge states are appropriate. The office of financial management shall report its findings to the governor and the legislature.

(5) During the 2009-10 and the 2010-11 academic years, institutions of higher education shall include information on their billing statements notifying students of tax credits available through the American opportunity tax credit provided in the American recovery and reinvestment act of 2009. [2009 c 540 § 1; 2007 c 151 § 1.]

**Captions not law—2007 c 151:** "Captions used in this act are not any part of the law." [2007 c 151 § 3.]

**28B.15.0681 Tuition billing statements—Disclosures to students—Notice of federal educational tax credits.** (1) In addition to the requirement in RCW 28B.76.300(4), institutions of higher education shall disclose to their undergraduate resident students on the tuition billing statement, in dollar figures for a full-time equivalent student:

- (a) The full cost of instruction;
- (b) The amount collected from student tuition and fees; and
- (c) The difference between the amounts for the full cost of instruction and the student tuition and fees.

(2) The tuition billing statement shall note that the difference between the cost and tuition under subsection (1)(c) of this section was paid by state tax funds and other moneys.

(3) Beginning in the 2010-11 academic year, the amount determined in subsection (1)(c) of this section shall be labeled an "opportunity pathway" on the tuition billing statement.

(4) Beginning in the 2010-11 academic year, institutions of higher education shall label financial aid awarded to resident undergraduate students as an "opportunity pathway" on the tuition billing statement or financial aid award notification. Aid granted to students outside of the financial aid package provided through the institution of higher education and loans provided by the federal government are not subject to the labeling provisions in this subsection. All other aid from all sources including federal, state, and local governments, local communities, nonprofit and for-profit organizations, and institutions of higher education must be included. The disclosure requirements specified in this section do not change the source, award amount, student eligibility, or student obligations associated with each award. Institutions of higher education retain the ability to customize their tuition billing statements to inform students of the assistance source, amount, and type so long as provisions of this section are also fulfilled.

(5) The tuition billing statement disclosures shall be in twelve-point type and boldface type where appropriate.

(6) All tuition billing statements or financial aid award notifications at institutions of higher education must notify resident undergraduate students of federal tax credits related to higher education for which they may be eligible. [2009 c 215 § 6; 2007 c 151 § 2.]

**Findings—Intent—Effective date—2009 c 215:** See notes following RCW 28B.92.030.

**Captions not law—2007 c 151:** See note following RCW 28B.15.068.

**28B.15.210 Fees—University of Washington—Disposition of building fees.** Within thirty-five days from the date of collection thereof, all building fees at the University of Washington, including building fees to be charged stu-

dents registering in the schools of medicine and dentistry, shall be paid into the state treasury and credited as follows:

One-half or such larger portion as may be necessary to prevent a default in the payments required to be made out of the bond retirement fund to the "University of Washington bond retirement fund" and the remainder thereof to the "University of Washington building account." The sum so credited to the University of Washington building account shall be used exclusively for the purpose of erecting, altering, maintaining, equipping, or furnishing buildings, and for certificates of participation under chapter 39.94 RCW, except for any sums transferred as authorized in RCW 28B.20.725(3). The sum so credited to the University of Washington bond retirement fund shall be used for the payment of principal of and interest on bonds outstanding as provided by chapter 28B.20 RCW except for any sums transferred as authorized in RCW 28B.20.725(5). During the 2009-2011 biennium, sums credited to the University of Washington building account shall also be used for routine facility maintenance and utility costs. [2009 c 499 § 1; 2009 c 497 § 6019; 1985 c 390 § 20; 1969 ex.s. c 223 § 28B.15.210. Prior: 1963 c 224 § 1; 1959 c 193 § 7; 1957 c 254 § 6; 1947 c 243 § 2; 1945 c 187 § 2; 1939 c 156 § 1; 1933 c 169 § 2; 1921 c 139 § 2; 1919 c 63 § 2; 1915 c 66 § 3; Rem. Supp. 1947 § 4547. Formerly RCW 28.77.040.]

**Reviser's note:** This section was amended by 2009 c 497 § 6019 and by 2009 c 499 § 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).

**Effective date—2009 c 497:** "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 15, 2009], except for sections 6020, 6021, and 6024 through 6027 of this act which take effect July 1, 2009." [2009 c 497 § 6055.]

**28B.15.310 Fees—Washington State University—Disposition of building fees.** Within thirty-five days from the date of collection thereof, all building fees shall be paid and credited as follows: To the Washington State University bond retirement fund, one-half or such larger portion as may be necessary to prevent a default in the payments required to be made out of such bond retirement fund; and the remainder thereof to the Washington State University building account.

The sum so credited to the Washington State University building account shall be expended by the board of regents for buildings, equipment, or maintenance on the campus of Washington State University as may be deemed most advisable and for the best interests of the university, and for certificates of participation under chapter 39.94 RCW, except for any sums transferred as authorized by law. During the 2009-2011 biennium, sums credited to the Washington State University building account shall also be used for routine facility maintenance and utility costs. Expenditures so made shall be accounted for in accordance with existing law and shall not be expended until appropriated by the legislature.

The sum so credited to the Washington State University bond retirement fund shall be used to pay and secure the payment of the principal of and interest on building bonds issued by the university, except for any sums which may be transferred out of such fund as authorized by law. [2009 c 499 § 2; 2009 c 497 § 6020; 1985 c 390 § 22; 1969 ex.s. c 223 §

28B.15.310. Prior: 1961 ex.s. c 11 § 2; 1935 c 185 § 1; 1921 c 164 § 2; RRS § 4570. Formerly RCW 28.80.040.]

**Reviser's note:** This section was amended by 2009 c 497 § 6020 and by 2009 c 499 § 2, 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—2009 c 497:** See note following RCW 28B.15.210.

*Chapter not to repeal, override, or limit other statutes or actions: RCW 28B.31.100.*

**28B.15.610 Voluntary fees of students.** The provisions of this chapter shall not apply to or affect any student fee or charge which the students voluntarily maintain upon themselves for student purposes only. Students are authorized to create or increase voluntary student fees for each academic year when passed by a majority vote of the student government or its equivalent, or referendum presented to the student body or such other process that has been adopted under this section. Notwithstanding RCW 42.17.190 (2) and (3), voluntary student fees imposed under this section and services and activities fees may be used for lobbying by a student government association or its equivalent and may also be used to support a statewide or national student organization or its equivalent that may engage in lobbying. [2009 c 179 § 1; 1969 ex.s. c 223 § 28B.15.610. Prior: 1915 c 66 § 8; RRS § 4552. Formerly RCW 28.77.065.]

**28B.15.621 Tuition waivers—Veterans and national guard members—Dependents—Private institutions.** (1) The legislature finds that active military and naval veterans, reserve military and naval veterans, and national guard members called to active duty have served their country and have risked their lives to defend the lives of all Americans and the freedoms that define and distinguish our nation. The legislature intends to honor active military and naval veterans, reserve military and naval veterans, and national guard members who have served on active military or naval duty for the public service they have provided to this country.

(2) Subject to the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, may waive all or a portion of tuition and fees for an eligible veteran or national guard member.

(3) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, may waive all or a portion of tuition and fees for a military or naval veteran who is a Washington domiciliary, but who did not serve on foreign soil or in international waters or in another location in support of those serving on foreign soil or in international waters and who does not qualify as an eligible veteran or national guard member under subsection (8) of this section. However, there shall be no state general fund support for waivers granted under this subsection.

(4) Subject to the conditions in subsection (5) of this section and the limitations in RCW 28B.15.910, the governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges, shall waive all tuition and fees for the following persons:

(a) A child and the spouse or the domestic partner or surviving spouse or surviving domestic partner of an eligible

veteran or national guard member who became totally disabled as a result of serving in active federal military or naval service, or who is determined by the federal government to be a prisoner of war or missing in action; and

(b) A child and the surviving spouse or surviving domestic partner of an eligible veteran or national guard member who lost his or her life as a result of serving in active federal military or naval service.

(5) The conditions in this subsection (5) apply to waivers under subsection (4) of this section.

(a) A child must be a Washington domiciliary between the age of seventeen and twenty-six to be eligible for the tuition waiver. A child's marital status does not affect eligibility.

(b)(i) A surviving spouse or surviving domestic partner must be a Washington domiciliary.

(ii) Except as provided in (b)(iii) of this subsection, a surviving spouse or surviving domestic partner has ten years from the date of the death, total disability, or federal determination of prisoner of war or missing in action status of the eligible veteran or national guard member to receive benefits under the waiver. Upon remarriage or registration in a subsequent domestic partnership, the surviving spouse or surviving domestic partner is ineligible for the waiver of all tuition and fees.

(iii) If a death results from total disability, the surviving spouse has ten years from the date of death in which to receive benefits under the waiver.

(c) Each recipient's continued participation is subject to the school's satisfactory progress policy.

(d) Tuition waivers for graduate students are not required for those who qualify under subsection (4) of this section but are encouraged.

(e) Recipients who receive a waiver under subsection (4) of this section may attend full-time or part-time. Total credits earned using the waiver may not exceed two hundred quarter credits, or the equivalent of semester credits.

(6) Required waivers of all tuition and fees under subsection (4) of this section shall not affect permissive waivers of tuition and fees under subsection (3) of this section.

(7) Private vocational schools and private higher education institutions are encouraged to provide waivers consistent with the terms in subsections (2) through (5) of this section.

(8) The definitions in this subsection apply throughout this section.

(a) "Child" means a biological child, adopted child, or stepchild.

(b) "Eligible veteran or national guard member" means a Washington domiciliary who was an active or reserve member of the United States military or naval forces, or a national guard member called to active duty, who served in active federal service, under either Title 10 or Title 32 of the United States Code, in a war or conflict fought on foreign soil or in international waters or in another location in support of those serving on foreign soil or in international waters, and if discharged from service, has received an honorable discharge.

(c) "Totally disabled" means a person who has been determined to be one hundred percent disabled by the federal department of veterans affairs.

(d) "Washington domiciliary" means a person whose true, fixed, and permanent house and place of habitation is

the state of Washington. "Washington domiciliary" includes a person who is residing in rental housing or residing in base housing. In ascertaining whether a child or surviving spouse or surviving domestic partner is domiciled in the state of Washington, public institutions of higher education shall, to the fullest extent possible, rely upon the standards provided in RCW 28B.15.013.

(9) As used in subsection (4) of this section, "fees" includes all assessments for costs incurred as a condition to a student's full participation in coursework and related activities at an institution of higher education.

(10) The governing boards of the state universities, the regional universities, The Evergreen State College, and the community colleges shall report to the higher education committees of the legislature by November 15, 2010, and every two years thereafter, regarding the status of implementation of the waivers under subsection (4) of this section. The reports shall include the following data and information:

(a) Total number of waivers;

(b) Total amount of tuition waived;

(c) Total amount of fees waived;

(d) Average amount of tuition and fees waived per recipient;

(e) Recipient demographic data that is disaggregated by distinct ethnic categories within racial subgroups; and

(f) Recipient income level, to the extent possible. [2009 c 316 § 1. Prior: 2008 c 188 § 1; 2008 c 6 § 501; 2007 c 450 § 1; 2005 c 249 § 1.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**28B.15.820 Institutional financial aid fund—"Eligible student" defined.** (1) Each institution of higher education, including technical colleges, shall deposit a minimum of three and one-half percent of revenues collected from tuition and services and activities fees in an institutional financial aid fund that is hereby created and which shall be held locally. Moneys in the fund shall be used only for the following purposes: (a) To make guaranteed long-term loans to eligible students as provided in subsections (3) through (8) of this section; (b) to make short-term loans as provided in subsection (9) of this section; (c) to provide financial aid to needy students as provided in subsection (10) of this section; or (d) to provide financial aid to students as provided in subsection (11) of this section.

(2) An "eligible student" for the purposes of subsections (3) through (8) and (10) of this section is a student registered for at least three credit hours or the equivalent, who is eligible for resident tuition and fee rates as defined in RCW 28B.15.012 and 28B.15.013, and who is a "needy student" as defined in RCW 28B.92.030.

(3) The amount of the guaranteed long-term loans made under this section shall not exceed the demonstrated financial need of the student. Each institution shall establish loan terms and conditions which shall be consistent with the terms of the guaranteed loan program established by 20 U.S. Code Section 1071 et seq., as now or hereafter amended. All loans made shall be guaranteed by the Washington student loan guaranty association or its successor agency. Institutions are hereby granted full authority to operate as an eligible lender under the guaranteed loan program.

(4) Before approving a guaranteed long-term loan, each institution shall analyze the ability of the student to repay the loan based on factors which include, but are not limited to, the student's accumulated total education loan burdens and the employment opportunities and average starting salary characteristics of the student's chosen fields of study. The institution shall counsel the student on the advisability of acquiring additional debt, and on the availability of other forms of financial aid.

(5) Each institution is responsible for collection of guaranteed long-term loans made under this section and shall exercise due diligence in such collection, maintaining all necessary records to insure that maximum repayments are made. Institutions shall cooperate with other lenders and the Washington student loan guaranty association, or its successor agency, in the coordinated collection of guaranteed loans, and shall assure that the guarantability of the loans is not violated. Collection and servicing of guaranteed long-term loans under this section shall be performed by entities approved for such servicing by the Washington student loan guaranty association or its successor agency: PROVIDED, That institutions be permitted to perform such servicing if specifically recognized to do so by the Washington student loan guaranty association or its successor agency. Collection and servicing of guaranteed long-term loans made by community colleges under subsection (1) of this section shall be coordinated by the state board for community and technical colleges and shall be conducted under procedures adopted by the state board.

(6) Receipts from payment of interest or principal or any other subsidies to which institutions as lenders are entitled, that are paid by or on behalf of borrowers of funds under subsections (3) through (8) of this section, shall be deposited in each institution's financial aid fund and shall be used to cover the costs of making the guaranteed long-term loans under this section and maintaining necessary records and making collections under subsection (5) of this section: PROVIDED, That such costs shall not exceed five percent of aggregate outstanding loan principal. Institutions shall maintain accurate records of such costs, and all receipts beyond those necessary to pay such costs, shall be deposited in the institution's financial aid fund.

(7) The governing boards of the state universities, the regional universities, and The Evergreen State College, and the state board for community and technical colleges, on behalf of the community colleges and technical colleges, shall each adopt necessary rules and regulations to implement this section.

(8) First priority for any guaranteed long-term loans made under this section shall be directed toward students who would not normally have access to educational loans from private financial institutions in Washington state, and maximum use shall be made of secondary markets in the support of loan consolidation.

(9) Short-term loans, not to exceed one year, may be made from the institutional financial aid fund to students enrolled in the institution. No such loan shall be made to any student who is known by the institution to be in default or delinquent in the payment of any outstanding student loan. A short-term loan may be made only if the institution has ample evidence that the student has the capability of repaying the

loan within the time frame specified by the institution for repayment.

(10) Any moneys deposited in the institutional financial aid fund that are not used in making long-term or short-term loans may be used by the institution for locally administered financial aid programs for needy students, such as need-based institutional employment programs or need-based tuition and fee scholarship or grant programs. These funds shall be used in addition to and not to replace institutional funds that would otherwise support these locally administered financial aid programs. First priority in the use of these funds shall be given to needy students who have accumulated excessive educational loan burdens. An excessive educational loan burden is a burden that will be difficult to repay given employment opportunities and average starting salaries in the student's chosen fields of study. Second priority in the use of these funds shall be given to needy single parents, to assist these students with their educational expenses, including expenses associated with child care and transportation.

(11) Any moneys deposited in the institutional financial aid fund may be used by the institution for a locally administered financial aid program for high school students enrolled in dual credit programs. If institutions use funds in this manner, the governing boards of the state universities, the regional universities, The Evergreen State College, and the state board for community and technical colleges shall each adopt necessary rules to implement this subsection. Moneys from this fund may be used for all educational expenses related to a student's participation in a dual credit program including but not limited to tuition, fees, course materials, and transportation. [2009 c 215 § 9; 2007 c 404 § 4; 2004 c 275 § 66; 1995 1st sp.s. c 9 § 10. Prior: 1993 c 385 § 1; 1993 c 173 § 1; 1985 c 390 § 35; 1983 1st ex.s. c 64 § 1; 1982 1st ex.s. c 37 § 13; 1981 c 257 § 9.]

**Findings—Intent—Effective date—2009 c 215:** See notes following RCW 28B.92.030.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Intent—Purpose—Effective date—1995 1st sp.s. c 9:** See notes following RCW 28B.15.031.

**Effective date—Severability—1982 1st ex.s. c 37:** See notes following RCW 28B.15.012.

**Severability—1981 c 257:** See note following RCW 28B.15.031.

**28B.15.821 Dual credit program—Definition.** As used in this chapter, "dual credit program" means a program, administered by either an institution of higher education or a high school, through which high school students in the eleventh or twelfth grade who have not yet received the credits required for the award of a high school diploma apply to a participating institution of higher education to enroll in courses or programs offered by the institution of higher education and simultaneously earn high school and college credit. [2009 c 215 § 8.]

**Findings—Intent—Effective date—2009 c 215:** See notes following RCW 28B.92.030.

**28B.15.980 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes

of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. The rules and time periods to establish residency that apply to spouses of Washington residents shall apply equally to state registered domestic partners of Washington residents. [2009 c 521 § 74.]

### Chapter 28B.20 RCW

#### UNIVERSITY OF WASHINGTON

##### Sections

28B.20.060	Courses exclusive to University of Washington.
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**28B.20.060 Courses exclusive to University of Washington.** The courses of instruction of the University of Washington shall embrace as exclusive major lines, law, medicine, forest products, logging engineering, library sciences, and fisheries. [2009 c 207 § 2; 1985 c 218 § 2; 1969 ex.s. c 223 § 28B.20.060. Prior: 1963 c 23 § 1; 1961 c 71 § 1; prior: (i) 1917 c 10 § 2; RRS § 4533. (ii) 1917 c 10 § 5; RRS § 4536. Formerly RCW 28.77.025; 28.76.060.]

**28B.20.150 Endowment investments—Disclosure of private fund information—Conflicts of interest.** The University of Washington must disclose: (1) The names and commitment amounts of the private funds in which it is invested; and (2) the aggregate quarterly performance results for its portfolio of investments in such funds. The University of Washington shall have formal policies addressing conflicts of interest in regard to the private funds in which the endowment is invested, in compliance with RCW 42.52.190, and shall post these policies on their public web site. [2009 c 394 § 2.]

**Intent—2009 c 394:** "The intent of this act is to clarify provisions governing disclosure of information related to University of Washington endowment investments, and thereby improve the university's ability to maximize the performance of its endowment portfolio. For endowment investments in privately managed funds, this act requires disclosure of the names of the funds, the amounts invested in the funds, and quarterly performance results for the endowment's portfolio of investments in such funds. These disclosures are intended to provide the public with information about the overall performance of the privately managed endowment investments, while prohibiting disclosure of proprietary information that could result in loss to the

endowment or to persons who provide the proprietary information." [2009 c 394 § 1.]

**28B.20.308 Global Asia institute.** (1) A global Asia institute is created within the Henry M. Jackson School of International Studies. The mission of the institute is to promote the understanding of Asia and its interactions with Washington state and the world. The institute shall host visiting scholars and policymakers, sponsor programs and learning initiatives, engage in collaborative research projects, and facilitate broader understanding and cooperation between the state of Washington and Asia through general public programs and targeted collaborations with specific communities in the state.

(2) Within existing resources, a global Asia institute advisory board is established. The director of the Henry M. Jackson School of International Studies shall appoint members of the advisory board and determine the advisory board's roles and responsibilities. The board shall include members representing academia, business, and government.

(3) The higher education coordinating board may solicit, accept, receive, and administer federal funds or private funds, in trust or otherwise, and contract with foundations or with for-profit or nonprofit organizations to support the purposes of this section. [2009 c 466 § 2.]

**Findings—Intent—2009 c 466:** "The legislature finds that Asia and its interactions with the rest of the world are transforming the way the world works in the twenty-first century. The legislature further finds that trade, finance, technology, and global influence and institutions are all areas in which China, India, and other Asian states are in the process of reshaping the nature of the international system, and that Washington state is uniquely situated to contribute to enhance interactions between the United States and Asia. The legislature intends to establish a global Asia institute at the University of Washington." [2009 c 466 § 1.]

**28B.20.478 Center for human rights.** (1) A University of Washington center for human rights is created. The mission of the center is to expand opportunities for Washington residents to receive a world-class education in human rights, generate research data and expert knowledge to enhance public and private policymaking, and become an academic center for human rights teaching and research in the nation. The center shall align with the founding principles and philosophies of the United States of America and engage faculty, staff, and students in service to enhance the promise of life and liberty as outlined in the Preamble of the United States Constitution. Key substantive issues for the center include: The rights of all persons to security against violence; the rights of immigrants, native Americans, and ethnic or religious minorities; human rights and the environment; health as a human right; human rights and trade; the human rights of working people; and women's rights as human rights. State funds may not be used to support the center for human rights created in this section.

(2) The higher education coordinating board and the University of Washington may solicit, accept, receive, and administer federal funds or private funds, in trust or otherwise, and contract with foundations or with for-profit or nonprofit organizations to support the purposes of this section. [2009 c 465 § 1.]

**28B.20.4781 Center for human rights—Reports.** The University of Washington center for human rights shall report to the appropriate committees of the legislature by December 1, 2010, and biennially thereafter regarding the center's activities. The report shall include, but not be limited to, descriptions of the center's activities and accomplishments especially as they relate to: International human rights issues and community service; documentation of measurable accomplishments in improving outcomes in the issue areas outlined in RCW 28B.20.478; and documentation of engagement with agencies and nongovernmental organizations outside of the University of Washington. [2009 c 465 § 2.]

**28B.20.715 Bonds—Issuance, sale, form, term, interest, etc.—Covenants—Use of proceeds.** For the purpose of financing the cost of any projects, the board is hereby authorized to adopt the resolution or resolutions and prepare all other documents necessary for the issuance, sale and delivery of the bonds or any part thereof at such time or times as it shall deem necessary and advisable. Said bonds:

- (1) Shall not constitute
  - (a) An obligation, either general or special, of the state; or
  - (b) A general obligation of the University of Washington or of the board;
- (2) Shall be
  - (a) Either registered or in coupon form; and
  - (b) Issued in denominations of not less than one hundred dollars; and
  - (c) Fully negotiable instruments under the laws of this state; and
  - (d) Signed on behalf of the university by the president of the board, attested by the secretary of the board, have the seal of the university impressed thereon or a facsimile of such seal printed or lithographed in the bottom border thereof, and the coupons attached thereto shall be signed with the facsimile signatures of such president and secretary;
- (3) Shall state
  - (a) The date of issue; and
  - (b) The series of the issue and be consecutively numbered within the series; and
  - (c) That, except as otherwise provided in subsection (8)(e) of this section, the bond is payable both principal and interest solely out of the bond retirement fund;
  - (4) Each series of bonds shall bear interest, payable either annually or semiannually, as the board may determine;
  - (5) Shall be payable both principal and interest out of the bond retirement fund;
  - (6) Shall be payable at such times over a period of not to exceed forty years from date of issuance, at such place or places, and with such reserved rights of prior redemption, as the board may prescribe;
  - (7) Shall be sold in such manner and at such price as the board may prescribe;
  - (8) Shall be issued under and subject to such terms, conditions and covenants providing for the payment of the principal thereof and interest thereon and such other terms, conditions, covenants and protective provisions safeguarding such payment, not inconsistent with this chapter, and as found to be necessary by the board for the most advantageous sale thereof, which may include but not be limited to:

(a) A covenant that the building fees shall be established, maintained and collected in such amounts that will provide money sufficient to pay the principal of and interest on all bonds payable out of the bond retirement fund, to set aside and maintain the reserves required to secure the payment of such principal and interest, and to maintain any coverage which may be required over such principal and interest;

(b) A covenant that a reserve account shall be created in the bond retirement fund to secure the payment of the principal of and interest on all bonds issued and a provision made that certain amounts be set aside and maintained therein;

(c) A covenant that sufficient moneys may be transferred from the University of Washington building account to the bond retirement fund when ordered by the board of regents in the event there is ever an insufficient amount of money in the bond retirement fund to pay any installment of interest or principal and interest coming due on the bonds or any of them;

(d) A covenant fixing conditions under which bonds on a parity with any bonds outstanding may be issued;

(e) A covenant to obligate, to pay the principal of or interest on the bonds, all or a component of the fees and revenues of the University of Washington that are not subject to appropriation by the legislature and that do not constitute general state revenues as defined in Article VIII, section 1 of the state Constitution or general state revenues for the purpose of calculating statutory limits on state indebtedness pursuant to \*RCW 39.42.060.

The proceeds of the sale of all bonds issued in accordance with this chapter shall be used solely for paying the costs of the projects, including costs of issuance and other financing costs. [2009 c 499 § 7; 1985 c 390 § 38; 1970 ex.s. c 56 § 26; 1969 ex.s. c 232 § 100; 1969 ex.s. c 223 § 28B.20.715. Prior: 1959 c 193 § 4; 1957 c 254 § 4. Formerly RCW 28.77.530.]

\*Reviser's note: RCW 39.42.060 was repealed by 2009 c 500 § 13.

**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.

**28B.20.720 University of Washington bond retirement fund—Composition—Pledge of building fees.** For the purpose of paying and securing the payment of the principal of and interest on the bonds as the same shall become due, there is created in the custody of the state treasurer a special trust fund to be known as the University of Washington bond retirement fund. An appropriation is not required for expenditures from the fund. There shall be paid into the fund, the following:

(1) One-half of such building fees as the board may from time to time determine, or such larger portion as may be necessary to prevent default in the payments required to be made out of the bond retirement fund;

(2) Any gifts, bequests, or grants which may be made, or may become available, for the purpose of furthering the construction of any authorized projects, or for the repayment of the costs thereof;

(3) Such additional funds as the legislature may provide.

While any bonds issued in accordance with the provisions of this chapter or any interest thereon remain unpaid, the bond retirement fund shall be available solely for the pay-



ment thereof except as provided in RCW 28B.20.725(5). As a part of the contract of sale of such bonds, the board undertakes to charge and collect building fees and to deposit the portion of such fees in the bond retirement fund in amounts which will be sufficient to pay the principal of, and interest on all such bonds outstanding. [2009 c 499 § 3; 1985 c 390 § 39; 1969 ex.s. c 223 § 28B.20.720. Prior: 1959 c 193 § 5; 1957 c 254 § 5. Formerly RCW 28.77.540.]

*1977 Bond act for the refunding of outstanding limited obligation revenue bonds of institutions of higher education, as affecting: RCW 28B.14C.080 through 28B.14C.130.*

**28B.20.735 Bonds not general obligations—Legislature may provide additional means of payment.** The bonds authorized to be issued pursuant to the provisions of RCW 28B.20.700 through 28B.20.740 shall not be general obligations of the state of Washington, but shall be limited obligation bonds payable only from the special fund created for their payment as herein provided. The legislature may provide additional means for raising money for the payment of interest and principal of said bonds. RCW 28B.20.700 through 28B.20.740 shall not be deemed to provide an exclusive method for such payment. The power given to the legislature by this section to provide additional means for raising money is permissive, and shall not in any way be construed as a pledge of the general credit of the state of Washington. [2009 c 499 § 8; 1985 c 390 § 40; 1969 ex.s. c 223 § 28B.20.735. Prior: 1957 c 254 § 7. Formerly RCW 28.77.550.]

## Chapter 28B.30 RCW

### WASHINGTON STATE UNIVERSITY

#### Sections

28B.30.530	Small business development center—Services—Use of funds.
28B.30.531	Business assistance account.
28B.30.730	Bonds—Issuance, sale, form, term, interest—Covenants—Use of proceeds.
28B.30.740	Washington State University bond retirement fund—Composition—Pledge of building fees.

**28B.30.530 Small business development center—Services—Use of funds.** (1) The board of regents of Washington State University shall establish the Washington State University small business development center.

(2) The center shall provide management and technical assistance including but not limited to training, counseling, and research services to small businesses throughout the state. The center shall work with the department of community, trade, and economic development, the state board for community and technical colleges, the higher education coordinating board, the workforce training and education coordinating board, the employment security department, the Washington state economic development commission, associate development organizations, and workforce development councils to:

(a) Integrate small business development centers with other state and local economic development and workforce development programs;

(b) Target the centers' services to small businesses;

(c) Tailor outreach and services at each center to the needs and demographics of entrepreneurs and small businesses located within the service area;

(d) Establish and expand small business development center satellite offices when financially feasible; and

(e) Coordinate delivery of services to avoid duplication.

(3) The administrator of the center may contract with other public or private entities for the provision of specialized services.

(4) The small business development center may accept and disburse federal grants or federal matching funds or other funds or donations from any source when made, granted, or donated to carry out the center's purposes. When drawing on funds from the business assistance account created in \*RCW 30.60.010, the center must first use the funds to make increased management and technical assistance available to small and start-up businesses at satellite offices. The funds may also be used to develop and expand assistance programs such as small business planning workshops and small business counseling.

(5) The legislature directs the small business development center to request United States small business administration approval of a special emphasis initiative, as permitted under 13 C.F.R. 130.340(c) as of April 1, 2009, to target assistance to Washington state's smaller businesses. This initiative would be negotiated and included in the first cooperative agreement application process that occurs after July 26, 2009.

(6) By December 1, 2009, and December 1, 2010, respectively, the center shall provide a written progress report and a final report to the appropriate committees of the legislature with respect to the requirements in subsections (2) and (5) of this section and the amount and use of funding received through the business assistance account. The reports must also include data on the number, location, staffing, and budget levels of satellite offices; affiliations with community colleges, associate development organizations or other local organizations; the number, size, and type of small businesses assisted; and the types of services provided. The reports must also include information on the outcomes achieved, such as jobs created or retained, private capital invested, and return on the investment of state and federal dollars. [2009 c 486 § 1; 1984 c 77 § 1.]

**\*Reviser's note:** The reference to RCW 30.60.010 appears to be erroneous. Reference to RCW 28B.30.531 was apparently intended.

**Conflict with federal requirements—2009 c 486:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements, including guidelines set by the United States small business administration, that are a necessary condition to the receipt of federal funds by the state." [2009 c 486 § 4.]

**Intent—2009 c 486:** See note following RCW 39.29.006.

**28B.30.531 Business assistance account.** The business assistance account is created in the custody of the state treasurer. Expenditures from the account may be used only for the expansion of business assistance services delivered by the small business development center created in RCW

28B.30.530. Only the administrator of the center or the administrator's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2009 c 486 § 2.]

**Intent—2009 c 486:** See note following RCW 39.29.006.

**Conflict with federal requirements—2009 c 486:** See note following RCW 28B.30.530.

**28B.30.730 Bonds—Issuance, sale, form, term, interest—Covenants—Use of proceeds.** For the purpose of financing the cost of any projects, the board is hereby authorized to adopt the resolution or resolutions and prepare all other documents necessary for the issuance, sale and delivery of the bonds or any part thereof at such time or times as it shall deem necessary and advisable. Said bonds:

(1) Shall not constitute

(a) An obligation, either general or special, of the state;

or

(b) A general obligation of Washington State University or of the board;

(2) Shall be

(a) Either registered or in coupon form; and

(b) Issued in denominations of not less than one hundred dollars; and

(c) Fully negotiable instruments under the laws of this state; and

(d) Signed on behalf of the university by the president of the board, attested by the secretary or the treasurer of the board, have the seal of the university impressed thereon or a facsimile of such seal printed or lithographed in the bottom border thereof, and the coupons attached thereto shall be signed with the facsimile signatures of such president and secretary;

(3) Shall state

(a) The date of issue; and

(b) The series of the issue and be consecutively numbered within the series; and

(c) That, except as otherwise provided in subsection (8)(e) of this section, the bond is payable both principal and interest solely out of the bond retirement fund;

(4) Each series of bonds shall bear interest, payable either annually or semiannually, as the board may determine;

(5) Shall be payable both principal and interest out of the bond retirement fund;

(6) Shall be payable at such times over a period of not to exceed forty years from date of issuance, at such place or places, and with such reserved rights of prior redemption, as the board may prescribe;

(7) Shall be sold in such manner and at such price as the board may prescribe;

(8) Shall be issued under and subject to such terms, conditions and covenants providing for the payment of the principal thereof and interest thereon and such other terms, conditions, covenants and protective provisions safeguarding such payment, not inconsistent with RCW 28B.30.700 through 28B.30.780, and as found to be necessary by the board for the most advantageous sale thereof, which may include but not be limited to:

(a) A covenant that the building fees shall be established, maintained and collected in such amounts that will provide

money sufficient to pay the principal of and interest on all bonds payable out of the bond retirement account, to set aside and maintain the reserves required to secure the payment of such principal and interest, and to maintain any coverage which may be required over such principal and interest;

(b) A covenant that a reserve account shall be created in the bond retirement fund to secure the payment of the principal of and interest on all bonds issued and a provision made that certain amounts be set aside and maintained therein;

(c) A covenant that sufficient moneys may be transferred from the Washington State University building account to the bond retirement account when ordered by the board of regents in the event there is ever an insufficient amount of money in the bond retirement account to pay any installment of interest or principal and interest coming due on the bonds or any of them;

(d) A covenant fixing conditions under which bonds on a parity with any bonds outstanding may be issued;

(e) A covenant to obligate, to pay the principal of or interest on the bonds, all or a component of the fees and revenues of Washington State University that are not subject to appropriation by the legislature and that do not constitute general state revenues as defined in Article VIII, section 1 of the state Constitution or general state revenues for the purpose of calculating statutory limits on state indebtedness pursuant to \*RCW 39.42.060.

The proceeds of the sale of all bonds issued in accordance with this chapter shall be used solely for paying the costs of the projects, including costs of issuance and other financing costs. The Washington State University building account shall be credited with the investment income derived pursuant to RCW 43.84.080 on the investable balances of scientific permanent fund and agricultural permanent fund, less the allocation to the state treasurer's service fund pursuant to RCW 43.08.190. [2009 c 499 § 9; 2002 c 238 § 302; 1991 sp.s. c 13 § 50; 1985 c 390 § 43; 1972 ex.s. c 25 § 2; 1970 ex.s. c 56 § 28; 1969 ex.s. c 232 § 102; 1969 ex.s. c 223 § 28B.30.730. Prior: 1961 ex.s. c 12 § 4. Formerly RCW 28.80.530.]

**\*Reviser's note:** RCW 39.42.060 was repealed by 2009 c 500 § 13.

**Severability—2002 c 238:** "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." [2002 c 238 § 307.]

**Effective date—2002 c 238:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 238 § 308.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**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.

*Chapter not to repeal, override, or limit other statutes or actions: RCW 28B.31.100.*

**28B.30.740 Washington State University bond retirement fund—Composition—Pledge of building fees.** For the purpose of paying and securing the payment of the principal of and interest on the bonds as the same shall become due, there is created in the custody of the state treasurer a special trust fund to be known as the Washington State University

bond retirement fund. An appropriation is not required for expenditures from the fund. There shall be paid into the fund, the following:

(1) One-half of such building fees as the board may from time to time determine, or such larger portion as may be necessary to prevent default in the payments required to be made out of the bond retirement fund;

(2) Any grants which may be made, or may become available, for the purpose of furthering the construction of any authorized projects, or for the repayment of the costs thereof;

(3) Such additional funds as the legislature may provide.

While any bonds issued in accordance with the provisions of this chapter or any interest thereon remain unpaid, the bond retirement fund shall be available solely for the payment thereof except as provided in RCW 28B.30.750(5). As a part of the contract of sale of such bonds, the board shall undertake to charge and collect building fees and to deposit the portion of such fees in the bond retirement fund in amounts which will be sufficient to pay the principal of, and interest on all such bonds outstanding. [2009 c 499 § 4; 1985 c 390 § 44; 1969 ex.s. c 223 § 28B.30.740. Prior: 1961 ex.s. c 12 § 5. Formerly RCW 28.80.540.]

*Chapter not to repeal, override, or limit other statutes or actions: RCW 28B.31.100.*

### Chapter 28B.32 RCW COMMUNITY TECHNOLOGY OPPORTUNITY PROGRAM

#### Sections

28B.32.010	Recodified as RCW 43.105.380.
28B.32.020	Repealed.
28B.32.030	Recodified as RCW 43.105.382.
28B.32.900	Decodified.
28B.32.901	Decodified.

**28B.32.010 Recodified as RCW 43.105.380.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28B.32.020 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28B.32.030 Recodified as RCW 43.105.382.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28B.32.900 Decodified.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28B.32.901 Decodified.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

### Chapter 28B.35 RCW REGIONAL UNIVERSITIES

#### Sections

28B.35.205	Degrees through master's degrees authorized—Limitations—Honorary degrees.
28B.35.370	Disposition of building fees and normal school fund revenues—Bond payments—Capital projects accounts.

**28B.35.205 Degrees through master's degrees authorized—Limitations—Honorary degrees.** In addition to all other powers and duties given to them by law, Central Washington University, Eastern Washington University, and Western Washington University are hereby authorized to grant any degree through the master's degree to any student who has completed a program of study and/or research in those areas which are determined by the faculty and board of trustees of the college to be appropriate for the granting of such degree: PROVIDED, That before any degree is authorized under this section it shall be subject to the review and approval of the higher education coordinating board.

The board of trustees, upon recommendation of the faculty, may also confer honorary bachelor's, master's, or doctorate level degrees upon persons in recognition of their learning or devotion to education, literature, art, or science. No degree may be conferred in consideration of the payment of money or the donation of any kind of property. [2009 c 295 § 1; 1991 c 58 § 2; 1985 c 370 § 84; 1979 c 14 § 4. Prior: 1977 ex.s. c 169 § 51. Cf: 1975 1st ex.s. c 232 § 1.]

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

**28B.35.370 Disposition of building fees and normal school fund revenues—Bond payments—Capital projects accounts.** Within thirty-five days from the date of collection thereof all building fees of each regional university and The Evergreen State College shall be paid into the state treasury and these together with such normal school fund revenues as provided in RCW 28B.35.751 as are received by the state treasury shall be credited as follows:

(1) On or before June 30th of each year the board of trustees of each regional university and The Evergreen State College, if issuing bonds payable out of its building fees and above described normal school fund revenues, shall certify to the state treasurer the amounts required in the ensuing twelve months to pay and secure the payment of the principal of and interest on such bonds. The amounts so certified by each regional university and The Evergreen State College shall be a prior lien and charge against all building fees and above described normal school fund revenues of such institution. The state treasurer shall thereupon deposit the amounts so certified in the Eastern Washington University capital projects account, the Central Washington University capital projects account, the Western Washington University capital projects account, or The Evergreen State College capital projects account respectively, which accounts are hereby created in the state treasury. The amounts deposited in the respective capital projects accounts shall be used to pay and secure the payment of the principal of and interest on the building bonds issued by such regional universities and The Evergreen State College as authorized by law. If in any twelve month period it shall appear that the amount certified by any such board of trustees is insufficient to pay and secure the payment of the principal of and interest on the outstanding building and above described normal school fund revenue bonds of its institution, the state treasurer shall notify the board of trustees and such board shall adjust its certificate so that all requirements of moneys to pay and secure the payment of the principal of and interest on all such bonds then outstanding shall be fully met at all times.

(2) All normal school fund revenue pursuant to RCW 28B.35.751 shall be deposited in the Eastern Washington University capital projects account, the Central Washington University capital projects account, the Western Washington University capital projects account, or The Evergreen State College capital projects account respectively, which accounts are hereby created in the state treasury. The sums deposited in the respective capital projects accounts shall be appropriated and expended to pay and secure the payment of the principal of and interest on bonds payable out of the building fees and normal school revenue and for the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto except for any sums transferred therefrom as authorized by law. During the 2009-2011 biennium, sums in the respective capital accounts shall also be used for routine facility maintenance and utility costs.

(3) Funds available in the respective capital projects accounts may also be used for certificates of participation under chapter 39.94 RCW. [2009 c 499 § 5; 2009 c 497 § 6021; 1991 sp.s. c 13 § 49. Prior: 1985 c 390 § 47; 1985 c 57 § 15; 1977 ex.s. c 169 § 79; 1969 ex.s. c 223 § 28B.40.370; prior: 1967 c 47 §§ 11, 14; 1965 c 76 § 2; 1961 ex.s. c 14 § 5; 1961 ex.s. c 13 § 4. Formerly RCW 28B.40.370; 28.81.085; 28.81.540.]

**Reviser's note:** This section was amended by 2009 c 497 § 6021 and by 2009 c 499 § 5, 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—2009 c 497:** See note following RCW 28B.15.210.

**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.

**Severability—Nomenclature—Savings—1977 ex.s. c 169:** See notes following RCW 28B.10.016.

## Chapter 28B.50 RCW

### COMMUNITY AND TECHNICAL COLLEGES

#### Sections

28B.50.020	Purpose.
28B.50.030	Definitions.
28B.50.090	College board—Powers and duties.
28B.50.140	Boards of trustees—Powers and duties.
28B.50.273	Identification of grant-eligible programs of study and other job training programs—Marketing.
28B.50.281	Curriculum development and funding—Use of federal stimulus funding—Reports—Recognized programs of study under RCW 28B.50.273—Prioritization of workforce training programs.
28B.50.282	Evergreen jobs training account—Grants.
28B.50.330	Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Revenue bond financing—Public bid.
28B.50.360	Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Community and technical college capital projects account—Disposition of building fees. ( <i>Effective until June 30, 2011.</i> )
28B.50.360	Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Community and technical college capital projects account—Disposition of building fees. ( <i>Effective June 30, 2011.</i> )
28B.50.465	Cost-of-living increases—Academic employees.
28B.50.468	Cost-of-living increases—Classified employees.

28B.50.535	Community or technical college—Issuance of high school diploma or certificate.
28B.50.837	Exceptional faculty awards—Established—Community and technical college faculty awards trust fund.
28B.50.902	Centers of excellence.
28B.50.980	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )

*College in the high school program—Rules:* RCW 28A.600.290.

*Dual credit programs—Annual report:* RCW 28A.600.280.

**28B.50.020 Purpose.** The purpose of this chapter is to provide for the dramatically increasing number of students requiring high standards of education either as a part of the continuing higher education program or for occupational education and training, or for adult basic skills and literacy education, by creating a new, independent system of community and technical colleges which will:

(1) Offer an open door to every citizen, regardless of his or her academic background or experience, at a cost normally within his or her economic means;

(2) Ensure that each college district shall offer thoroughly comprehensive educational, training, and service programs to meet the needs of both the communities and students served by combining high standards of excellence in academic transfer courses; realistic and practical courses in occupational education, both graded and ungraded; community services of an educational, cultural, and recreational nature; and adult education, including basic skills and general, family, and workforce literacy programs and services;

(3) Provide for basic skills and literacy education, and occupational education and technical training at technical colleges in order to prepare students for careers in a competitive workforce;

(4) Provide or coordinate related and supplemental instruction for apprentices at community and technical colleges;

(5) Provide administration by state and local boards which will avoid unnecessary duplication of facilities or programs; and which will encourage efficiency in operation and creativity and imagination in education, training, and service to meet the needs of the community and students;

(6) Allow for the growth, improvement, flexibility and modification of the community colleges and their education, training, and service programs as future needs occur; and

(7) Establish firmly that, except on a pilot basis as provided under RCW 28B.50.810, community colleges are, for purposes of academic training, two year institutions, and are an independent, unique, and vital section of our state's higher education system, separate from both the common school system and other institutions of higher learning, and never to be considered for conversion into four-year liberal arts colleges. [2009 c 64 § 2; 2005 c 258 § 7; 1991 c 238 § 21; 1969 ex.s. c 261 § 17; 1969 ex.s. c 223 § 28B.50.020. Prior: 1967 ex.s. c 8 § 2.]

**Intent—2009 c 64:** "It is the intent of the legislature to allow public technical colleges under the authority of the state board for community and technical colleges to offer associate degrees that prepare students for transfer to bachelor's degrees in professional fields, subject to rules adopted by the state board for community and technical colleges." [2009 c 64 § 1.]

**Findings—Intent—2005 c 258:** See note following RCW 28B.45.014.

**Severability—1969 ex.s. c 261:** "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 261 § 37. Formerly RCW 28.85.911.]

**28B.50.030 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adult education" means all education or instruction, including academic, vocational education or training, basic skills and literacy training, and "occupational education" provided by public educational institutions, including common school districts for persons who are eighteen years of age and over or who hold a high school diploma or certificate. However, "adult education" shall not include academic education or instruction for persons under twenty-one years of age who do not hold a high school degree or diploma and who are attending a public high school for the sole purpose of obtaining a high school diploma or certificate, nor shall "adult education" include education or instruction provided by any four-year public institution of higher education.

(2) "Applied baccalaureate degree" means a baccalaureate degree awarded by a college under RCW 28B.50.810 for successful completion of a program of study that is:

(a) Specifically designed for individuals who hold an associate of applied science degree, or its equivalent, in order to maximize application of their technical course credits toward the baccalaureate degree; and

(b) Based on a curriculum that incorporates both theoretical and applied knowledge and skills in a specific technical field.

(3) "Board" means the workforce training and education coordinating board.

(4) "Board of trustees" means the local community and technical college board of trustees established for each college district within the state.

(5) "Center of excellence" means a community or technical college designated by the college board as a statewide leader in industry-specific, community and technical college workforce education and training.

(6) "College board" means the state board for community and technical colleges created by this chapter.

(7) "Common school board" means a public school district board of directors.

(8) "Community college" includes those higher education institutions that conduct education programs under RCW 28B.50.020.

(9) "Director" means the administrative director for the state system of community and technical colleges.

(10) "Dislocated forest product worker" means a forest products worker who: (a)(i) Has been terminated or received notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business' services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(11) "Dislocated salmon fishing worker" means a finfish products worker who: (a)(i) Has been terminated or received

notice of termination from employment and is unlikely to return to employment in the individual's principal occupation or previous industry because of a diminishing demand for his or her skills in that occupation or industry; or (ii) is self-employed and has been displaced from his or her business because of the diminishing demand for the business's services or goods; and (b) at the time of last separation from employment, resided in or was employed in a rural natural resources impact area.

(12) "District" means any one of the community and technical college districts created by this chapter.

(13) "Forest products worker" means a worker in the forest products industries affected by the reduction of forest fiber enhancement, transportation, or production. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries assigned the major group standard industrial classification codes "24" and "26" and the industries involved in the harvesting and management of logs, transportation of logs and wood products, processing of wood products, and the manufacturing and distribution of wood processing and logging equipment. The commissioner may adopt rules further interpreting these definitions. For the purposes of this subsection, "standard industrial classification code" means the code identified in \*RCW 50.29.025(3).

(14) "High employer demand program of study" means an apprenticeship, or an undergraduate or graduate certificate or degree program in which the number of students prepared for employment per year from in-state institutions is substantially less than the number of projected job openings per year in that field, statewide or in a substate region.

(15) "K-12 system" means the public school program including kindergarten through the twelfth grade.

(16) "Occupational education" means education or training that will prepare a student for employment that does not require a baccalaureate degree, and education and training that will prepare a student for transfer to bachelor's degrees in professional fields, subject to rules adopted by the college board.

(17) "Qualified institutions of higher education" means:

(a) Washington public community and technical colleges;

(b) Private career schools that are members of an accrediting association recognized by rule of the higher education coordinating board for the purposes of chapter 28B.92 RCW; and

(c) Washington state apprenticeship and training council-approved apprenticeship programs.

(18) "Rural natural resources impact area" means:

(a) A nonmetropolitan county, as defined by the 1990 decennial census, that meets three of the five criteria set forth in subsection (19) of this section;

(b) A nonmetropolitan county with a population of less than forty thousand in the 1990 decennial census, that meets two of the five criteria as set forth in subsection (19) of this section; or

(c) A nonurbanized area, as defined by the 1990 decennial census, that is located in a metropolitan county that meets three of the five criteria set forth in subsection (19) of this section.

(19) For the purposes of designating rural natural resources impact areas, the following criteria shall be considered:

(a) A lumber and wood products employment location quotient at or above the state average;

(b) A commercial salmon fishing employment location quotient at or above the state average;

(c) Projected or actual direct lumber and wood products job losses of one hundred positions or more;

(d) Projected or actual direct commercial salmon fishing job losses of one hundred positions or more; and

(e) An unemployment rate twenty percent or more above the state average. The counties that meet these criteria shall be determined by the employment security department for the most recent year for which data is available. For the purposes of administration of programs under this chapter, the United States post office five-digit zip code delivery areas will be used to determine residence status for eligibility purposes. For the purpose of this definition, a zip code delivery area of which any part is ten miles or more from an urbanized area is considered nonurbanized. A zip code totally surrounded by zip codes qualifying as nonurbanized under this definition is also considered nonurbanized. The office of financial management shall make available a zip code listing of the areas to all agencies and organizations providing services under this chapter.

(20) "Salmon fishing worker" means a worker in the finfish industry affected by 1994 or future salmon disasters. The workers included within this definition shall be determined by the employment security department, but shall include workers employed in the industries involved in the commercial and recreational harvesting of finfish including buying and processing finfish. The commissioner may adopt rules further interpreting these definitions.

(21) "System" means the state system of community and technical colleges, which shall be a system of higher education.

(22) "Technical college" includes those higher education institutions with the mission of conducting occupational education, basic skills, literacy programs, and offering on short notice, when appropriate, programs that meet specific industry needs. For purposes of this chapter, technical colleges shall include Lake Washington Vocational-Technical Institute, Renton Vocational-Technical Institute, Bates Vocational-Technical Institute, Clover Park Vocational Institute, and Bellingham Vocational-Technical Institute. [2009 c 353 § 1; 2009 c 151 § 3; 2009 c 64 § 3; 2007 c 277 § 301; 2005 c 258 § 8; 2003 2nd sp.s. c 4 § 33; 1997 c 367 § 13; 1995 c 226 § 17; 1992 c 21 § 5. Prior: 1991 c 315 § 15; 1991 c 238 § 22; 1985 c 461 § 14; 1982 1st ex.s. c 53 § 24; 1973 c 62 § 12; 1969 ex.s. c 261 § 18; 1969 ex.s. c 223 § 28B.50.030; prior: 1967 ex.s. c 8 § 3.]

**Reviser's note:** \*(1) Reference to the "standard industrial classification code" in RCW 50.29.025(3) was eliminated by section 14, chapter 3, Laws of 2009, and section 2, chapter 493, Laws of 2009.

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(3) This section was amended by 2009 c 64 § 3, 2009 c 151 § 3, and by 2009 c 353 § 1, 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).

**Intent—2009 c 64:** See note following RCW 28B.50.020.

**Findings—Part headings not law—2007 c 277:** See notes following RCW 28B.50.271.

**Findings—Intent—2005 c 258:** See note following RCW 28B.45.014.

**Conflict with federal requirements—Severability—Effective date—2003 2nd sp.s. c 4:** See notes following RCW 50.01.010.

**Severability—Conflict with federal requirements—Effective date—1997 c 367:** See notes following RCW 43.160.020.

**Severability—Conflict with federal requirements—Effective date—1995 c 226:** See notes following RCW 43.160.020.

**Intent—1991 c 315:** "The legislature finds that:

(1) The economic health and well-being of timber-dependent communities is of substantial public concern. The significant reduction in annual timber harvest levels likely will result in reduced economic activity and persistent unemployment and underemployment over time, which would be a serious threat to the safety, health, and welfare of residents of the timber impact areas, decreasing the value of private investments and jeopardizing the sources of public revenue.

(2) Timber impact areas are most often located in areas that are experiencing little or no economic growth, creating an even greater risk to the health, safety, and welfare of these communities. The ability to remedy problems caused by the substantial reduction in harvest activity is beyond the power and control of the regulatory process and influence of the state, and the ordinary operations of private enterprise without additional governmental assistance are insufficient to adequately remedy the resulting problems of poverty and unemployment.

(3) To address these concerns, it is the intent of the legislature to increase training and retraining services accessible to timber impact areas, and provide for coordination of noneconomic development services in timber impact areas as economic development efforts will not succeed unless social, housing, health, and other needs are addressed." [1991 c 315 § 1.]

**Severability—Conflict with federal requirements—Effective date—1991 c 315:** See RCW 50.70.900 through 50.70.902.

**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.

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**Severability—1969 ex.s. c 261:** See note following RCW 28B.50.020.

**28B.50.090 College board—Powers and duties.** The college board shall have general supervision and control over the state system of community and technical colleges. In addition to the other powers and duties imposed upon the college board by this chapter, the college board shall be charged with the following powers, duties and responsibilities:

(1) Review the budgets prepared by the boards of trustees, prepare a single budget for the support of the state system of community and technical colleges and adult education, and submit this budget to the governor as provided in RCW 43.88.090;

(2) Establish guidelines for the disbursement of funds; and receive and disburse such funds for adult education and maintenance and operation and capital support of the college districts in conformance with the state and district budgets, and in conformance with chapter 43.88 RCW;

(3) Ensure, through the full use of its authority:

(a) That each college district shall offer thoroughly comprehensive educational, training, and service programs to meet the needs of both the communities and students served by combining high standards of excellence in academic transfer courses; realistic and practical courses in occupational education, both graded and ungraded; and community services of an educational, cultural, and recreational nature; and adult education, including basic skills and general, family, and workforce literacy programs and services;

(b) That each college district shall maintain an open-door policy, to the end that no student will be denied admission because of the location of the student's residence or because of the student's educational background or ability; that, insofar as is practical in the judgment of the college board, curriculum offerings will be provided to meet the educational and training needs of the community generally and the students thereof; and that all students, regardless of their differing courses of study, will be considered, known and recognized equally as members of the student body: PROVIDED, That the administrative officers of a community or technical college may deny admission to a prospective student or attendance to an enrolled student if, in their judgment, the student would not be competent to profit from the curriculum offerings of the college, or would, by his or her presence or conduct, create a disruptive atmosphere within the college not consistent with the purposes of the institution. This subsection (3)(b) shall not apply to competency, conduct, or presence associated with a disability in a person twenty-one years of age or younger attending a technical college;

(4) Prepare a comprehensive master plan for the development of community and technical college education and training in the state; and assist the office of financial management in the preparation of enrollment projections to support plans for providing adequate college facilities in all areas of the state. The master plan shall include implementation of the vision, goals, priorities, and strategies in the statewide strategic master plan for higher education under RCW 28B.76.200 based on the community and technical college system's role and mission. The master plan shall also contain measurable performance indicators and benchmarks for gauging progress toward achieving the goals and priorities;

(5) Define and administer criteria and guidelines for the establishment of new community and technical colleges or campuses within the existing districts;

(6) Establish criteria and procedures for modifying district boundary lines consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended and in accordance therewith make such changes as it deems advisable;

(7) Establish minimum standards to govern the operation of the community and technical colleges with respect to:

(a) Qualifications and credentials of instructional and key administrative personnel, except as otherwise provided in the state plan for vocational education,

(b) Internal budgeting, accounting, auditing, and financial procedures as necessary to supplement the general requirements prescribed pursuant to chapter 43.88 RCW,

(c) The content of the curriculums and other educational and training programs, and the requirement for degrees and certificates awarded by the colleges,

(d) Standard admission policies,

(e) Eligibility of courses to receive state fund support;

(8) Establish and administer criteria and procedures for all capital construction including the establishment, installation, and expansion of facilities within the various college districts;

(9) Encourage innovation in the development of new educational and training programs and instructional methods; coordinate research efforts to this end; and disseminate the findings thereof;

(10) Exercise any other powers, duties and responsibilities necessary to carry out the purposes of this chapter;

(11) Authorize the various community and technical colleges to offer programs and courses in other districts when it determines that such action is consistent with the purposes set forth in RCW 28B.50.020 as now or hereafter amended;

(12) Notwithstanding any other law or statute regarding the sale of state property, sell or exchange and convey any or all interest in any community and technical college real and personal property, except such property as is received by a college district in accordance with RCW 28B.50.140(8), when it determines that such property is surplus or that such a sale or exchange is in the best interests of the community and technical college system;

(13) In order that the treasurer for the state board for community and technical colleges appointed in accordance with RCW 28B.50.085 may make vendor payments, the state treasurer will honor warrants drawn by the state board providing for an initial advance on July 1, 1982, of the current biennium and on July 1 of each succeeding biennium from the state general fund in an amount equal to twenty-four percent of the average monthly allotment for such budgeted biennium expenditures for the state board for community and technical colleges as certified by the office of financial management; and at the conclusion of such initial month and for each succeeding month of any biennium, the state treasurer will reimburse expenditures incurred and reported monthly by the state board treasurer in accordance with chapter 43.88 RCW: PROVIDED, That the reimbursement to the state board for actual expenditures incurred in the final month of each biennium shall be less the initial advance made in such biennium;

(14) Notwithstanding the provisions of subsection (12) of this section, may receive such gifts, grants, conveyances, devises, and bequests of real or personal property from private sources as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community and technical college programs and may sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof according to the terms and conditions thereof; and adopt regulations to govern the receipt and expenditure of the proceeds, rents, profits and income thereof; and

(15) The college board shall have the power of eminent domain. [2009 c 64 § 4; 2004 c 275 § 57; 2003 c 130 § 6; 1991 c 238 § 33; 1982 c 50 § 1; 1981 c 246 § 2; 1979 c 151 § 20; 1977 ex.s. c 282 § 4; 1973 c 62 § 16; 1969 ex.s. c 261 § 21; 1969 ex.s. c 223 § 28B.50.090. Prior: 1967 ex.s. c 8 § 9.]

**Intent—2009 c 64:** See note following RCW 28B.50.020.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Findings—Intent—2003 c 130:** See note following RCW 28B.76.210.

**Severability—1981 c 246:** "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 246 § 6.]

**Severability—1977 ex.s. c 282:** See note following RCW 28B.50.870.

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**Severability—1969 ex.s. c 261:** See note following RCW 28B.50.020.

*Construction, reconstruction, equipping facilities—Financing: RCW 28B.50.340.*

*Development of budget: RCW 43.88.090.*

*Eminent domain: Title 8 RCW.*

*State budgeting, accounting, and reporting system: Chapter 43.88 RCW.*

### **28B.50.140 Boards of trustees—Powers and duties.**

Each board of trustees:

(1) Shall operate all existing community and technical colleges in its district;

(2) Shall create comprehensive programs of community and technical college education and training and maintain an open-door policy in accordance with the provisions of RCW 28B.50.090(3);

(3) Shall employ for a period to be fixed by the board a college president for each community and technical college and, may appoint a president for the district, and fix their duties and compensation, which may include elements other than salary. Compensation under this subsection shall not affect but may supplement retirement, health care, and other benefits that are otherwise applicable to the presidents as state employees. The board shall also employ for a period to be fixed by the board members of the faculty and such other administrative officers and other employees as may be necessary or appropriate and fix their salaries and duties. Compensation and salary increases under this subsection shall not exceed the amount or percentage established for those purposes in the state appropriations act by the legislature as allocated to the board of trustees by the state board for community and technical colleges. The state board for community and technical colleges shall adopt rules defining the permissible elements of compensation under this subsection;

(4) May establish, under the approval and direction of the college board, new facilities as community needs and interests demand. However, the authority of boards of trustees to purchase or lease major off-campus facilities shall be subject to the approval of the higher education coordinating board pursuant to RCW 28B.76.230;

(5) May establish or lease, operate, equip and maintain dormitories, food service facilities, bookstores and other self-supporting facilities connected with the operation of the community and technical college;

(6) May, with the approval of the college board, borrow money and issue and sell revenue bonds or other evidences of indebtedness for the construction, reconstruction, erection, equipping with permanent fixtures, demolition and major alteration of buildings or other capital assets, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances, for dormitories, food service facilities, and other self-supporting facilities connected with the operation of the community and technical college in accordance with the provisions of RCW 28B.10.300 through 28B.10.330 where applicable;

(7) May establish fees and charges for the facilities authorized hereunder, including reasonable rules and regulations for the government thereof, not inconsistent with the rules of the college board; each board of trustees operating a community and technical college may enter into agreements, subject to rules of the college board, with owners of facilities to be used for housing regarding the management, operation,

and government of such facilities, and any board entering into such an agreement may:

(a) Make rules for the government, management and operation of such housing facilities deemed necessary or advisable; and

(b) Employ necessary employees to govern, manage and operate the same;

(8) May receive such gifts, grants, conveyances, devises and bequests of real or personal property from private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out the community and technical college programs as specified by law and the rules of the state college board; sell, lease or exchange, invest or expend the same or the proceeds, rents, profits and income thereof according to the terms and conditions thereof; and adopt rules to govern the receipt and expenditure of the proceeds, rents, profits and income thereof;

(9) May establish and maintain night schools whenever in the discretion of the board of trustees it is deemed advisable, and authorize classrooms and other facilities to be used for summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for community and technical college purposes;

(10) May make rules for pedestrian and vehicular traffic on property owned, operated, or maintained by the district;

(11) Shall prescribe, with the assistance of the faculty, the course of study in the various departments of the community and technical college or colleges under its control, and publish such catalogues and bulletins as may become necessary;

(12) May grant to every student, upon graduation or completion of a course of study, a suitable diploma, degree, or certificate under the rules of the state board for community and technical colleges that are appropriate to their mission. The purposes of these diplomas, certificates, and degrees are to lead individuals directly to employment in a specific occupation or prepare individuals for a bachelor's degree or beyond. Technical colleges may only offer transfer degrees that prepare students for bachelor's degrees in professional fields, subject to rules adopted by the college board. In adopting rules, the college board, where possible, shall create consistency between community and technical colleges and may address issues related to tuition and fee rates; tuition waivers; enrollment counting, including the use of credits instead of clock hours; degree granting authority; or any other rules necessary to offer the associate degrees that prepare students for transfer to bachelor's degrees in professional areas. Only pilot colleges under RCW 28B.50.810 may award baccalaureate degrees. The board, upon recommendation of the faculty, may also confer honorary associate of arts degrees upon persons other than graduates of the community college, in recognition of their learning or devotion to education, literature, art, or science. No degree may be conferred in consideration of the payment of money or the donation of any kind of property;

(13) Shall enforce the rules prescribed by the state board for community and technical colleges for the government of community and technical colleges, students and teachers, and adopt such rules and perform all other acts not inconsistent with law or rules of the state board for community and tech-



nical colleges as the board of trustees may in its discretion deem necessary or appropriate to the administration of college districts: PROVIDED, That such rules shall include, but not be limited to, rules relating to housing, scholarships, conduct at the various community and technical college facilities, and discipline: PROVIDED, FURTHER, That the board of trustees may suspend or expel from community and technical colleges students who refuse to obey any of the duly adopted rules;

(14) May, by written order filed in its office, delegate to the president or district president any of the powers and duties vested in or imposed upon it by this chapter. Such delegated powers and duties may be exercised in the name of the district board;

(15) May perform such other activities consistent with this chapter and not in conflict with the directives of the college board;

(16) Notwithstanding any other provision of law, may offer educational services on a contractual basis other than the tuition and fee basis set forth in chapter 28B.15 RCW for a special fee to private or governmental entities, consistent with rules adopted by the state board for community and technical colleges: PROVIDED, That the whole of such special fee shall go to the college district and be not less than the full instructional costs of such services including any salary increases authorized by the legislature for community and technical college employees during the term of the agreement: PROVIDED FURTHER, That enrollments generated hereunder shall not be counted toward the official enrollment level of the college district for state funding purposes;

(17) Notwithstanding any other provision of law, may offer educational services on a contractual basis, charging tuition and fees as set forth in chapter 28B.15 RCW, counting such enrollments for state funding purposes, and may additionally charge a special supplemental fee when necessary to cover the full instructional costs of such services: PROVIDED, That such contracts shall be subject to review by the state board for community and technical colleges and to such rules as the state board may adopt for that purpose in order to assure that the sum of the supplemental fee and the normal state funding shall not exceed the projected total cost of offering the educational service: PROVIDED FURTHER, That enrollments generated by courses offered on the basis of contracts requiring payment of a share of the normal costs of the course will be discounted to the percentage provided by the college;

(18) Shall be authorized to pay dues to any association of trustees that may be formed by the various boards of trustees; such association may expend any or all of such funds to submit biennially, or more often if necessary, to the governor and to the legislature, the recommendations of the association regarding changes which would affect the efficiency of such association;

(19) May participate in higher education centers and consortia that involve any four-year public or independent college or university: PROVIDED, That new degree programs or off-campus programs offered by a four-year public or independent college or university in collaboration with a community or technical college are subject to approval by the higher education coordinating board under RCW 28B.76.230; and

(20) Shall perform any other duties and responsibilities imposed by law or rule of the state board. [2009 c 64 § 5; 2005 c 258 § 9; 2004 c 275 § 58; 1997 c 281 § 1. Prior: 1991 c 238 § 39; 1991 c 58 § 1; 1990 c 135 § 1; prior: 1987 c 407 § 1; 1987 c 314 § 14; 1985 c 370 § 96; 1981 c 246 § 3; 1979 ex.s. c 226 § 11; 1979 c 14 § 6; prior: 1977 ex.s. c 282 § 5; 1977 c 75 § 28; 1973 c 62 § 19; 1970 ex.s. c 15 § 17; prior: 1969 ex.s. c 283 § 30; 1969 ex.s. c 261 § 23; 1969 ex.s. c 223 § 28B.50.140; prior: 1967 ex.s. c 8 § 14.]

**Intent—2009 c 64:** See note following RCW 28B.50.020.

**Findings—Intent—2005 c 258:** See note following RCW 28B.45.014.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Severability—1987 c 314:** See RCW 28B.52.900.

**Severability—1981 c 246:** See note following RCW 28B.50.090.

**Effective date—Severability—1979 ex.s. c 226:** See notes following RCW 28B.59C.010.

**Severability—1977 ex.s. c 282:** See note following RCW 28B.50.870.

**Savings—Severability—1973 c 62:** See notes following RCW 28B.10.510.

**Severability—1970 ex.s. c 15:** See note following RCW 28A.230.160.

**Severability—1969 ex.s. c 283:** See note following RCW 28A.150.050.

**Severability—1969 ex.s. c 261:** See note following RCW 28B.50.020.

#### **28B.50.273 Identification of grant-eligible programs of study and other job training programs—Marketing.**

For the purposes of identifying opportunity grant-eligible programs of study and other job training programs, the college board, in partnership with business, labor, and the workforce training and education coordinating board, shall:

(1) Identify high employer demand programs of study offered by qualified postsecondary institutions that lead to a credential, certificate, or degree;

(2) Identify job-specific training programs offered by qualified postsecondary institutions that lead to a credential, certificate, or degree in green industry occupations as established in chapter 14, Laws of 2008;

(3) Gain recognition of the credentials, certificates, and degrees by Washington's employers and labor organizations. The college board shall designate these recognized credentials, certificates, and degrees as "opportunity grant-eligible programs of study"; and

(4) Market the credentials, certificates, and degrees to potential students, businesses, and apprenticeship programs as a way for individuals to advance in their careers and to better meet the needs of industry. [2009 c 353 § 2; 2008 c 14 § 10; 2007 c 277 § 201.]

**Findings—Intent—Scope of chapter 14, Laws of 2008—Severability—2008 c 14:** See RCW 70.235.005, 70.235.900, and 70.235.901.

**Findings—Part headings not law—2007 c 277:** See notes following RCW 28B.50.271.

#### **28B.50.281 Curriculum development and funding—Use of federal stimulus funding—Reports—Recognized programs of study under RCW 28B.50.273—Prioritization of workforce training programs.**

(1) The state board shall work with the \*leadership team, the Washington state apprenticeship and training council, and the office of the superintendent of public instruction to jointly develop, by June 30, 2010, curricula and training programs, to include on-

the-job training, classroom training, and safety and health training, for the development of the skills and qualifications identified by the department of community, trade, and economic development under \*\*section 7 of this act.

(2) The board shall target a portion of any federal stimulus funding received to ensure commensurate capacity for high employer-demand programs of study developed under this section. To that end, the state board must coordinate with the department, the \*leadership team, the workforce board, or another appropriate state agency in the application for and receipt of any funding that may be made available through the federal youthbuild program, workforce investment act, job corps, or other relevant federal programs.

(3) The board shall provide an interim report to the appropriate committees of the legislature by December 1, 2011, and a final report by December 1, 2013, detailing the effectiveness of, and any recommendations for improving, the worker training curricula and programs established in this section.

(4) Existing curricula and training programs or programs provided by community and technical colleges in the state developed under this section must be recognized as programs of study under RCW 28B.50.273.

(5) Subject to available funding, the board may grant enrollment priority to persons who qualify for a waiver under RCW 28B.15.522 and who enroll in curricula and training programs provided by community or technical colleges in the state that have been developed in accordance with this section.

(6) The college board may prioritize workforce training programs that lead to a credential, certificate, or degree in green economy jobs. For purposes of this section, green economy jobs include those in the primary industries of a green economy including clean energy, high-efficiency building, green transportation, and environmental protection. Prioritization efforts may include but are not limited to: (a) Prioritization of the use of high employer-demand funding for workforce training programs in green economy jobs, if the programs meet minimum criteria for identification as a high-demand program of study as defined by the state board for community and technical colleges, however any additional community and technical college high-demand funding authorized for the 2009-2011 fiscal biennium and thereafter may be subject to prioritization; (b) increased outreach efforts to public utilities, education, labor, government, and private industry to develop tailored, green job training programs; and (c) increased outreach efforts to target populations. Outreach efforts shall be conducted in partnership with local workforce development councils.

(7) The definitions in RCW 43.330.010 apply to this section and RCW 28B.50.282. [2009 c 536 § 9.]

**Reviser's note:** \*(1) The leadership team was created in 2009 c 536 § 3, which was vetoed.

\*\* (2) Section 7 of this act was vetoed.

**Short title—2009 c 536:** See note following RCW 43.330.370.

**28B.50.282 Evergreen jobs training account--Grants.** The evergreen jobs training account is created in the state treasury. Funds deposited to the account may include gifts, grants, or endowments from public or private sources, in trust or otherwise. Moneys from the account must be used

to supplement the state opportunity grant program established under RCW 28B.50.271. All receipts from appropriations directed to the account must be deposited into the account. Expenditures from the account may be used only for the activities identified in this section. The state board, in consultation with the department and the \*leadership team, may authorize expenditures from the account but must distribute grants from the account on a competitive basis. Grant funds from the evergreen jobs training account should be used when other public or private funds are insufficient or unavailable.

(1) These grant funds may be used for, but are not limited to uses for:

- (a) Curriculum development;
- (b) Transitional jobs strategies for dislocated workers in declining industries who may be retrained for high-wage occupations in green industries;
- (c) Workforce education to target populations;
- (d) Adult basic and remedial education as necessary linked to occupation skills training; and
- (e) Coordinated outreach efforts by institutions of higher education and workforce development councils.

(2) These grant funds may not be used for student assistance and support services available through the state opportunity grant program under RCW 28B.50.271.

(3) Applicants eligible to receive these grants may be any organization or a partnership of organizations that has demonstrated expertise in:

- (a) Implementing effective education and training programs that meet industry demand; and
- (b) Recruiting and supporting, to successful completion of those training programs carried out under these grants, the target populations of workers.

(4) In awarding grants from the evergreen jobs training account, the state board shall give priority to applicants that demonstrate the ability to:

- (a) Use labor market and industry analysis developed by the employment security department and green industry skill panels in the design and delivery of the relevant education and training program, and otherwise use strategies developed by green industry skill panels;

(b) Leverage and align existing public programs and resources and private resources toward the goal of recruiting, supporting, educating, and training target populations of workers;

(c) Work collaboratively with other relevant stakeholders in the regional economy;

(d) Link adult basic and remedial education, where necessary, with occupation skills training;

(e) Involve employers and, where applicable, labor unions in the determination of relevant skills and competencies and, where relevant, the validation of career pathways; and

(f) Ensure that supportive services, where necessary, are integrated with education and training and are delivered by organizations with direct access to and experience with the targeted population of workers. [2009 c 536 § 10.]

**\*Reviser's note:** The leadership team was created in 2009 c 536 § 3, which was vetoed.

**Short title—2009 c 536:** See note following RCW 43.330.370.

**28B.50.330 Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Revenue bond financing—Public bid.** (1) The boards of trustees of college districts are empowered in accordance with the provisions of this chapter to provide for the construction, reconstruction, erection, equipping, demolition, and major alterations of buildings and other capital assets, and the acquisition of sites, rights-of-way, easements, improvements, or appurtenances for the use of the aforementioned colleges as authorized by the college board in accordance with RCW 28B.50.140; to be financed by bonds payable out of special funds from revenues hereafter derived from income received from such facilities, gifts, bequests, or grants, and such additional funds as the legislature may provide, and payable out of a bond retirement fund to be established by the respective district boards in accordance with rules of the state board. With respect to building, improvements, or repairs, or other work, where the estimated cost exceeds ninety thousand dollars, or forty-five thousand dollars if the work involves one trade or craft area, complete plans and specifications for the work shall be prepared, the work shall be put out for a public bid, and the contract shall be awarded to the responsible bidder who submits the lowest responsive bid. Any project regardless of dollar amount may be put to public bid.

(2) This section does not apply when a contract is awarded by the small works roster procedure authorized in RCW 39.04.155.

(3) Where the estimated cost to any college of any building, improvements, or repairs, or other work, is less than ninety thousand dollars, or forty-five thousand dollars if the work involves one trade or craft area, the publication requirements of RCW 39.04.020 do not apply. [2009 c 229 § 1; 2007 c 495 § 2; 1993 c 379 § 108; 1991 c 238 § 48; 1979 ex.s. c 12 § 2; 1969 ex.s. c 223 § 28B.50.330. Prior: 1967 ex.s. c 8 § 33. Formerly RCW 28.85.330.]

**Intent—Severability—Effective date—1993 c 379:** See notes following RCW 28B.10.029.

**Severability—1979 ex.s. c 12:** See note following RCW 28B.10.350.

**28B.50.360 Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Community and technical college capital projects account—Disposition of building fees. (Effective until June 30, 2011.)** Within thirty-five days from the date of start of each quarter all collected building fees of each such community and technical college shall be paid into the state treasury, and shall be credited as follows:

(1) On or before June 30th of each year the college board if issuing bonds payable out of building fees shall certify to the state treasurer the amounts required in the ensuing twelve-month period to pay and secure the payment of the principal of and interest on such bonds. The state treasurer shall thereupon deposit the amounts so certified in the community and technical college capital projects account. Such amounts of the funds deposited in the community and technical college capital projects account as are necessary to pay and secure the payment of the principal of and interest on the building bonds issued by the college board as authorized by this chapter shall be devoted to that purpose. If in any

twelve-month period it shall appear that the amount certified by the college board is insufficient to pay and secure the payment of the principal of and interest on the outstanding building bonds, the state treasurer shall notify the college board and such board shall adjust its certificate so that all requirements of moneys to pay and secure the payment of the principal and interest on all such bonds then outstanding shall be fully met at all times.

(2) The community and technical college capital projects account is hereby created in the state treasury. The sums deposited in the capital projects account shall be appropriated and expended to pay and secure the payment of the principal of and interest on bonds payable out of the building fees and for the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets owned by the state board for community and technical colleges in the name of the state of Washington, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto, engineering and architectural services provided by the department of general administration, and for the payment of principal of and interest on any bonds issued for such purposes. During the 2009-2011 biennium, sums in the capital projects account shall also be used for routine facility maintenance and utility costs.

(3) Funds available in the community and technical college capital projects account may also be used for certificates of participation under chapter 39.94 RCW. [2009 c 499 § 6; 2009 c 497 § 6022; 2005 c 488 § 922; 2004 c 277 § 910; 2002 c 238 § 303; 2000 c 65 § 1; 1997 c 42 § 1; 1991 sp.s. c 13 §§ 47, 48; 1991 c 238 § 51. Prior: 1985 c 390 § 56; 1985 c 57 § 16; 1974 ex.s. c 112 § 4; 1971 ex.s. c 279 § 20; 1970 ex.s. c 15 § 20; prior: 1969 ex.s. c 261 § 28; 1969 ex.s. c 238 § 7; 1969 ex.s. c 223 § 28B.50.360; prior: 1967 ex.s. c 8 § 36.]

**Reviser's note:** This section was amended by 2009 c 497 § 6022 and by 2009 c 499 § 6, 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).

**Expiration date—2009 c 497 §§ 6022 and 6023:** "Sections 6022 and 6023 of this act expire June 30, 2011." [2009 c 497 § 6051.]

**Effective date—2009 c 497:** See note following RCW 28B.15.210.

**Part headings not law—2005 c 488:** "Part headings in this act are not any part of the law." [2005 c 488 § 956.]

**Severability—2005 c 488:** "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." [2005 c 488 § 958.]

**Effective dates—2005 c 488:** "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 16, 2005], except for sections 920 and 921 of this act, which take effect June 30, 2005." [2005 c 488 § 959.]

**Severability—Effective dates—2004 c 277:** See notes following RCW 89.08.550.

**Severability—Effective date—2002 c 238:** See notes following RCW 28B.30.730.

**Effective date—2000 c 65:** "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 22, 2000]." [2000 c 65 § 3.]

**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.

**Severability—1974 ex.s. c 112:** See note following RCW 28B.50.403.

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.

**Severability—1970 ex.s. c 15:** See note following RCW 28A.230.160.

*Transfer of moneys in community and technical college bond retirement fund to state general fund: RCW 28B.50.401 and 28B.50.402.*

**28B.50.360 Construction, reconstruction, equipping, and demolition of community and technical college facilities and acquisition of property—Community and technical college capital projects account—Disposition of building fees. (Effective June 30, 2011.)** Within thirty-five days from the date of start of each quarter all collected building fees of each such community and technical college shall be paid into the state treasury, and shall be credited as follows:

(1) On or before June 30th of each year the college board if issuing bonds payable out of building fees shall certify to the state treasurer the amounts required in the ensuing twelve-month period to pay and secure the payment of the principal of and interest on such bonds. The state treasurer shall thereupon deposit the amounts so certified in the community and technical college capital projects account. Such amounts of the funds deposited in the community and technical college capital projects account as are necessary to pay and secure the payment of the principal of and interest on the building bonds issued by the college board as authorized by this chapter shall be devoted to that purpose. If in any twelve-month period it shall appear that the amount certified by the college board is insufficient to pay and secure the payment of the principal of and interest on the outstanding building bonds, the state treasurer shall notify the college board and such board shall adjust its certificate so that all requirements of moneys to pay and secure the payment of the principal and interest on all such bonds then outstanding shall be fully met at all times.

(2) The community and technical college capital projects account is hereby created in the state treasury. The sums deposited in the capital projects account shall be appropriated and expended to pay and secure the payment of the principal of and interest on bonds payable out of the building fees and for the construction, reconstruction, erection, equipping, maintenance, demolition and major alteration of buildings and other capital assets owned by the state board for community and technical colleges in the name of the state of Washington, and the acquisition of sites, rights-of-way, easements, improvements or appurtenances in relation thereto, engineering and architectural services provided by the department of general administration, and for the payment of principal of and interest on any bonds issued for such purposes.

(3) Funds available in the community and technical college capital projects account may also be used for certificates of participation under chapter 39.94 RCW. [2009 c 499 § 6; 2005 c 488 § 922; 2004 c 277 § 910; 2002 c 238 § 303; 2000 c 65 § 1; 1997 c 42 § 1; 1991 sp.s. c 13 §§ 47, 48; 1991 c 238 § 51. Prior: 1985 c 390 § 56; 1985 c 57 § 16; 1974 ex.s. c 112 § 4; 1971 ex.s. c 279 § 20; 1970 ex.s. c 15 § 20; prior: 1969 ex.s. c 261 § 28; 1969 ex.s. c 238 § 7; 1969 ex.s. c 223 § 28B.50.360; prior: 1967 ex.s. c 8 § 36.]

**Part headings not law—2005 c 488:** "Part headings in this act are not any part of the law." [2005 c 488 § 956.]

**Severability—2005 c 488:** "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." [2005 c 488 § 958.]

**Effective dates—2005 c 488:** "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 16, 2005], except for sections 920 and 921 of this act, which take effect June 30, 2005." [2005 c 488 § 959.]

**Severability—Effective dates—2004 c 277:** See notes following RCW 89.08.550.

**Severability—Effective date—2002 c 238:** See notes following RCW 28B.30.730.

**Effective date—2000 c 65:** "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 22, 2000]." [2000 c 65 § 3.]

**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.

**Severability—1974 ex.s. c 112:** See note following RCW 28B.50.403.

**Severability—1971 ex.s. c 279:** See note following RCW 28B.15.005.

**Severability—1970 ex.s. c 15:** See note following RCW 28A.230.160.

*Transfer of moneys in community and technical college bond retirement fund to state general fund: RCW 28B.50.401 and 28B.50.402.*

**28B.50.465 Cost-of-living increases—Academic employees.** (1) Academic employees of community and technical college districts shall be provided an annual salary cost-of-living increase in accordance with this section. For purposes of this section, "academic employee" has the same meaning as defined in RCW 28B.52.020.

(a) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year, except as provided in (d) of this subsection, each college district shall receive a cost-of-living allocation sufficient to increase academic employee salaries, including mandatory salary-related benefits, by the rate of the yearly increase in the cost-of-living index.

(b) A college district shall distribute its cost-of-living allocation for salaries and salary-related benefits in accordance with the district's salary schedules, collective bargaining agreements, and other compensation policies. No later than the end of the fiscal year, each college district shall certify to the college board that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) The college board shall include any funded cost-of-living increase in the salary base used to determine cost-of-living increases for academic employees in subsequent years.

(d) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year except for the 2009-2010 and 2010-2011 fiscal years, the state shall fully fund the cost-of-living increase set forth in this section.

(e) During the 2011-2013 and 2013-2015 fiscal biennia, in addition to cost-of-living allocations required by (a) of this subsection, community and technical college districts shall receive additional cost-of-living allocations in equal increments such that, by the end of the 2014-15 academic year, average salaries of academic employees of community and technical college districts will be, at a minimum, equal to what salaries would have been if cost-of-living allocations had not been suspended during the 2009-10 or 2010-11 school years.

(2) For the purposes of this section, "cost-of-living index" means, for any fiscal year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section. [2009 c 573 § 2; 2003 1st sp.s. c 20 § 3; 2001 c 4 § 3 (Initiative Measure No. 732, approved November 7, 2000).]

**Effective date—2009 c 573:** See note following RCW 28A.400.205.

**Severability—2001 c 4 (Initiative Measure No. 732):** See note following RCW 28A.400.205.

**28B.50.468 Cost-of-living increases—Classified employees.** (1) Classified employees of technical colleges shall be provided an annual salary cost-of-living increase in accordance with this section. For purposes of this section, "technical college" has the same meaning as defined in RCW 28B.50.030. This section applies to only those classified employees under the jurisdiction of chapter 41.56 RCW.

(a) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year, except as provided in (d) of this subsection, each technical college board of trustees shall receive a cost-of-living allocation sufficient to increase classified employee salaries, including mandatory salary-related benefits, by the rate of the yearly increase in the cost-of-living index.

(b) A technical college board of trustees shall distribute its cost-of-living allocation for salaries and salary-related benefits in accordance with the technical college's salary schedules, collective bargaining agreements, and other compensation policies. No later than the end of the fiscal year, each technical college shall certify to the college board that it has spent funds provided for cost-of-living increases on salaries and salary-related benefits.

(c) The college board shall include any funded cost-of-living increase in the salary base used to determine cost-of-living increases for technical college classified employees in subsequent years.

(d) Beginning with the 2001-2002 fiscal year, and for each subsequent fiscal year except for the 2009-2010 and 2010-2011 fiscal years, the state shall fully fund the cost-of-living increase set forth in this section.

(e) During the 2011-2013 and 2013-2015 fiscal biennia, in addition to cost-of-living allocations required by (a) of this subsection, technical college districts shall receive additional cost-of-living allocations in equal increments such that, by the end of the 2014-15 academic year, average salaries of classified employees of technical college districts will be, at a minimum, equal to what salaries would have been if cost-of-living allocations had not been suspended during the 2009-10 or 2010-11 school years.

(2) For the purposes of this section, "cost-of-living index" means, for any fiscal year, the previous calendar year's annual average consumer price index, using the official current base, compiled by the bureau of labor statistics, United States department of labor for the state of Washington. If the bureau of labor statistics develops more than one

consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the cost-of-living index in this section. [2009 c 573 § 3; 2003 1st sp.s. c 20 § 4; 2001 c 4 § 4 (Initiative Measure No. 732, approved November 7, 2000).]

**Effective date—2009 c 573:** See note following RCW 28A.400.205.

**Severability—2001 c 4 (Initiative Measure No. 732):** See note following RCW 28A.400.205.

**28B.50.535 Community or technical college—Issuance of high school diploma or certificate.** A community or technical college may issue a high school diploma or certificate as provided under this section.

(1) An individual who satisfactorily meets the requirements for high school completion shall be awarded a diploma from the college, subject to rules adopted by the superintendent of public instruction and the state board of education.

(2) An individual enrolled through the option established under RCW 28A.600.310 through 28A.600.400 who satisfactorily completes an associate degree, including an associate of arts degree, associate of science degree, associate of technology degree, or associate in applied science degree, shall be awarded a diploma from the college upon written request from the student.

(3) An individual, twenty-one years or older, who enrolls in a community or technical college for the purpose of obtaining an associate degree and who satisfactorily completes an associate degree, including an associate of arts degree, associate of science degree, associate of technology degree, or associate in applied science degree, shall be awarded a diploma from the college upon written request from the student. Individuals under this subsection are not eligible for funding provided under chapter 28A.150 RCW. [2009 c 524 § 2; 2007 c 355 § 2; 1991 c 238 § 58; 1969 ex.s. c 261 § 30.]

**Intent—2009 c 524:** "The legislature has previously affirmed the value of career and technical education, particularly in programs that lead to nationally recognized certification. These programs provide students with the knowledge and skills to become responsible citizens and contribute to their own economic well-being and that of their families and communities, which is the goal of education in the public schools. The legislature has also previously affirmed the value of dual enrollment in college and high school programs that can lead to both an associate degree and a high school diploma. Therefore, the legislature intends to maximize students' options and choices for completing high school by awarding diplomas to students who complete these valuable postsecondary programs." [2009 c 524 § 1.]

**Finding—Intent—2007 c 355:** See note following RCW 28B.50.534.

**Severability—1969 ex.s. c 261:** See note following RCW 28B.50.020.

**28B.50.837 Exceptional faculty awards—Established—Community and technical college faculty awards trust fund.** (1) The Washington community and technical college exceptional faculty awards program is established. The program shall be administered by the college board. The college faculty awards trust fund hereby created shall be administered by the state treasurer.

(2) Funds appropriated by the legislature for the community and technical college exceptional faculty awards program shall be deposited in the college faculty awards trust fund. At the request of the college board, the treasurer shall release the state matching funds to the local endowment fund of the college or its foundation. No appropriation is neces-

sary for the expenditure of moneys from the fund. Expenditures from the fund may be used solely for the exceptional faculty awards program. During the 2007-2009 fiscal biennium, the legislature may transfer from the college faculty awards trust fund to the state general fund such amounts as reflect the excess fund balance in the account [fund]. [2009 c 564 § 1803; 2003 c 129 § 2; 2002 c 371 § 902; 1993 c 87 § 1; 1991 sp.s. c 13 §§ 108, 109; 1991 c 238 § 63; 1990 c 29 § 2.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Severability—1990 c 29:** See note following RCW 28B.50.835.

**28B.50.902 Centers of excellence.** The college board, in consultation with business, industry, labor, the workforce training and education coordinating board, the department of community, trade, and economic development, the employment security department, and community and technical colleges, shall designate centers of excellence and allocate funds to existing and new centers of excellence based on a competitive basis.

Eligible applicants for the program established under this section include community and technical colleges. Priority shall be given to applicants that have an established education and training program serving the targeted industry and that have in their home district or region an industry cluster with the same targeted industry at its core.

It is the role of centers of excellence to employ strategies to: Create educational efficiencies; build a diverse, competitive workforce for strategic industries; maintain an institutional reputation for innovation and responsiveness; develop innovative curriculum and means of delivering education and training; act as brokers of information and resources related to community and technical college education and training for a targeted industry; and serve as partners with workforce development councils, associate development organizations, and other workforce and economic development organizations.

Examples of strategies include but are not limited to: Sharing curriculum and other instructional resources, to ensure cost savings to the system; delivering collaborative certificate and degree programs; and holding statewide summits, seminars, conferences, and workshops on industry trends and best practices in community and technical college education and training. [2009 c 151 § 4.]

**28B.50.980 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where nec-

essary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 75.]

## Chapter 28B.67 RCW

### CUSTOMIZED EMPLOYMENT TRAINING

#### Sections

- 28B.67.020 Customized training program created—Applications—Criteria—Rules.
- 28B.67.030 Employment training finance account (*as amended by 2009 c 296*).
- 28B.67.030 Employment training finance account (*as amended by 2009 c 564*). (*Expires July 1, 2012.*)

**28B.67.020 Customized training program created—Applications—Criteria—Rules.** (1) The Washington customized employment training program is hereby created to provide training assistance to employers locating or expanding in the state.

(2)(a) Application to receive funding under this program shall be made to the board in a form and manner as specified by the board. Successful applicants shall receive a training allowance from the board to cover the costs of training at a qualified training institution. Employers may not receive an allowance for training costs which exceed the maximum annual training cost per employee, as established by the board, and are not eligible to receive an allowance or allowances of over five hundred thousand dollars per calendar year.

(b) Allowances shall be granted for applicants who meet the following criteria:

(i) The employer must have entered into an agreement with a qualified training institution to engage in customized training and the employer must agree to: (A) Upon completion of the training, make a payment to the employment training finance account created in RCW 28B.67.030 in an amount equal to one-quarter of the amount of the training allowance; and (B) over the subsequent eighteen months, make monthly or quarterly payments, as specified in the agreement, to the employment training finance account created in RCW 28B.67.030 in an amount equal to three-quarters of the amount of the training allowance. During calendar years 2009 and 2010, participants may delay payments due under this section for up to eighteen months. The payments into the employment training finance account provided for in this section do not constitute payment to the institution.

(ii) ~~(The employer must ensure that the number of employees an employer has in the state during the calendar year following the completion of the training program will equal the number of employees the employer had in the state in the calendar year preceding the start of the training program plus seventy-five percent of the number of trainees.)~~ When hiring, the employer must make good faith efforts, as determined by the board, to hire from trainees in the participant's training program. The agreement with the qualified training institution provided for in (b)(i) of this subsection shall specify terms for reimbursement or additional payment to the employment training finance account by the employer if the ~~(employment criterion of this subsection is not met)~~ participant does not, when hiring, make good faith efforts to hire from trainees in the participant's training program.

(iii) The training ~~(grant)~~ allowance may not be used to train workers who have been hired as a result of a strike or lockout.

(c) Preference shall be given to employers with fewer than fifty employees.

(d) Preference shall be given to training that leads to transferable skills that are interchangeable among different jobs, employers, or workplaces.

(3) Qualified training institutions may enter into agreements with four-year institutions of higher education, as defined in RCW 28B.10.016, in accordance with the interlocal cooperation act, chapter 39.34 RCW.

(4) The board and qualified training institutions may solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local, federal, or other governmental entities, as well as private sources, for the purpose of providing training allowances under chapter 112, Laws of 2006. All revenue thus solicited and received shall be deposited into the employment training finance account created in RCW 28B.67.030.

(5) Qualified training institutions must make good faith efforts to develop training programs using trainers preferred by participants.

(6) For employers who (a) have requested training under the job skills program created under chapter 28C.04 RCW but are not able to participate in the job skills program because the funds have all been committed, and (b) desire to become participants in the Washington customized employment training program, the board shall ensure a seamless process toward participation.

(7) The board may adopt rules to implement this section. [2009 c 296 § 1; 2006 c 112 § 3.]

**Reviser's note:** 2009 c 296 amended RCW 28B.67.020 without cognizance of the underlying expiration date of RCW 28B.67.020.

**28B.67.030 Employment training finance account (as amended by 2009 c 296).** (1) All payments received from a participant in the Washington customized employment training program created in RCW 28B.67.020 shall be deposited into the employment training finance account, which is hereby created in the custody of the state treasurer. Only the state board for community and technical colleges may authorize expenditures from the account and no appropriation is required for expenditures. The money in the account must be used solely for training allowances under the Washington customized employment training program created in RCW 28B.67.020 and for providing up to seventy-five thousand dollars per year for training, marketing, and facilitation services to increase the use of the program. The deposit of payments under this section from a participant shall cease when the board specifies that the participant has met the monetary obligations of the program.

(2) All revenue solicited and received under the provisions of RCW 28B.67.020(4) shall be deposited into the employment training finance account to provide training allowances.

(3) The definitions in RCW 28B.67.010 apply to this section. [2009 c 296 § 2; 2006 c 112 § 8.]

**Reviser's note:** 2009 c 296 amended RCW 28B.67.030 without cognizance of the underlying expiration date of RCW 28B.67.030.

**28B.67.030 Employment training finance account (as amended by 2009 c 564). (Expires July 1, 2012.)** (1) All payments received from a participant in the Washington customized employment training program created in RCW 28B.67.020 shall be deposited into the employment training finance account, which is hereby created in the custody of the state treasurer. Only the state board for community and technical colleges may authorize expenditures from the account and no appropriation is required for expenditures. The money in the account must be used solely for training allowances under the Washington customized employment training program created in RCW 28B.67.020. The deposit of payments under this section from a participant shall cease when the board specifies that the participant has met the monetary obligations of the program. During the 2007-2009 fiscal biennium, the legislature may transfer from the employment training finance account to the state general fund such amounts as reflect the excess fund balance in the account.

(2) All revenue solicited and received under the provisions of RCW 28B.67.020(4) shall be deposited into the employment training finance account to provide training allowances.

(3) The definitions in RCW 28B.67.010 apply to this section.

(4) This section expires July 1, 2012. [2009 c 564 § 1804; 2006 c 112 § 8.]

**Reviser's note:** RCW 28B.67.030 was amended twice during the 2009 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—2009 c 564:** See note following RCW 2.68.020.

## Chapter 28B.76 RCW

### HIGHER EDUCATION COORDINATING BOARD

#### Sections

- 28B.76.500 Student financial aid programs—Administration by board—College information web-based portal.  
 28B.76.565 Distinguished professorship trust fund program—Trust fund established.  
 28B.76.610 Graduate fellowship trust fund—Matching funds.  
 28B.76.685 Border county higher education opportunity project—Created. *College in the high school program—Rules: RCW 28A.600.290.*

*Dual credit programs—Annual report: RCW 28A.600.280.*

**28B.76.500 Student financial aid programs—Administration by board—College information web-based portal.** (1) The board shall administer any state program or state-administered federal program of student financial aid now or hereafter established.

(2) Each of the student financial aid programs administered by the board shall be labeled an "opportunity pathway." Loans provided by the federal government and aid granted to students outside of the financial aid package provided through institutions of higher education are not subject to the labeling provisions in this subsection. All communication materials, including, but not limited to, printed materials, presentations, and web content, shall include the "opportunity pathway" label.

(3) If the board develops a one-stop college information web-based portal that includes financial, academic, and career planning information, the portal shall display all available student financial aid programs, except federal student loans and aid granted to students outside of the financial aid package provided through institutions of higher education, under the "opportunity pathway" label. The portal shall also display information regarding federal tax credits related to higher education available for students or their families.

(4) The labeling requirements in this section do not change the source, eligibility requirements, or student obligations associated with each program. The board shall customize its communications to differentiate between programs, eligibility requirements, and student obligations, so long as the reporting provisions of this chapter are also fulfilled. [2009 c 215 § 7; 1985 c 370 § 23; 1975 1st ex.s. c 132 § 15. Prior: 1969 ex.s. c 263 § 7. Formerly RCW 28B.80.240, 28.90.160, 28B.81.070.]

**Findings—Intent—Effective date—2009 c 215:** See notes following RCW 28B.92.030.

**Effective date—Severability—1975 1st ex.s. c 132:** See notes following RCW 28B.76.110.

**28B.76.565 Distinguished professorship trust fund program—Trust fund established.** Funds appropriated by the legislature for the distinguished professorship program shall be deposited in the distinguished professorship trust fund. At the request of the higher education coordinating board under RCW 28B.76.575, the treasurer shall release the state matching funds to the designated institution's local endowment fund. No appropriation is required for expenditures from the fund. During the 2007-2009 fiscal biennium, the legislature may transfer from the distinguished professorship trust fund to the state general fund such amounts as reflect the excess fund balance in the account [fund]. [2009 c 564 § 1805; 2004 c 275 § 20; 1991 sp.s. c 13 § 99; 1987 c 8 § 3. Formerly RCW 28B.10.868.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**28B.76.610 Graduate fellowship trust fund—Matching funds.** Funds appropriated by the legislature for the

graduate fellowship program shall be deposited in the graduate fellowship trust fund. At the request of the higher education coordinating board under RCW 28B.76.620, the treasurer shall release the state matching funds to the designated institution's local endowment fund. No appropriation is required for expenditures from the fund. During the 2007-2009 fiscal biennium, the legislature may transfer from the graduate fellowship trust fund to the state general fund such amounts as reflect the excess fund balance in the account [fund]. [2009 c 564 § 1806; 2004 c 275 § 22; 1991 sp.s. c 13 § 88; 1987 c 147 § 3. Formerly RCW 28B.10.882.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**28B.76.685 Border county higher education opportunity project—Created.** (1)(a) The border county higher education opportunity project is created. The purpose of the project is to allow Washington institutions of higher education that are located in counties on the Oregon border to implement tuition policies that correspond to Oregon policies. Under the border county project, Columbia Basin Community College, Clark College, Lower Columbia Community College, Grays Harbor Community College, and Walla Walla Community College may enroll students who reside in the bordering Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, and Washington at resident tuition rates.

(b) The Tri-Cities and Vancouver branches of Washington State University may enroll students who reside in the bordering Oregon counties of Columbia, Multnomah, Clatsop, Clackamas, Morrow, Umatilla, Union, Wallowa, and Washington for eight credits or less at resident tuition rates.

(2) Columbia Basin Community College, Clark College, Lower Columbia Community College, Grays Harbor Community College, and Walla Walla Community College may enroll students at resident tuition rates who:

(a) Are currently domiciled in Washington;

(b) Relocated to Washington from one of the thirteen counties identified in subsection (1)(a) of this section within the previous twelve months; and

(c) Were domiciled in one of the thirteen counties identified in subsection (1)(a) of this section for at least ninety days immediately before relocating to Washington.

(3) The Tri-Cities and Vancouver branches of Washington State University may enroll students for eight credits or less at resident tuition rates who:

(a) Are currently domiciled in Washington;

(b) Relocated to Washington from one of the nine counties identified in subsection (1)(b) of this section within the previous twelve months; and

(c) Were domiciled in one of the nine counties identified in subsection (1)(b) of this section for at least ninety days immediately before relocating to Washington.

(4) Washington institutions of higher education participating in the project shall give priority program enrollment to Washington residents. [2009 c 158 § 1; 2003 c 159 § 2; 2002

c 130 § 2; 2000 c 160 § 3; 1999 c 320 § 2. Formerly RCW 28B.80.806.]

*Resident tuition rates—Border county higher education opportunity project: RCW 28B.15.0139.*

## Chapter 28B.92 RCW

### STATE STUDENT FINANCIAL AID PROGRAM

#### Sections

- 28B.92.030 Definitions.
- 28B.92.060 State need grant awards.
- 28B.92.080 Eligibility for state need grant.
- 28B.92.082 Enhanced need grants—Eligibility.
- 28B.92.084 Eligibility of opportunity internship graduates.
- 28B.92.086 Dual credit programs—Review of financial aid policies and programs.
- 28B.92.110 Application of award.

#### **28B.92.030 Definitions.** As used in this chapter:

(1) "Board" means the higher education coordinating board.

(2) "Disadvantaged student" means a post high school student who by reason of adverse cultural, educational, environmental, experiential, familial or other circumstances is unable to qualify for enrollment as a full-time student in an institution of higher education, who would otherwise qualify as a needy student, and who is attending an institution of higher education under an established program designed to qualify the student for enrollment as a full-time student.

(3) "Financial aid" means loans and/or grants to needy students enrolled or accepted for enrollment as a student at institutions of higher education.

(4) "Institution" or "institutions of higher education" means:

(a) Any public university, college, community college, or technical college operated by the state of Washington or any political subdivision thereof; or

(b) Any other university, college, school, or institute in the state of Washington offering instruction beyond the high school level which is a member institution of an accrediting association recognized by rule of the board for the purposes of this section: PROVIDED, That any institution, branch, extension or facility operating within the state of Washington which is affiliated with an institution operating in another state must be a separately accredited member institution of any such accrediting association, or a branch of a member institution of an accrediting association recognized by rule of the board for purposes of this section, that is eligible for federal student financial aid assistance and has operated as a nonprofit college or university delivering on-site classroom instruction for a minimum of twenty consecutive years within the state of Washington, and has an annual enrollment of at least seven hundred full-time equivalent students: PROVIDED FURTHER, That no institution of higher education shall be eligible to participate in a student financial aid program unless it agrees to and complies with program rules and regulations adopted pursuant to RCW 28B.92.150.

(5) "Needy student" means a post high school student of an institution of higher education who demonstrates to the board the financial inability, either through the student's parents, family and/or personally, to meet the total cost of board, room, books, and tuition and incidental fees for any semester



or quarter. "Needy student" also means an opportunity internship graduate as defined by RCW 28C.18.162 who enrolls in a postsecondary program of study as defined in RCW 28C.18.162 within one year of high school graduation.

(6) "Placebound student" means a student who (a) is unable to complete a college program because of family or employment commitments, health concerns, monetary inability, or other similar factors; and (b) may be influenced by the receipt of an enhanced student financial aid award to complete a baccalaureate degree at an eligible institution. [2009 c 238 § 7; 2009 c 215 § 5; 2004 c 275 § 35; 2002 c 187 § 1; 1989 c 254 § 2; 1985 c 370 § 56; 1979 ex.s. c 235 § 1; 1975 1st ex.s. c 132 § 16; 1969 ex.s. c 222 § 8. Formerly RCW 28B.10.802, 28.76.440.]

**Reviser's note:** (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2009 c 215 § 5 and by 2009 c 238 § 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).

**Findings—Intent—2009 c 238:** See note following RCW 28C.18.160.

**Findings—Intent—2009 c 215:** "The legislature finds that a myriad of financial aid programs exist for students at the federal, state, local, community, and institutional levels. These programs enable thousands of students across Washington to access all sectors of higher education, from apprenticeship programs to public and private four and two-year institutions of higher education. The legislature further finds that Washington state is a national leader in the distribution of financial aid to increase college access and affordability, ranking fourth in the nation in 2007 in terms of state student grant aid funding per capita.

It is the intent of the legislature to promote and expand access to state financial aid programs by determining which programs provide the greatest value to the largest number of students, and by fully supporting those programs. Furthermore, it is the intent of the legislature to designate all existing financial aid an opportunity pathway, with the effect of providing students with a clear understanding of available resources to pay for postsecondary education, thereby increasing access to postsecondary education and meeting the needs of local business and industry.

It is the intent of the legislature that the higher education coordinating board, the state board for community and technical colleges, the office of the superintendent of public instruction, the workforce training and education coordinating board, and institutions of higher education coordinate the development of outreach tools, such as a web-based portal for information on all opportunity pathway aid programs. The information should be communicated in a format and manner that provides an ease of understanding for students and their families and include other pertinent information on institutions of higher education, costs, and academic programs. It is also the intent of the legislature for institutions of higher education to incorporate this information in promotional materials to prospective and current students and their families." [2009 c 215 § 1.]

**Effective date—2009 c 215:** "This act takes effect August 1, 2009." [2009 c 215 § 17.]

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Intent—1989 c 254:** "It is the intent of the legislature that nothing in this act shall prevent or discourage an individual from making an effort to repay any state financial aid awarded during his or her collegiate career." [1989 c 254 § 1.]

**Effective date—Severability—1975 1st ex.s. c 132:** See notes following RCW 28B.76.110.

*Loan programs for mathematics and science teachers: RCW 28B.15.760 through 28B.15.766.*

**28B.92.060 State need grant awards.** In awarding need grants, the board shall proceed substantially as follows: PROVIDED, That nothing contained herein shall be construed to prevent the board, in the exercise of its sound discre-

tion, from following another procedure when the best interest of the program so dictates:

(1) The board shall annually select the financial aid award recipients from among Washington residents applying for student financial aid who have been ranked according to:

(a) Financial need as determined by the amount of the family contribution; and

(b) Other considerations, such as whether the student is a former foster youth, or is a placebound student who has completed an associate of arts or associate of science degree or its equivalent.

(2) The financial need of the highest ranked students shall be met by grants depending upon the evaluation of financial need until the total allocation has been disbursed. Funds from grants which are declined, forfeited or otherwise unused shall be reawarded until disbursed, except that eligible former foster youth shall be assured receipt of a grant.

(3) A student shall be eligible to receive a state need grant for up to five years, or the credit or clock hour equivalent of five years, or up to one hundred twenty-five percent of the published length of time of the student's program. A student may not start a new associate degree program as a state need grant recipient until at least five years have elapsed since earning an associate degree as a need grant recipient, except that a student may earn two associate degrees concurrently. Qualifications for renewal will include maintaining satisfactory academic progress toward completion of an eligible program as determined by the board. Should the recipient terminate his or her enrollment for any reason during the academic year, the unused portion of the grant shall be returned to the state educational grant fund by the institution according to the institution's own policy for issuing refunds, except as provided in RCW 28B.92.070.

(4) In computing financial need, the board shall determine a maximum student expense budget allowance, not to exceed an amount equal to the total maximum student expense budget at the public institutions plus the current average state appropriation per student for operating expense in the public institutions. Any child support payments received by students who are parents attending less than half-time shall not be used in computing financial need.

(5)(a) A student who is enrolled in three to six credit-bearing quarter credits, or the equivalent semester credits, may receive a grant for up to one academic year before beginning a program that leads to a degree or certificate.

(b) An eligible student enrolled on a less-than-full-time basis shall receive a prorated portion of his or her state need grant for any academic period in which he or she is enrolled on a less-than-full-time basis, as long as funds are available.

(c) An institution of higher education may award a state need grant to an eligible student enrolled in three to six credit-bearing quarter credits, or the semester equivalent, on a provisional basis if:

(i) The student has not previously received a state need grant from that institution;

(ii) The student completes the required free application for federal student aid;

(iii) The institution has reviewed the student's financial condition, and the financial condition of the student's family if the student is a dependent student, and has determined that the student is likely eligible for a state need grant; and

(iv) The student has signed a document attesting to the fact that the financial information provided on the free application for federal student aid and any additional financial information provided directly to the institution is accurate and complete, and that the student agrees to repay the institution for the grant amount if the student submitted false or incomplete information.

(6) As used in this section, "former foster youth" means a person who is at least eighteen years of age, but not more than twenty-four years of age, who was a dependent of the department of social and health services at the time he or she attained the age of eighteen. [2009 c 215 § 4; 2007 c 404 § 2; 2005 c 93 § 3; 2004 c 275 § 37; 1999 c 345 § 5; 1991 c 164 § 4; 1989 c 254 § 4; 1969 ex.s. c 222 § 12. Formerly RCW 28B.10.808, 28.76.470.]

**Findings—Intent—Effective date—2009 c 215:** See notes following RCW 28B.92.030.

**Findings—Intent—2005 c 93:** See note following RCW 74.13.570.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Intent—1989 c 254:** See note following RCW 28B.92.030.

**28B.92.080 Eligibility for state need grant.** Except for opportunity internship graduates whose eligibility is provided under RCW 28B.92.084, for a student to be eligible for a state need grant a student must:

(1) Be a "needy student" or "disadvantaged student" as determined by the board in accordance with \*RCW 28B.92.030 (3) and (4);

(2) Have been domiciled within the state of Washington for at least one year;

(3) Be enrolled or accepted for enrollment on at least a half-time basis at an institution of higher education in Washington as defined in \*\*RCW 28B.92.030(1);

(4) Until June 30, 2011, to the extent funds are specifically appropriated for this purpose, and subject to any terms and conditions specified in the omnibus appropriations act, be enrolled or accepted for enrollment for at least three quarter credits or the equivalent semester credits at an institution of higher education in Washington as defined in \*\*RCW 28B.92.030(1); and

(5) Have complied with all the rules adopted by the board for the administration of this chapter. [2009 c 238 § 9; 2007 c 404 § 1; 2004 c 275 § 39; 1999 c 345 § 6; 1989 c 254 § 5; 1969 ex.s. c 222 § 13. Formerly RCW 28B.10.810, 28.76.475.]

**Reviser's note:** \*(1) Due to the alphabetization of RCW 28B.92.030 pursuant to RCW 1.08.015(2)(k), subsections (3) and (4) were changed to subsections (5) and (2) respectively.

\*\* (2) Due to the alphabetization of RCW 28B.92.030 pursuant to RCW 1.08.015(2)(k), subsection (1) was changed to subsection (4).

**Findings—Intent—2009 c 238:** See note following RCW 28C.18.160.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Intent—1989 c 254:** See note following RCW 28B.92.030.

**28B.92.082 Enhanced need grants—Eligibility.** (1) To the extent funds are appropriated for this purpose and within overall appropriations for the state need grant, enhanced need grants are provided for persons who meet all of the following criteria:

- (a) Are needy students as defined in RCW 28B.92.030;
- (b) Are placebound students as defined in RCW 28B.92.030; and
- (c) Have completed the associate of arts or the associate of science degree, or its equivalent.

(2) The enhanced need grants established in this section are provided to this specific group of students in addition to the base state need grant, as defined by rule of the board. [2009 c 215 § 3.]

**Findings—Intent—Effective date—2009 c 215:** See notes following RCW 28B.92.030.

**28B.92.084 Eligibility of opportunity internship graduates.** (1) The board shall work with institutions of higher education to assure that the institutions are aware of the eligibility of opportunity internship graduates for an award under this chapter.

(2) If an opportunity internship graduate enrolls within one year of high school graduation in a postsecondary program of study in an institution of higher education, including in an apprenticeship program with related and supplemental instruction provided through an institution of higher education, the graduate is eligible to receive a state need grant for up to one year. The graduate shall not be required to be enrolled on at least a half-time basis. The related and supplemental instruction provided to a graduate through an apprenticeship program shall not be required to lead to a degree or certificate.

(3) Except for the eligibility criteria for an opportunity internship graduate that are provided under this section, other rules pertaining to award of a state need grant apply.

(4) Nothing in this section precludes an opportunity internship graduate from being eligible to receive additional state need grants after the one-year grant provided in this section if the graduate meets other criteria as a needy or disadvantaged student. [2009 c 238 § 8.]

**Findings—Intent—2009 c 238:** See note following RCW 28C.18.160.

**28B.92.086 Dual credit programs—Review of financial aid policies and programs.** Institutions of higher education are encouraged to review their policies and procedures regarding financial aid for students enrolled in dual credit programs as defined in RCW 28B.15.821. Institutions of higher education are further encouraged to implement policies and procedures providing students enrolled in dual credit programs with the same access to institutional aid, including all educational expenses, as provided to resident undergraduate students. [2009 c 215 § 10.]

**Findings—Intent—Effective date—2009 c 215:** See notes following RCW 28B.92.030.

**28B.92.110 Application of award.** A state financial aid recipient under this chapter shall apply the award toward the cost of tuition, room, board, books, and fees at the institution of higher education attended. An opportunity internship graduate who enters an apprenticeship program may use the award for the costs of related and supplemental instruction provided through an institution of higher education, tools, and other costs associated with the apprenticeship program. [2009 c 238 § 10; 2004 c 275 § 40; 1969 ex.s. c 222 § 16. Formerly RCW 28B.10.816, 28.76.500.]

**Findings—Intent—2009 c 238:** See note following RCW 28C.18.160.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

### Chapter 28B.97 RCW

#### WASHINGTON HIGHER EDUCATION LOAN PROGRAM

##### Sections

28B.97.010 Washington higher education loan program.  
28B.97.020 Definitions.

**28B.97.010 Washington higher education loan program.** (1) The Washington higher education loan program is created. The program is created to assist students in need of additional low-cost student loans and related loan benefits.

(2) The program shall be administered by the board. In administering the program, the board must:

(a) Periodically assess the needs and target the benefits to selected students;

(b) Devise a program to address the following issues related to loans:

(i) Issuance of low-interest educational loans;

(ii) Determining loan repayment obligations and options;

(iii) Borrowing educational loans at low interest rates;

(iv) Developing conditional loans that can be forgiven in exchange for service; and

(v) Creating an emergency loan fund to help students until other state and federal long-term financing can be secured;

(c) Accept public and private contributions;

(d) Publicize the program; and

(e) Work with public and private colleges and universities, the state board for community and technical colleges, the workforce training and education coordinating board, and with students, to conduct periodic assessment of program needs. The board may also consult with other groups and individuals as needed. [2009 c 215 § 13.]

**Findings—Intent—Effective date—2009 c 215:** See notes following RCW 28B.92.030.

**28B.97.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Board" means the higher education coordinating board.

(2) "Institution of higher education" means a college or university in the state of Washington that is accredited by an accrediting association recognized as such by rule of the board.

(3) "Program" means the Washington higher education loan program.

(4) "Resident student" has the definition in RCW 28B.15.012(2) (a) through (d). [2009 c 215 § 14.]

**Findings—Intent—Effective date—2009 c 215:** See notes following RCW 28B.92.030.

### Chapter 28B.101 RCW

#### EDUCATIONAL OPPORTUNITY GRANT PROGRAM—PLACEBOUND STUDENTS

##### Sections

28B.101.005 through 28B.101.040 Repealed. (*Effective August 1, 2011.*)  
28B.101.050 Consolidation of program. (*Expires August 1, 2011.*)

**28B.101.005 through 28B.101.040 Repealed.** (*Effective August 1, 2011.*) See Supplementary Table of Disposition of Former RCW Sections, this volume.

**28B.101.050 Consolidation of program.** (*Expires August 1, 2011.*) (1) The legislature intends to consolidate the educational opportunity grant program over a period of two years. As of August 1, 2009, no new educational opportunity grants may be made. Persons who have been selected by the higher education coordinating board to receive a grant before August 1, 2009, shall receive the full amount of their award, not to exceed two thousand five hundred dollars per academic year for a maximum of two years. All persons awarded an educational opportunity grant before August 1, 2009, must complete using the award before August 1, 2011. For these recipients, eligibility for the grant is forfeited after this period.

(2) This section expires August 1, 2011. [2009 c 215 § 2.]

**Findings—Intent—Effective date—2009 c 215:** See notes following RCW 28B.92.030.

### Chapter 28B.105 RCW

#### GET READY FOR MATH AND SCIENCE SCHOLARSHIP PROGRAM

##### Sections

28B.105.110 GET ready for math and science scholarship account.

**28B.105.110 GET ready for math and science scholarship account.** (1) The GET ready for math and science scholarship account is created in the custody of the state treasurer.

(2) The board shall deposit into the account all money received for the GET ready for math and science scholarship program from appropriations and private sources. The account shall be self-sustaining.

(3) Expenditures from the account shall be used for scholarships to eligible students and for purchases of GET units. Purchased GET units shall be owned and held in trust by the board. Expenditures from the account shall be an equal match of state appropriations and private funds raised by the program administrator. During the 2009-2011 fiscal biennium, expenditures from the account not to exceed five percent may be used by the program administrator to carry out the provisions of RCW 28B.105.090.

(4) With the exception of the operating costs associated with the management of the account by the treasurer's office as authorized in chapter 43.79A RCW, the account shall be credited with all investment income earned by the account.

(5) Disbursements from the account are exempt from appropriations and the allotment provisions of chapter 43.88 RCW.

(6) Disbursements from the account shall be made only on the authorization of the board.

(7) During the 2007-2009 fiscal biennium, the legislature may transfer state appropriations to the GET ready for math and science scholarship account that have not been matched by private contributions to the state general fund. [2009 c 564 § 1807; 2009 c 564 § 920; 2008 c 329 § 908; 2007 c 214 § 11.]

**Reviser's note:** This section was amended by 2009 c 564 § 920 and by 2009 c 564 § 1807, 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—2009 c 564:** See note following RCW 2.68.020.

**Severability—2008 c 329:** "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." [2008 c 329 § 928.]

**Effective date—2008 c 329:** "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 1, 2008]." [2008 c 329 § 929.]

## Chapter 28B.108 RCW AMERICAN INDIAN ENDOWED SCHOLARSHIP PROGRAM

### Sections

28B.108.020	Program created—Duties of the higher education coordinating board—Screening committee.
28B.108.050	Repealed.
28B.108.060	Scholarship endowment fund.
28B.108.070	Repealed.

**28B.108.020 Program created—Duties of the higher education coordinating board—Screening committee.** The American Indian endowed scholarship program is created. The program shall be administered by the higher education coordinating board. In administering the program, the board's powers and duties shall include but not be limited to:

(1) Selecting students to receive scholarships, with the assistance of a screening committee composed of persons involved in helping American Indian students to obtain a higher education. The membership of the committee may include, but is not limited to representatives of: Indian tribes, urban Indians, the governor's office of Indian affairs, the Washington state Indian education association, and institutions of higher education;

(2) Adopting necessary rules and guidelines;

(3) Publicizing the program;

(4) Accepting and depositing donations into the endowment fund created in RCW 28B.108.060;

(5) Requesting from the state investment board and accepting from the state treasurer moneys earned from the endowment fund created in RCW 28B.108.060;

(6) Soliciting and accepting grants and donations from public and private sources for the program; and

(7) Naming scholarships in honor of those American Indians from Washington who have acted as role models. [2009 c 259 § 1; 1990 c 287 § 3.]

**28B.108.050 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

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**28B.108.060 Scholarship endowment fund.** The American Indian scholarship endowment fund is created in the custody of the state treasurer. The investment of the endowment fund shall be managed by the state investment board. Funds appropriated by the legislature for the endowment fund must be deposited into the fund.

(1) Moneys received from the higher education coordinating board, private donations, state moneys, and funds received from any other source may be deposited into the endowment fund. Private moneys received as a gift subject to conditions may be deposited into the fund.

(2) At the request of the higher education coordinating board, the state investment board shall release earnings from the endowment fund to the state treasurer. The state treasurer shall then release those funds at the request of the higher education coordinating board for scholarships. No appropriation is required for expenditures from the endowment fund.

(3) When notified by the higher education coordinating board that a condition attached to a gift of private moneys in the fund has failed, the state investment board shall release those moneys to the higher education coordinating board. The higher education coordinating board shall then release the moneys to the donors according to the terms of the conditional gift.

(4) The principal of the endowment fund shall not be invaded. The release of moneys under subsection (3) of this section shall not constitute an invasion of corpus.

(5) The earnings on the fund shall be used solely for the purposes set forth in RCW 28B.108.040, except when the terms of a conditional gift of private moneys in the fund require that a portion of earnings on such moneys be reinvested in the fund. [2009 c 259 § 2; 2007 c 73 § 2; 1993 c 372 § 1; 1991 sp.s. c 13 § 110; 1990 c 287 § 7.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**28B.108.070 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 28B.116 RCW FOSTER CARE ENDOWED SCHOLARSHIP PROGRAM

### Sections

28B.116.020	Program created—Duties of the higher education coordinating board.
28B.116.040	Repealed.

**28B.116.020 Program created—Duties of the higher education coordinating board.** (1) The foster care endowed scholarship program is created. The purpose of the program is to help students who were in foster care attend an institution of higher education in the state of Washington. The foster care endowed scholarship program shall be administered by the higher education coordinating board.

(2) In administering the program, the higher education coordinating board's powers and duties shall include but not be limited to:

(a) Adopting necessary rules and guidelines; and

(b) Administering the foster care endowed scholarship trust fund and the foster care scholarship endowment fund.

(3) In administering the program, the higher education coordinating board's powers and duties may include but not be limited to:

(a) Working with the department of social and health services and the superintendent of public instruction to provide information about the foster care endowed scholarship program to children in foster care in the state of Washington and to students over the age of sixteen who could be eligible for this program;

(b) Publicizing the program; and

(c) Contracting with a private agency to perform outreach to the potentially eligible students. [2009 c 560 § 20; 2005 c 215 § 3.]

**Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560:** See notes following RCW 18.06.080.

**28B.116.040 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

### Chapter 28B.142 RCW

#### LOCAL BORROWING AUTHORITY— RESEARCH UNIVERSITIES

##### Sections

- 28B.142.010 Bonds, notes, evidences of indebtedness—University of Washington and Washington State University.  
28B.142.030 Bonds, notes, evidences of indebtedness—University of Washington—Refinancing.

**28B.142.010 Bonds, notes, evidences of indebtedness—University of Washington and Washington State University.** The board of regents of the University of Washington and Washington State University may issue bonds, notes, or other evidences of indebtedness for any university purpose. The board of regents of the University of Washington and Washington State University may obligate all or a component of the fees and revenues of the university for the payment of such bonds, notes, or evidences of indebtedness: PROVIDED, That such fees and revenues are not subject to appropriation by the legislature and do not constitute general state revenues as defined in Article VIII, section 1 of the state Constitution. Such bonds, notes, and other indebtedness shall not constitute bonds, notes, or other evidences of indebtedness secured by the full faith and credit of the state or required to be paid, directly or indirectly, from general state revenues. Bonds, notes, or other evidences of indebtedness issued under this chapter shall be issued in accordance with the procedures in RCW 28B.10.310 and 28B.10.315 or the provisions applicable to either the state or local governments under chapter 39.46 or 39.53 RCW. [2009 c 500 § 4; 2007 c 24 § 2.]

**Effective date—2009 c 500:** See note following RCW 39.42.070.

**28B.142.030 Bonds, notes, evidences of indebtedness—University of Washington—Refinancing.** The board of regents of the University of Washington may issue bonds, notes, or other evidences of indebtedness under this section for the purpose of refinancing real and personal property acquired by the University of Washington during the period between August and October 2006. The board of

regents of the University of Washington may obligate all or a component of the fees and revenues of the university for the payment of such bonds, notes, or evidences of indebtedness: PROVIDED, That such fees and revenues are not subject to appropriation by the legislature and do not constitute general state revenues as defined in Article VIII, section 1 of the state Constitution. Bonds, notes, or other evidences of indebtedness issued under this section shall be issued in accordance with the procedures in RCW 28B.10.310 and 28B.10.315 or the provisions applicable to either the state or local governments under chapter 39.46 or 39.53 RCW. Such bonds, notes, and other indebtedness shall not constitute bonds, notes, or other evidences of indebtedness secured by the full faith and credit of the state or required to be paid, directly or indirectly, from general state revenues. [2009 c 500 § 5; 2007 c 24 § 4.]

**Effective date—2009 c 500:** See note following RCW 39.42.070.

**Effective date—2007 c 24 § 4:** "Section 4 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 takes effect May 1, 2007." [2007 c 24 § 6.]

### Title 28C

#### VOCATIONAL EDUCATION

##### Chapters

- 28C.04 Vocational education.**  
**28C.18 Workforce training and education.**

### Chapter 28C.04 RCW

#### VOCATIONAL EDUCATION

##### Sections

- 28C.04.410 Job skills program—Definitions.  
28C.04.420 Job skills program—Grants—Reports.

**28C.04.410 Job skills program—Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 28C.04.390 and 28C.04.420.

(1) "Applicant" means an educational institution which has made application for a job skills grant under RCW 28C.04.390 and 28C.04.420.

(2) "Business and industry" means a private corporation, institution, firm, person, group, or association concerned with commerce, trades, manufacturing, or the provision of services within the state, or a public or nonprofit hospital licensed by the department of social and health services.

(3) "College board" means the state board for community and technical colleges under chapter 28B.50 RCW.

(4) "Dislocated worker" means an individual who meets the definition of dislocated worker contained in P.L. 105-220, Sec. 101 on July 25, 1999.

(5) "Educational institution" means a public secondary or postsecondary institution, an independent institution, or a private career school or college within the state authorized by law to provide a program of skills training or education beyond the secondary school level. Any educational institution receiving a job skills grant under RCW 28C.04.420 shall be free of sectarian control or influence as set forth in Article IX, section 4 of the state Constitution.

(6) "Equipment" means tangible personal property which will further the objectives of the supported program and for which a definite value and evidence in support of the value have been provided by the donor.

(7) "Financial support" means any thing of value which is contributed by business, industry, and others to an educational institution which is reasonably calculated to support directly the development and expansion of a particular program under RCW 28C.04.390 and 28C.04.420 and represents an addition to any financial support previously or customarily provided to such educational institutions by the donor. "Financial support" includes, but is not limited to, funds, equipment, facilities, faculty, and scholarships for matriculating students and trainees.

(8) "Job skills grant" means funding that is provided to an educational institution by the college board for the development or significant expansion of a program under RCW 28C.04.390 and 28C.04.420.

(9) "Job skills program" means a program of skills training or education separate from and in addition to existing vocational education programs and which:

- (a) Provides short-term training which has been designated for specific industries;
- (b) Provides training for prospective employees before a new plant opens or when existing industry expands;
- (c) Includes training and retraining for workers already employed by an existing industry or business where necessary to avoid dislocation or where upgrading of existing employees would create new vacancies for unemployed persons;
- (d) Serves areas with high concentrations of economically disadvantaged persons and high unemployment;
- (e) Promotes the growth of industry clusters;
- (f) Serves areas where there is a shortage of skilled labor to meet job demands; or
- (g) Promotes the location of new industry in areas affected by economic dislocation.

(10) "Technical assistance" means professional and any other assistance provided by business and industry to an educational institution, which is reasonably calculated to support directly the development and expansion of a particular program and which represents an addition to any technical assistance previously or customarily provided to the educational institutions by the donor. [2009 c 554 § 1; 1999 c 121 § 2; 1983 1st ex.s. c 21 § 2.]

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

**Severability—1983 1st ex.s. c 21:** See note following RCW 28C.04.400.

#### **28C.04.420 Job skills program—Grants—Reports.**

The college board may, subject to appropriation from the legislature or from funds made available from any other public or private source and pursuant to rules adopted by the college board with the advice of the workforce training customer advisory committee established in RCW 28C.04.390, provide job skills grants to educational institutions. The job skills grants shall be used exclusively for programs which are consistent with the job skills program. The college board shall work in collaboration with the workforce training customer

advisory committee established in RCW 28C.04.390 to assure that:

(1) The program is within the scope of the job skills program under this chapter and may reasonably be expected to succeed and thereby increase employment within the state;

(2) Provision has been made to use any available alternative funding from local, state, and federal sources;

(3) The job skills grant will only be used to cover the costs associated with the program;

(4) The program will not unnecessarily duplicate existing programs and could not be provided by another educational institution more effectively or efficiently;

(5) The program involves an area of skills training and education for which there is a demonstrable need;

(6) The applicant has made provisions for the use of existing federal and state resources for student financial assistance;

(7) The job skills grant is essential to the success of the program as the resources of the applicant are inadequate to attract the technical assistance and financial support necessary for the program from business and industry;

(8) The program represents a collaborative partnership between business, industry, labor, educational institutions, and other partners, as appropriate;

(9) The commitment of financial support from business and industry shall be equal to or greater than the amount of the requested job skills grant;

(10) The job skills program gives priority to applications:

(a) Proposing training that leads to transferable skills that are interchangeable among different jobs, employers, or workplaces;

(b) From firms in strategic industry clusters as identified by the state or local areas;

(c) Proposing coordination with other cluster-based programs or initiatives including, but not limited to, industry skill panels, centers of excellence, innovation partnership zones, state-supported cluster growth grants, and local cluster-based economic development initiatives;

(d) Proposing industry-based credentialing; and

(e) Proposing increased capacity for educational institutions that can be made available to industry and students beyond the grant recipients;

(11) Binding commitments have been made to the college board by the applicant for adequate reporting of information and data regarding the program to the college board, particularly information concerning the recruitment and employment of trainees and students, and including a requirement for an annual or other periodic audit of the books of the applicant directly related to the program, and for such control on the part of the college board as it considers prudent over the management of the program, so as to protect the use of public funds, including, in the discretion of the commission and without limitation, right of access to financial and other records of the applicant directly related to the programs; and

(12) A provision has been made by the applicant to work, in cooperation with the employment security department, to identify and screen potential trainees, and that provision has been made by the applicant for the participation as trainees of low-income persons including temporary assistance for needy families recipients, dislocated workers, and persons

from minority and economically disadvantaged groups to participate in the program.

Beginning October 1, 1999, and every two years thereafter, the college board shall provide the legislature and the governor with a report describing the activities and outcomes of the state job skills program. [2009 c 554 § 2; 1999 c 121 § 3; 1983 1st ex.s. c 21 § 4.]

**Severability—1983 1st ex.s. c 21:** See note following RCW 28C.04.400.

## Chapter 28C.18 RCW

### WORKFORCE TRAINING AND EDUCATION

#### Sections

- 28C.18.010 Definitions.
- 28C.18.060 Board's duties.
- 28C.18.080 Comprehensive plan—Contents—Updates—Agency operating plans—Reports to the legislature (*as amended by 2009 c 92*).
- 28C.18.080 Comprehensive plan—Contents—Updates—Agency operating plans—Reports to the legislature (*as amended by 2009 c 151*).
- 28C.18.080 Comprehensive plan—Contents—Updates—Agency operating plans—Reports to the legislature (*as amended by 2009 c 421*).
- 28C.18.150 Local unified plan for the workforce development system—Strategic plan.
- 28C.18.160 Opportunity internship program—Purpose—Program incentives—Rules.
- 28C.18.162 Opportunity internship program—Definitions.
- 28C.18.164 Opportunity internship program—Opportunity internship consortia—Contracts—Federal funds.
- 28C.18.166 Opportunity internship program—List of consortium graduates—Notifying higher education coordinating board of state need grant eligibility.
- 28C.18.168 Opportunity internship program—List of employed graduates—Verification—Incentive payments.
- 28C.18.170 Green industry skill panels—Prioritization of workforce training programs.

*Centers of excellence:* RCW 28B.50.902.

*Dual credit programs—Annual report:* RCW 28A.600.280.

**28C.18.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1) "Adult basic education" means instruction designed to achieve mastery of skills in reading, writing, oral communication, and computation at a level sufficient to allow the individual to function effectively as a parent, worker, and citizen in the United States, commensurate with that individual's actual ability level, and includes English as a second language and preparation and testing service for the general education development exam.

(2) "Board" means the workforce training and education coordinating board.

(3) "Director" means the director of the workforce training and education coordinating board.

(4) "Industry skill panel" means a regional partnership of business, labor, and education leaders that identifies skill gaps in a key economic cluster and enables the industry and public partners to respond to and be proactive in addressing workforce skill needs.

(5) "Training system" means programs and courses of secondary vocational education, technical college programs and courses, community college vocational programs and courses, private career school and college programs and courses, employer-sponsored training, adult basic education

programs and courses, programs and courses funded by the federal workforce investment act, programs and courses funded by the federal vocational act, programs and courses funded under the federal adult education act, publicly funded programs and courses for adult literacy education, and apprenticeships, and programs and courses offered by private and public nonprofit organizations that are representative of communities or significant segments of communities and provide job training or adult literacy services.

(6) "Vocational education" means organized educational programs offering a sequence of courses which are directly related to the preparation or retraining of individuals in paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. Such programs shall include competency-based applied learning which contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupational-specific skills necessary for economic independence as a productive and contributing member of society. Such term also includes applied technology education.

(7) "Workforce development council" means a local workforce investment board as established in P.L. 105-220 Sec. 117.

(8) "Workforce skills" means skills developed through applied learning that strengthen and reinforce an individual's academic knowledge, critical thinking, problem solving, and work ethic and, thereby, develop the employability, occupational skills, and management of home and work responsibilities necessary for economic independence. [2009 c 151 § 5; 2008 c 103 § 2; 1996 c 99 § 2; 1991 c 238 § 2.]

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

**Findings—Intent—2008 c 103:** "(1) The legislature finds that a skilled workforce is essential for employers and job seekers to compete in today's global economy. The engines of economic progress are fueled by education and training. The legislature further finds that industry skill panels are a critical and proven form of public-private partnership that harness the expertise of leaders in business, labor, and education to identify workforce development strategies for industries that drive Washington's regional economies. Industry skill panels foster innovation and enable industry leaders and public partners to be proactive, addressing changing needs for businesses quickly and strategically. Industry skill panels leverage small state investments with private sector investments to ensure that public resources are better aligned with industry needs.

(2) The legislature further finds that industry skill panels support other valuable initiatives such as the department of community, trade, and economic development's cluster-based economic development grants; the community and technical college centers of excellence, high-demand funds, and the job skills program; and the employment security department's incumbent worker training funds. Industry skill panels provide a framework for coordinating these and other investments in line with economic and workforce development strategies identified by industry leaders. It is the intent of the legislature to support the development and maintenance of industry skill panels in key sectors of the economy as an efficient and effective way to support regional economic development." [2008 c 103 § 1.]

**28C.18.060 Board's duties.** The board, in cooperation with the operating agencies of the state training system and private career schools and colleges, shall:

(1) Concentrate its major efforts on planning, coordination evaluation, policy analysis, and recommending improvements to the state's training system;

(2) Advocate for the state training system and for meeting the needs of employers and the workforce for workforce education and training;

(3) Establish and maintain an inventory of the programs of the state training system, and related state programs, and perform a biennial assessment of the vocational education, training, and adult basic education and literacy needs of the state; identify ongoing and strategic education needs; and assess the extent to which employment, training, vocational and basic education, rehabilitation services, and public assistance services represent a consistent, integrated approach to meet such needs;

(4) Develop and maintain a state comprehensive plan for workforce training and education, including but not limited to, goals, objectives, and priorities for the state training system, and review the state training system for consistency with the state comprehensive plan. In developing the state comprehensive plan for workforce training and education, the board shall use, but shall not be limited to: Economic, labor market, and populations trends reports in office of financial management forecasts; joint office of financial management and employment security department labor force, industry employment, and occupational forecasts; the results of scientifically based outcome, net-impact and cost-benefit evaluations; the needs of employers as evidenced in formal employer surveys and other employer input; and the needs of program participants and workers as evidenced in formal surveys and other input from program participants and the labor community;

(5) In consultation with the higher education coordinating board, review and make recommendations to the office of financial management and the legislature on operating and capital facilities budget requests for operating agencies of the state training system for purposes of consistency with the state comprehensive plan for workforce training and education;

(6) Provide for coordination among the different operating agencies and components of the state training system at the state level and at the regional level;

(7) Develop a consistent and reliable database on vocational education enrollments, costs, program activities, and job placements from publicly funded vocational education programs in this state;

(8)(a) Establish standards for data collection and maintenance for the operating agencies of the state training system in a format that is accessible to use by the board. The board shall require a minimum of common core data to be collected by each operating agency of the state training system;

(b) Develop requirements for minimum common core data in consultation with the office of financial management and the operating agencies of the training system;

(9) Establish minimum standards for program evaluation for the operating agencies of the state training system, including, but not limited to, the use of common survey instruments and procedures for measuring perceptions of program participants and employers of program participants, and monitor such program evaluation;

(10) Every two years administer scientifically based outcome evaluations of the state training system, including, but not limited to, surveys of program participants, surveys of employers of program participants, and matches with

employment security department payroll and wage files. Every five years administer scientifically based net-impact and cost-benefit evaluations of the state training system;

(11) In cooperation with the employment security department, provide for the improvement and maintenance of quality and utility in occupational information and forecasts for use in training system planning and evaluation. Improvements shall include, but not be limited to, development of state-based occupational change factors involving input by employers and employees, and delineation of skill and training requirements by education level associated with current and forecasted occupations;

(12) Provide for the development of common course description formats, common reporting requirements, and common definitions for operating agencies of the training system;

(13) Provide for effectiveness and efficiency reviews of the state training system;

(14) In cooperation with the higher education coordinating board, facilitate transfer of credit policies and agreements between institutions of the state training system, and encourage articulation agreements for programs encompassing two years of secondary workforce education and two years of postsecondary workforce education;

(15) In cooperation with the higher education coordinating board, facilitate transfer of credit policies and agreements between private training institutions and institutions of the state training system;

(16) Develop policy objectives for the workforce investment act, P.L. 105-220, or its successor; develop coordination criteria for activities under the act with related programs and services provided by state and local education and training agencies; and ensure that entrepreneurial training opportunities are available through programs of each local workforce investment board in the state;

(17) Make recommendations to the commission of student assessment, the state board of education, and the superintendent of public instruction, concerning basic skill competencies and essential core competencies for K-12 education. Basic skills for this purpose shall be reading, writing, computation, speaking, and critical thinking, essential core competencies for this purpose shall be English, math, science/technology, history, geography, and critical thinking. The board shall monitor the development of and provide advice concerning secondary curriculum which integrates vocational and academic education;

(18) Establish and administer programs for marketing and outreach to businesses and potential program participants;

(19) Facilitate the location of support services, including but not limited to, child care, financial aid, career counseling, and job placement services, for students and trainees at institutions in the state training system, and advocate for support services for trainees and students in the state training system;

(20) Facilitate private sector assistance for the state training system, including but not limited to: Financial assistance, rotation of private and public personnel, and vocational counseling;

(21) Facilitate the development of programs for school-to-work transition that combine classroom education and on-the-job training, including entrepreneurial education and



training, in industries and occupations without a significant number of apprenticeship programs;

(22) Include in the planning requirements for local workforce investment boards a requirement that the local workforce investment boards specify how entrepreneurial training is to be offered through the one-stop system required under the workforce investment act, P.L. 105-220, or its successor;

(23) Encourage and assess progress for the equitable representation of racial and ethnic minorities, women, and people with disabilities among the students, teachers, and administrators of the state training system. Equitable, for this purpose, shall mean substantially proportional to their percentage of the state population in the geographic area served. This function of the board shall in no way lessen more stringent state or federal requirements for representation of racial and ethnic minorities, women, and people with disabilities;

(24) Participate in the planning and policy development of governor set-aside grants under P.L. 97-300, as amended;

(25) Administer veterans' programs, licensure of private vocational schools, the job skills program, and the Washington award for vocational excellence;

(26) Allocate funding from the state job training trust fund;

(27) Work with the director of community, trade, and economic development and the economic development commission to ensure coordination among workforce training priorities, the long-term economic development strategy of the economic development commission, and economic development and entrepreneurial development efforts, including but not limited to assistance to industry clusters;

(28) Conduct research into workforce development programs designed to reduce the high unemployment rate among young people between approximately eighteen and twenty-four years of age. In consultation with the operating agencies, the board shall advise the governor and legislature on policies and programs to alleviate the high unemployment rate among young people. The research shall include disaggregated demographic information and, to the extent possible, income data for adult youth. The research shall also include a comparison of the effectiveness of programs examined as a part of the research conducted in this subsection in relation to the public investment made in these programs in reducing unemployment of young adults. The board shall report to the appropriate committees of the legislature by November 15, 2008, and every two years thereafter. Where possible, the data reported to the legislative committees should be reported in numbers and in percentages;

(29) Adopt rules as necessary to implement this chapter.

The board may delegate to the director any of the functions of this section. [2009 c 151 § 6; 2008 c 212 § 2; 2007 c 149 § 1; 1996 c 99 § 4; 1993 c 280 § 17; 1991 c 238 § 7.]

**Finding—Intent—2008 c 212:** "The legislature finds that there is a persistent and unacceptable high rate of unemployment among young people in Washington. The unemployment rate among those between eighteen and twenty-four years of age is seventeen percent, about four times the unemployment rate among the general population. It is the legislature's intent that the workforce training and education coordinating board examine programs to help young people be more successful in the workforce and make recommendations to improve policies and programs in Washington." [2008 c 212 § 1.]

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**28C.18.080 Comprehensive plan—Contents—Updates—Agency operating plans—Reports to the legislature (as amended by 2009 c 92).**

(1) ~~((The state comprehensive plan for workforce training and education shall be updated every two years and presented to the governor and the appropriate legislative policy committees.))~~ The board shall develop a state comprehensive plan for workforce training and education for a ten-year time period. The board shall submit the ten-year state comprehensive plan to the governor and the appropriate legislative policy committees. Every four years by December 1st, beginning December 1, 2012, the board shall submit an update of the ten-year state comprehensive plan for workforce training and education to the governor and the appropriate legislative policy committees. Following public hearings, the legislature shall, by concurrent resolution, approve or recommend changes to the initial plan and the updates. The plan shall then become the state's workforce training policy unless legislation is enacted to alter the policies set forth in the plan.

(2) The comprehensive plan shall include workforce training role and mission statements for the workforce development programs of operating agencies represented on the board and sufficient specificity regarding expected actions by the operating agencies to allow them to carry out actions consistent with the comprehensive plan.

(3) Operating agencies represented on the board shall have operating plans for their workforce development efforts that are consistent with the comprehensive plan and that provide detail on implementation steps they will take to carry out their responsibilities under the plan. Each operating agency represented on the board shall provide an annual progress report to the board.

(4) The comprehensive plan shall include recommendations to the legislature and the governor on the modification, consolidation, initiation, or elimination of workforce training and education programs in the state.

(5) The comprehensive plan shall address how the state's workforce development system will meet the needs of employers hiring for industrial projects of statewide significance.

(6) The board shall report to the appropriate legislative policy committees by December 1st of each year on its progress in implementing the comprehensive plan and on the progress of the operating agencies in meeting their obligations under the plan. [2009 c 92 § 1; 1997 c 369 § 5; 1995 c 130 § 2.]

**28C.18.080 Comprehensive plan—Contents—Updates—Agency operating plans—Reports to the legislature (as amended by 2009 c 151).**

(1) The state comprehensive plan for workforce training and education shall be updated every two years and presented to the governor and the appropriate legislative policy committees. Following public hearings, the legislature shall, by concurrent resolution, approve or recommend changes to the initial plan and the updates. The plan shall then become the state's workforce training policy unless legislation is enacted to alter the policies set forth in the plan.

(2) The comprehensive plan shall include workforce training role and mission statements for the workforce development programs of operating agencies represented on the board and sufficient specificity regarding expected actions by the operating agencies to allow them to carry out actions consistent with the comprehensive plan.

(3) Operating agencies represented on the board shall have operating plans for their workforce development efforts that are consistent with the comprehensive plan and that provide detail on implementation steps they will take to carry out their responsibilities under the plan. Each operating agency represented on the board shall provide an annual progress report to the board.

(4) The comprehensive plan shall include recommendations to the legislature and the governor on the modification, consolidation, initiation, or elimination of workforce training and education programs in the state.

(5) The comprehensive plan shall ~~((address how the state's workforce development system will meet the needs of employers hiring for industrial projects of statewide significance))~~ identify the strategic industry clusters targeted by the workforce development system. In identifying the strategic clusters, the board shall consult with the economic development commission to identify clusters that meet the criteria identified by the working group convened by the economic development commission and the workforce training and education coordinating board under RCW 43.330.280.

(6) The board shall report to the appropriate legislative policy committees by December 1st of each year on its progress in implementing the comprehensive plan and on the progress of the operating agencies in meeting

their obligations under the plan. [2009 c 151 § 7; 1997 c 369 § 5; 1995 c 130 § 2.]

**28C.18.080 Comprehensive plan—Contents—Updates—Agency operating plans—Reports to the legislature (as amended by 2009 c 421).**

(1) The state comprehensive plan for workforce training and education shall be updated every two years and presented to the governor and the appropriate legislative policy committees. Following public hearings, the legislature shall, by concurrent resolution, approve or recommend changes to the initial plan and the updates. The plan shall then become the state's workforce training policy unless legislation is enacted to alter the policies set forth in the plan.

(2) The comprehensive plan shall include workforce training role and mission statements for the workforce development programs of operating agencies represented on the board and sufficient specificity regarding expected actions by the operating agencies to allow them to carry out actions consistent with the comprehensive plan.

(3) Operating agencies represented on the board shall have operating plans for their workforce development efforts that are consistent with the comprehensive plan and that provide detail on implementation steps they will take to carry out their responsibilities under the plan. Each operating agency represented on the board shall provide an annual progress report to the board.

(4) The comprehensive plan shall include recommendations to the legislature and the governor on the modification, consolidation, initiation, or elimination of workforce training and education programs in the state.

(5) The comprehensive plan shall address how the state's workforce development system will meet the needs of employers hiring for (~~indus-~~~~trial~~) projects of statewide significance.

(6) The board shall report to the appropriate legislative policy committees by December 1 of each year on its progress in implementing the comprehensive plan and on the progress of the operating agencies in meeting their obligations under the plan. [2009 c 421 § 6; 1997 c 369 § 5; 1995 c 130 § 2.]

**Reviser's note:** RCW 28C.18.080 was amended three times during the 2009 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—2009 c 421:** See note following RCW 43.157.005.

*Industrial project of statewide significance—Defined: RCW 43.157.010.*

**28C.18.150 Local unified plan for the workforce development system—Strategic plan.**

(1) Workforce development councils, in partnership with local elected officials, shall develop and maintain a local unified plan for the workforce development system including, but not limited to, the local plan required by P.L. 105-220, Title I. The unified plan shall include a strategic plan that assesses local employment opportunities and skill needs, the present and future workforce, the current workforce development system, information on financial resources, diversity, goals, objectives, and strategies for the local workforce development system, and a system-wide financial strategy for implementing the plan. Local workforce development councils shall submit their strategic plans to the board for review and to the governor for approval.

(2) The strategic plan shall clearly articulate the connection between workforce and economic development efforts in the local area including the area industry clusters and the strategic clusters the community is targeting for growth. The plan shall include, but is not limited to:

(a) Data on current and projected employment opportunities in the local area;

(b) Identification of workforce investment needs of existing businesses and businesses considering location in the region, with special attention to industry clusters;

(c) Identification of educational, training, employment, and support service needs of jobseekers and workers in the

local area, including individuals with disabilities and other underrepresented talent sources;

(d) Analysis of the industry demand, potential labor force supply, and educational, employment, and workforce support available to businesses and jobseekers in the region; and

(e) Collaboration with associate development organizations in regional planning efforts involving combined strategies around workforce development and economic development policies and programs. Combined planning efforts shall include, but not be limited to, assistance to industry clusters in the area.

(3) The board shall work with workforce development councils to develop implementation and funding strategies for purposes of this section. [2009 c 151 § 8.]

**28C.18.160 Opportunity internship program—Purpose—Program incentives—Rules.**

(1) The opportunity internship program is created under this section and RCW 28C.18.162 through 28C.18.168. The purpose of the program is to provide incentives for opportunity internship consortia to use existing resources to build educational and employment pipelines to high-demand occupations in targeted industries for low-income high school students. Three types of incentives are provided through the program:

(a) Each opportunity internship graduate shall be eligible for up to one year of financial assistance for postsecondary education as provided in RCW 28B.92.084;

(b) Each opportunity internship graduate who completes a postsecondary program of study shall receive a job interview with an employer participating in an opportunity internship consortium that has agreed to provide such interviews; and

(c) For each opportunity internship graduate who completes a postsecondary program of study, obtains employment in a high-demand occupation that pays a starting salary or wages of not less than thirty thousand dollars per year, and remains employed for at least six months, the participating opportunity internship consortium shall be eligible to receive an incentive payment as provided in RCW 28C.18.168.

(2) The opportunity internship program shall be administered by the board and the board may adopt rules to implement the program. [2009 c 238 § 2.]

**Findings—Intent—2009 c 238:** "(1) The legislature finds that moving low-income high school students efficiently through a progression of career exploration, internships or preapprenticeships in high-demand occupations, and completion of postsecondary education benefits these students by increasing the relevance of their high school education, increasing their connection to the working world, accelerating their entry into a high-demand occupation, and increasing their earnings and opportunities.

(2) The legislature further finds that in a difficult economy, youth unemployment rates increase sharply. Providing paid internships and preapprenticeships to high school students creates not only an immediate short-term economic stimulus in local communities, but also creates the potential to sustain that economic recovery by making students better prepared for postsecondary education and employment in the types of occupations that will generate economic growth over the long term.

(3) The legislature further finds that moving students efficiently through secondary and postsecondary education reduces state expenditures by improving on-time graduation and postsecondary retention and increases state revenues by providing for graduates with higher lifelong earnings and taxpaying potential.

(4) Employers and local economies benefit from the development of a long-term relationship with potential employees and a more consistent pipeline of skilled workers into the occupations for which they are having the

most trouble finding skilled workers.

(5) Therefore the legislature intends to provide incentives for local consortia of employers, labor organizations, educational institutions, and workforce and economic development councils to use existing funds to build educational and employment pipelines to high-demand occupations for low-income high school students." [2009 c 238 § 1.]

**Outcome evaluation—2009 c 238:** "(1) The workforce training and education coordinating board shall conduct an outcome evaluation of opportunity internship programs. At a minimum, the analysis shall examine the financial benefits of on-time graduation, youth employment while in high school, postsecondary education enrollment and completion, and adult employment in high-demand occupations compared to the local and state costs of the programs.

(2) The board shall submit a preliminary analysis to the governor and the education and higher education committees of the legislature by December 1, 2012, and a final analysis by December 1, 2014." [2009 c 238 § 11.]

**28C.18.162 Opportunity internship program—Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this section and RCW 28C.18.160 and 28C.18.164 through 28C.18.168.

(1) "High-demand occupation" means an occupation with a substantial number of current or projected employment opportunities.

(2) "Low-income high school student" means a student who is enrolled in grades ten, eleven, or twelve in a public high school and who qualifies for federal free or reduced-price meals. If a student qualifies at the time the student begins participating in the opportunity internship program, the student remains eligible even if the student does not receive free or reduced-price meals thereafter. To participate in the program, the student must remain enrolled in high school until the student receives a high school diploma.

(3) "Opportunity internship consortium" means a local consortium formed for the purpose of participating in the opportunity internship program and which may be composed of a local workforce development council, economic development council, area high schools, community or technical colleges, apprenticeship councils, preapprenticeship programs such as running start for the trades, private vocational schools licensed under chapter 28C.10 RCW, public and private four-year institutions of higher education, employers in targeted industries, and labor organizations.

(4) "Opportunity internship graduate" means a low-income high school student who successfully completes an opportunity internship program and graduates from high school.

(5) "Postsecondary program of study" means an undergraduate or graduate certificate, apprenticeship, or degree program.

(6) "Preapprenticeship" means a program of at least ninety hours and not more than one hundred eighty hours in length that provides practical experience, education, preparation, and the development of skills that would be beneficial for entry into state-approved apprenticeship programs, including but not limited to construction industry structure and the construction process; orientation to state-approved apprenticeship; tools of the various trades and safe handling of power tools; and industry standards of safety, responsibility, and craft excellence.

(7) "Targeted industry" means a business or industry identified by a local workforce development council as having high-demand occupations that require candidates to have

completed a postsecondary program of study. [2009 c 238 § 3.]

**Findings—Intent—2009 c 238:** See note following RCW 28C.18.160.

**28C.18.164 Opportunity internship program—Opportunity internship consortia—Contracts—Federal funds.** (1) Opportunity internship consortia may apply to the board to offer an opportunity internship program.

(a) The board, in consultation with the Washington state apprenticeship and training council, may select those consortia that demonstrate the strongest commitment and readiness to implement a high quality opportunity internship program for low-income high school students. The board shall place a priority on consortia with demonstrated experience working with similar populations of students and demonstrated capacity to assist a large number of students through the progression of internship or preapprenticeship, high school graduation, postsecondary education, and retention in a high-demand occupation. The board shall place a priority on programs that emphasize secondary career and technical education and nonbaccalaureate postsecondary education; however, programs that target four-year postsecondary degrees are eligible to participate.

(b) The board shall enter into a contract with each consortium selected to participate in the program. No more than ten consortia per year shall be selected to participate in the program, and to the extent possible, the board shall assure a geographic distribution of consortia in regions across the state emphasizing a variety of targeted industries. Each consortium may select no more than one hundred low-income high school students per year to participate in the program.

(2) Under the terms of an opportunity internship program contract, an opportunity internship consortium shall commit to the following activities which shall be conducted using existing federal, state, local, or private funds available to the consortium:

(a) Identify high-demand occupations in targeted industries for which opportunity internships or preapprenticeships shall be developed and provided;

(b) Develop and implement the components of opportunity internships, including paid or unpaid internships or preapprenticeships of at least ninety hours in length in high-demand occupations with employers in the consortium, mentoring and guidance for students who participate in the program, assistance with applications for postsecondary programs and financial aid, and a guarantee of a job interview with a participating employer for all opportunity internship graduates who successfully complete a postsecondary program of study;

(c) Once the internship or preapprenticeship components have been developed, conduct outreach efforts to inform low-income high school students about high-demand occupations, the opportunity internship program, options for postsecondary programs of study, and the incentives and opportunities provided to students who participate in the program;

(d) Obtain appropriate documentation of the low-income status of students who participate in the program;

(e) Maintain communication with opportunity internship graduates of the consortium who enroll in postsecondary programs of study; and

(f) Submit an annual report to the board on the progress of and participation in the opportunity internship program of the consortium.

(3) Opportunity internship consortia are encouraged to:

(a) Provide paid opportunity internships or preapprenticeships, including during the summer months to encourage students to stay enrolled in high school;

(b) Work with high schools to offer opportunity internships as approved worksite learning experiences where students can earn high school credit;

(c) Designate the local workforce development council as fiscal agent for the opportunity internship program contract;

(d) Work with area high schools to incorporate the opportunity internship program into comprehensive guidance and counseling programs such as the navigation 101 program; and

(e) Coordinate the opportunity internship program with other workforce development and postsecondary education programs, including opportunity grants, the college bound scholarship program, federal workforce investment act initiatives, and college access challenge grants.

(4) The board shall seek federal funds that may be used to support the opportunity internship program, including providing the incentive payments under RCW 28C.18.168. [2009 c 238 § 4.]

**Findings—Intent—2009 c 238:** See note following RCW 28C.18.160.

**28C.18.166 Opportunity internship program—List of consortium graduates—Notifying higher education coordinating board of state need grant eligibility.** On an annual basis, each opportunity internship consortium shall provide the board with a list of the opportunity internship graduates from the consortium. The board shall compile the lists from all consortia and shall notify the higher education coordinating board of the eligibility of each graduate on the lists to receive a state need grant under chapter 28B.92 RCW if the graduate enrolls in a postsecondary program of study within one year of high school graduation. [2009 c 238 § 5.]

**Findings—Intent—2009 c 238:** See note following RCW 28C.18.160.

**28C.18.168 Opportunity internship program—List of employed graduates—Verification—Incentive payments.** (1) On an annual basis, each opportunity internship consortium shall provide the board with a list of the opportunity internship graduates from the consortium who have completed a postsecondary program of study, obtained employment in a high-demand occupation that pays a starting salary or wages of not less than thirty thousand dollars per year, and remained employed for at least six months.

(2) The board shall verify the information on the lists from each consortium. Subject to funds appropriated or otherwise available for this purpose, the board shall allocate to each consortium an incentive payment of two thousand dollars for each graduate on the consortium's list. In the event that insufficient funds are appropriated to provide a full payment, the board shall prorate payments across all consortia and shall notify the governor and the legislature of the amount of the shortfall.

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(3) Opportunity internship consortia shall use the incentive payments to continue operating opportunity internship programs. [2009 c 238 § 6.]

**Findings—Intent—2009 c 238:** See note following RCW 28C.18.160.

**28C.18.170 Green industry skill panels—Prioritization of workforce training programs.** (1) The legislature directs the board to create and pilot green industry skill panels. These panels shall consist of business representatives from industry sectors related to clean energy, labor unions representing workers in those industries or labor affiliates administering state-approved, joint apprenticeship programs or labor-management partnership programs that train workers for these industries, state and local veterans agencies, employer associations, educational institutions, and local workforce development councils within the region that the panels propose to operate, and other key stakeholders as determined by the applicant. Any of these stakeholder organizations are eligible to receive grants under this section and serve as the intermediary that convenes and leads the panel. Panel applicants must provide labor market and industry analysis that demonstrates high demand, or demand of strategic importance to the development of the state's clean energy economy as identified in this section, for middle or high-wage occupations, or occupations that are part of career pathways to the same, within the relevant industry sector. The panel shall, in consultation with the department and the \*leadership team:

(a) Conduct labor market and industry analyses, in consultation with the employment security department, and drawing on the findings of its research when available;

(b) Recommend strategies to meet the recruitment and training needs of the industry and small businesses; and

(c) Recommend strategies to leverage and align other public and private funding sources.

(2) The board may prioritize workforce training programs that lead to a credential, certificate, or degree in green economy jobs. For purposes of this section, green economy jobs include those in the primary industries of a green economy, including clean energy, high-efficiency building, green transportation, and environmental protection. Prioritization efforts may include but are not limited to: (a) Prioritization of the use of high employer-demand funding for workforce training programs in green economy jobs; (b) increased outreach efforts to public utilities, education, labor, government, and private industry to develop tailored, green job training programs; and (c) increased outreach efforts to target populations. Outreach efforts may be conducted in partnership with local workforce development councils.

(3) The definitions in RCW 43.330.010 apply to this section. [2009 c 536 § 8.]

**\*Reviser's note:** The leadership team was created in 2009 c 536 § 3, which was vetoed.

**Short title—2009 c 536:** See note following RCW 43.330.370.

## Title 29A ELECTIONS

### Chapters

<b>29A.04</b>	<b>General provisions.</b>
<b>29A.08</b>	<b>Voters and registration.</b>
<b>29A.24</b>	<b>Filing for office.</b>
<b>29A.32</b>	<b>Voters' pamphlets.</b>
<b>29A.36</b>	<b>Ballots and other voting forms.</b>
<b>29A.40</b>	<b>Absentee voting.</b>
<b>29A.48</b>	<b>Voting by mail.</b>
<b>29A.56</b>	<b>Special circumstances elections.</b>
<b>29A.60</b>	<b>Canvassing.</b>
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### Chapter 29A.04 RCW GENERAL PROVISIONS

#### Sections

29A.04.079	Infamous crime.
29A.04.103	Repealed.
29A.04.109	Overseas voter.
29A.04.163	Service voter.
29A.04.210	Registration required—Exception.
29A.04.236	Repealed.
29A.04.245	Repealed.
29A.04.321	State and local general elections—Statewide general election—Exceptions—Special county elections. ( <i>Effective until July 1, 2011.</i> )
29A.04.321	State and local general elections—Statewide general election—Exceptions—Special county elections. ( <i>Effective July 1, 2011.</i> )
29A.04.330	City, town, and district general and special elections—Exceptions ( <i>as amended by 2009 c 144.</i> )
29A.04.330	City, town, and district general and special elections—Exceptions ( <i>as amended by 2009 c 413.</i> ) ( <i>Effective until July 1, 2011.</i> )
29A.04.330	City, town, and district general and special elections—Exceptions ( <i>as amended by 2009 c 413.</i> ) ( <i>Effective July 1, 2011.</i> )
29A.04.340	Elections in certain first-class school districts.
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29A.04.540	Training of administrators.
29A.04.570	Review of county election procedures.
29A.04.611	Rules by secretary of state.

**29A.04.079 Infamous crime.** An "infamous crime" is a crime punishable by death in the state penitentiary or imprisonment in a state correctional facility. Neither an adjudication in juvenile court pursuant to chapter 13.40 RCW, nor a conviction for a misdemeanor or gross misdemeanor, is an "infamous crime." [2009 c 369 § 1; 2003 c 111 § 114. Prior: 1992 c 7 § 31; 1965 c 9 § 29.01.080; prior: Code 1881 § 3054; 1865 p 25 § 5; RRS § 5113. Formerly RCW 29.01.080.]

*Contests, conviction of felony without reversal or restoration of civil rights as grounds for:* RCW 29A.68.020.

*Denial of civil rights for conviction of infamous crime: State Constitution Art. 6 § 3.*

**29A.04.103 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**29A.04.109 Overseas voter.** "Overseas voter" means any elector of the state of Washington outside the territorial limits of the United States. [2009 c 369 § 2; 2003 c 111 § 119. Prior: 1987 c 346 § 6. Formerly RCW 29.01.117.]

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

**29A.04.163 Service voter.** "Service voter" means any elector of the state of Washington who is a member of the armed forces under 42 U.S.C. Sec. 1973 ff-6 while in active service, is a member of a reserve component of the armed forces, is a student or member of the faculty at a United States military academy, is a member of the merchant marine of the United States, or is a member of a religious group or welfare agency officially attached to and serving with the armed forces of the United States. [2009 c 369 § 3; 2003 c 111 § 127. Prior: 1991 c 23 § 13; 1987 c 346 § 8. Formerly RCW 29.01.155.]

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

**29A.04.210 Registration required—Exception.** Except for service and overseas voters, only persons registered to vote shall be permitted to vote:

- (1) At any election held for the purpose of electing persons to public office;
- (2) At any recall election of a public officer;
- (3) At any election held for the submission of a measure to any voting constituency;
- (4) At any primary election.

This section does not apply to elections where being registered to vote is not a prerequisite to voting. [2009 c 369 § 4; 2003 c 111 § 133; 1965 c 9 § 29.04.010. Prior: 1955 c 181 § 8; prior: (i) 1933 c 1 § 22, part; RRS § 5114-22, part. (ii) 1933 c 1 § 23; RRS § 5114-23. See also 1935 c 26 § 3; RRS § 5189. Formerly RCW 29.04.010.]

*Overseas, service voters, same ballots as registered voters:* RCW 29A.40.010.

*Subversive activities, disqualification from voting:* RCW 9.81.040.

**29A.04.236 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**29A.04.245 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**29A.04.321 State and local general elections—Statewide general election—Exceptions—Special county elections.** (*Effective until July 1, 2011.*) (1) All state, county, city, town, and district general elections for the election of federal, state, legislative, judicial, county, city, town, and district officers, and for the submission to the voters of the state, county, city, town, or district of any measure for their adoption and approval or rejection, shall be held on the first Tuesday after the first Monday of November, in the year in which they may be called. A statewide general election shall be held on the first Tuesday after the first Monday of November of each year. However, the statewide general election held in odd-numbered years shall be limited to (a) city, town, and district general elections as provided for in RCW 29A.04.330, or as otherwise provided by law; (b) the election of federal officers for the remainder of any unexpired terms in the membership of either branch of the Congress of the United States; (c) the election of state and county officers for the remainder of any unexpired terms of offices created by or

whose duties are described in Article II, section 15, Article III, sections 16, 17, 19, 20, 21, 22, and 23, and Article IV, sections 3 and 5 of the state Constitution and RCW 2.06.080; (d) the election of county officers in any county governed by a charter containing provisions calling for general county elections at this time; and (e) the approval or rejection of state measures, including proposed constitutional amendments, matters pertaining to any proposed constitutional convention, initiative measures and referendum measures proposed by the electorate, referendum bills, and any other matter provided by the legislature for submission to the electorate.

(2) A county legislative authority may call a special county election by presenting a resolution to the county auditor prior to the proposed election date. A special election called by the county legislative authority shall be held on one of the following dates as decided by such governing body:

- (a) The second Tuesday in February;
- (b) The fourth Tuesday in April;
- (c) The third Tuesday in May for tax levies that failed previously in that calendar year and new bond issues;
- (d) The day of the primary as specified by RCW 29A.04.311; or
- (e) The first Tuesday after the first Monday in November.

(3) A resolution calling for a special election on a date set forth in subsection (2)(a) through (c) of this section must be presented to the county auditor at least forty-five days prior to the election date. A resolution calling for a special election on a date set forth in subsection (2)(d) or (e) of this section must be presented to the county auditor at least eighty-four days prior to the election date.

(4) In addition to the dates set forth in subsection (2)(a) through (e) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God. Such county special election shall be noticed and conducted in the manner provided by law.

(5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections except for those elections held pursuant to a home-rule charter adopted under Article XI, section 4 of the state Constitution. This section shall not be construed as fixing the time for holding primary elections, or elections for the recall of any elective public officer. [2009 c 413 § 1; 2006 c 344 § 2; 2004 c 271 § 106.]

**Expiration date—2009 c 413 §§ 1 and 3:** "Sections 1 and 3 of this act expire July 1, 2011." [2009 c 413 § 5.]

**Effective date—2006 c 344 §§ 1-16 and 18-40:** See note following RCW 29A.04.311.

**29A.04.321 State and local general elections—State-wide general election—Exceptions—Special county elections. (Effective July 1, 2011.)** (1) All state, county, city, town, and district general elections for the election of federal, state, legislative, judicial, county, city, town, and district officers, and for the submission to the voters of the state, county, city, town, or district of any measure for their adoption and approval or rejection, shall be held on the first Tuesday after the first Monday of November, in the year in which

they may be called. A statewide general election shall be held on the first Tuesday after the first Monday of November of each year. However, the statewide general election held in odd-numbered years shall be limited to (a) city, town, and district general elections as provided for in RCW 29A.04.330, or as otherwise provided by law; (b) the election of federal officers for the remainder of any unexpired terms in the membership of either branch of the Congress of the United States; (c) the election of state and county officers for the remainder of any unexpired terms of offices created by or whose duties are described in Article II, section 15, Article III, sections 16, 17, 19, 20, 21, 22, and 23, and Article IV, sections 3 and 5 of the state Constitution and RCW 2.06.080; (d) the election of county officers in any county governed by a charter containing provisions calling for general county elections at this time; and (e) the approval or rejection of state measures, including proposed constitutional amendments, matters pertaining to any proposed constitutional convention, initiative measures and referendum measures proposed by the electorate, referendum bills, and any other matter provided by the legislature for submission to the electorate.

(2) A county legislative authority may call a special county election by presenting a resolution to the county auditor prior to the proposed election date. A special election called by the county legislative authority shall be held on one of the following dates as decided by such governing body:

- (a) The second Tuesday in February;
- (b) The fourth Tuesday in April;
- (c) The day of the primary as specified by RCW 29A.04.311; or
- (d) The first Tuesday after the first Monday in November.

(3) A resolution calling for a special election on a date set forth in subsection (2)(a) and (b) of this section must be presented to the county auditor at least forty-five days prior to the election date. A resolution calling for a special election on a date set forth in subsection (2)(c) or (d) of this section must be presented to the county auditor at least eighty-four days prior to the election date.

(4) In addition to the dates set forth in subsection (2)(a) through (d) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God. Such county special election shall be noticed and conducted in the manner provided by law.

(5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections except for those elections held pursuant to a home-rule charter adopted under Article XI, section 4 of the state Constitution. This section shall not be construed as fixing the time for holding primary elections, or elections for the recall of any elective public officer. [2009 c 413 § 2; 2006 c 344 § 2; 2004 c 271 § 106.]

**Effective date—2009 c 413 §§ 2 and 4:** "Sections 2 and 4 of this act take effect July 1, 2011." [2009 c 413 § 6.]

**Effective date—2006 c 344 §§ 1-16 and 18-40:** See note following RCW 29A.04.311.

**29A.04.330 City, town, and district general and special elections—Exceptions (as amended by 2009 c 144).** (1) All city, town, and district general elections shall be held throughout the state of Washington on the first Tuesday following the first Monday in November in the odd-numbered years.

This section shall not apply to:

- (a) Elections for the recall of any elective public officer;
  - (b) Public utility districts, conservation districts, or district elections at which the ownership of property within those districts is a prerequisite to voting, all of which elections shall be held at the times prescribed in the laws specifically applicable thereto;
  - (c) Consolidation proposals as provided for in RCW 28A.315.235 and nonhigh capital fund aid proposals as provided for in chapter 28A.540 RCW;
  - (d) Special flood control districts consisting of three or more counties.
- (2) The county auditor, as ex officio supervisor of elections, upon request in the form of a resolution of the governing body of a city, town, or district, presented to the auditor prior to the proposed election date, may call a special election in such city, town, or district, and for the purpose of such special election he or she may combine, unite, or divide precincts. Except as provided in subsection ~~((3))~~ (4) of this section, such a special election shall be held on one of the following dates as decided by the governing body:

- (a) The first Tuesday after the first Monday in February;
- (b) The second Tuesday in March;
- (c) The fourth Tuesday in April;
- (d) The third Tuesday in May;
- (e) The day of the primary election as specified by RCW 29A.04.311;

or

- (f) The first Tuesday after the first Monday in November.

(3) A resolution calling for a special election on a date set forth in subsection (2)(a) through (d) of this section must be presented to the county auditor at least fifty-two days prior to the election date. A resolution calling for a special election on a date set forth in subsection (2)(e) or (f) of this section must be presented to the county auditor at least eighty-four days prior to the election date.

(4) In a presidential election year, if a presidential preference primary is conducted in February, March, April, or May under chapter 29A.56 RCW, the date on which a special election may be called under subsection (2) of this section during the month of that primary is the date of the presidential primary.

(5) In addition to subsection (2)(a) through (f) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God, except that no special election may be held between the first day for candidates to file for public office and the last day to certify the returns of the general election other than as provided in subsection (2)(e) and (f) of this section. Such special election shall be conducted and notice thereof given in the manner provided by law.

(6) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections. [2009 c 144 § 3; 2006 c 344 § 3; 2004 c 266 § 6; 2003 c 111 § 145; 2002 c 43 § 2; 1994 c 142 § 2; 1992 c 37 § 2; 1990 c 33 § 562; 1989 c 4 § 10 (Initiative Measure No. 99); 1986 c 167 § 6; 1980 c 3 § 2; 1975-'76 2nd ex.s. c 111 § 2; 1965 c 123 § 3; 1965 c 9 § 29.13.020. Prior: 1963 c 200 § 1; 1955 c 55 § 1; 1951 c 101 § 1; 1949 c 161 § 1; 1927 c 182 § 1; 1923 c 53 § 2; 1921 c 61 § 2; Rem. Supp. 1949 § 5144. Formerly RCW 29.13.020.]

**29A.04.330 City, town, and district general and special elections—Exceptions (as amended by 2009 c 413). (Effective until July 1, 2011.)** (1) All city, town, and district general elections shall be held throughout the state of Washington on the first Tuesday following the first Monday in November in the odd-numbered years.

This section shall not apply to:

- (a) Elections for the recall of any elective public officer;
  - (b) Public utility districts, conservation districts, or district elections at which the ownership of property within those districts is a prerequisite to voting, all of which elections shall be held at the times prescribed in the laws specifically applicable thereto;
  - (c) Consolidation proposals as provided for in RCW 28A.315.235 and nonhigh capital fund aid proposals as provided for in chapter 28A.540 RCW.
- (2) The county auditor, as ex officio supervisor of elections, upon request in the form of a resolution of the governing body of a city, town, or district, presented to the auditor prior to the proposed election date, may call a special election in such city, town, or district, and for the purpose of such

special election he or she may combine, unite, or divide precincts. ~~((Except as provided in subsection (3) of this section;))~~ Such a special election shall be held on one of the following dates as decided by the governing body:

- (a) The ~~((first))~~ second Tuesday ~~((after the first Monday))~~ in February;
- (b) ~~((The second Tuesday in March;))~~
- ~~((c))~~ The fourth Tuesday in April;
- ~~((d))~~ (c) The third Tuesday in May for tax levies that failed previously in that calendar year and new bond issues;

~~((e))~~ (d) The day of the primary election as specified by RCW 29A.04.311; or

~~((f))~~ (e) The first Tuesday after the first Monday in November.

(3) A resolution calling for a special election on a date set forth in subsection (2)(a) through ~~((d))~~ (c) of this section must be presented to the county auditor at least ~~((fifty-two))~~ forty-five days prior to the election date. A resolution calling for a special election on a date set forth in subsection (2)~~((e))~~ (d) or ~~((f))~~ (e) of this section must be presented to the county auditor at least eighty-four days prior to the election date.

(4) ~~((In a presidential election year, if a presidential preference primary is conducted in February, March, April, or May under chapter 29A.56 RCW, the date on which a special election may be called under subsection (2) of this section during the month of that primary is the date of the presidential primary.~~

~~((5))~~ In addition to subsection (2)(a) through ~~((f))~~ (e) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God, except that no special election may be held between the first day for candidates to file for public office and the last day to certify the returns of the general election other than as provided in subsection (2)~~((e))~~ (d) and ~~((f))~~ (e) of this section. Such special election shall be conducted and notice thereof given in the manner provided by law.

~~((6))~~ (5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections. [2009 c 413 § 3; 2006 c 344 § 3; 2004 c 266 § 6; 2003 c 111 § 145; 2002 c 43 § 2; 1994 c 142 § 2; 1992 c 37 § 2; 1990 c 33 § 562; 1989 c 4 § 10 (Initiative Measure No. 99); 1986 c 167 § 6; 1980 c 3 § 2; 1975-'76 2nd ex.s. c 111 § 2; 1965 c 123 § 3; 1965 c 9 § 29.13.020. Prior: 1963 c 200 § 1; 1955 c 55 § 1; 1951 c 101 § 1; 1949 c 161 § 1; 1927 c 182 § 1; 1923 c 53 § 2; 1921 c 61 § 2; Rem. Supp. 1949 § 5144. Formerly RCW 29.13.020.]

**Expiration date—2009 c 413 §§ 1 and 3:** See note following RCW 29A.04.321.

**29A.04.330 City, town, and district general and special elections—Exceptions (as amended by 2009 c 413). (Effective July 1, 2011.)** (1) All city, town, and district general elections shall be held throughout the state of Washington on the first Tuesday following the first Monday in November in the odd-numbered years.

This section shall not apply to:

- (a) Elections for the recall of any elective public officer;
- (b) Public utility districts, conservation districts, or district elections at which the ownership of property within those districts is a prerequisite to voting, all of which elections shall be held at the times prescribed in the laws specifically applicable thereto;
- (c) Consolidation proposals as provided for in RCW 28A.315.235 and nonhigh capital fund aid proposals as provided for in chapter 28A.540 RCW.

(2) The county auditor, as ex officio supervisor of elections, upon request in the form of a resolution of the governing body of a city, town, or district, presented to the auditor prior to the proposed election date, may call a special election in such city, town, or district, and for the purpose of such special election he or she may combine, unite, or divide precincts. ~~((Except as provided in subsection (3) of this section;))~~ Such a special election shall be held on one of the following dates as decided by the governing body:

- (a) The ~~((first))~~ second Tuesday ~~((after the first Monday))~~ in February;
- (b) ~~((The second Tuesday in March;))~~
- ~~((c))~~ The fourth Tuesday in April;
- ~~((d))~~ (c) The third Tuesday in May;

~~((e))~~ (c) The day of the primary election as specified by RCW 29A.04.311; or

~~((f))~~ (d) The first Tuesday after the first Monday in November.

(3) A resolution calling for a special election on a date set forth in subsection (2)(a) ~~((through (d)))~~ and (b) of this section must be presented to the county auditor at least ~~((fifty-two))~~ forty-five days prior to the election date. A resolution calling for a special election on a date set forth in subsection

(2)((e)) (c) or ((f)) (d) of this section must be presented to the county auditor at least eighty-four days prior to the election date.

~~(4) (In a presidential election year, if a presidential preference primary is conducted in February, March, April, or May under chapter 29A.56 RCW, the date on which a special election may be called under subsection (2) of this section during the month of that primary is the date of the presidential primary.~~

(5)) In addition to subsection (2)(a) through ((f)) (d) of this section, a special election to validate an excess levy or bond issue may be called at any time to meet the needs resulting from fire, flood, earthquake, or other act of God, except that no special election may be held between the first day for candidates to file for public office and the last day to certify the returns of the general election other than as provided in subsection (2)((e)) (c) and ((f)) (d) of this section. Such special election shall be conducted and notice thereof given in the manner provided by law.

((6)) (5) This section shall supersede the provisions of any and all other statutes, whether general or special in nature, having different dates for such city, town, and district elections, the purpose of this section being to establish mandatory dates for holding elections. [2009 c 413 § 4; 2006 c 344 § 3; 2004 c 266 § 6; 2003 c 111 § 145; 2002 c 43 § 2; 1994 c 142 § 2; 1992 c 37 § 2; 1990 c 33 § 562; 1989 c 4 § 10 (Initiative Measure No. 99); 1986 c 167 § 6; 1980 c 3 § 2; 1975-'76 2nd ex.s. c 111 § 2; 1965 c 123 § 3; 1965 c 9 § 29.13.020. Prior: 1963 c 200 § 1; 1955 c 55 § 1; 1951 c 101 § 1; 1949 c 161 § 1; 1927 c 182 § 1; 1923 c 53 § 2; 1921 c 61 § 2; Rem. Supp. 1949 c 5144. Formerly RCW 29.13.020.]

**Reviser's note:** RCW 29A.04.330 was amended three times during the 2009 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—2009 c 413 §§ 2 and 4:** See note following RCW 29A.04.321.

**Effective date—2006 c 344 §§ 1-16 and 18-40:** See note following RCW 29A.04.311.

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Intent—2002 c 43:** "The legislature finds that there are conflicting interpretations as to the intent of the legislature in the enactment of chapter 305, Laws of 1999. The purpose of this act is to make statutory changes that further clarify this intent.

It is the intent of the legislature that elections of conservation district supervisors continue to be conducted under procedures in the conservation district statutes, chapter 89.08 RCW, and that such elections not be conducted under the general election laws contained in Title 29 RCW. Further, it is the intent of the legislature that there be no change made with regard to applicability of the public disclosure act, chapter 42.17 RCW, to conservation district supervisors from those that existed before the enactment of chapter 305, Laws of 1999." [2002 c 43 § 1.]

**Effective date—2002 c 43:** "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 14, 2002]." [2002 c 43 § 6.]

**Effective date—1994 c 142:** "This act shall take effect January 1, 1995." [1994 c 142 § 3.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Severability—1986 c 167:** See note following RCW 29A.04.049.

**Severability—1975-'76 2nd ex.s. c 111:** "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 111 § 3.]

**29A.04.340 Elections in certain first-class school districts.** (1) In each county with a population of two hundred ten thousand or more, first-class school districts containing a city of the first-class shall hold their elections biennially as provided in RCW 29A.04.330.

(2) Except as provided in RCW 28A.343.610, the directors to be elected may be elected for terms of six years and until their successors are elected, qualified, and assume office in accordance with RCW 29A.20.040.

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(3) If the board of directors of a school district pursuant to subsection (1) of this section reduces the length of the term of office for school directors in the district from six to four years, the reduction in the length of term must not affect the term of office of any incumbent director without his or her consent, and a provision must be made to appropriately stagger future elections of school directors. [2009 c 107 § 4.]

**Retroactive application—2009 c 107 §§ 1-4:** See note following RCW 28A.343.300.

**Effective date—2009 c 107:** See note following RCW 28A.343.300.

**29A.04.530 Duties of secretary of state.** The secretary of state shall:

(1) Establish and operate, or provide by contract, training and certification programs for state and county elections administration officials and personnel, including training on election laws, the various types of election law violations, and discrimination;

(2) Administer tests for state and county officials and personnel who have received such training and issue certificates to those who have successfully completed the training and passed such tests;

(3) Maintain a record of those individuals who have received such training and certificates; and

(4) Provide the staffing and support services required by the board created under RCW 29A.04.510. [2009 c 415 § 8; 2006 c 206 § 1; 2005 c 243 § 2; 2003 c 111 § 151. Prior: 2001 c 41 § 11; 1992 c 163 § 5. Formerly RCW 29.60.030.]

**Effective date—1992 c 163 §§ 5-13:** "Sections 5 through 13 of this act shall take effect July 1, 1993." [1992 c 163 § 15.]

**29A.04.540 Training of administrators.** A person having responsibility for the administration or conduct of elections, other than precinct election officers, shall, within eighteen months of undertaking those responsibilities, receive general training regarding the conduct of elections and specific training regarding their responsibilities and duties as prescribed by this title or by rules adopted by the secretary of state under this title. Included among those persons for whom such training is mandatory are the following:

(1) Secretary of state elections division personnel;

(2) County elections administrators under RCW 36.22.220; and

(3) Any other person or group charged with election administration responsibilities if the person or group is designated by rule adopted by the secretary of state as requiring the training.

Neither this section nor RCW 29A.04.530 may be construed as requiring an elected official to receive training or a certificate of training as a condition for seeking or holding elective office or as a condition for carrying out constitutional duties. [2009 c 415 § 9; 2003 c 111 § 152; 1992 c 163 § 6. Formerly RCW 29.60.040.]

**Effective date—1992 c 163 §§ 5-13:** See note following RCW 29A.04.530.

**29A.04.570 Review of county election procedures.**

(1)(a) The election review staff of the office of the secretary of state shall conduct a review of election-related policies, procedures, and practices in an affected county or counties:



(i) If the unofficial returns of a primary or general election for a position in the state legislature indicate that a mandatory recount is likely for that position; or

(ii) If unofficial returns indicate a mandatory recount is likely in a statewide election or an election for federal office.

Reviews conducted under (a)(ii) of this subsection shall be performed in as many selected counties as time and staffing permit. Reviews conducted as a result of mandatory recounts shall be performed between the time the unofficial returns are complete and the time the recount is to take place, if possible.

(b) In addition to conducting reviews under (a) of this subsection, the election review staff shall also conduct such a review in a county at least once every five years, in conjunction with a county primary or special or general election, at the direction of the secretary of state or at the request of the county auditor. If staffing or budget levels do not permit a five-year election cycle for reviews, then reviews must be done as often as possible. If any resident of this state believes that an aspect of a primary or election has been conducted inappropriately in a county, the resident may file a complaint with the secretary of state. The secretary shall consider such complaints in scheduling periodic reviews under this section.

(c) Before an election review is conducted in a county, the secretary of state shall provide the county auditor of the affected county and the chair of the state central committee of each major political party with notice that the review is to be conducted. When a periodic review is to be conducted in a county at the direction of the secretary of state under (b) of this subsection, the secretary shall provide the affected county auditor not less than thirty days' notice.

(2) Reviews shall be conducted in conformance with rules adopted under RCW 29A.04.630. In performing a review in a county under this chapter, the election review staff shall evaluate the policies and procedures established for conducting the primary or election in the county and the practices of those conducting it. As part of the review, the election review staff shall issue to the county auditor and the members of the county canvassing board a report of its findings and recommendations regarding such policies, procedures, and practices. A review conducted under this chapter shall not include any evaluation, finding, or recommendation regarding the validity of the outcome of a primary or election or the validity of any canvass of returns nor does the election review staff have any jurisdiction to make such an evaluation, finding, or recommendation under this title.

(3) The county auditor or the county canvassing board shall respond to the review report in writing, listing the steps that will be taken to correct any problems listed in the report. Within one year of issuance of the response provided by the county auditor or county canvassing board, the secretary of state shall verify that the county has taken the steps to correct the problems noted in the report.

(4) The county auditor of the county in which a review is conducted under this section or a member of the canvassing board of the county may appeal the findings or recommendations of the election review staff regarding the review by filing an appeal with the board created under RCW 29A.04.510. [2009 c 415 § 10; 2005 c 240 § 1; 2003 c 111 § 155. Prior: 1997 c 284 § 1; 1992 c 163 § 9. Formerly RCW 29.60.070.]

**Effective date—1992 c 163 §§ 5-13:** See note following RCW 29A.04.530.

**29A.04.611 Rules by secretary of state.** The secretary of state as chief election officer shall make reasonable rules in accordance with chapter 34.05 RCW not inconsistent with the federal and state election laws to effectuate any provision of this title and to facilitate the execution of its provisions in an orderly, timely, and uniform manner relating to any federal, state, county, city, town, and district elections. To that end the secretary shall assist local election officers by devising uniform forms and procedures.

In addition to the rule-making authority granted otherwise by this section, the secretary of state shall make rules governing the following provisions:

- (1) The maintenance of voter registration records;
- (2) The preparation, maintenance, distribution, review, and filing of precinct maps;
- (3) Standards for the design, layout, and production of ballots;
- (4) The examination and testing of voting systems for certification;
- (5) The source and scope of independent evaluations of voting systems that may be relied upon in certifying voting systems for use in this state;
- (6) Standards and procedures for the acceptance testing of voting systems by counties;
- (7) Standards and procedures for testing the programming of vote tallying software for specific primaries and elections;
- (8) Standards and procedures for the preparation and use of each type of certified voting system including procedures for the operation of counting centers where vote tallying systems are used;
- (9) Standards and procedures to ensure the accurate tabulation and canvassing of ballots;
- (10) Consistency among the counties of the state in the preparation of ballots, the operation of vote tallying systems, and the canvassing of primaries and elections;
- (11) Procedures to ensure the secrecy of a voter's ballot when a small number of ballots are counted at the polls or at a counting center;
- (12) The use of substitute devices or means of voting when a voting device at the polling place is found to be defective, the counting of votes cast on the defective device, the counting of votes cast on the substitute device, and the documentation that must be submitted to the county auditor regarding such circumstances;
- (13) Procedures for the transportation of sealed containers of voted ballots or sealed voting devices;
- (14) The acceptance and filing of documents via electronic facsimile;
- (15) Voter registration applications and records;
- (16) The use of voter registration information in the conduct of elections;
- (17) The coordination, delivery, and processing of voter registration records accepted by driver licensing agents or the department of licensing;
- (18) The coordination, delivery, and processing of voter registration records accepted by agencies designated by the governor to provide voter registration services;

- (19) Procedures to receive and distribute voter registration applications by mail;
- (20) Procedures for a voter to change his or her voter registration address within a county by telephone;
- (21) Procedures for a voter to change the name under which he or she is registered to vote;
- (22) Procedures for canceling dual voter registration records and for maintaining records of persons whose voter registrations have been canceled;
- (23) Procedures for the electronic transfer of voter registration records between county auditors and the office of the secretary of state;
- (24) Procedures and forms for declarations of candidacy;
- (25) Procedures and requirements for the acceptance and filing of declarations of candidacy by electronic means;
- (26) Procedures for the circumstance in which two or more candidates have a name similar in sound or spelling so as to cause confusion for the voter;
- (27) Filing for office;
- (28) The order of positions and offices on a ballot;
- (29) Sample ballots;
- (30) Independent evaluations of voting systems;
- (31) The testing, approval, and certification of voting systems;
- (32) The testing of vote tallying software programming;
- (33) Standards and procedures to prevent fraud and to facilitate the accurate processing and canvassing of absentee ballots and mail ballots, including standards for the approval and implementation of hardware and software for automated signature verification systems;
- (34) Standards and procedures to guarantee the secrecy of absentee ballots and mail ballots;
- (35) Uniformity among the counties of the state in the conduct of absentee voting and mail ballot elections;
- (36) Standards and procedures to accommodate overseas voters and service voters;
- (37) The tabulation of paper ballots before the close of the polls;
- (38) The accessibility of polling places and registration facilities that are accessible to elderly and disabled persons;
- (39) The aggregation of precinct results if reporting the results of a single precinct could jeopardize the secrecy of a person's ballot;
- (40) Procedures for conducting a statutory recount;
- (41) Procedures for filling vacancies in congressional offices if the general statutory time requirements for availability of absentee ballots, certification, canvassing, and related procedures cannot be met;
- (42) Procedures for the statistical sampling of signatures for purposes of verifying and canvassing signatures on initiative, referendum, and recall election petitions;
- (43) Standards and deadlines for submitting material to the office of the secretary of state for the voters' pamphlet;
- (44) Deadlines for the filing of ballot titles for referendum bills and constitutional amendments if none have been provided by the legislature;
- (45) Procedures for the publication of a state voters' pamphlet;
- (46) Procedures for conducting special elections regarding nuclear waste sites if the general statutory time require-

ments for availability of absentee ballots, certification, canvassing, and related procedures cannot be met;

(47) Procedures for conducting partisan primary elections;

(48) Standards and procedures for the proper conduct of voting during the early voting period to provide accessibility for the blind or visually impaired;

(49) Standards for voting technology and systems used by the state or any political subdivision to be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for access and participation, including privacy and independence, as other voters;

(50) All data formats for transferring voter registration data on electronic or machine-readable media for the purpose of administering the statewide voter registration list required by the Help America Vote Act (P.L. 107-252);

(51) Defining the interaction of electronic voter registration election management systems employed by each county auditor to maintain a local copy of each county's portion of the official state list of registered voters;

(52) Provisions and procedures to implement the state-based administrative complaint procedure as required by the Help America Vote Act (P.L. 107-252);

(53) Facilitating the payment of local government grants to local government election officers or vendors; and

(54) Standards for the verification of signatures on absentee, mail, and provisional ballot envelopes. [2009 c 369 § 5. Prior: 2006 c 207 § 1; 2006 c 206 § 2; 2004 c 271 § 151.]

## Chapter 29A.08 RCW

### VOTERS AND REGISTRATION

#### Sections

- 29A.08.010 Minimum information required for voter registration.
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- 29A.08.040 Repealed.
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- 29A.08.630 Return of inactive voter to active status—Cancellation of registration.
- 29A.08.635 Confirmation notices—Form, contents.
- 29A.08.640 Confirmation notice—Response, auditor's action.
- 29A.08.651 Repealed.
- 29A.08.720 Registration, voting records—As public records—Information furnished—Restrictions, confidentiality.
- 29A.08.760 Computer file—Duplicate copy—Restrictions and penalties.
- 29A.08.780 Repealed.

**29A.08.010 Minimum information required for voter registration.** (1) The minimum information provided on a voter registration application that is required in order to place a voter registration applicant on the voter registration rolls includes:

- (a) Name;
- (b) Residential address;
- (c) Date of birth;
- (d) A signature attesting to the truth of the information provided on the application; and
- (e) A check or indication in the box confirming the individual is a United States citizen.

(2) The residential address provided must identify the actual physical residence of the voter in Washington, as defined in RCW 29A.04.151, with detail sufficient to allow the voter to be assigned to the proper precinct and to locate the voter to confirm his or her residence for purposes of verifying qualification to vote under Article VI, section 1 of the state Constitution. A residential address may be either a traditional address or a nontraditional address. A traditional address consists of a street number and name, optional apartment number or unit number, and city or town, as assigned by a local government, which serves to identify the parcel or building of residence and the unit if a multiunit residence. A nontraditional address consists of a narrative description of the location of the voter's residence, and may be used when a traditional address has not been assigned to the voter's residence.

(3) All other information supplied is ancillary and not to be used as grounds for not registering an applicant to vote.

(4) Modification of the language of the official Washington state voter registration form by the voter will not be accepted and will cause the rejection of the registrant's application. [2009 c 369 § 6; 2006 c 320 § 2; 2005 c 246 § 2; 2004 c 267 § 102; 2003 c 111 § 201; 1994 c 57 § 9. Formerly RCW 29.07.005.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—1994 c 57:** See note following RCW 10.64.021.

**29A.08.030 Notices, various.** The definitions set forth in this section apply throughout this chapter, unless the context clearly requires otherwise.

(1) "Verification notice" means a notice sent by the county auditor or secretary of state to a voter registration applicant and is used to verify or collect information about the applicant in order to complete the registration. The verification notice must be designed to include a postage prepaid, preaddressed return form by which the applicant may verify or send information.

(2) "Acknowledgement notice" means a notice sent by nonforwardable mail by the county auditor or secretary of state to a registered voter to acknowledge a voter registration transaction, which can include initial registration, transfer, or reactivation of an inactive registration. An acknowledgement notice may be a voter registration card.

(3) "Identification notice" means a notice sent to a provisionally registered voter to confirm the applicant's identity.

(4) "Confirmation notice" means a notice sent to a registered voter by first-class forwardable mail at the address indicated on the voter's permanent registration record and to any other address at which the county auditor or secretary of state could reasonably expect mail to be received by the voter in order to confirm the voter's residence address. The confirmation notice must be designed to include a postage prepaid, preaddressed return form by which the registrant may verify the address information. [2009 c 369 § 7; 2005 c 246 § 3; 2004 c 267 § 104; 2003 c 111 § 203. Prior: 1994 c 57 § 33. Formerly RCW 29.10.011.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.040 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**29A.08.105 Official list, secretary of state—County auditor.** (1) In compliance with the Help America Vote Act (P.L. 107-252), the centralized statewide voter registration list maintained by the secretary of state is the official list of eligible voters for all elections.

(2) In all counties, the county auditor shall be the chief registrar of voters for every precinct within the county. [2009 c 369 § 8; 2004 c 267 § 105; 2003 c 111 § 205; 1999 c 298 § 4; 1994 c 57 § 8; 1984 c 211 § 3; 1980 c 48 § 1; 1971 ex.s. c 202 § 4; 1965 c 9 § 29.07.010. Prior: 1957 c 251 § 4; prior: 1939 c 15 § 1, part; 1933 c 1 § 3, part; RRS § 5114-3, part; prior: 1891 c 104 §§ 1, part, 2, part; RRS §§ 5116, part, 5117, part. Formerly RCW 29.07.010.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—1994 c 57:** See note following RCW 10.64.021.

**Intent—1984 c 211:** See note following RCW 29A.08.310.

**29A.08.107 Applicant information for registration—Provisional registration—Exception.** (1) If the driver's license number, state identification card number, or last four digits of the social security number provided by the applicant match the information maintained by the Washington department of licensing or the social security administration, and the applicant provided all information required by RCW 29A.08.010, the applicant must be registered to vote.

(2) If the driver's license number, state identification card number, or last four digits of the social security number provided by the applicant do not match the information maintained by the Washington department of licensing or the social security administration, or if the applicant does not provide a Washington driver's license, a Washington state identification card, or a social security number, the applicant must be provisionally registered to vote. An identification

notice must be sent to the voter to obtain the correct driver's license number, state identification card number, last four digits of the social security number, or one of the following forms of alternate identification:

- (a) Valid photo identification;
- (b) A valid enrollment card of a federally recognized Indian tribe in Washington state;
- (c) A copy of a current utility bill;
- (d) A current bank statement;
- (e) A copy of a current government check;
- (f) A copy of a current paycheck; or
- (g) A government document, other than a voter registration card, that shows both the name and address of the voter.

(3) The ballot of a provisionally registered voter may not be counted until the voter provides a driver's license number, a state identification card number, or the last four digits of a social security number that matches the information maintained by the Washington department of licensing or the social security administration, or until the voter provides alternate identification. The identification must be provided no later than the day before certification of the primary or election. If the voter provides one of the forms of identification in subsection (2) of this section, the voter's registration status must be changed from provisionally registered to registered.

(4) A provisional registration must remain on the official list of registered voters through at least two general elections for federal office. If, after two general elections for federal office, the voter still has not verified his or her identity, the provisional registration may be canceled.

(5) The requirements of this section do not apply to an overseas or service voter who registers to vote by signing the return envelope of an absentee ballot, or to a registered voter transferring his or her registration. [2009 c 369 § 9; 2005 c 246 § 4; 2004 c 267 § 106.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.110 Auditor's procedure.** (1) An application is considered complete only if it contains the information required by RCW 29A.08.010. The applicant is considered to be registered to vote as of the original date of mailing or date of delivery, whichever is applicable. The auditor shall record the appropriate precinct identification, taxing district identification, and date of registration on the voter's record in the state voter registration list. Any mailing address provided shall be used only for mail delivery purposes, and not for precinct assignment or residency purposes. Within sixty days after the receipt of an application or transfer, the auditor shall send to the applicant, by first-class nonforwardable mail, an acknowledgement notice identifying the registrant's precinct and containing such other information as may be required by the secretary of state. The postal service shall be instructed not to forward a voter registration card to any other address and to return to the auditor any card which is not deliverable.

(2) If an application is not complete, the auditor shall promptly mail a verification notice to the applicant. The verification notice shall require the applicant to provide the missing information. If the applicant provides the required information within forty-five days, the applicant shall be reg-

istered to vote as of the original date of application. The applicant shall not be placed on the official list of registered voters until the application is complete. [2009 c 369 § 10; 2005 c 246 § 5; 2004 c 267 § 107; 2003 c 111 § 206. Prior: 1994 c 57 § 32; 1993 c 434 § 6. Formerly RCW 29.08.060.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.113 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**29A.08.115 Registration by other than auditor or secretary of state.** A person or organization collecting voter registration application forms must transmit the forms to the secretary of state or a county auditor within five business days. The registration date on such forms will be the date they are received by the secretary of state or county auditor. [2009 c 369 § 11; 2005 c 246 § 8; 2004 c 267 § 108; 2003 c 111 § 207; 1971 ex.s. c 202 § 15; 1965 c 9 § 29.07.110. Prior: 1957 c 251 § 11; prior: 1947 c 68 § 1, part; 1945 c 95 § 1, part; 1933 c 1 § 6, part; Rem. Supp. 1947 § 5114-6, part; prior: 1919 c 163 § 6, part; 1915 c 16 § 6, part; 1901 c 135 § 5, part; 1893 c 45 § 1, part; 1889 p 415 § 6, part; RRS § 5124, part. Formerly RCW 29.07.110.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.125 Database of voter registration records.** (1) The office of the secretary of state shall maintain a statewide voter registration database. This database must be a centralized, uniform, interactive computerized statewide voter registration list that contains the name and registration information of every registered voter in the state.

(2) The statewide list is the official list of registered voters for the conduct of all elections.

(3) The statewide list must include, but is not limited to, the name, date of birth, residence address, signature, gender, and date of registration of every legally registered voter in the state.

(4) A unique identifier must be assigned to each registered voter in the state.

(5) The database must be coordinated with other government databases within the state including, but not limited to, the department of corrections, the department of licensing, the department of health, the administrative office of the courts, and county auditors. The database may also be coordinated with the databases of election officials in other states.

(6) Authorized employees of the secretary of state and each county auditor must have immediate electronic access to the information maintained in the database.

(7) Voter registration information received by each county auditor must be electronically entered into the database. The office of the secretary of state must provide support, as needed, to enable each county auditor to enter and maintain voter registration information in the state database.

(8) The secretary of state has data authority over all voter registration data.

(9) The voter registration database must be designed to accomplish at a minimum, the following:

(a) Comply with the help America vote act of 2002 (P.L. 107-252);

(b) Identify duplicate voter registrations;

(c) Identify suspected duplicate voters;

(d) Screen against any available databases maintained by other government agencies to identify voters who are ineligible to vote due to a felony conviction, lack of citizenship, or mental incompetence;

(e) Provide images of voters' signatures for the purpose of checking signatures on initiative and referendum petitions;

(f) Provide for a comparison between the voter registration database and the department of licensing change of address database;

(g) Provide access for county auditors that includes the capability to update registrations and search for duplicate registrations; and

(h) Provide for the cancellation of registrations of voters who have moved out of state.

(10) The secretary of state may, upon agreement with other appropriate jurisdictions, screen against any available databases maintained by election officials in other states and databases maintained by federal agencies including, but not limited to, the federal bureau of investigation, the federal court system, the federal bureau of prisons, and the bureau of citizenship and immigration services.

(11) The database shall retain information regarding previous successful appeals of proposed cancellations of registrations in order to avoid repeated cancellations for the same reason.

(12) Each county auditor shall maintain a list of all registered voters within the county that are contained on the official statewide voter registration list. In addition to the information maintained in the statewide database, the county database must also maintain the applicable taxing district and precinct codes for each voter in the county, and a list of elections in which the individual voted.

(13) Each county auditor shall allow electronic access and information transfer between the county's voter registration system and the official statewide voter registration list. [2009 c 369 § 12; 2005 c 246 § 9; 2004 c 267 § 110; 2003 c 111 § 209; 1993 c 408 § 11; 1991 c 81 § 22; 1974 ex.s. c 127 § 12. Formerly RCW 29.07.220.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective dates—1993 c 408:** See notes following RCW 2.36.054.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.08.130 Count of registered voters.** Election officials shall not include inactive voters in the count of registered voters for the purpose of dividing precincts, creating vote-by-mail precincts, determining voter turnout, or other purposes in law for which the determining factor is the number of registered voters. Election officials shall not include persons who are ongoing absentee voters under RCW 29A.40.040 in determining the maximum permissible size of vote-by-mail precincts or in determining the maximum permissible size of precincts. Nothing in this section may be

construed as altering the vote tallying requirements of RCW 29A.60.230. [2009 c 369 § 13; 2003 c 111 § 210; 1994 c 57 § 40. Formerly RCW 29.10.081.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.135 Updating information.** (1) When a person who has previously registered to vote in another state applies for voter registration in Washington, the person shall provide on the registration form all information needed to cancel any previous registration. Notification must be made to the state elections office of the applicant's previous state of registration.

(2) A county auditor receiving official information that a voter has registered to vote in another state shall immediately cancel that voter's registration on the official state voter registration list. [2009 c 369 § 14; 2004 c 267 § 111; 2003 c 111 § 211; 2001 c 41 § 6; 1975 1st ex.s. c 184 § 1; 1973 c 153 § 2. Formerly RCW 29.07.092.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—1975 1st ex.s. c 184:** "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 184 § 5.]

**29A.08.140 Voting in primaries, special elections, or general elections—Notice.** (1) In order to vote in any primary, special election, or general election, a person who is not registered to vote in Washington must:

(a) Submit a registration application no later than twenty-nine days before the day of the primary, special election, or general election; or

(b) Register in person at the county auditor's office in his or her county of residence no later than eight days before the day of the primary, special election, or general election. A person registering under this subsection will be issued an absentee ballot.

(2) A person who is already registered to vote in Washington may update his or her registration no later than twenty-nine days before the day of the primary, special election, or general election to be in effect for that primary, special election, or general election. A registered voter who fails to transfer his or her residential address by this deadline may vote according to his or her previous registration address.

(3) Prior to each primary and general election, the county auditor shall give notice of the registration deadlines by one publication in a newspaper of general circulation in the county at least thirty-five days before the primary or general election. [2009 c 369 § 15; 2006 c 97 § 1; 2004 c 267 § 112; 2003 c 111 § 212. Prior: 1993 c 383 § 2; 1980 c 3 § 4; 1974 ex.s. c 127 § 4; 1971 ex.s. c 202 § 20; 1965 c 9 § 29.07.160; prior: 1947 c 68 § 2; 1933 c 1 § 9; Rem. Supp. 1947 § 5114-9. Formerly RCW 29.07.160.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.145 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**29A.08.210 Application—Information required—Warning.** An applicant for voter registration shall complete

an application providing the following information concerning his or her qualifications as a voter in this state:

(1) The former address of the applicant if previously registered to vote;

(2) The applicant's full name;

(3) The applicant's date of birth;

(4) The address of the applicant's residence for voting purposes;

(5) The mailing address of the applicant if that address is not the same as the address in subsection (4) of this section;

(6) The sex of the applicant;

(7) The applicant's Washington state driver's license number, Washington state identification card number, or the last four digits of the applicant's social security number if he or she does not have a Washington state driver's license or Washington state identification card;

(8) A check box allowing the applicant to indicate that he or she is a member of the armed forces, national guard, or reserves, or that he or she is an overseas voter;

(9) A check box allowing the applicant to confirm that he or she is at least eighteen years of age or will be eighteen years of age by the next election;

(10) Clear and conspicuous language, designed to draw the applicant's attention, stating that the applicant must be a United States citizen in order to register to vote;

(11) A check box and declaration confirming that the applicant is a citizen of the United States;

(12) The following warning:

"If you knowingly provide false information on this voter registration form or knowingly make a false declaration about your qualifications for voter registration you will have committed a class C felony that is punishable by imprisonment for up to five years, a fine of up to ten thousand dollars, or both."

(13) The oath required by RCW 29A.08.230 and a space for the applicant's signature; and

(14) Any other information that the secretary of state determines is necessary to establish the identity of the applicant and prevent duplicate or fraudulent voter registrations.

This information shall be recorded on a single registration form to be prescribed by the secretary of state. [2009 c 369 § 16; 2005 c 246 § 11; 2003 c 111 § 216; 1994 c 57 § 11; 1990 c 143 § 7; 1973 1st ex.s. c 21 § 3; 1971 ex.s. c 202 § 9; 1965 c 9 § 29.07.070. Prior: 1947 c 68 § 3, part; 1933 c 1 § 11, part; Rem. Supp. 1947 § 5114-11, part; prior: 1921 c 177 § 7, part; 1915 c 16 § 8, part; 1901 c 135 § 4, part; 1893 c 45 § 3, part; 1889 p 416 § 8, part; RRS § 5126, part. Formerly RCW 29.07.070.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Effective date—1990 c 143 §§ 1-8:** See note following RCW 29A.08.340.

*Civil disabilities of wife abolished:* RCW 26.16.160.

*Civil rights*

*loss of:* State Constitution Art. 6 § 3, RCW 29A.08.520.

*restoration of:* RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

*Copy of instrument restoring civil rights as evidence:* RCW 5.44.090.

*Qualifications of electors:* State Constitution Art. 6 § 1 (Amendment 5).

*Residence defined:* RCW 29A.04.151.

[2009 RCW Supp—page 494]

*Subversive activities as disqualification for voting:* RCW 9.81.040.

**29A.08.230 Oath of applicant.** For all voter registrations, the registrant shall sign the following oath:

"I declare that the facts on this voter registration form are true. I am a citizen of the United States, I am not presently denied the right to vote as a result of being convicted of a felony, I will have lived in Washington at this address for thirty days immediately before the next election at which I vote, and I will be at least eighteen years old when I vote." [2009 c 369 § 17; 2003 c 111 § 218; 1994 c 57 § 12; 1990 c 143 § 8; 1973 1st ex.s. c 21 § 4; 1971 ex.s. c 202 § 10; 1965 c 9 § 29.07.080. Prior: 1933 c 1 § 12; RRS § 5114-12. Formerly RCW 29.07.080.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Effective date—1990 c 143 §§ 1-8:** See note following RCW 29A.08.340.

*Civil rights*

*loss of:* State Constitution Art. 6 § 3, RCW 29A.08.520.

*restoration of:* RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

**29A.08.260 Supply and distribution.** The county auditor shall distribute forms by which a person may register to vote by mail and transfer any previous registration in this state. The county auditor shall keep a supply of voter registration forms in his or her office at all times for political parties and others interested in assisting in voter registration, and shall make every effort to make these forms generally available to the public. The county auditor shall provide voter registration forms to city and town clerks, state offices, schools, fire stations, public libraries, and any other locations considered appropriate by the auditor or secretary of state for extending registration opportunities to all areas of the county. After the initial distribution of voter registration forms to a given location, a representative designated by the official in charge of that location shall notify the county auditor of the need for additional voter registration supplies. [2009 c 369 § 18; 2004 c 267 § 118; 2003 c 111 § 221. Prior: 1993 c 434 § 4. Formerly RCW 29.08.040.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.310 Voter registration in state offices, colleges.** (1) The governor, in consultation with the secretary of state, shall designate agencies to provide voter registration services in compliance with federal statutes.

(2) Each state agency designated shall provide voter registration services for employees and the public within each office of that agency.

(3) The secretary of state shall design and provide a standard notice informing the public of the availability of voter registration, which notice shall be posted in each state agency where such services are available.

(4) Each institution of higher education shall put in place an active prompt on its course registration web site, or similar web site that students actively and regularly use, that, if selected, will link the student to the secretary of state's voter registration web site. The prompt must ask the student if he or she wishes to register to vote. [2009 c 369 § 19; 2003 c

111 § 222; 2002 c 185 § 3; 1994 c 57 § 10; 1984 c 211 § 2. Formerly RCW 29.07.025.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Intent—1984 c 211:** "It is the intention of the legislature, in order to encourage the broadest possible participation in the electoral process by the citizens of the state of Washington, to make voter registration services available in state offices which have significant contact with the public." [1984 c 211 § 1.]

**29A.08.330 Registration at designated agencies—Procedures.** (1) The secretary of state shall prescribe the method of voter registration for each designated agency. The agency shall use either the state voter registration by mail form with a separate declination form for the applicant to indicate that he or she declines to register at this time, or the agency may use a separate form approved for use by the secretary of state.

(2) The person providing service at the agency shall offer voter registration services to every client whenever he or she applies for service or assistance and with each renewal, recertification, or change of address. The person providing service shall give the applicant the same level of assistance with the voter registration application as is offered to fill out the agency's forms and documents, including information about age and citizenship requirements for voter registration.

(3) The person providing service at the agency shall determine if the prospective applicant wants to register to vote or transfer his or her voter registration by asking the following question:

"Do you want to register to vote or transfer your voter registration?"

If the applicant chooses to register or transfer a registration, the service agent shall ask the following:

(a) "Are you a United States citizen?"

(b) "Are you or will you be eighteen years of age on or before the next election?"

If the applicant answers in the affirmative to both questions, the agent shall then provide the applicant with a voter registration form and instructions and shall record that the applicant has requested to register to vote or transfer a voter registration. If the applicant answers in the negative to either question, the agent shall not provide the applicant with a voter registration form.

(4) If an agency uses a computerized application process, it may, in consultation with the secretary of state, develop methods to capture simultaneously the information required for voter registration during a person's computerized application process.

(5) Each designated agency shall transmit the applications to the secretary of state or appropriate county auditor within three business days. [2009 c 369 § 20; 2005 c 246 § 14; 2003 c 111 § 224. Prior: 2001 c 41 § 7; 1994 c 57 § 28. Formerly RCW 29.07.440.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.350 Duties of department of licensing, secretary of state.** The department of licensing shall produce and transmit to the secretary of state the following information from the records of each individual who requested a voter registration or transfer at a driver's license facility: The name, address, date of birth, gender of the applicant, the driver's license number, and the date on which the application for voter registration or transfer was submitted. The secretary of state shall process the registrations and transfers as an electronic application. [2009 c 369 § 21; 2004 c 267 § 120; 2003 c 111 § 226; 1994 c 57 § 22; 1990 c 143 § 2. Formerly RCW 29.07.270.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Effective date—1990 c 143 §§ 1-8:** See note following RCW 29A.08.340.

**29A.08.360 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**29A.08.410 Address change within county—Transfer by telephone or e-mail.** A registered voter who changes his or her residence from one address to another within the same county may transfer his or her registration to the new address in one of the following ways:

(1) Sending the county auditor a request stating both the voter's present address and the address from which the voter was last registered;

(2) Appearing in person before the county auditor and making such a request;

(3) Telephoning or e-mailing the county auditor to transfer the registration; or

(4) Submitting a voter registration application. [2009 c 369 § 22; 2003 c 111 § 228; 1994 c 57 § 35; 1991 c 81 § 23; 1975 1st ex.s. c 184 § 2; 1971 ex.s. c 202 § 24; 1965 c 9 § 29.10.020. Prior: 1955 c 181 § 4; prior: 1933 c 1 § 14, part; RRS § 5114-14, part; prior: 1919 c 163 § 9, part; 1915 c 16 § 9, part; 1889 p 417 § 12, part; RRS § 5129, part. Formerly RCW 29.10.020.]

**Severability—1994 c 57:** See note following RCW 10.64.021.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Severability—1975 1st ex.s. c 184:** See note following RCW 29A.08.135.

**29A.08.420 Transfer to another county.** A registered voter who changes his or her residence from one county to another county must do so by submitting a voter registration form. The county auditor of the voter's new county shall transfer the voter's registration from the county of the previous registration. [2009 c 369 § 23; 2004 c 267 § 122; 2003 c 111 § 229; 1999 c 100 § 3; 1994 c 57 § 36; 1991 c 81 § 24; 1977 ex.s. c 361 § 26; 1971 ex.s. c 202 § 26; 1965 c 9 § 29.10.040. Prior: 1933 c 1 § 15; RRS § 5114-15. Formerly RCW 29.10.040.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—1994 c 57:** See note following RCW 10.64.021.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.08.430 Transfer on day of primary, special election, or general election.** (1) A registered voter may submit a transfer of his or her voter registration on the day of a primary, special election, or general election by completing a voter registration form.

(2) A voter who requests to transfer his or her registration after the deadlines established in RCW 29A.08.140 shall vote in the precinct in which he or she was previously registered. [2009 c 369 § 24; 2004 c 267 § 123; 2003 c 111 § 230. Prior: 1991 c 81 § 28; 1979 c 96 § 1. Formerly RCW 29.10.170.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.08.440 Voter name change.** A registered voter who changes his or her name shall notify the county auditor regarding the name change by submitting a notice clearly identifying the name under which he or she is registered to vote, the voter's new name, and the voter's residence, and providing a signature of the new name, or by submitting a voter registration application.

A properly registered voter who files a change-of-name notice at the voter's precinct polling place during a primary or election and who desires to vote at that primary or election shall sign the poll book using the voter's former and new names. [2009 c 369 § 25; 2003 c 111 § 231; 1994 c 57 § 37; 1991 c 81 § 25. Formerly RCW 29.10.051.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**29A.08.510 Death.** The registrations of deceased voters may be canceled from voter registration lists as follows:

(1) Periodically, the registrar of vital statistics of the state shall prepare a list of persons who resided in each county, for whom a death certificate was transmitted to the registrar and was not included on a previous list, and shall supply the list to the secretary of state.

The secretary of state shall compare this list with the registration records and cancel the registrations of deceased voters.

(2) In addition, each county auditor may also use government agencies and newspaper obituary articles as a source of information for identifying deceased voters and canceling a registration. The auditor must verify the identity of the voter by matching the voter's date of birth or an address. The auditor shall record the date and source of the information in the cancellation records.

(3) In addition, any registered voter may sign a statement, subject to the penalties of perjury, to the effect that to his or her personal knowledge or belief another registered voter is deceased. This statement may be filed with the county auditor or the secretary of state. Upon the receipt of such signed statement, the county auditor or the secretary of state shall cancel the registration from the official state voter registration list. [2009 c 369 § 26; 2004 c 267 § 124; 2003 c 111 § 232; 1999 c 100 § 1; 1994 c 57 § 41; 1983 c 110 § 1; 1971 ex.s. c 202 § 29; 1965 c 9 § 29.10.090. Prior: 1961 c 32 § 1; 1933 c 1 § 20; RRS § 5114-20. Formerly RCW 29.10.090.]

[2009 RCW Supp—page 496]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—1994 c 57:** See note following RCW 10.64.021.

**29A.08.520 Felony conviction—Provisional and permanent restoration of voting rights (as amended by 2009 c 325).** (1) ~~(Upon receiving official notice of a person's conviction of a felony in either state or federal court, if the convicted person is a registered voter in the county, the county auditor shall cancel the defendant's voter registration. Additionally, the secretary of state in conjunction with the department of corrections, the Washington state patrol, the office of the administrator for the courts, and other appropriate state agencies shall arrange for a quarterly comparison of a list of known felons with the statewide voter registration list. If a person is found on a felon list and the statewide voter registration list) For a felony conviction in a Washington state court, the right to vote is provisionally restored as long as the person is not under the authority of the department of corrections. For a felony conviction in a federal court or any state court other than a Washington state court, the right to vote is restored as long as the person is no longer incarcerated.~~

~~(2)(a) Once the right to vote has been provisionally restored, the sentencing court may revoke the provisional restoration of voting rights if the sentencing court determines that a person has willfully failed to comply with the terms of his or her order to pay legal financial obligations.~~

~~(b) If the person has failed to make three payments in a twelve-month period and the county clerk or restitution recipient requests, the prosecutor shall seek revocation of the provisional restoration of voting rights from the court.~~

~~(c) To the extent practicable, the prosecutor and county clerk shall inform a restitution recipient of the recipient's right to ask for the revocation of the provisional restoration of voting rights.~~

~~(3) If the court revokes the provisional restoration of voting rights, the revocation shall remain in effect until, upon motion by the person whose provisional voting rights have been revoked, the person shows that he or she has made a good faith effort to pay as defined in RCW 10.82.090.~~

~~(4) The county clerk shall enter into a database maintained by the administrator for the courts the names of all persons whose provisional voting rights have been revoked, and update the database for any person whose voting rights have subsequently been restored pursuant to subsection (6) of this section.~~

~~(5) At least twice a year, the secretary of state shall compare the list of registered voters to a list of felons who are not eligible to vote as provided in subsections (1) and (3) of this section. If a registered voter is not eligible to vote as provided in this section, the secretary of state or county auditor shall confirm the match through a date of birth comparison and suspend the voter registration from the official state voter registration list. The ~~(cancellation authority)~~ secretary of state or county auditor shall send to the person at his or her last known voter registration address and at the department of corrections, if the person is under the authority of the department, a notice of the proposed cancellation and an explanation of the requirements for provisionally and permanently restoring the right to vote ~~(once all terms of sentencing have been completed)~~ and reregistering. ~~(If the person does not respond within thirty days, the registration must be canceled.)~~ To the extent possible, the secretary of state shall time the comparison required by this subsection to allow notice and cancellation of voting rights for ineligible voters prior to a primary or general election.~~

~~((2)) (6) The right to vote may be permanently restored by ~~(for each felony conviction)~~ one of the following for each felony conviction:~~

~~(a) A certificate of discharge issued by the sentencing court, as provided in RCW 9.94A.637;~~

~~(b) A court order restoring the right, as provided in RCW 9.92.066;~~

~~(c) A final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or~~

~~(d) A certificate of restoration issued by the governor, as provided in RCW 9.96.020.~~

~~(7) For the purposes of this section, a person is under the authority of the department of corrections if the person is:~~

~~(a) Serving a sentence of confinement in the custody of the department of corrections; or~~

~~(b) Subject to community custody as defined in RCW 9.94A.030. [2009 c 325 § 1; 2005 c 246 § 15; 2004 c 267 § 126; 2003 c 111 § 233. Prior: 1994 c 57 § 42. Formerly RCW 29.10.097.]~~

**29A.08.520 Felony conviction—Restoration of voting rights (as amended by 2009 c 369).** (1) Upon receiving official notice of a person's conviction of a felony in either state or federal court, if the convicted person



is a registered voter in the county, the county auditor shall cancel the defendant's voter registration. ~~((Additionally,))~~

(2) The secretary of state in conjunction with the department of corrections, ~~((the Washington state patrol,))~~ the office of the administrator for the courts, and other appropriate state agencies shall arrange for a quarterly comparison of a list of known felons with the statewide voter registration list. If a ~~((person))~~ registered voter is found on a ~~((felon))~~ reliable list ~~((and the statewide voter registration list))~~ of felons who are ineligible to vote, the secretary of state or county auditor shall confirm the match through a name and date of birth comparison and suspend the voter registration from the official state voter registration list. ~~The ((cancelling authority))~~ secretary of state shall send to the person at his or her last known voter registration address a notice of the proposed cancellation and an explanation of the requirements for restoring the right to vote once all terms of sentencing have been completed. If the person does not respond within thirty days, the registration must be canceled.

~~((2))~~ (3) The right to vote may be restored by, for each felony conviction, one of the following:

- (a) A certificate of discharge issued by the sentencing court, as provided in RCW 9.94A.637;
- (b) A court order restoring the right, as provided in RCW 9.92.066;
- (c) A final order of discharge issued by the indeterminate sentence review board, as provided in RCW 9.96.050; or
- (d) A certificate of restoration issued by the governor, as provided in RCW 9.96.020. [2009 c 369 § 27; 2005 c 246 § 15; 2004 c 267 § 126; 2003 c 111 § 233. Prior: 1994 c 57 § 42. Formerly RCW 29.10.097.]

**Reviser's note:** RCW 29A.08.520 was amended twice during the 2009 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—2005 c 246:** See note following RCW 10.64.140.

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

*Restoration of civil rights: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.*

**29A.08.605 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

### 29A.08.610 Dual registration or voting detection.

The secretary of state shall conduct an ongoing list maintenance program designed to detect persons registered in more than one county or voting in more than one county in an election. This program must be applied uniformly throughout the state and must be nondiscriminatory in its application.

The office of the secretary of state shall search the statewide voter registration list to find registered voters with the same date of birth and similar names. Once the potential duplicate registrations are identified, the secretary of state shall refer the potential duplicate registrations to the appropriate county auditors, who shall compare the signatures on each voter registration record and, after confirming that a duplicate registration exists properly resolve the duplication.

If a voter is suspected of voting in two or more counties in an election, the county auditors in each county shall cooperate without delay to determine the voter's county of residence. The county auditor of the county of residence of the voter suspected of voting in two or more counties shall take action under RCW 29A.84.010 without delay. [2009 c 369 § 28; 2004 c 267 § 129; 2003 c 111 § 237; 2001 c 41 § 10; 1999 c 100 § 4. Formerly RCW 29.10.185.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**29A.08.620 Change of address information for absentee and mail ballots—Assignment of voter to inactive status—Confirmation notice.**

(1) Each county auditor must request change of address information from the postal service for all absentee and mail ballots. A voter who votes at the polls must be mailed an election-related document, with change of address information requested, at least once every two years and at least ninety days prior to the date of a primary or general election for federal office.

(2) The county auditor shall transfer the registration of a voter and send an acknowledgement notice to the new address informing the voter of the transfer if change of address information received by the county auditor from the postal service, the department of licensing, or another agency designated to provide voter registration services indicates that the voter has moved within the county.

(3) The county auditor shall place a voter on inactive status and send to all known addresses a confirmation notice and a voter registration application if change of address information received by the county auditor from the postal service, the department of licensing, or another agency designated to provide voter registration services indicates that the voter has moved from one county to another.

(4) The county auditor shall place a voter on inactive status and send to all known addresses a confirmation notice if any of the following occur:

(a) Any document mailed by the county auditor to a voter is returned by the postal service as undeliverable without address correction information; or

(b) Change of address information received from the postal service, the department of licensing, or another state agency designated to provide voter registration services indicates that the voter has moved out of the state. [2009 c 369 § 29. Prior: 2004 c 267 § 130; 2004 c 266 § 8; 2003 c 111 § 239; prior: 1994 c 57 § 38. Formerly RCW 29.10.071.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

### 29A.08.625 Voting by inactive or canceled voters. (1)

A voter whose registration has been made inactive under this chapter and who requests to vote at an ensuing election before two federal general elections have been held must be allowed to vote a regular ballot applicable to the registration address, and the voter's registration restored to active status.

(2) A voter whose registration has been properly canceled under this chapter shall vote a provisional ballot. The voter shall mark the provisional ballot in secrecy, the ballot placed in a security envelope, the security envelope placed in a provisional ballot envelope, and the reasons for the use of the provisional ballot noted.

(3) Upon receipt of such a voted provisional ballot the auditor shall investigate the circumstances surrounding the original cancellation. If he or she determines that the cancellation was in error, the voter's registration must be immediately reinstated, and the voter's provisional ballot must be counted. If the original cancellation was not in error, the voter must be afforded the opportunity to reregister at his or her correct address, and the voter's provisional ballot must not be counted. [2009 c 369 § 30; 2003 c 111 § 240; 1994 c 57 § 47. Formerly RCW 29.10.220.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.630 Return of inactive voter to active status—Cancellation of registration.** The county auditor shall return an inactive voter to active voter status if, prior to the passage of two federal general elections, the voter:

(1) Notifies the auditor of a change of address;  
 (2) Responds to a confirmation notice with information that he or she continues to reside at the registration address; or

(3) Votes or attempts to vote in a primary, special election, or general election. If the inactive voter fails to provide such a notice or take such an action within that period, the auditor shall cancel the person's voter registration. [2009 c 369 § 31; 2004 c 267 § 131; 2003 c 111 § 241. Prior: 1994 c 57 § 39. Formerly RCW 29.10.075.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.635 Confirmation notices—Form, contents.** Confirmation notices must be on a form prescribed by, or approved by, the secretary of state and must request that the voter confirm that he or she continues to reside at the address of record and desires to continue to use that address for voting purposes. The notice must inform the voter that if the voter does not respond to the notice and does not vote in either of the next two federal general elections, his or her voter registration will be canceled. [2009 c 369 § 32; 2003 c 111 § 242. Prior: 1994 c 57 § 45. Formerly RCW 29.10.200.]

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.640 Confirmation notice—Response, auditor's action.** (1) If the response to the confirmation notice from the voter indicates that the voter has moved within the county, the auditor shall transfer the voter's registration and send the voter an acknowledgement notice.

(2) If the response from the voter indicates that the voter moved out of the county, but within the state, the auditor shall cancel the voter's registration and notify the county auditor of the voter's new county of residence.

(3) If the response from the voter indicates that the voter has left the state, the auditor shall cancel the voter's registration on the official state voter registration list. [2009 c 369 § 33; 2004 c 267 § 132; 2003 c 111 § 243. Prior: 1994 c 57 § 46. Formerly RCW 29.10.210.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

**29A.08.651 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**29A.08.720 Registration, voting records—As public records—Information furnished—Restrictions, confidentiality.** (1) In the case of voter registration records received through the department of licensing or an agency designated under RCW 29A.08.310, the identity of the office or agency

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at which any particular individual registered to vote is not available for public inspection and shall not be disclosed to the public. Any record of a particular individual's choice not to register to vote at an office of the department of licensing or a state agency designated under RCW 29A.08.310 is not available for public inspection and any information regarding such a choice by a particular individual shall not be disclosed to the public.

(2) Subject to the restrictions of RCW 29A.08.710 and 40.24.060, poll books, precinct lists, and current lists of registered voters are public records and must be made available for public inspection and copying under such reasonable rules and regulations as the county auditor or secretary of state may prescribe. The county auditor or secretary of state shall promptly furnish current lists of registered voters in his or her possession, at actual reproduction cost, to any person requesting such information. The lists shall not be used for the purpose of mailing or delivering any advertisement or offer for any property, establishment, organization, product, or service or for the purpose of mailing or delivering any solicitation for money, services, or anything of value. However, the lists and labels may be used for any political purpose. The county auditor or secretary of state must provide a copy of RCW 29A.08.740 to the person requesting the material that is released under this section.

(3) For the purposes of this section, "political purpose" means a purpose concerned with the support of or opposition to any candidate for any partisan or nonpartisan office or concerned with the support of or opposition to any ballot proposition or issue. "Political purpose" includes, but is not limited to, such activities as the advertising for or against any candidate or ballot measure or the solicitation of financial support. [2009 c 369 § 34; 2005 c 246 § 18; 2004 c 266 § 9; 2003 c 111 § 247; 1994 c 57 § 5; 1975-'76 2nd ex.s. c 46 § 1; 1974 ex.s. c 127 § 2; 1973 1st ex.s. c 111 § 2; 1971 ex.s. c 202 § 3; 1965 ex.s. c 156 § 6. Formerly RCW 29.04.100.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Severability—1994 c 57:** See note following RCW 10.64.021.

*Forms, secretary of state to design—Availability to public:* RCW 29A.08.850.

*Signature required to vote—Procedure if voter unable to sign name:* RCW 29A.44.210.

**29A.08.760 Computer file—Duplicate copy—Restrictions and penalties.** The secretary of state shall provide a duplicate copy of the master statewide computer file or electronic data file of registered voters to the department of information services for purposes of creating the jury source list without cost. Restrictions as to the commercial use of the information on the statewide computer tape or data file of registered voters, and penalties for its misuse, shall be the same as provided in RCW 29A.08.720 and 29A.08.740. [2009 c 369 § 35; 2004 c 267 § 134; 2003 c 111 § 251; 1995 c 135 § 2. Prior: 1993 c 441 § 2; 1993 c 408 § 10; 1977 ex.s. c 226 § 1; 1975-'76 2nd ex.s. c 46 § 3. Formerly RCW 29.04.160.]

**Effective dates—2004 c 267:** See note following RCW 29A.08.651.

**Intent—1995 c 135:** "The only intent of the legislature in this act is to correct multiple amendments and delete obsolete provisions. It is not the

intent of the legislature to change the substance or effect of any presently effective statute." [1995 c 135 § 1.]

**Effective date—1993 c 441:** "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 441 § 3.]

**Severability—Effective dates—1993 c 408:** See notes following RCW 2.36.054.

**29A.08.780 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

## Chapter 29A.24 RCW FILING FOR OFFICE

### Sections

- 29A.24.070 Declaration of candidacy—Where filed—Copy to public disclosure commission.  
29A.24.091 Declaration—Fees and petitions.

**29A.24.070 Declaration of candidacy—Where filed—Copy to public disclosure commission.** Declarations of candidacy shall be filed with the following filing officers:

(1) The secretary of state for declarations of candidacy for statewide offices, United States senate, and United States house of representatives;

(2) The secretary of state for declarations of candidacy for the state legislature, the court of appeals, and the superior court when the candidate is seeking office in a district comprised of voters from two or more counties;

(3) The county auditor for all other offices. For any non-partisan office, other than judicial offices and school director in joint districts, where voters from a district comprising more than one county vote upon the candidates, a declaration of candidacy shall be filed with the county auditor of the county in which a majority of the registered voters of the district reside. For school directors in joint school districts, the declaration of candidacy shall be filed with the county auditor of the county designated by the superintendent of public instruction as the county to which the joint school district is considered as belonging under RCW 28A.323.040.

Each official with whom declarations of candidacy are filed under this section, within one business day following the closing of the applicable filing period, shall transmit to the public disclosure commission the information required in RCW 29A.24.031 (1) through (4) for each declaration of candidacy filed in his or her office during such filing period or a list containing the name of each candidate who files such a declaration in his or her office during such filing period together with a precise identification of the position sought by each such candidate and the date on which each such declaration was filed. Such official, within three days following his or her receipt of any letter withdrawing a person's name as a candidate, shall also forward a copy of such withdrawal letter to the public disclosure commission. [2009 c 106 § 1; 2006 c 263 § 614; 2005 c 221 § 1; 2003 c 111 § 607; 2002 c 140 § 4; 1998 c 22 § 1; 1990 c 59 § 84; 1977 ex.s. c 361 § 30; 1975-'76 2nd ex.s. c 112 § 1; 1965 c 9 § 29.18.040. Prior: 1907 c 209 § 7; RRS § 5184. Formerly RCW 29.15.030, 29.18.040.]

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Implementation—Captions not law—2002 c 140:** See notes following RCW 29A.24.040.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**Construction—1975-'76 2nd ex.s. c 112:** RCW 42.17.945.

**Severability—1975-'76 2nd ex.s. c 112:** RCW 42.17.912.

*Public disclosure—Campaign finances, lobbying, records: Chapter 42.17 RCW.*

**29A.24.091 Declaration—Fees and petitions.** A filing fee of ten dollars shall accompany the declaration of candidacy for any office with a fixed annual salary of one thousand dollars or less; a filing fee equal to one percent of the annual salary of the office at the time of filing shall accompany the declaration of candidacy for any office with a fixed annual salary of more than one thousand dollars per annum. No filing fee need accompany a declaration of candidacy for precinct committee officer or any office for which compensation is on a per diem or per meeting attended basis.

A candidate who lacks sufficient assets or income at the time of filing to pay the filing fee required by this section shall submit with his or her declaration of candidacy a filing fee petition. The petition shall contain not less than a number of signatures of registered voters equal to the number of dollars of the filing fee. The signatures shall be of voters registered to vote within the jurisdiction of the office for which the candidate is filing.

When the candidacy is for:

(1) A statewide office, the United States senate, or the United States house of representatives, the fee shall be paid to the secretary of state;

(2) A legislative or judicial office that includes territory from more than one county, the fee shall be paid to the secretary of state for equal division between the treasuries of the counties comprising the district;

(3) A legislative or judicial office that includes territory from only one county, the fee shall be paid to the county auditor;

(4) A city or town office, the fee shall be paid to the county auditor who shall transmit it to the city or town clerk for deposit in the city or town treasury. [2009 c 106 § 2; 2006 c 206 § 3; 2005 c 221 § 2; 2004 c 271 § 160.]

## Chapter 29A.32 RCW VOTERS' PAMPHLETS

### Sections

- 29A.32.031 Contents.  
29A.32.040 Explanatory statements.  
29A.32.050 Notice of constitutional amendments and state measures—  
Explanatory statement.  
29A.32.070 Format, layout, contents.  
29A.32.090 Arguments—Rejection, dispute.

**29A.32.031 Contents.** The voters' pamphlet published or distributed under RCW 29A.32.010 must contain:

(1) Information about each measure for an advisory vote of the people and each ballot measure initiated by or referred to the voters for their approval or rejection as required by RCW 29A.32.070;

(2) In even-numbered years, statements, if submitted, from candidates for the office of president and vice president of the United States, United States senator, United States representative, governor, lieutenant governor, secretary of state, state treasurer, state auditor, attorney general, commissioner of public lands, superintendent of public instruction, insurance commissioner, state senator, state representative, justice of the supreme court, judge of the court of appeals, or judge of the superior court. Candidates may also submit campaign contact information and a photograph not more than five years old in a format that the secretary of state determines to be suitable for reproduction in the voters' pamphlet;

(3) In odd-numbered years, if any office voted upon statewide appears on the ballot due to a vacancy, then statements and photographs for candidates for any vacant office listed in subsection (2) of this section must appear;

(4) Contact information for the public disclosure commission established under RCW 42.17.350;

(5) Contact information for major political parties;

(6) A brief statement explaining the deletion and addition of language for proposed measures under RCW 29A.32.080; and

(7) Any additional information pertaining to elections as may be required by law or in the judgment of the secretary of state is deemed informative to the voters. [2009 c 415 § 2; 2008 c 1 § 12 (Initiative Measure No. 960, approved November 6, 2007); 2004 c 271 § 121.]

**Findings—Intent—Construction—Severability—Subheadings and part headings not law—Short title—Effective date—2008 c 1 (Initiative Measure No. 960):** See notes following RCW 43.135.031.

**29A.32.040 Explanatory statements.** (1) Explanatory statements prepared by the attorney general under RCW 29A.32.070 (3) and (4) must be written in clear and concise language, avoiding legal and technical terms when possible, and filed with the secretary of state no later than the tenth day of August.

(2) When the explanatory statement for a measure initiated by petition is filed with the secretary of state, the secretary of state shall immediately provide the text of the explanatory statement to the person proposing the measure and any others who have made written request for notification of the exact language of the explanatory statement. When the explanatory statement for a measure referred to the ballot by the legislature is filed with the secretary of state, the secretary of state shall immediately provide the text of the explanatory statement to the presiding officer of the senate and the presiding officer of the house of representatives and any others who have made written request for notification of the exact language of the explanatory statement.

(3) A person dissatisfied with the explanatory statement may appeal to the superior court of Thurston County within five days of the filing date. A copy of the petition and a notice of the appeal must be served on the secretary of state and the attorney general. The court shall examine the measure, the explanatory statement, and objections, and may hear arguments. The court shall render its decision and certify to and file with the secretary of state an explanatory statement it determines will meet the requirements of this chapter.

The decision of the superior court is final, and its explanatory statement is the established explanatory statement. The

appeal must be heard without costs to either party. [2009 c 415 § 3; 2003 c 111 § 804. Prior: 1999 c 260 § 3. Formerly RCW 29.81.230.]

**29A.32.050 Notice of constitutional amendments and state measures—Explanatory statement.** The attorney general shall, by the tenth day of August preceding each general election, prepare the explanatory statements required under RCW 29A.32.070 (3) and (4). Such statements shall be prepared in clear and concise language and shall avoid the use of legal and other technical terms insofar as possible. Any person dissatisfied with the explanatory statement so prepared may at any time within ten days from the filing thereof in the office of the secretary of state appeal to the superior court of Thurston county by petition setting forth the proposed state measure, the explanatory statement prepared by the attorney general, and his or her objection thereto and praying for the amendment thereof. A copy of the petition and a notice of such appeal shall be served on the secretary of state and the attorney general. The court shall, upon filing of the petition, examine the proposed state measure, the explanatory statement, and the objections thereto and may hear argument thereon and shall, as soon as possible, render its decision and certify to and file with the secretary of state such explanatory statement as it determines will meet the requirement of RCW 29A.52.330, 29A.52.340, and this section. The decision of the superior court shall be final and its explanatory statement shall be the established explanatory statement. Such appeal shall be heard without costs to either party. [2009 c 415 § 4; 2003 c 111 § 805; 1967 c 96 § 3; 1965 c 9 § 29.27.076. Prior: 1961 c 176 § 3. Formerly RCW 29.27.076.]

**29A.32.070 Format, layout, contents.** The secretary of state shall determine the format and layout of the voters' pamphlet published under RCW 29A.32.010. The secretary of state shall print the pamphlet in clear, readable type on a size, quality, and weight of paper that in the judgment of the secretary of state best serves the voters. The pamphlet must contain a table of contents. Measures and arguments must be printed in the order specified by RCW 29A.72.290.

The voters' pamphlet must provide the following information for each statewide issue on the ballot except measures for an advisory vote of the people whose requirements are provided in subsection (11) of this section:

(1) The legal identification of the measure by serial designation or number;

(2) The official ballot title of the measure;

(3) A statement prepared by the attorney general explaining the law as it presently exists;

(4) A statement prepared by the attorney general explaining the effect of the proposed measure if it becomes law;

(5) The fiscal impact statement prepared under RCW 29A.72.025;

(6) The total number of votes cast for and against the measure in the senate and house of representatives, if the measure has been passed by the legislature;

(7) An argument advocating the voters' approval of the measure together with any statement in rebuttal of the opposing argument;

(8) An argument advocating the voters' rejection of the measure together with any statement in rebuttal of the opposing argument;

(9) Each argument or rebuttal statement must be followed by the names of the committee members who submitted them, and may be followed by a telephone number that citizens may call to obtain information on the ballot measure;

(10) The full text of \*the measure;

(11) Two pages shall be provided in the general election voters' pamphlet for each measure for an advisory vote of the people under RCW 43.135.041 and shall consist of the serial number assigned by the secretary of state under RCW 29A.72.040, the short description formulated by the attorney general under RCW 29A.72.283, the tax increase's most up-to-date ten-year cost projection, including a year-by-year breakdown, by the office of financial management under RCW 43.135.031, and the names of the legislators, and their contact information, and how they voted on the increase upon final passage so they can provide information to, and answer questions from, the public. For the purposes of this subsection, "names of legislators, and their contact information" includes each legislator's position (senator or representative), first name, last name, party affiliation (for example, Democrat or Republican), city or town they live in, office phone number, and office e-mail address. [2009 c 415 § 5; prior: 2008 c 1 § 13 (Initiative Measure No. 960, approved November 6, 2007); 2003 c 111 § 807; prior: 2002 c 139 § 2; 1999 c 260 § 5. Formerly RCW 29.81.250.]

**Reviser's note:** \*(1) The word "each" was changed to "the" in 2008 c 1 § 13 (Initiative Measure No. 960) without enclosing "each" in double parentheses and underlining "the."

(2) RCW 29A.32.070 was amended by 2008 c 1 § 13 (Initiative Measure No. 960) without enclosing by double parentheses all material proposed for deletion and underlining all proposed new material, in amendatory sections. See RCW 29A.32.080.

**Findings—Intent—Construction—Severability—Subheadings and part headings not law—Short title—Effective date—2008 c 1 (Initiative Measure No. 960):** See notes following RCW 43.135.031.

**29A.32.090 Arguments—Rejection, dispute.** (1) If in the opinion of the secretary of state any argument or statement offered for inclusion in the voters' pamphlet in support of or opposition to a measure or candidate contains obscene matter or matter that is otherwise prohibited by law from distribution through the mail, the secretary may petition the superior court of Thurston county for a judicial determination that the argument or statement may be rejected for publication or edited to delete the matter. The court shall not enter such an order unless it concludes that the matter is obscene or otherwise prohibited for distribution through the mail.

(2) A candidate's statement submitted for inclusion in the voters' pamphlet shall not contain false or misleading statements about the candidate's opponent. A false or misleading statement shall be considered "libel or defamation per se" if the statement tends to expose the candidate to hatred, contempt, ridicule, or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse, or to injure him or her in his or her business or occupation. If a candidate believes his or her opponent has libeled or defamed him or her, the candidate may commence an action under subsection (3) of this section.

(3)(a) A person who believes that he or she may be defamed by an argument or statement offered for inclusion in the voters' pamphlet in support of or opposition to a measure or candidate may petition the superior court of Thurston county for a judicial determination that the argument or statement may be rejected for publication or edited to delete the defamatory statement.

(b) The court shall not enter such an order unless it concludes that the statement is untrue and that the petitioner has a very substantial likelihood of prevailing in a defamation action.

(c) An action under this subsection (3) must be filed and served no later than the tenth day after the deadline for the submission of the argument or statement to the secretary of state.

(d) If the secretary of state notifies a person named or identified in an argument or statement of the contents of the argument or statement within three days after the deadline for submission to the secretary, then neither the state nor the secretary is liable for damages resulting from publication of the argument or statement unless the secretary publishes the argument or statement in violation of an order entered under this section. Nothing in this section creates a duty on the part of the secretary of state to identify, locate, or notify the person.

(4) Parties to a dispute under this section may agree to resolve the dispute by rephrasing the argument or statement, even if the deadline for submission to the secretary has elapsed, unless the secretary determines that the process of publication is too far advanced to permit the change. The secretary shall promptly provide any such revision to any committee entitled to submit a rebuttal argument. If that committee has not yet submitted its rebuttal, its deadline to submit a rebuttal is extended by five days. If it has submitted a rebuttal, it may revise it to address the change within five days of the filing of the revised argument with the secretary.

(5) In an action under this section the committee or candidate must be named as a defendant, and may be served with process by certified mail directed to the address contained in the secretary's records for that party. The secretary of state shall be a nominal party to an action brought under subsection (3) of this section, solely for the purpose of determining the content of the voters' pamphlet. The superior court shall give such an action priority on its calendar. [2009 c 222 § 3; 2003 c 111 § 809. Prior: 1999 c 260 § 8. Formerly RCW 29.81.280.]

**Intent—Findings—2009 c 222:** See note following RCW 42.17.530.

## Chapter 29A.36 RCW

### BALLOTS AND OTHER VOTING FORMS

#### Sections

29A.36.111 Uniformity, arrangement, contents required—Contracts with vendors.

**29A.36.111 Uniformity, arrangement, contents required—Contracts with vendors.** (1) Every ballot for a single combination of issues, offices, and candidates shall be uniform within a precinct and shall identify the type of primary or election, the county, and the date of the primary or

election, and the ballot or voting device shall contain instructions on the proper method of recording a vote, including write-in votes. Each position, together with the names of the candidates for that office, shall be clearly separated from other offices or positions in the same jurisdiction. The offices in each jurisdiction shall be clearly separated from each other. No paper ballot or ballot card may be marked by or at the direction of an election official in any way that would permit the identification of the person who voted that ballot.

(2) An elections [election] official may not enter into or extend any contract with a vendor if such contract may allow the vendor to acquire an ownership interest in any data pertaining to any voter, any voter's address, registration number, or history, or any ballot. [2009 c 414 § 1; 2004 c 271 § 128.]

### Chapter 29A.40 RCW ABSENTEE VOTING

#### Sections

29A.40.010	When permitted.
29A.40.020	Request for single ballot.
29A.40.061	Issuance of ballot and other materials ( <i>as amended by 2009 c 369</i> ).
29A.40.061	Issuance of ballot and other materials ( <i>as amended by 2009 c 415</i> ).
29A.40.091	Envelopes and instructions.
29A.40.110	Processing incoming ballots.
29A.40.150	Overseas, service voters.

**29A.40.010 When permitted.** Any registered voter of the state or any overseas voter or service voter may vote by absentee ballot in any general election, special election, or primary in the manner provided in this chapter. Overseas voters and service voters are authorized to cast the same ballots, including those for special elections, as a registered voter of the state would receive under this chapter. [2009 c 369 § 36; 2003 c 111 § 1001. Prior: 2001 c 241 § 1; 1991 c 81 § 29; 1987 c 346 § 9; 1986 c 167 § 14; 1985 c 273 § 1; 1984 c 27 § 1; 1977 ex.s. c 361 § 76; 1974 ex.s. c 35 § 1; 1971 ex.s. c 202 § 37; 1965 c 9 § 29.36.010; prior: 1963 ex.s. c 23 § 1; 1955 c 167 § 2; prior: (i) 1950 ex.s. c 8 § 1; 1943 c 72 § 1; 1933 ex.s. c 41 § 1; 1923 c 58 § 1; 1921 c 143 § 1; 1917 c 159 § 1; 1915 c 189 § 1; Rem. Supp. 1943 § 5280. (ii) 1933 ex.s. c 41 § 2, part; 1923 c 58 § 2, part; 1921 c 143 § 2, part; 1917 c 159 § 2, part; 1915 c 189 § 2, part; RRS § 5281, part. Formerly RCW 29.36.210, 29.36.010.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Legislative intent—1987 c 346:** "By this act the legislature intends to combine and unify the laws and procedures governing absentee voting. These amendments are intended: (1) To clarify and incorporate into a single chapter of the Revised Code of Washington the preexisting statutes under which electors of this state qualify for absentee ballots under state law, federal law, or a combination of both state and federal law, and (2) to insure uniformity in the application, issuance, receipt, and canvassing of these absentee ballots. Nothing in this act is intended to impose any new requirement on the ability of the registered voters or electors of this state to qualify for, receive, or cast absentee ballots in any primary or election." [1987 c 346 § 1.]

**Effective date—1987 c 346:** "This act shall take effect on January 1, 1988." [1987 c 346 § 25.]

**Severability—1986 c 167:** See note following RCW 29A.04.049.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

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**29A.40.020 Request for single ballot.** (1) Except as otherwise provided by law, a registered voter, overseas voter, or service voter desiring to cast an absentee ballot at a single election or primary must request the absentee ballot from his or her county auditor no earlier than ninety days nor later than the day before the election or primary at which the person seeks to vote. Except as otherwise provided by law, the request may be made orally in person, by telephone, electronically, or in writing. An application or request for an absentee ballot made under the authority of a federal statute or regulation will be considered and given the same effect as a request for an absentee ballot under this chapter.

(2) A voter requesting an absentee ballot for a primary may also request an absentee ballot for the following general election. A request by an overseas voter or service voter for an absentee ballot for a primary election will be considered as a request for an absentee ballot for the following general election.

(3) In requesting an absentee ballot, the voter shall state the address to which the absentee ballot should be sent. A request for an absentee ballot from an overseas voter or service voter must include the address of the last residence in the state of Washington and either a written application or the oath on the return envelope must include a declaration of the other qualifications of the applicant as an elector of this state. A request for an absentee ballot from any other voter must state the address at which that voter is currently registered to vote in the state of Washington or the county auditor shall verify that information from the voter registration records of the county.

(4) A request for an absentee ballot from a registered voter who is within this state must be made directly to the auditor of the county in which the voter is registered. An absentee ballot request from a registered voter who is temporarily outside this state or from an overseas voter or service voter may be made either to the appropriate county auditor or to the secretary of state, who shall promptly forward the request to the appropriate county auditor.

(5) No person, organization, or association may distribute absentee ballot applications within this state that contain a return address other than that of the appropriate county auditor. [2009 c 369 § 37; 2003 c 111 § 1002; 2001 c 241 § 2. Formerly RCW 29.36.220.]

**29A.40.061 Issuance of ballot and other materials (*as amended by 2009 c 369*).** (1) The county auditor shall issue an absentee ballot for the primary or election for which it was requested, or for the next occurring primary or election when ongoing absentee status has been requested if the information contained in a request for an absentee ballot or ongoing absentee status received by the county auditor is complete and correct and the applicant is qualified to vote under federal or state law. Otherwise, the county auditor shall notify the applicant of the reason or reasons why the request cannot be accepted. Whenever two or more candidates have filed for the position of precinct committee officer for the same party in the same precinct, the contest for that position must be presented to absentee voters from that precinct by either including the contest on the regular absentee ballot or a separate absentee ballot. The ballot must provide space designated for writing in the name of additional candidates.

(2) A registered voter may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. The voter may obtain the ballot by telephone request, by mail, electronically, or in person. The county auditor shall keep a record of each replacement ballot provided under this subsection.

(3) A copy of the state voters' pamphlet must be sent to ((registered voters temporarily outside the state, out-of-state voters,)) overseas voters((-))

and service voters along with the absentee ballot if such a pamphlet has been prepared for the primary or election and is available to the county auditor at the time of mailing. The county auditor shall mail all absentee ballots and related material to overseas and service voters (outside the territorial limits of the United States and the District of Columbia) under 39 U.S.C. 3406. [2009 c 369 § 38; 2004 c 271 § 134.]

**29A.40.061 Issuance of ballot and other materials (as amended by 2009 c 415).** (1) The county auditor shall issue an absentee ballot for the primary or election for which it was requested, or for the next occurring primary or election when ongoing absentee status has been requested if the information contained in a request for an absentee ballot or ongoing absentee status received by the county auditor is complete and correct and the applicant is qualified to vote under federal or state law. Otherwise, the county auditor shall notify the applicant of the reason or reasons why the request cannot be accepted. Whenever two or more candidates have filed for the position of precinct committee officer for the same party in the same precinct, the contest for that position must be presented to absentee voters from that precinct by either including the contest on the regular absentee ballot or a separate absentee ballot. The ballot must provide space designated for writing in the name of additional candidates.

(2) A registered voter may obtain a replacement ballot if the ballot is destroyed, spoiled, lost, or not received by the voter. The voter may obtain the ballot by telephone request, by mail, electronically, or in person. The county auditor shall keep a record of each replacement ballot provided under this subsection.

(3) ~~(A copy of the state voters' pamphlet must be sent to registered voters temporarily outside the state, out-of-state voters, overseas voters, and service voters along with the absentee ballot if such a pamphlet has been prepared for the primary or election and is available to the county auditor at the time of mailing.)~~ The county auditor shall mail all absentee ballots and related material to voters outside the territorial limits of the United States and the District of Columbia under 39 U.S.C. 3406. If candidate and ballot measure information is available on the web site of the county auditor or secretary of state, the county auditor shall provide the appropriate web site information with the ballot materials. [2009 c 415 § 6; 2004 c 271 § 134.]

**Reviser's note:** RCW 29A.40.061 was amended twice during the 2009 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.

*Alternative forms of identification—Voting procedure: RCW 29A.08.113.*

**29A.40.091 Envelopes and instructions.** The county auditor shall send each absentee voter a ballot, a security envelope in which to seal the ballot after voting, a larger envelope in which to return the security envelope, and instructions on how to mark the ballot and how to return it to the county auditor. The instructions that accompany an absentee ballot for a partisan primary must include instructions for voting the applicable ballot style, as provided in chapter 29A.36 RCW. The absentee voter's name and address must be printed on the larger return envelope, which must also contain a declaration by the absentee voter reciting his or her qualifications and stating that he or she has not voted in any other jurisdiction at this election, together with a summary of the penalties for any violation of any of the provisions of this chapter. The declaration must clearly inform the voter that it is illegal to vote if he or she is not a United States citizen; it is illegal to vote if he or she has been convicted of a felony and has not had his or her voting rights restored; and, except as otherwise provided by law, it is illegal to cast a ballot or sign an absentee envelope on behalf of another voter. The return envelope must provide space for the voter to indicate the date on which the ballot was voted and for the voter to sign the oath. It must also contain a space so that the voter may include a telephone number. A summary of the applicable penalty provisions of this chapter must be printed on the return envelope immediately adjacent to the

space for the voter's signature. The signature of the voter on the return envelope must affirm and attest to the statements regarding the qualifications of that voter and to the validity of the ballot. The return envelope must also have a secrecy flap that the voter may seal that will cover the voter's signature and optional telephone number. For overseas voters and service voters, the signed declaration on the return envelope constitutes the equivalent of a voter registration for the election or primary for which the ballot has been issued. The voter must be instructed to either return the ballot to the county auditor by whom it was issued or attach sufficient first-class postage, if applicable, and mail the ballot to the appropriate county auditor no later than the day of the election or primary for which the ballot was issued.

If the county auditor chooses to forward absentee ballots, he or she must include with the ballot a clear explanation of the qualifications necessary to vote in that election and must also advise a voter with questions about his or her eligibility to contact the county auditor. This explanation may be provided on the ballot envelope, on an enclosed insert, or printed directly on the ballot itself. If the information is not included, the envelope must clearly indicate that the ballot is not to be forwarded and that return postage is guaranteed. [2009 c 369 § 39; 2005 c 246 § 21; 2004 c 271 § 135.]

**Effective date—2005 c 246:** See note following RCW 10.64.140.

**29A.40.110 Processing incoming ballots.** (1) The opening and subsequent processing of return envelopes for any primary or election may begin upon receipt. The tabulation of absentee ballots must not commence until after 8:00 p.m. on the day of the primary or election.

(2) All received absentee return envelopes must be placed in secure locations from the time of delivery to the county auditor until their subsequent opening. After opening the return envelopes, the county canvassing board shall place all of the ballots in secure storage until after 8:00 p.m. of the day of the primary or election. Absentee ballots that are to be tabulated on an electronic vote tallying system may be taken from the inner envelopes and all the normal procedural steps may be performed to prepare these ballots for tabulation.

(3) Before opening a returned absentee ballot, the canvassing board, or its designated representatives, shall examine the postmark, statement, and signature on the return envelope that contains the security envelope and absentee ballot. All personnel assigned to verify signatures must receive training on statewide standards for signature verification. Personnel shall verify that the voter's signature on the return envelope is the same as the signature of that voter in the registration files of the county. Verification may be conducted by an automated verification system approved by the secretary of state. For any absentee ballot, a variation between the signature of the voter on the return envelope and the signature of that voter in the registration files due to the substitution of initials or the use of common nicknames is permitted so long as the surname and handwriting are clearly the same.

(4) For registered voters casting absentee ballots, the date on the return envelope to which the voter has attested determines the validity, as to the time of voting for that absentee ballot if the postmark is missing or is illegible. For overseas voters and service voters, the date on the return

envelope to which the voter has attested determines the validity as to the time of voting for that absentee ballot. [2009 c 369 § 40. Prior: 2006 c 207 § 4; 2006 c 206 § 6; 2005 c 243 § 5; 2003 c 111 § 1011; prior: 2001 c 241 § 10; 1991 c 81 § 32; 1987 c 346 § 14; 1977 ex.s. c 361 § 78; 1973 c 140 § 1; 1965 c 9 § 29.36.060; prior: 1963 ex.s. c 23 § 5; 1955 c 167 § 7; 1955 c 50 § 2; prior: 1933 ex.s. c 41 § 5, part; 1921 c 143 § 6, part; 1917 c 159 § 4, part; 1915 c 189 § 4, part; RRS § 5285, part. Formerly RCW 29.36.310, 29.36.060.]

**Effective date—1991 c 81:** See note following RCW 29A.84.540.

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

*County canvassing board, meeting to process absentee ballots, canvass returns:* RCW 29A.60.160.

*Unsigned absentee or provisional ballots:* RCW 29A.60.165.

**29A.40.150 Overseas, service voters.** The information on the envelopes or instructions for overseas voters and service voters must explain that:

(1) Return postage is free if the ballot is mailed through the United States postal service, United States armed forces postal service, or the postal service of a United States foreign embassy;

(2) The date of the signature is considered the date of mailing;

(3) The envelope must be signed by election day;

(4) The signed declaration on the envelope is the equivalent of voter registration;

(5) A voter may fax a voted ballot and the accompanying envelope if the voter agrees to waive secrecy. The ballot will be counted if the original documents are received before certification of the election; and

(6) A voter may obtain a ballot via electronic mail, which the voter may print out, vote, and return by mail. In order to facilitate the electronic acquisition of ballots by overseas and service voters, the ballot instructions shall include the web site of the office of the secretary of state. [2009 c 415 § 12; 2006 c 206 § 7; 2005 c 245 § 1; 2003 c 111 § 1015; 1993 c 417 § 7; 1987 c 346 § 19; 1983 1st ex.s. c 71 § 8. Formerly RCW 29.36.360, 29.36.150.]

**Legislative intent—Effective date—1987 c 346:** See notes following RCW 29A.40.010.

## Chapter 29A.48 RCW VOTING BY MAIL

### Sections

29A.48.010 Mail ballot counties and precincts.

**29A.48.010 Mail ballot counties and precincts.** (1) With express authorization from the county legislative authority, the county auditor may conduct all primary, special, and general elections entirely by mail ballot. The county legislative authority must give the county auditor at least ninety days' notice before the first election to be conducted entirely by mail ballot. If the county legislative authority and the county auditor decide to return to a polling place election environment, the county legislative authority must give the

county auditor at least one hundred eighty days' notice before the first election to be conducted using polling places. Authorization under this subsection must apply to all primary, special, and general elections conducted by the county auditor.

(2) The county auditor may designate any precinct having fewer than two hundred active registered voters at the time of closing of voter registration as provided in \*RCW 29A.08.140 as a mail ballot precinct. Authorization from the county legislative authority is not required to designate a precinct as a mail ballot precinct under this subsection. In determining the number of registered voters in a precinct for the purposes of this section, persons who are ongoing absentee voters under RCW 29A.40.040 shall not be counted. Nothing in this section may be construed as altering the vote tallying requirements of RCW 29A.60.230.

(3) The county auditor shall notify each registered voter by mail that for all future primaries and elections the voting will be by mail ballot only. The auditor shall mail each active voter a ballot at least eighteen days before a primary, general election, or special election. The requirements regarding certification, reporting, and the mailing of overseas and military ballots in RCW 29A.40.070 apply to elections conducted by mail ballot.

(4) If the county legislative authority and county auditor determine under subsection (1) of this section, or if the county auditor determines under subsection (2) of this section, to return to a polling place election environment, the auditor shall notify each registered voter, by mail, of this and shall provide the address of the polling place to be used. [2009 c 103 § 1; 2005 c 241 § 1; 2004 c 266 § 14. Prior: 2003 c 162 § 3; 2003 c 111 § 1201; prior: 2001 c 241 § 15; prior: 1994 c 269 § 1; 1994 c 57 § 48; 1993 c 417 § 1; 1983 1st ex.s. c 71 § 1; 1974 ex.s. c 35 § 2; 1967 ex.s. c 109 § 6. Formerly RCW 29.38.010, 29.36.120.]

\***Reviser's note:** RCW 29A.08.140 was amended by 2009 c 369 § 15, deleting references to "closing of voter registration."

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

**Policy—2003 c 162:** See note following RCW 29A.40.070.

**Severability—Effective date—1994 c 57:** See notes following RCW 10.64.021.

## Chapter 29A.56 RCW SPECIAL CIRCUMSTANCES ELECTIONS

### Sections

29A.56.300 States' agreement—Presidential election—National popular vote.

29A.56.320 Nomination—Pledge by electors—What names on ballots—How counted.

**29A.56.300 States' agreement—Presidential election—National popular vote.** The agreement among the states to elect the president by national popular vote is hereby entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

### ARTICLE I - Membership

Any state of the United States and the District of Columbia may become a member of this agreement by enacting this agreement.



ARTICLE II - Right of the People in Member States  
to Vote for President and Vice President

Each member state shall conduct a statewide popular election for president and vice president of the United States.

ARTICLE III - Manner of Appointing Presidential Electors  
in Member States

Prior to the time set by law for the meeting and voting by the presidential electors, the chief election official of each member state shall determine the number of votes for each presidential slate in each state of the United States and in the District of Columbia in which votes have been cast in a statewide popular election and shall add such votes together to produce a "national popular vote total" for each presidential slate.

The chief election official of each member state shall designate the presidential slate with the largest national popular vote total as the "national popular vote winner."

The presidential elector certifying official of each member state shall certify the appointment in that official's own state of the elector slate nominated in that state in association with the national popular vote winner.

At least six days before the day fixed by law for the meeting and voting by the presidential electors, each member state shall make a final determination of the number of popular votes cast in the state for each presidential slate and shall communicate an official statement of such determination within twenty-four hours to the chief election official of each other member state.

The chief election official of each member state shall treat as conclusive an official statement containing the number of popular votes in a state for each presidential slate made by the day established by federal law for making a state's final determination conclusive as to the counting of electoral votes by congress.

In event of a tie for the national popular vote winner, the presidential elector certifying official of each member state shall certify the appointment of the elector slate nominated in association with the presidential slate receiving the largest number of popular votes within that official's own state.

If, for any reason, the number of presidential electors nominated in a member state in association with the national popular vote winner is less than or greater than that state's number of electoral votes, the presidential candidate on the presidential slate that has been designated as the national popular vote winner shall have the power to nominate the presidential electors for that state and that state's presidential elector certifying official shall certify the appointment of such nominees.

The chief election official of each member state shall immediately release to the public all vote counts or statements of votes as they are determined or obtained.

This article shall govern the appointment of presidential electors in each member state in any year in which this agreement is, on July 20, in effect in states cumulatively possessing a majority of the electoral votes.

ARTICLE IV - Other Provisions

This agreement shall take effect when states cumulatively possessing a majority of the electoral votes have

enacted this agreement in substantially the same form and the enactments by such states have taken effect in each state.

Any member state may withdraw from this agreement, except that a withdrawal occurring six months or less before the end of a president's term shall not become effective until a president or vice president shall have been qualified to serve the next term.

The chief executive of each member state shall promptly notify the chief executive of all other states of when this agreement has been enacted and has taken effect in that official's state, when the state has withdrawn from this agreement, and when this agreement takes effect generally.

This agreement shall terminate if the electoral college is abolished.

If any provision of this agreement is held invalid, the remaining provisions shall not be affected.

ARTICLE V - Definitions

For purposes of this agreement:

"Chief executive" shall mean the governor of a state of the United States or the mayor of the District of Columbia;

"Elector slate" shall mean a slate of candidates who have been nominated in a state for the position of presidential elector in association with a presidential slate;

"Chief election official" shall mean the state official or body that is authorized to certify the total number of popular votes for each presidential slate;

"Presidential elector" shall mean an elector for president and vice president of the United States;

"Presidential elector certifying official" shall mean the state official or body that is authorized to certify the appointment of the state's presidential electors;

"Presidential slate" shall mean a slate of two persons, the first of whom has been nominated as a candidate for president of the United States and the second of whom has been nominated as a candidate for vice president of the United States, or any legal successors to such persons, regardless of whether both names appear on the ballot presented to the voter in a particular state;

"State" shall mean a state of the United States and the District of Columbia; and

"Statewide popular election" shall mean a general election in which votes are cast for presidential slates by individual voters and counted on a statewide basis. [2009 c 264 § 2.]

**Intent—2009 c 264:** "It is the intent of the legislature to enter into the agreement among the states to elect the president by national popular vote. This agreement is a contract between the member states. As a contract, this agreement is governed by the legal principles applicable to contracts. As with a contract, in order for this agreement to have the force of law in a jurisdiction that wishes to enter into the agreement, it must be accepted in precisely the same terms that constitute the offer. Any material variance between the offer and acceptance precludes the formation of a contract. Therefore, the agreement among the states to elect the president by national popular vote must be enacted by Washington under identical terms as contained in the agreement and as enacted by Hawaii, Illinois, Maryland, and New Jersey, subject to only nonmaterial changes." [2009 c 264 § 1.]

**29A.56.320 Nomination—Pledge by electors—What names on ballots—How counted.** In the year in which a presidential election is held, each major political party and each minor political party or independent candidate convention held under chapter 29A.20 RCW that nominates candidates for president and vice president of the United States

shall nominate presidential electors for this state. The party or convention shall file with the secretary of state a certificate signed by the presiding officer of the convention at which the presidential electors were chosen, listing the names and addresses of the presidential electors. Each presidential elector shall execute and file with the secretary of state a pledge that, as an elector, he or she will vote for the candidates nominated by that party. The names of presidential electors shall not appear on the ballots. The votes cast for candidates for president and vice president of each political party shall be counted for the candidates for presidential electors of that political party; however, if the interstate compact entitled the "agreement among the states to elect the president by national popular vote," as set forth in RCW 29A.56.300, governs the appointment of the presidential electors for a presidential election as provided in clause 9 of Article III of that compact, then the final appointment of presidential electors for that presidential election shall be in accordance with that compact. [2009 c 264 § 3; 2003 c 111 § 1425. Prior: 1990 c 59 § 69; 1977 ex.s. c 238 § 1; 1965 c 9 § 29.71.020; prior: 1935 c 20 § 1; RRS § 5138-1. Formerly RCW 29.71.020.]

**Intent—2009 c 264:** See note following RCW 29A.56.300.

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

## Chapter 29A.60 RCW CANVASSING

### Sections

29A.60.040 Rejection of ballots or parts—Write-in votes.  
29A.60.235 Certification reports.

**29A.60.040 Rejection of ballots or parts—Write-in votes.** A ballot is invalid and no votes on that ballot may be counted if it is found folded together with another ballot.

Those parts of a ballot are invalid and no votes may be counted for those issues or offices where more votes are cast for the office or issue than are permitted by law; write-in votes do not contain all of the information required under RCW 29A.60.021; or that issue or office is not marked with sufficient definiteness to determine the voter's choice or intention. No write-in vote may be rejected due to a variation in the form of the name if the election board or the canvassing board can determine the issue for or against which or the person and the office for which the voter intended to vote. [2009 c 414 § 2; 2003 c 111 § 1504. Prior: 1999 c 158 § 13; 1999 c 157 § 4; 1990 c 59 § 56; 1977 ex.s. c 361 § 88; 1973 1st ex.s. c 121 § 2; 1965 ex.s. c 101 § 11; 1965 c 9 § 29.54.050; prior: (i) Code 1881 § 3091; 1865 p 38 § 2; RRS § 5336. (ii) 1895 c 156 § 10; 1889 p 411 § 29; RRS § 5294. (iii) 1905 c 39 § 1, part; 1889 p 405 § 15, part; RRS § 5272, part. (iv) 1895 c 156 § 11, part; 1886 p 128 § 1, part; Code 1881 § 3079, part; 1865 p 34 § 4, part; RRS § 5323, part. Formerly RCW 29.54.050.]

**Intent—Effective date—1990 c 59:** See notes following RCW 29A.04.013.

**Effective date—Severability—1977 ex.s. c 361:** See notes following RCW 29A.16.040.

**29A.60.235 Certification reports.** (1) The county auditor shall prepare, make publicly available at the auditor's

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office or on the auditor's web site, and submit at the time of certification an election reconciliation report that discloses the following information:

- (a) The number of registered voters;
- (b) The number of ballots counted;
- (c) The number of provisional ballots issued;
- (d) The number of provisional ballots counted;
- (e) The number of provisional ballots rejected;
- (f) The number of absentee ballots issued;
- (g) The number of absentee ballots counted;
- (h) The number of absentee ballots rejected;
- (i) The number of federal write-in ballots counted;
- (j) The number of overseas and service ballots issued;
- (k) The number of overseas and service ballots counted;

and

(1) The number of overseas and service ballots rejected.  
(2) The county auditor shall prepare and make publicly available at the auditor's office or on the auditor's web site within thirty days of certification a final election reconciliation report that discloses the following information:

- (a) The number of registered voters;
- (b) The total number of voters credited with voting;
- (c) The number of poll voters credited with voting;
- (d) The number of provisional voters credited with voting;

and

- (e) The number of absentee voters credited with voting;
- (f) The number of federal write-in voters credited with voting;
- (g) The number of overseas and service voters credited with voting;

(h) The total number of voters credited with voting even though their ballots were postmarked after election day and were not counted; and

(i) Any other information the auditor deems necessary to reconcile the number of ballots counted with the number of voters credited with voting.

(3) The county auditor may also prepare such reports for jurisdictions located, in whole or in part, in the county. [2009 c 369 § 41; 2005 c 243 § 11.]

## Chapter 29A.72 RCW

### STATE INITIATIVE AND REFERENDUM

#### Sections

29A.72.025 Fiscal impact statements.

**29A.72.025 Fiscal impact statements.** The office of financial management, in consultation with the secretary of state, the attorney general, and any other appropriate state or local agency, shall prepare a fiscal impact statement for each of the following state ballot measures: (1) An initiative to the people that is certified to the ballot; (2) an initiative to the legislature that will appear on the ballot; (3) an alternative measure appearing on the ballot that the legislature proposes to an initiative to the legislature; (4) a referendum bill referred to voters by the legislature; and (5) a referendum measure appearing on the ballot. Fiscal impact statements must be written in clear and concise language, avoid legal and technical terms when possible, and be filed with the secretary of

state no later than the tenth day of August. Fiscal impact statements may include easily understood graphics.

A fiscal impact statement must describe any projected increase or decrease in revenues, costs, expenditures, or indebtedness that the state or local governments will experience if the ballot measure were approved by state voters. Where appropriate, a fiscal impact statement may include both estimated dollar amounts and a description placing the estimated dollar amounts into context. A fiscal impact statement must include both a summary of not to exceed one hundred words and a more detailed statement that includes the assumptions that were made to develop the fiscal impacts.

Fiscal impact statements must be available online from the secretary of state's web site and included in the state voters' pamphlet. Additional information may be posted on the web site of the office of financial management. [2009 c 415 § 7; 2004 c 266 § 4. Prior: 2002 c 139 § 1. Formerly RCW 29.79.075.]

**Effective date—2004 c 266:** See note following RCW 29A.04.575.

### Chapter 29A.80 RCW POLITICAL PARTIES

#### Sections

29A.80.041 Precinct committee officer, eligibility.

**29A.80.041 Precinct committee officer, eligibility.** Any member of a major political party who is a registered voter in the precinct may file his or her declaration of candidacy as prescribed under RCW 29A.24.031 with the county auditor for the office of precinct committee officer of his or her party in that precinct. When elected at the primary, the precinct committee officer shall serve so long as the committee officer remains an eligible voter in that precinct. [2009 c 106 § 3; 2004 c 271 § 148.]

## Title 30

### BANKS AND TRUST COMPANIES

#### Chapters

**30.22 Financial institution individual account deposit act.**

**30.60 Community credit needs.**

#### Chapter 30.22 RCW

### FINANCIAL INSTITUTION INDIVIDUAL ACCOUNT DEPOSIT ACT

#### Sections

30.22.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**30.22.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted

as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 76.]

### Chapter 30.60 RCW COMMUNITY CREDIT NEEDS

#### Sections

30.60.010 Examinations—Investigation and assessment of performance record in meeting community credit needs.

**30.60.010 Examinations—Investigation and assessment of performance record in meeting community credit needs.** (1) In conducting an examination of a bank chartered under Title 30 RCW, the director shall investigate and assess the record of performance of the bank in meeting the credit needs of the bank's entire community, including low and moderate-income neighborhoods. The director shall accept, in lieu of an investigation or part of an investigation required by this section, any report or document that the bank is required to prepare or file with one or more federal agencies by the act of Congress entitled the "Community Reinvestment Act of 1977" and the regulations promulgated in accordance with that act, to the extent such reports or documents assist the director in making an assessment based upon the factors outlined in subsection (2) of this section.

(2) In making an investigation required under subsection (1) of this section, the director shall consider, independent of any federal determination, the following factors in assessing the bank's record of performance:

(a) Activities conducted by the institution to ascertain credit needs of its community, including the extent of the institution's efforts to communicate with members of its community regarding the credit services being provided by the institution;

(b) The extent of the institution's marketing and special credit related programs to make members of the community aware of the credit services offered by the institution;

(c) The extent of participation by the institution's board of directors in formulating the institution's policies and reviewing its performance with respect to the purposes of the Community Reinvestment Act of 1977;

(d) Any practices intended to discourage applications for types of credit set forth in the institution's community reinvestment act statement(s);

(e) The geographic distribution of the institution's credit extensions, credit applications, and credit denials;

(f) Evidence of prohibited discriminatory or other illegal credit practices;

(g) The institution's record of opening and closing offices and providing services at offices;

(h) The institution's participation, including investments, in local community and microenterprise development projects;

(i) The institution's origination of residential mortgage loans, housing rehabilitation loans, home improvement loans, and small business or small farm loans within its community, or the purchase of such loans originated in its community;

(j) The institution's participation in governmentally insured, guaranteed, or subsidized loan programs for housing, small businesses, or small farms;

(k) The institution's ability to meet various community credit needs based on its financial condition, size, legal impediments, local economic condition, and other factors;

(l) The institution's contribution of cash or in-kind support to local or statewide organizations that provide counseling, training, financing, or other services to small businesses; and

(m) Other factors that, in the judgment of the director, reasonably bear upon the extent to which an institution is helping to meet the credit needs of its entire community.

(3) The director shall include as part of the examination report, a summary of the results of the assessment required under subsection (1) of this section and shall assign annually to each bank a numerical community reinvestment rating based on a one through five scoring system. Such numerical scores shall represent performance assessments as follows:

- |                               |   |
|-------------------------------|---|
| (a) Excellent performance:    | 1 |
| (b) Good performance:         | 2 |
| (c) Satisfactory performance: | 3 |
| (d) Inadequate performance:   | 4 |
| (e) Poor performance:         | 5 |

[2009 c 486 § 3; 2008 c 240 § 1; 1994 c 92 § 157; 1985 c 329 § 2.]

**Intent—2009 c 486:** See note following RCW 39.29.006.

**Conflict with federal requirements—2009 c 486:** See note following RCW 28B.30.530.

**Legislative intent—1985 c 329:** "The legislature believes that commercial banks and savings banks doing business in Washington state have a responsibility to meet the credit needs of the businesses and communities of Washington state, consistent with safe and sound business practices and the free exercise of management discretion.

This act is intended to provide the supervisor of banking and the supervisor of savings and loan associations with the information necessary to enable the supervisors to better determine whether commercial banks, savings banks, and savings and loan associations are meeting the convenience and needs of the public.

This act is further intended to condition the approval of any application by a commercial bank, savings bank, or savings and loan association for a new branch or satellite facility, for an acquisition, merger, conversion, or purchase of assets of another institution not required for solvency reasons, or for the exercise of any new power upon proof that the applicant is satisfactorily meeting the convenience and needs of its community or communities." [1985 c 329 § 1.] "This act" consists of the enactment of RCW 30.04.212, 30.04.214, 30.60.010, 30.60.020, 30.60.030, 30.60.900, 30.60.901, 32.40.010, 32.40.020, and 32.40.030 and this section and the 1985 c 329 amendment to RCW 30.04.210.

## Title 31

### MISCELLANEOUS LOAN AGENCIES

#### Chapters

#### 31.04 Consumer loan act.

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#### 31.12 Washington state credit union act. 31.45 Check cashers and sellers.

### Chapter 31.04 RCW CONSUMER LOAN ACT

#### Sections

- 31.04.015 Definitions.  
31.04.025 Application of chapter (*as amended by 2009 c 120*).  
31.04.025 Application of chapter (*as amended by 2009 c 311*).  
31.04.035 License required.  
31.04.045 License—Application—Background checks—Fee—Surety bond. (*Effective January 1, 2010.*)  
31.04.102 Loans secured, or not secured, by lien on real property—Licensee's obligations—Disclosure of fees and costs to borrower—Time limits.  
31.04.105 Licensee—Powers—Restrictions.  
31.04.115 Open-end loan—Requirements—Restrictions—Options.  
31.04.145 Investigations and examinations—Director's duties and powers—Production of information—Costs.  
31.04.165 Director—Broad administrative discretion—Rule making—Actions in superior court.  
31.04.211 Application of chapter—2009 c 120.  
31.04.221 Mortgage loan originator—License required—Unique identifier required. (*Effective July 1, 2010.*)  
31.04.2211 Mortgage loan originator—License required—Unique identifier required. (*Effective January 1, 2010.*)  
31.04.224 Mortgage loan originators—Licensing exemptions. (*Effective July 1, 2010.*)  
31.04.227 Mortgage loan origination—Independent contractors. (*Effective July 1, 2010.*)  
31.04.231 Individual loan processor—Licensing exemptions. (*Effective July 1, 2010.*)  
31.04.234 Mortgage loan originator license—Application form and content. (*Effective July 1, 2010.*)  
31.04.237 Use of nationwide mortgage licensing system and registry.  
31.04.241 Mortgage loan originator application—Required submission and use of personal information. (*Effective July 1, 2010.*)  
31.04.244 Mortgage loan originator application—Required information—Fees. (*Effective July 1, 2010.*)  
31.04.247 Issuance of mortgage loan originator license—Necessary findings. (*Effective July 1, 2010.*)  
31.04.251 Mortgage loan originator license—Renewal—Surrender—Rules. (*Effective July 1, 2010.*)  
31.04.254 Mortgage loan originator licensing process—Rules—Interim procedures.  
31.04.257 Mortgage loan originator interim license. (*Effective July 1, 2010.*)  
31.04.261 Mortgage loan originator—Education requirements. (*Effective July 1, 2010.*)  
31.04.264 Mortgage loan originator—Testing requirements. (*Effective July 1, 2010.*)  
31.04.267 Mortgage loan originator—Continuing education requirements. (*Effective July 1, 2010.*)  
31.04.271 Mortgage loan originators—System information may be challenged. (*Effective July 1, 2010.*)  
31.04.274 Information provided to nationwide mortgage licensing system and registry—Confidentiality—Restrictions on sharing.  
31.04.277 Consumer loan companies—When reports of condition are required. (*Effective July 1, 2010.*)  
31.04.281 Reports of violation—2009 c 120. (*Effective July 1, 2010.*)  
31.04.284 Mortgage loan originator—Unique identifier—Display. (*Effective July 1, 2010.*)

#### REVERSE MORTGAGE LENDING

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**31.04.015 Definitions.** The definitions set forth in this section apply throughout this chapter unless the context clearly requires a different meaning.

(1) "Add-on method" means the method of precomputing interest payable on a loan whereby the interest to be earned is added to the principal balance and the total plus any charges allowed under this chapter is stated as the loan amount, without further provision for the payment of interest except for failure to pay according to loan terms. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(2) "Applicant" means a person applying for a license under this chapter.

(3) "Borrower" means any person who consults with or retains a licensee or person subject to this chapter in an effort to obtain or seek information about obtaining a loan, regardless of whether that person actually obtains such a loan.

(4) "Depository institution" has the same meaning as in section 3 of the federal deposit insurance act on July 26, 2009, and includes credit unions.

(5) "Director" means the director of financial institutions.

(6) "Federal banking agencies" means the board of governors of the federal reserve system, comptroller of the currency, director of the office of thrift supervision, national credit union administration, and federal deposit insurance corporation.

(7) "Individual servicing a mortgage loan" means a person on behalf of a lender or servicer licensed by this state, who collects or receives payments including payments of principal, interest, escrow amounts, and other amounts due, on existing obligations due and owing to the licensed lender or servicer for a residential mortgage loan when the borrower is in default, or in reasonably foreseeable likelihood of default, working with the borrower and the licensed lender or servicer, collects data and makes decisions necessary to modify either temporarily or permanently certain terms of those obligations, or otherwise finalizing collection through the foreclosure process.

(8) "Insurance" means life insurance, disability insurance, property insurance, involuntary unemployment insurance, and such other insurance as may be authorized by the insurance commissioner.

(9) "License" means a single license issued under the authority of this chapter with respect to a single place of business.

(10) "Licensee" means a person to whom one or more licenses have been issued.

(11) "Loan" means a sum of money lent at interest or for a fee or other charge and includes both open-end and closed-end loan transactions.

(12) "Loan processor" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed, or exempt from licensing, under chapter 19.146 RCW.

(13) "Making a loan" means advancing, offering to advance, or making a commitment to advance funds to a borrower for a loan.

(14) "Mortgage broker" means the same as defined in RCW 19.146.010, except that for purposes of this chapter, a

licensee or person subject to this chapter cannot receive compensation as both a consumer loan licensee making the loan and as a consumer loan licensee acting as the mortgage broker in the same loan transaction.

(15)(a) "Mortgage loan originator" means an individual who for compensation or gain (i) takes a residential mortgage loan application, or (ii) offers or negotiates terms of a residential mortgage loan. "Mortgage loan originator" does not include any individual who performs purely administrative or clerical tasks; and does not include a person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in section 101(53D) of Title 11, United States Code. For the purposes of this definition, administrative or clerical tasks means the receipt, collection, and distribution of information common for the processing of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing of a residential mortgage loan.

(b) "Mortgage loan originator" does not include a person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with applicable state law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such a lender, mortgage broker, or other mortgage loan originator. For the purposes of chapter 120, Laws of 2009, the term "real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(i) Acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;

(ii) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(iii) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to such a transaction;

(iv) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and

(v) Offering to engage in any activity, or act in any capacity, described in (b)(i) through (iv) of this subsection.

(c) This subsection does not apply to an individual servicing a mortgage loan before July 1, 2011.

(16) "Nationwide mortgage licensing system and registry" means a mortgage licensing system developed and maintained by the conference of state bank supervisors and the American association of residential mortgage regulators for the licensing and registration of mortgage loan originators.

(17) "Officer" means an official appointed by the company for the purpose of making business decisions or corporate decisions.

(18) "Person" includes individuals, partnerships, associations, limited liability companies, limited liability partnerships, trusts, corporations, and all other legal entities.

(19) "Principal" means any person who controls, directly or indirectly through one or more intermediaries, alone or in concert with others, a ten percent or greater interest in a partnership; company; association or corporation; or a limited liability company, and the owner of a sole proprietorship.

(20) "Registered mortgage loan originator" means any individual who meets the definition of mortgage loan originator and is an employee of a depository institution; a subsidiary that is owned and controlled by a depository institution and regulated by a federal banking agency; or an institution regulated by the farm credit administration and is registered with, and maintains a unique identifier through, the nationwide mortgage licensing system and registry.

(21) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling, as defined in section 103(v) of the truth in lending act, or residential real estate upon which is constructed or intended to be constructed a dwelling.

(22) "S.A.F.E. act" means the secure and fair enforcement for mortgage licensing act of 2008, Title V of the housing and economic recovery act of 2008 ("HERA"), P.L. 110-289, effective July 30, 2008.

(23) "Senior officer" means an officer of a licensee at the vice president level or above.

(24) "Simple interest method" means the method of computing interest payable on a loan by applying the annual percentage interest rate or its periodic equivalent to the unpaid balances of the principal of the loan outstanding for the time outstanding with each payment applied first to any unpaid penalties, fees, or charges, then to accumulated interest, and the remainder of the payment applied to the unpaid balance of the principal until paid in full. In using such method, interest shall not be payable in advance nor compounded, except that on a loan secured by real estate, a licensee may collect at the time of the loan closing up to but not exceeding forty-five days of prepaid interest. The prohibition on compounding interest does not apply to reverse mortgage loans made in accordance with the Washington state reverse mortgage act. The director may adopt by rule a more detailed explanation of the meaning and use of this method.

(25) "Third-party service provider" means any person other than the licensee or a mortgage broker who provides goods or services to the licensee or borrower in connection with the preparation of the borrower's loan and includes, but is not limited to, credit reporting agencies, real estate brokers or salespersons, title insurance companies and agents, appraisers, structural and pest inspectors, or escrow companies.

(26) "Unique identifier" means a number or other identifier assigned by protocols established by the nationwide mortgage licensing system and registry. [2009 c 149 § 12; 2009 c 120 § 2; 2001 c 81 § 1; 1994 c 92 § 161; 1991 c 208 § 2.]

**Reviser's note:** This section was amended by 2009 c 120 § 2 and by 2009 c 149 § 12, 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—Declarations—2009 c 120:** "The legislature finds and declares that accessibility to credit is vital to the citizens of this state. The legislature declares that it is essential for the protection of citizens of this state and the stability of the state's economy that standards for licensing and regulation of the business practices of lenders be imposed. The legislature further finds that the activities of lenders and mortgage loan originators and the origination or offering of financing for residential real property have a direct, valuable, and immediate impact upon this state's consumers, this state's economy, the neighborhoods and communities of this state, and the housing and real estate industry. The legislature therefore declares that this

act is necessary to encourage responsible lending in all credit transactions, to protect borrowers, and to preserve access to credit in the residential real estate lending market." [2009 c 120 § 1.]

**31.04.025 Application of chapter (as amended by 2009 c 120).**  
(Each loan made to a resident of this state by a licensee is subject to the authority and restrictions of this chapter, unless such loan is made under the authority of chapter 63.14 RCW. This chapter shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions, nor to any pawnbroking business lawfully transacted under and as permitted by any law of this state regulating pawnbrokers, nor to any loan of credit made pursuant to a credit card plan.)

(1) This chapter does not apply to the following:

(a) Any person doing business under, and as permitted by, any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions;

(b) Entities making loans under chapter 19.60 RCW (pawnbroking);

(c) Entities making loans under chapter 63.14 RCW (retail installment sales of goods and services);

(d) Entities making loans under chapter 31.45 RCW (check cashers and sellers);

(e) Any person making loans primarily for business, commercial, or agricultural purposes, or making loans made to government or government agencies or instrumentalities, or to organizations as defined in the federal truth in lending act;

(f) Entities making loans under chapter 43.185 RCW (housing trust fund);

(g) Entities making loans under programs of the United States department of agriculture, department of housing and urban development, or other federal government program that provides funding or access to funding for single-family housing developments or grants to low-income individuals for the purchase or repair of single-family housing; and

(h) Entities making loans which are not residential mortgage loans under a credit card plan.

(2) The director may, at his or her discretion, waive applicability of the consumer loan company licensing provisions of this chapter to other persons, not including individuals subject to the S.A.F.E. act, making loans when the director determines it necessary to facilitate commerce and protect consumers. The director may adopt rules interpreting this section. [2009 c 120 § 3; 2008 c 78 § 1; 2001 c 81 § 2; 1991 c 208 § 4.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.025 Application of chapter (as amended by 2009 c 311).** (1) Each loan made to a resident of this state by a licensee is subject to the authority and restrictions of this chapter, unless such loan is made under the authority of chapter 63.14 RCW.

(2) This chapter shall not apply to any person doing business under and as permitted by any law of this state or of the United States relating to banks, savings banks, trust companies, savings and loan or building and loan associations, or credit unions, nor to any pawnbroking business lawfully transacted under and as permitted by any law of this state regulating pawnbrokers, nor to any loan of credit made pursuant to a credit card plan.

(3) This chapter does not apply to nonprofit housing organizations making loans, or loans made, under housing programs that are funded in whole or in part by federal or state programs if the primary purpose of the programs is to assist low-income borrowers with purchasing or repairing housing or the development of housing for low-income Washington state residents. [2009 c 311 § 1; 2008 c 78 § 1; 2001 c 81 § 2; 1991 c 208 § 4.]

**Reviser's note:** RCW 31.04.025 was amended twice during the 2009 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.

**Severability—2008 c 78:** "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." [2008 c 78 § 5.]

**31.04.035 License required.** No person may engage in the business of making secured or unsecured loans of money, credit, or things in action without first obtaining and maintaining a license in accordance with this chapter, except those exempt under RCW 31.04.025. [2009 c 120 § 4; 2008 c 78 § 2; 1991 c 208 § 3.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**Severability—2008 c 78:** See note following RCW 31.04.025.

**31.04.045 License—Application—Background checks—Fee—Surety bond.** (*Effective January 1, 2010.*)

(1) Application for a license under this chapter must be made to the nationwide mortgage licensing system and registry or in the form prescribed by the director. The application must contain at least the following information:

- (a) The name and the business addresses of the applicant;
- (b) If the applicant is a partnership or association, the name of every member;
- (c) If the applicant is a corporation, the name, residence address, and telephone number of each officer and director;
- (d) The street address, county, and municipality from which business is to be conducted; and
- (e) Such other information as the director may require by rule.

(2) As part of or in connection with an application for any license under this section, or periodically upon license renewal, each officer, director, and owner applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, the nationwide mortgage licensing system and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history background check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, or periodically upon license renewal, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

(3) In order to reduce the points of contact which the federal bureau of investigation may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(4) In order to reduce the points of contact which the director may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the director.

(5) At the time of filing an application for a license under this chapter, each applicant shall pay to the director or through the nationwide mortgage licensing system and registry an investigation fee and the license fee in an amount

determined by rule of the director to be sufficient to cover the director's costs in administering this chapter.

(6) Each applicant shall file and maintain a surety bond, approved by the director, executed by the applicant as obligor and by a surety company authorized to do a surety business in this state as surety, whose liability as such surety shall not exceed in the aggregate the penal sum of the bond. The penal sum of the bond shall be a minimum of thirty thousand dollars and based on the annual dollar amount of loans originated. The bond shall run to the state of Washington as obligee for the use and benefit of the state and of any person or persons who may have a cause of action against the obligor under this chapter. The bond shall be conditioned that the obligor as licensee will faithfully conform to and abide by this chapter and all the rules adopted under this chapter. The bond will pay to the state and any person or persons having a cause of action against the obligor all moneys that may become due and owing to the state and those persons under and by virtue of this chapter. In lieu of a surety bond, if the applicant is a Washington business corporation, the applicant may maintain unimpaired capital, surplus, and long-term subordinated debt in an amount that at any time its outstanding promissory notes or other evidences of debt (other than long-term subordinated debt) in an aggregate sum do not exceed three times the aggregate amount of its unimpaired capital, surplus, and long-term subordinated debt. The director may define qualifying "long-term subordinated debt" for purposes of this section. [2009 c 120 § 5; 2001 c 81 § 4; 1994 c 92 § 162; 1991 c 208 § 5.]

**Effective date—2009 c 120 § 5:** "In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, section 5 of this act takes effect January 1, 2010." [2009 c 120 § 32.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.102 Loans secured, or not secured, by lien on real property—Licensee's obligations—Disclosure of fees and costs to borrower—Time limits.** (1) For all loans made by a licensee that are not secured by a lien on real property, the licensee must make disclosures in compliance with the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Part 226, and all other applicable federal laws and regulations.

(2) For all loans made by a licensee that are secured by a lien on real property, the licensee shall provide to each borrower within three business days following receipt of a loan application a written disclosure containing an itemized estimation and explanation of all fees and costs that the borrower is required to pay in connection with obtaining a loan from the licensee. A good faith estimate of a fee or cost shall be provided if the exact amount of the fee or cost is not available when the disclosure is provided. Disclosure in a form which complies with the requirements of the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Part 226, the real estate settlement procedures act and regulation X, 24 C.F.R. Sec. 3500, and all other applicable federal laws and regulations, as now or hereafter amended, shall be deemed to constitute compliance with this disclosure requirement. Each licensee shall comply with all other applicable federal and state laws and regulations.

(3) In addition, for all loans made by the licensee that are secured by a lien on real property, the licensee must provide to the borrower an estimate of the annual percentage rate on the loan and a disclosure of whether or not the loan contains a prepayment penalty within three days of receipt of a loan application. The annual percentage rate must be calculated in compliance with the truth in lending act, 15 U.S.C. Sec. 1601 and regulation Z, 12 C.F.R. Part 226. If a licensee provides the borrower with a disclosure in compliance with the requirements of the truth in lending act within three business days of receipt of a loan application, then the licensee has complied with this subsection. If the director determines that the federal government has required a disclosure that substantially meets the objectives of this subsection, then the director may make a determination by rule that compliance with this federal disclosure requirement constitutes compliance with this subsection.

(4) In addition for all consumer loans made by the licensee that are secured by a lien on real property, the licensee must provide the borrower with the one-page disclosure summary required in RCW 19.144.020. [2009 c 120 § 6; 2002 c 346 § 1; 2001 c 81 § 9.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.105 Licensee—Powers—Restrictions.** Every licensee may:

(1) Lend money at a rate that does not exceed twenty-five percent per annum as determined by the simple interest method of calculating interest owed;

(2) In connection with the making of a loan, charge the borrower a nonrefundable, prepaid, loan origination fee not to exceed four percent of the first twenty thousand dollars and two percent thereafter of the principal amount of the loan advanced to or for the direct benefit of the borrower, which fee may be included in the principal balance of the loan;

(3) Agree with the borrower for the payment of fees to third parties other than the licensee who provide goods or services to the licensee in connection with the preparation of the borrower's loan, including, but not limited to, credit reporting agencies, title companies, appraisers, structural and pest inspectors, and escrow companies, when such fees are actually paid by the licensee to a third party for such services or purposes and may include such fees in the amount of the loan. However, no charge may be collected unless a loan is made, except for reasonable fees properly incurred in connection with the appraisal of property by a qualified, independent, professional, third-party appraiser selected by the borrower and approved by the lender or in the absence of borrower selection, selected by the lender;

(4) In connection with the making of a loan secured by real estate, when the borrower actually obtains a loan, agree with the borrower to pay a fee to a mortgage broker that is not owned by the licensee or under common ownership with the licensee and that performed services in connection with the origination of the loan. A licensee may not receive compensation as a mortgage broker in connection with any loan made by the licensee;

(5) Charge and collect a penalty of not more than ten percent of any installment payment delinquent ten days or more;

(6) Collect from the debtor reasonable attorneys' fees, actual expenses, and costs incurred in connection with the collection of a delinquent debt, a repossession, or a foreclosure when a debt is referred for collection to an attorney who is not a salaried employee of the licensee;

(7) Make open-end loans as provided in this chapter;

(8) Charge and collect a fee for dishonored checks in an amount approved by the director; and

(9) In accordance with Title 48 RCW, sell insurance covering real and personal property, covering the life or disability or both of the borrower, and covering the involuntary unemployment of the borrower. [2009 c 120 § 7; 2001 c 81 § 10; 1998 c 28 § 1; 1994 c 92 § 167; 1993 c 190 § 1; 1991 c 208 § 11.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.115 Open-end loan—Requirements—Restrictions—Options.** (1) As used in this section, "open-end loan" means an agreement between a licensee and a borrower that expressly states that the loan is made in accordance with this chapter and that provides that:

(a) A licensee may permit the borrower to obtain advances of money from the licensee from time to time, or the licensee may advance money on behalf of the borrower from time to time as directed by the borrower;

(b) The amount of each advance and permitted charges and costs are debited to the borrower's account, and payments and other credits are credited to the same account;

(c) The charges are computed on the unpaid principal balance, or balances, of the account from time to time; and

(d) The borrower has the privilege of paying the account in full at any time without prepayment penalty or, if the account is not in default, in monthly installments of fixed or determinable amounts as provided in the agreement.

(2)(a) Interest charges on an open-end loan shall not exceed twenty-five percent per annum computed in each billing cycle by any of the following methods:

(i) By converting the annual rate to a daily rate, and multiplying the daily rate by the daily unpaid principal balance of the account, in which case each daily rate is determined by dividing the annual rate by three hundred sixty-five;

(ii) By multiplying a monthly rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the monthly rate is one-twelfth of the annual rate, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle; or

(iii) By converting the annual rate to a daily rate, and multiplying the daily rate by the average daily unpaid principal balance of the account in the billing cycle, in which case the daily rate is determined by dividing the annual rate by three hundred sixty-five, and the average daily unpaid principal balance is the sum of the amount unpaid each day during the cycle divided by the number of days in the cycle.

For all of the methods of computation specified in this subsection (2)(a), the billing cycle shall be monthly, and the unpaid principal balance on any day shall be determined by adding to the balance unpaid, as of the beginning of that day,



all advances and other permissible amounts charged to the borrower, and deducting all payments and other credits made or received that day. A billing cycle is considered monthly if the closing date of the cycle is on the same date each month, or does not vary by more than four days from that date.

(b) Reverse mortgage loans made in accordance with the Washington state reverse mortgage act are not subject to the interest charge computation restrictions or billing cycle requirements in this section.

(3) In addition to the charges permitted under subsection (2) of this section, the licensee may contract for and receive an annual fee, payable each year in advance, for the privilege of opening and maintaining an open-end loan account. Except as prohibited or limited by this section, the licensee may also contract for and receive on an open-end loan any additional charge permitted by this chapter on other loans, subject to the conditions and restrictions otherwise pertaining to those charges.

(4)(a) If credit life or credit disability insurance is provided, the additional charge for credit life insurance or credit disability insurance shall be calculated in each billing cycle by applying the current monthly premium rate for the insurance, at the rate approved by the insurance commissioner to the entire outstanding balances in the borrower's open-end loan account, or so much thereof as the insurance covers using any of the methods specified in subsection (2)(a) of this section for the calculation of interest charges; and

(b) The licensee shall not cancel credit life or disability insurance written in connection with an open-end loan because of delinquency of the borrower in the making of the required minimum payments on the loan, unless one or more of the payments is past due for a period of ninety days or more; and the licensee shall advance to the insurer the amounts required to keep the insurance in force during that period, which amounts may be debited to the borrower's account.

(5) A security interest in real or personal property may be taken to secure an open-end loan. Any such security interest may be retained until the open-end account is terminated. The security interest shall be promptly released if (a) there has been no outstanding balance in the account for twelve months and the borrower either does not have or surrenders the unilateral right to create a new outstanding balance; or (b) the account is terminated at the borrower's request and paid in full.

(6) The licensee may from time to time increase the rate of interest being charged on the unpaid principal balance of the borrower's open-end loans if the licensee mails or delivers written notice of the change to the borrower at least thirty days before the effective date of the increase unless the increase has been earlier agreed to by the borrower. However, the borrower may choose to terminate the open-end account and the licensee shall allow the borrower to repay the unpaid balance incurred before the effective date of the rate increase upon the existing open-end loan account terms and interest rate unless the borrower incurs additional debt on or after the effective date of the rate increase or otherwise agrees to the new rate.

(7) The licensee shall deliver a copy of the open-end loan agreement to the borrower at the time the open-end account is created. The agreement must contain the name and address of the licensee and of the principal borrower, and must contain such specific disclosures as may be required by rule of the director. In adopting the rules the director shall consider Regulation Z promulgated by the board of governors of the federal reserve system under the federal consumer credit protection act.

(8) Except in the case of an account that the licensee deems to be uncollectible, or with respect to which delinquency collection procedures have been instituted, the licensee shall deliver to the borrower at the end of each billing cycle in which there is an outstanding balance of more than one dollar in the account, or with respect to which interest is imposed, a periodic statement in the form required by the director. In specifying such form the director shall consider Regulation Z promulgated by the board of governors of the federal reserve system under the federal consumer credit protection act. [2009 c 149 § 13; 1994 c 92 § 168; 1993 c 405 § 1; 1991 c 208 § 12.]

**31.04.145 Investigations and examinations—Director's duties and powers—Production of information—Costs.**

(1) For the purpose of discovering violations of this chapter or securing information lawfully required under this chapter, the director may at any time, either personally or by designees, investigate or examine the loans and business and, wherever located, the books, accounts, records, papers, documents, files, and other information used in the business of every licensee and of every person who is engaged in the business making or assisting in the making of loans at interest rates authorized by this chapter, whether the person acts or claims to act as principal or agent, or under or without the authority of this chapter. For these purposes, the director or designated representatives shall have free access to the offices and places of business, books, accounts, papers, documents, other information, records, files, safes, and vaults of all such persons. The director or persons designated by the director may require the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or the subject matter of any investigation, examination, or hearing and may require such person to produce books, accounts, papers, records, files, and any other information the director or designated persons deem relevant to the inquiry. The director may require the production of original books, accounts, papers, records, files, and other information; may require that such original books, accounts, papers, records, files, and other information be copied; or may make copies himself or herself or by designee of such original books, accounts, papers, records, files, or other information. If a licensee or person does not attend and testify, or does not produce the requested books, accounts, papers, records, files, or other information, then the director or designated persons may issue a subpoena or subpoena duces tecum requiring attendance or compelling production of the books, accounts, papers, records, files, or other information.

(2) The director shall make such periodic examinations of the affairs, business, office, and records of each licensee as determined by rule.

(3) Every licensee examined or investigated by the director or the director's designee shall pay to the director the cost of the examination or investigation of each licensed place of business as determined by rule by the director.

(4) In order to carry out the purposes of this section, the director may:

(a) Retain attorneys, accountants, or other professionals and specialists as examiners, auditors, or investigators to conduct or assist in the conduct of examinations or investigations;

(b) Enter into agreements or relationships with other government officials or regulatory associations in order to improve efficiencies and reduce regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under this section;

(c) Use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the licensee, individual, or person subject to chapter 120, Laws of 2009;

(d) Accept and rely on examination or investigation reports made by other government officials, within or without this state;

(e) Accept audit reports made by an independent certified public accountant for the licensee, individual, or person subject to chapter 120, Laws of 2009 in the course of that part of the examination covering the same general subject matter as the audit and may incorporate the audit report in the report of the examination, report of investigation, or other writing of the director; or

(f) Assess the licensee, individual, or person subject to chapter 120, Laws of 2009 the cost of the services in (a) of this subsection. [2009 c 120 § 8; 2001 c 81 § 11; 1995 c 9 § 2; 1994 c 92 § 169; 1991 c 208 § 15.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.165 Director—Broad administrative discretion—Rule making—Actions in superior court.** (1) The director has the power, and broad administrative discretion, to administer and interpret this chapter to facilitate the delivery of financial services to the citizens of this state by consumer loan companies and mortgage loan originators subject to this chapter. The director shall adopt all rules necessary to administer this chapter and to ensure complete and full disclosure by licensees of lending transactions governed by this chapter.

(2) If it appears to the director that a licensee is conducting business in an injurious manner or is violating any provision of this chapter, the director may order or direct the discontinuance of any such injurious or illegal practice.

(3) For purposes of this section, "conducting business in an injurious manner" means conducting business in a manner that violates any provision of this chapter, or that creates the reasonable likelihood of a violation of any provision of this chapter.

(4) The director or designated persons, with or without prior administrative action, may bring an action in superior court to enjoin the acts or practices that constitute violations of this chapter and to enforce compliance with this chapter or any rule or order made under this chapter. Upon proper

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showing, injunctive relief or a temporary restraining order shall be granted. The director shall not be required to post a bond in any court proceedings. [2009 c 120 § 30; 2001 c 81 § 13; 1994 c 92 § 171; 1991 c 208 § 17.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.211 Application of chapter—2009 c 120.** The authority of this chapter remains in effect, whether such a licensee, individual, or person subject to chapter 120, Laws of 2009 acts or claims to act under any licensing or registration law of this state, or claims to act without such an authority. [2009 c 120 § 9.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.221 Mortgage loan originator—License required—Unique identifier required. (Effective July 1, 2010.)** An individual defined as a mortgage loan originator shall not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under chapter 120, Laws of 2009. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry. [2009 c 120 § 10.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.2211 Mortgage loan originator—License required—Unique identifier required. (Effective January 1, 2010.)** An individual defined as a mortgage loan originator shall not engage in the business of a mortgage loan originator without first obtaining and maintaining annually a license under chapter 528, Laws of 2009. Each licensed mortgage loan originator must register with and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry. [2009 c 528 § 14.]

**Effective date—License requirement—Implementation—2009 c 528:** See notes following RCW 19.146.010.

**31.04.224 Mortgage loan originators—Licensing exemptions. (Effective July 1, 2010.)** The following are exempt from licensing as mortgage loan originators under this chapter:

(1) Registered mortgage loan originators, or any individual required to be registered;

(2) A licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of a lender, mortgage broker, or other mortgage loan originator; or

(3) Any individual who offers or negotiates terms of a residential mortgage loan with or on behalf of an immediate family member. [2009 c 120 § 11.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.227 Mortgage loan origination—Independent contractors.** (*Effective July 1, 2010.*) An independent contractor may not engage in residential mortgage loan origination activities as a loan processor unless the independent contractor obtains and maintains a license under this chapter. Each independent contractor loan processor licensed as a mortgage loan originator must have and maintain a valid unique identifier issued by the nationwide mortgage licensing system and registry. [2009 c 120 § 12.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.231 Individual loan processor—Licensing exemptions.** (*Effective July 1, 2010.*) An individual engaging solely in loan processor activities, who does not represent to the public, through advertising or other means of communicating or providing information including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such an individual can or will perform any of the activities of a mortgage loan originator is not required to obtain and maintain a mortgage loan originator license under this chapter. [2009 c 120 § 13.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.234 Mortgage loan originator license—Application form and content.** (*Effective July 1, 2010.*) Applicants for a mortgage loan originator license shall apply on a form as prescribed by the director. Each form must contain content as set forth by rule, regulation, instruction, or procedure of the director and may be changed or updated as necessary by the director in order to carry out the purposes of this chapter, but must not be inconsistent with that required by the nationwide mortgage licensing system and registry. [2009 c 120 § 14.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.237 Use of nationwide mortgage licensing system and registry.** In order to fulfill the purposes of chapter 120, Laws of 2009, the director is authorized to establish relationships or contracts with the nationwide mortgage licensing system and registry or other entities designated by the nationwide mortgage licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to this chapter. [2009 c 120 § 15.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.241 Mortgage loan originator application—Required submission and use of personal information.** (*Effective July 1, 2010.*) (1) As part of or in connection with an application for any license under this section, or periodically upon license renewal, the mortgage loan originator applicant shall furnish information concerning his or her identity, including fingerprints for submission to the Washington state patrol, the federal bureau of investigation, the nationwide mortgage licensing system and registry, or any governmental agency or entity authorized to receive this information for a state and national criminal history back-

ground check; personal history; experience; business record; purposes; and other pertinent facts, as the director may reasonably require. As part of or in connection with an application for a license under this chapter, or periodically upon license renewal, the director is authorized to receive criminal history record information that includes nonconviction data as defined in RCW 10.97.030. The department may only disseminate nonconviction data obtained under this section to criminal justice agencies. This section does not apply to financial institutions regulated under chapters 31.12 and 31.13 RCW and Titles 30, 32, and 33 RCW.

(2) As part of or in connection with an application for any license under this section, the mortgage loan originator applicant shall furnish information pertaining to personal history and experience in a form prescribed by the nationwide mortgage licensing system and registry, including (a) the submission of authorization for the nationwide mortgage licensing system and registry and the director to obtain an independent credit report obtained from a consumer reporting agency described in section 603(p) of the federal fair credit reporting act, and (b) information related to any administrative, civil, or criminal findings by any governmental jurisdiction.

(3) In order to reduce the points of contact which the federal bureau of investigation may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.

(4) In order to reduce the points of contact which the director may have to maintain, the director may use the nationwide mortgage licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the director. [2009 c 120 § 16.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.244 Mortgage loan originator application—Required information—Fees.** (*Effective July 1, 2010.*) (1) The application for a mortgage loan originator license must contain at least the following information:

(a) The name, address, date of birth, and social security number of the mortgage loan originator applicant, and any other names, dates of birth, or social security numbers previously used by the mortgage loan originator applicant, unless waived by the director; and

(b) Other information regarding the mortgage loan originator applicant's background, experience, character, and general fitness as the director may require by rule, or as deemed necessary by the nationwide mortgage licensing system and registry.

(2) At the time of filing an application for a license or a license renewal under this chapter, each mortgage loan originator applicant shall pay to the director through the nationwide mortgage licensing system and registry the application or renewal fee of up to one hundred fifty dollars. The director shall deposit the moneys in the financial services regulation fund. [2009 c 120 § 17.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.247 Issuance of mortgage loan originator license—Necessary findings. (Effective July 1, 2010.)** (1) The director shall issue and deliver a mortgage loan originator license if, after investigation, the director makes at a minimum the following findings:

- (a) The applicant has paid the required license fees;
- (b) The applicant has met the requirements of this chapter;
- (c) The applicant has never had a mortgage loan originator license revoked in any governmental jurisdiction, except that, for the purposes of this subsection, a subsequent formal vacation of such revocation is not a revocation;
- (d) The applicant has not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court (i) during the seven-year period preceding the date of the application for licensing and registration; or (ii) at any time preceding the date of application, if the felony involved an act of fraud, dishonesty, breach of trust, or money laundering;
- (e) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the mortgage loan originator will operate honestly, fairly, and efficiently within the purposes of chapter 120, Laws of 2009. For the purposes of this section, an applicant has not demonstrated financial responsibility when the applicant shows disregard in the management of his or her financial condition. A determination that an individual has shown disregard in the management of his or her financial condition may include, but is not limited to, an assessment of: Current outstanding judgments, except judgments solely as a result of medical expenses; current outstanding tax liens or other government liens and filings; foreclosures within the last three years; or a pattern of seriously delinquent accounts within the past three years;
- (f) The applicant has completed the prelicensing education requirement as required by this chapter;
- (g) The applicant has passed a written test that meets the test requirement as required by this chapter;
- (h) The consumer loan licensee that the applicant works for has met the surety bond requirement as required by this chapter;
- (i) The applicant has not been found to be in violation of this chapter or rules adopted under this chapter;
- (j) The mortgage loan originator licensee has completed, during the calendar year preceding a licensee's annual license renewal date, continuing education as required by this chapter.

(2) If the director finds the conditions of this section have not been met, the director shall not issue the mortgage loan originator license. The director shall notify the applicant of the denial and return to the mortgage loan originator applicant any remaining portion of the license fee that exceeds the department's actual cost to investigate the license. [2009 c 120 § 18.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.251 Mortgage loan originator license—Renewal—Surrender—Rules. (Effective July 1, 2010.)**

(1) A mortgage loan originator license issued under this section expires annually. The director shall establish rules regarding the mortgage loan originator license renewal process created under this chapter. At a minimum a mortgage loan originator may not renew a license under this chapter unless the mortgage loan originator continues to meet the minimum standards for a license, and has satisfied the annual continuing education requirements.

(2) A mortgage loan originator licensee may surrender a license by delivering to the director through the nationwide mortgage licensing system and registry written notice of surrender, but the surrender does not affect the mortgage loan originator licensee's civil or criminal liability or any administrative actions arising from acts or omissions occurring before such a surrender. [2009 c 120 § 19.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.254 Mortgage loan originator licensing process—Rules—Interim procedures.**

For the purposes of implementing an orderly and efficient mortgage loan originator licensing process, the director may establish licensing rules and interim procedures for licensing and acceptance of applications. For previously registered or licensed individuals the director may establish expedited review and licensing procedures. [2009 c 120 § 20.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.257 Mortgage loan originator interim license. (Effective July 1, 2010.)**

To prevent undue delay in the issuance of a mortgage loan originator license and to facilitate the business of a mortgage loan originator, an interim license with a fixed date of expiration may be issued when the director determines that the mortgage loan originator has substantially fulfilled the requirements for mortgage loan originator licensing. The director may adopt rules describing the information required before an interim license can be granted. [2009 c 120 § 21.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.261 Mortgage loan originator—Education requirements. (Effective July 1, 2010.)**

(1) Each mortgage loan originator applicant shall complete at least twenty hours of prelicensing education approved by the nationwide mortgage licensing system and registry. The prelicensing education shall include at least three hours of federal law and regulations; three hours of ethics, which shall include instruction on fraud, consumer protection, and fair lending issues; two hours of training related to lending standards for the nontraditional mortgage product marketplace; and at least two hours of training specifically related to Washington law.

(2) A mortgage loan originator applicant having successfully completed the prelicensing education requirements approved by the nationwide mortgage licensing system and

registry for any state shall be accepted as credit towards completion of prelicensing education requirements in this state.

(3) This chapter does not preclude any prelicensing education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the mortgage loan originator applicant or an entity which is affiliated with the applicant by an agency contract, or any subsidiary or affiliate of such an employer or entity. Prelicensing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry. [2009 c 120 § 22.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.264 Mortgage loan originator—Testing requirements. (Effective July 1, 2010.)** (1) To obtain a mortgage loan originator license, an individual must pass a test developed by the nationwide mortgage licensing system and registry and administered by a test provider approved by the nationwide mortgage licensing system and registry based upon reasonable standards.

(2) An individual is not considered to have passed a test unless the individual achieves a test score of not less than seventy-five percent correct answers to questions.

(a) An individual may retake a test three consecutive times with each consecutive taking occurring at least thirty days after the preceding test.

(b) After failing three consecutive tests, an individual must wait at least six months before taking the test again.

(c) A licensed mortgage loan originator who fails to maintain a valid license for a period of five years or longer must retake the test, not taking into account any time during which that individual is a registered mortgage loan originator.

(3) This section does not prohibit a test provider approved by the nationwide mortgage licensing system and registry from providing a test at the location of the employer of the mortgage loan originator applicant or any subsidiary or affiliate of the employer of the applicant, or any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator. [2009 c 120 § 23.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.267 Mortgage loan originator—Continuing education requirements. (Effective July 1, 2010.)** (1) A licensed mortgage loan originator must complete a minimum of eight hours of continuing education approved by the nationwide mortgage licensing system and registry which must include at least three hours of federal law and regulations; two hours of ethics, which must include instruction on fraud, consumer protection, and fair lending issues; and two hours of training related to lending standards for the nontraditional mortgage product marketplace. Additionally, the director may require at least one hour of continuing education on Washington law provided by and administered through an approved provider.

(2) The nationwide mortgage licensing system and registry must review and approve continuing education courses. Review and approval of a continuing education course must include review and approval of the course provider.

(3) A licensed mortgage loan originator may only receive credit for a continuing education course in the year in which the course is taken, and may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) A licensed mortgage loan originator who is an instructor of an approved continuing education course may receive credit for the licensed mortgage loan originator's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

(5) A person having successfully completed the education requirements approved by the nationwide mortgage licensing system and registry for any state must have their credits accepted as credit towards completion of continuing education requirements in this state.

(6) This section does not preclude any education course, as approved by the nationwide mortgage licensing system and registry, that is provided by the employer of the mortgage loan originator or an entity which is affiliated with the mortgage loan originator by an agency contract, or any subsidiary or affiliate of such employer or entity. Continuing education may be offered either in a classroom, online, or by any other means approved by the nationwide mortgage licensing system and registry. [2009 c 120 § 24.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.271 Mortgage loan originators—System information may be challenged. (Effective July 1, 2010.)** The director shall establish a process whereby mortgage loan originators may challenge information entered into the nationwide mortgage licensing system and registry by the director. [2009 c 120 § 25.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.274 Information provided to nationwide mortgage licensing system and registry—Confidentiality—Restrictions on sharing.** (1) Except as otherwise provided in section 1512 of the S.A.F.E. act, the requirements under any federal law or chapter 42.56 RCW regarding the privacy or confidentiality of any information or material provided to the nationwide mortgage licensing system and registry, and any privilege arising under federal or state law, including the rules of any federal or state court, with respect to that information or material, continues to apply to the information or material after the information or material has been disclosed to the nationwide mortgage licensing system and registry. Information and material may be shared with all state and federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by federal law or state law.

(2) For the purposes under subsection (1) of this section, the director is authorized to enter agreements or sharing arrangements with other governmental agencies, the conference of state bank supervisors, the American association of residential mortgage regulators, or other associations repre-

senting governmental agencies as established by rule, regulation, or order of the director.

(3) Information or material that is subject to a privilege or confidentiality under subsection (1) of this section is not subject to:

(a) Disclosure under any federal or state law governing the disclosure to the public of information held by an officer or an agency of the federal government or the respective state; or

(b) Subpoena or discovery, or admission into evidence, in any private civil action or administrative process unless, with respect to any privilege held by the nationwide mortgage licensing system and registry with respect to that information or material, the person to whom the information or material pertains waives, in whole or in part, in the discretion of that person, that privilege.

(4) Chapter 42.56 RCW relating to the disclosure of confidential supervisory information or any information or material described in subsection (1) of this section that is inconsistent with subsection (1) of this section is superseded by the requirements of this section.

(5) This section does not apply to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that is included in the nationwide mortgage licensing system and registry for access by the public. [2009 c 120 § 26.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.277 Consumer loan companies—When reports of condition are required. (Effective July 1, 2010.)** Each consumer loan company licensee who makes or brokers a loan secured by real property shall submit to the nationwide mortgage licensing system and registry reports of condition, which must be in the form and must contain the information as the nationwide mortgage licensing system and registry may require. [2009 c 120 § 27.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.281 Reports of violation—2009 c 120. (Effective July 1, 2010.)** The director is authorized to regularly report violations of chapter 120, Laws of 2009, as well as enforcement actions and other relevant information, to the nationwide mortgage licensing system and registry. [2009 c 120 § 28.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

**31.04.284 Mortgage loan originator—Unique identifier—Display. (Effective July 1, 2010.)** The unique identifier of any mortgage loan originator must be clearly shown on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or web sites, and any other documents as established by rule, regulation, or order of the director. This section does not apply to consumer loan company licensees. [2009 c 120 § 29.]

**Findings—Declaration—2009 c 120:** See note following RCW 31.04.015.

## REVERSE MORTGAGE LENDING

**31.04.500 Short title.** RCW 31.04.501 through 31.04.540 may be known and cited as the Washington state reverse mortgage act. [2009 c 149 § 10.]

**31.04.501 Implementation.** The director of the department of financial institutions may take the necessary steps to ensure that chapter 149, Laws of 2009 is implemented on its effective date. [2009 c 149 § 9.]

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

(1) "FHA-approved reverse mortgage" means a "home equity conversion mortgage" or other reverse mortgage product guaranteed or insured by the federal department of housing and urban development.

(2) "Owner-occupied residence" is the borrower's residence and includes a life estate property the legal title for which is held in the name of the borrower in a reverse mortgage transaction or in the name of a trust, provided the occupant of the property is the beneficiary of that trust.

(3) "Proprietary reverse mortgage loan" is any reverse mortgage loan product that is not a home equity conversion mortgage loan or other federally guaranteed or insured loan.

(4) "Reverse mortgage broker or lender" means a licensee under the Washington state consumer loan act, chapter 31.04 RCW, or a person exempt from licensing pursuant to federal law.

(5) "Reverse mortgage loan" means a nonrecourse consumer credit obligation in which:

(a) A mortgage, deed of trust, or equivalent consensual security interest securing one or more advances is created in the borrower's dwelling;

(b) Any principal, interest, or shared appreciation or equity is due and payable, other than in the case of default, only after:

(i) The consumer dies;

(ii) The dwelling is transferred; or

(iii) The consumer ceases to occupy the dwelling as a dwelling; and

(c) The broker or lender is licensed under Washington state law or exempt from licensing under federal law. [2009 c 149 § 1.]

**31.04.510 Requirements of licensee—Minimum capital—Exceptions.** (1) For purposes of RCW 31.04.501 through 31.04.540, in addition to any other requirements, licensees must comply with the following requirements before offering proprietary reverse mortgage loans:

(a) Maintain an irrevocable standby letter of credit approved by the director from a financial institution approved by the director in favor of the licensee in an amount necessary to fund all reverse mortgage loan requirements anticipated over the next twelve months for loans then on the licensee's books and those expected to be made over the next twelve months or three million dollars, whichever is greater. The initial term of the letter of credit must be at least two years.

(b) The financial institution that provides the letter of credit as required in (a) of this subsection may not be affiliated with the licensee.

(c) A licensee with a rating of either 4A1 or 5A1 from Dun & Bradstreet credit services for three consecutive years is exempt from the requirements set forth in (a) of this subsection.

(2) The licensee shall maintain a minimum capital of ten million dollars.

(3) A licensee may rely on the capital of its parent to satisfy the requirement of subsection (2) of this section. However, for any year in which a licensee seeks to so rely, it shall provide to the director a certified financial statement of the parent showing a net worth of at least one hundred million dollars as of the close of its most recent fiscal year and a binding written commitment from the parent to the licensee to make a minimum of ten million dollars available to the licensee as a capital contribution in connection with its reverse mortgage lending program.

(4) Subsections (2) and (3) of this section do not apply to a licensee that:

(a) Only originates proprietary reverse mortgage loans the proceeds of which are fully disbursed at the loan closing; or

(b) Only originates proprietary reverse mortgage loans that are sold into the secondary market to an investor with either a 4A1 or 5A1 rating from Dun & Bradstreet credit services. A licensee that makes such a sale shall obtain a written commitment to purchase the loans from the investor prior to closing and shall arrange for the delivery of the loans to the investor within ten days of the loan closing. [2009 c 149 § 2.]

### **31.04.515 Loan requirements—Compliance—Rules.**

The department of financial institutions has specific authority to develop rules regarding the interpretation and implementation of this section. A proprietary reverse mortgage loan must comply with all of the following requirements:

(1) For the purposes of this section prepayment, in whole or in part, or the refinancing of a reverse mortgage loan, is permitted without penalty at any time during the term of the reverse mortgage loan. For the purposes of this section, penalty does not include any fees, payments, or other charges, not including interest, that would have otherwise been due upon the reverse mortgage being due and payable. However, when a reverse mortgage lender has paid or waived all of the usual fees or costs associated with a reverse mortgage loan, a prepayment penalty may be imposed, provided the penalty does not exceed the total amount of the usual fees or costs that were initially absorbed or waived by the reverse mortgage lender. A mortgagee may not impose a prepayment penalty under this subsection if the prepayment is caused by the occurrence of the death of the borrowers. A borrower must be provided prior written notice of any permissible prepayment penalty under this section;

(2) A reverse mortgage loan may provide for a fixed or adjustable interest rate or combination thereof, including compound interest, and may also provide for interest that is contingent on the value of the property upon execution of the loan or at maturity, or on changes in value between closing and maturity;

(3) The lender shall pay a late charge to the borrower for any late advance. If the lender does not mail or electronically transfer a scheduled monthly advance to the borrower on the first business day of the month, or within five business days of the date the lender receives the request, or such other regularly scheduled contractual date, the late charge is ten percent of the entire amount that should have been paid to the borrower for that month or as a result of that request. For each additional day that the lender fails to make the advance, the lender shall pay interest on the late advance at the interest rate stated in the loan documents. If the loan documents provide for an adjustable interest rate, the rate in effect when the late charge first accrues is used. Any late charge is paid from the lender's funds and may not be added to the unpaid principal balance. Additionally, the lender forfeits the right to interest and a monthly servicing fee for any months in which the advance has not been timely made. This section does not affect the department of financial institution's ability to impose other sanctions to protect consumers of reverse mortgage loans;

(4) The reverse mortgage loan may become due and payable upon the occurrence of any one of the following events:

(a) The home securing the loan is sold or title to the home is otherwise transferred;

(b) All borrowers cease occupying the home as a principal residence, except as provided in subsection (5) of this section; or

(c) A defaulting event occurs which is specified in the loan documents;

(5) Repayment of the reverse mortgage loan is subject to the following additional conditions:

(a) Temporary absences from the home not exceeding one hundred eighty consecutive days do not cause the mortgage to become due and payable;

(b) Extended absences from the home exceeding one hundred eighty consecutive days, but less than one year, do not cause the mortgage to become due and payable if the borrower has taken prior action that secures and protects the home in a manner satisfactory to the lender, as specified in the loan documents;

(c) The lender's right to collect reverse mortgage loan proceeds is subject to the applicable statute of limitations for written loan contracts. Notwithstanding any other provision of law, the statute of limitations shall commence on the date that the reverse mortgage loan becomes due and payable as provided in the loan agreement; and

(d) Using conspicuous, bold sixteen-point or larger type, the lender shall disclose in the loan agreement any interest rate or other fees to be charged during the period that commences on the date that the reverse mortgage loan becomes due and payable, and that ends when repayment in full is made;

(6) The first page of any deed of trust securing a reverse mortgage loan must contain the following statement in sixteen-point boldface type: "This deed of trust secures a reverse mortgage loan;"

(7) A lender or any other party that participates in the origination of a reverse mortgage loan shall not require an applicant for a reverse mortgage to purchase an annuity, insurance, or another product as a condition of obtaining a

reverse mortgage loan. A reverse mortgage lender or a broker arranging a reverse mortgage loan shall not:

(a) Offer an annuity to the borrower prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement;

(b) Refer the borrower to anyone for the purchase of an annuity prior to the closing of the reverse mortgage or before the expiration of the right of the borrower to rescind the reverse mortgage agreement; or

(c) Provide marketing information or annuity sales leads to anyone regarding the prospective borrower or borrower, or receive any compensation for such an annuity sale or referral;

(8)(a) A lender or any other party that participates in the origination of a reverse mortgage loan shall maintain safeguards, acceptable to the department of financial institutions, to ensure that individuals offering reverse mortgage loans do not provide reverse mortgage borrowers with any other financial or insurance products and that individuals participating in the origination of a reverse mortgage loan have no ability or incentive to provide the borrower with any other financial or insurance product;

(b) The borrower shall not be required, directly or indirectly, as a condition of obtaining a reverse mortgage under this section, to purchase any other financial or insurance products;

(9) Prior to accepting a final and complete application for a reverse mortgage loan or assessing any fees, a lender shall refer the prospective borrower to an independent housing counseling agency approved by the federal department of housing and urban development for counseling. The counseling must meet the standards and requirements established by the federal department of housing and urban development for reverse mortgage counseling. The lender shall provide the borrower with a list of at least five independent housing counseling agencies approved by the federal department of housing and urban development, including at least two agencies that can provide counseling by telephone. Telephone counseling is only available at the borrower's request;

(10) A lender shall not accept a final and complete application for a reverse mortgage loan from a prospective applicant or assess any fees upon a prospective applicant without first receiving a certification from the applicant or the applicant's authorized representative that the applicant has received counseling from an agency as described in subsection (9) of this section. The certification must be signed by the borrower and the agency counselor, and must include the date of the counseling and the names, addresses, and telephone numbers of both the counselor and the borrower. Electronic facsimile copy of the housing counseling certification satisfies the requirements of this subsection. The lender shall maintain the certification in an accurate, reproducible, and accessible format for the term of the reverse mortgage;

(11) A reverse mortgage loan may not be made for a Washington state resident unless that resident is a minimum of sixty years of age as of the date of execution of the loan; and

(12) Except for the initial disbursement of moneys to the closing agent, advances by the lender to the borrower must be issued directly to the borrower, or his or her legal representative, and not to an intermediary or third party. [2009 c 149 § 3.]

**31.04.520 Right to rescind transaction.** The borrower in a proprietary reverse mortgage transaction has the same right to rescind the transaction as provided in the truth in lending act, Regulation Z, 12 C.F.R. Sec. 226. [2009 c 149 § 4.]

**31.04.525 Preapproval required from department of financial institutions—Application of section—Rules.** (1) This section does not apply to a home equity conversion mortgage or other federally administered reverse mortgage product. A proprietary reverse mortgage loan product may not be offered without preapproval by the department of financial institutions.

(2) The director may make rules regarding the preapproval process, and may require any documentation, information, standards, or data deemed necessary by the director. The director may disapprove any proprietary reverse mortgage loan products that contain or incorporate by reference any inconsistent, ambiguous, or misleading provisions or terms, or exceptions and conditions which unreasonably or deceptively affect the reverse mortgage contract. Additional grounds for disapproval may include, without limitation, the existence in the proprietary product of any benefits provided to the borrower that are contrary to public policy. [2009 c 149 § 5.]

**31.04.530 Required notice to prospective borrower about counseling—Form—Contents—Annual disclosure statements—Property appraisals.** (1) A proprietary reverse mortgage loan application may not be taken by a lender unless the loan applicant has received from the lender the following plain language statement in conspicuous bold sixteen-point type or larger, advising the prospective borrower about counseling prior to obtaining the reverse mortgage loan within three business days of receipt of the completed loan application:

**"Important notice to reverse mortgage loan applicant**

**A reverse mortgage is a complex financial transaction that provides a means of using the equity you have built up in your home, or the value of your home, as a way to access home equity.**

**If you decide to obtain a reverse mortgage loan, you will sign binding legal documents that will have important legal, tax, and financial implications for you and your estate.**

**It is very important for you to understand the terms of the reverse mortgage and its effect. Before entering into this transaction, you are required by law to consult with an independent loan counselor. A list of approved counselors will be provided to you by the lender or broker. You may also want to discuss your decision with family members or others on whom you rely for financial advice."**

(2) As part of the disclosure required under this section, the lender or servicer shall provide an annual, or more frequent, disclosure statement to the borrower, providing details of the loan advances, balance, other terms, and the name and telephone number of the lender's employee or agent who has been specifically designated to respond to inquiries concerning reverse mortgage loans.



(3) In addition to any other loan documentation or disclosure, prior to execution of the loan and at the end of the loan term, the lender may either obtain an independent appraisal of the property value or use the current year's tax assessment valuation of the property. Copies of these appraisals must be timely provided to the borrower within five days of the borrower's written request, provided the borrower has paid for the appraisal. [2009 c 149 § 6.]

**31.04.535 Lender default—Treble damages—Civil remedies.** (1) In addition to any other remedies, if a lender defaults on any of the reverse mortgage loan terms and fails to cure an actual default after notice as specified in the loan documents, the borrower, or the borrower's estate, is entitled to treble damages.

(2) An arrangement, transfer, or lien subject to this chapter is not invalidated solely because of the failure of a lender to comply with any provision of this chapter. However, this section does not preclude the application of any other existing civil remedies provided by law.

(3) A violation of federal legal requirements for an FHA-approved reverse mortgage as defined in RCW 31.04.505(1) constitutes a violation of this chapter. [2009 c 149 § 7.]

**31.04.540 Loan advances—Eligibility and benefits under means-tested programs—Subject to federal law.** (1) To the extent that implementation of this section does not conflict with federal law resulting in the loss of federal funding, proprietary reverse mortgage loan advances made to a borrower must be treated as proceeds from a loan and not as income for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

(2) Undisbursed reverse mortgage funds must be treated as equity in the borrower's home and not as proceeds from a loan, resources, or assets for the purpose of determining eligibility and benefits under means-tested programs of aid to individuals.

(3) This section applies to any law or program relating to payments, allowances, benefits, or services provided on a means-tested basis by this state including, but not limited to, optional state supplements to the federal supplemental security income program, low-income energy assistance, property tax relief, general assistance, and medical assistance only to the extent this section does not conflict with Title 19 of the federal social security act. [2009 c 149 § 8.]

**31.04.903 Effective date—2009 c 120.** In order to facilitate an orderly transition to licensing and minimize disruption in the mortgage marketplace, sections 10 through 14, 16 through 19, 21 through 25, and 27 through 29 of this act take effect July 1, 2010. [2009 c 120 § 31.]

## Chapter 31.12 RCW

### WASHINGTON STATE CREDIT UNION ACT

#### Sections

31.12.909 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**31.12.909 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 77.]

## Chapter 31.45 RCW

### CHECK CASHERS AND SELLERS

#### Sections

31.45.010 Definitions. (*Effective January 1, 2010.*)  
 31.45.073 Making small loans—Endorsement required—Due date—Termination date—Maximum amount—Installment plans—Interest—Fees—Postdated check or draft as security. (*Effective January 1, 2010.*)  
 31.45.082 Delinquent small loan—Restrictions on collection by licensee or third party—Definitions.  
 31.45.084 Small loan installment plan—Terms—Restrictions. (*Effective January 1, 2010.*)  
 31.45.085 Loan application—Required statement—Rules. (*Effective January 1, 2010.*)  
 31.45.093 Information system—Access—Required information—Fees—Rules. (*Effective January 1, 2010.*)  
 31.45.095 Report by director—Contents. (*Effective January 1, 2010.*)  
 31.45.901 Effective date—2009 c 510.

#### **31.45.010 Definitions.** (*Effective January 1, 2010.*)

Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a person that files an application for a license under this chapter, including the applicant's sole proprietor, owners, directors, officers, partners, members, and controlling persons.

(2) "Borrower" means a natural person who receives a small loan.

(3) "Business day" means any day that the licensee is open for business in at least one physical location.

(4) "Check" means the same as defined in RCW 62A.3-104(f) and, for purposes of conducting the business of making small loans, includes other electronic forms of payment, including stored value cards, internet transfers, and automated clearing house transactions.

(5) "Check cashier" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of cashing checks, drafts, money orders, or other commercial paper serving the same purpose.

(6) "Check seller" means an individual, partnership, unincorporated association, or corporation that, for compensation, engages, in whole or in part, in the business of or sell-

ing checks, drafts, money orders, or other commercial paper serving the same purpose.

(7) "Collateral" means the same as defined in chapter 62A.9A RCW.

(8) "Controlling person" means a person owning or controlling ten percent or more of the total outstanding shares of the applicant or licensee, if the applicant or licensee is a corporation, and a member who owns ten percent or more of a limited liability company or limited liability partnership.

(9) "Default" means the borrower's failure to repay the small loan in compliance with the terms contained in the small loan agreement or note or failure to pay any installment plan payment on an installment plan within ten days after the date upon which the installment was scheduled to be paid.

(10) "Director" means the director of financial institutions.

(11) "Financial institution" means a commercial bank, savings bank, savings and loan association, or credit union.

(12) "Installment plan" is a contract between a licensee and borrower that provides that the loaned amount will be repaid in substantially equal installments scheduled on or after a borrower's pay dates and no less than fourteen days apart.

(13) "Licensee" means a check casher or seller licensed by the director to engage in business in accordance with this chapter. For purposes of the enforcement powers of this chapter, including the power to issue cease and desist orders under RCW 31.45.110, "licensee" also means a check casher or seller who fails to obtain the license required by this chapter.

(14) "Loaned amount" means the outstanding principal balance and any fees authorized under RCW 31.45.073 that have not been paid by the borrower.

(15) "Origination date" means the date upon which the borrower and the licensee initiate a small loan transaction.

(16) "Outstanding principal balance" of a small loan means any of the principal amount that has not been paid by the borrower.

(17) "Paid" means that moment in time when the licensee deposits the borrower's check or accepts cash for the full amount owing on a valid small loan. If the borrower's check is returned by the borrower's bank for insufficient funds, the licensee shall not consider the loan paid.

(18) "Person" means an individual, partnership, association, limited liability company, limited liability partnership, trust, corporation, and any other legal entity.

(19) "Principal" means the loan proceeds advanced for the benefit of the borrower in a small loan, excluding any fee or interest charge.

(20) "Rescission" means annulling the loan contract and, with respect to the small loan contract, returning the borrower and the licensee to their financial condition prior to the origination date of the loan.

(21) "Small loan" means a loan of up to the maximum amount and for a period of time up to the maximum term specified in RCW 31.45.073.

(22) "Termination date" means the date upon which payment for the small loan transaction is due or paid to the licensee, whichever occurs first.

(23) "Total of payments" means the principal amount of the small loan plus all fees or interest charged on the loan.

(24) "Trade secret" means the same as defined in RCW 19.108.010. [2009 c 510 § 2; 2003 c 86 § 1; 1995 c 18 § 1; 1994 c 92 § 274; 1993 c 143 § 1; 1991 c 355 § 1.]

**Finding—Intent—Liberal construction—2009 c 510:** "The legislature finds that some small loan borrowers are unable to pay the entire loaned amount when it is due. Many of these borrowers take out multiple loans to pay off the original borrowed sum.

It is the legislature's intent to reduce or limit the number of borrowers taking out multiple loans by providing for installment plans that give a borrower a better opportunity to pay off their original small loan without having to resort to taking out a subsequent loan or loans.

This act shall be liberally construed to effectuate the legislature's intent to protect borrowers." [2009 c 510 § 1.]

**31.45.073 Making small loans—Endorsement required—Due date—Termination date—Maximum amount—Installment plans—Interest—Fees—Postdated check or draft as security. (Effective January 1, 2010.)** (1) No licensee may engage in the business of making small loans without first obtaining a small loan endorsement to its license from the director in accordance with this chapter. An endorsement will be required for each location where a licensee engages in the business of making small loans, but a small loan endorsement may authorize a licensee to make small loans at a location different than the licensed locations where it cashes or sells checks. A licensee may have more than one endorsement.

(2) A licensee must set the due date of a small loan on or after the date of the borrower's next pay date. If a borrower's next pay date is within seven days of taking out the loan, a licensee must set the due date of a small loan on or after the borrower's second pay date after the date the small loan is made. The termination date of a small loan may not exceed the origination date of that same small loan by more than forty-five days, including weekends and holidays, unless the term of the loan is extended by agreement of both the borrower and the licensee and no additional fee or interest is charged. The maximum principal amount of any small loan, or the outstanding principal balances of all small loans made by all licensees to a single borrower at any one time, may not exceed seven hundred dollars or thirty percent of the gross monthly income of the borrower, whichever is lower. A licensee is prohibited from making a small loan to a borrower who is in default on another small loan until after that loan is paid in full or two years have passed from the origination date of the small loan, whichever occurs first.

(3) A licensee is prohibited from making a small loan to a borrower in an installment plan with any licensee until after the plan is paid in full or two years have passed from the origination date of the installment plan, whichever occurs first.

(4) A borrower is prohibited from receiving more than eight small loans from all licensees in any twelve-month period. A licensee is prohibited from making a small loan to a borrower if making that small loan would result in a borrower receiving more than eight small loans from all licensees in any twelve-month period.

(5) A licensee that has obtained the required small loan endorsement may charge interest or fees for small loans not to exceed in the aggregate fifteen percent of the first five hundred dollars of principal. If the principal exceeds five hundred dollars, a licensee may charge interest or fees not to exceed in the aggregate ten percent of that portion of the prin-

principal in excess of five hundred dollars. If a licensee makes more than one loan to a single borrower, and the aggregated principal of all loans made to that borrower exceeds five hundred dollars at any one time, the licensee may charge interest or fees not to exceed in the aggregate ten percent on that portion of the aggregated principal of all loans at any one time that is in excess of five hundred dollars. The director may determine by rule which fees, if any, are not subject to the interest or fee limitations described in this section. It is a violation of this chapter for any licensee to knowingly loan to a single borrower at any one time, in a single loan or in the aggregate, more than the maximum principal amount described in this section.

(6) In connection with making a small loan, a licensee may advance moneys on the security of a postdated check. The licensee may not accept any other property, title to property, or other evidence of ownership of property as collateral for a small loan. The licensee may accept only one postdated check per loan as security for the loan. A licensee may permit a borrower to redeem a postdated check with a payment of cash or the equivalent of cash. The licensee may disburse the proceeds of a small loan in cash, in the form of a check, or in the form of the electronic equivalent of cash or a check.

(7) No person may at any time cash or advance any moneys on a postdated check or draft in excess of the amount of goods or services purchased without first obtaining a small loan endorsement to a check casher or check seller license. [2009 c 510 § 3; 2003 c 86 § 8; 1995 c 18 § 2.]

**Finding—Intent—Liberal construction—2009 c 510:** See note following RCW 31.45.010.

**31.45.082 Delinquent small loan—Restrictions on collection by licensee or third party—Definitions.** (1) A licensee shall comply with all applicable state and federal laws when collecting a delinquent small loan. A licensee may charge a one-time fee as determined in rule by the director to any borrower in default on any loan or loans where the borrower's check has been returned unpaid by the financial institution upon which it was drawn. A licensee may take civil action under Title 62A RCW to collect upon a check that has been dishonored. If the licensee takes civil action, a licensee may charge the borrower the cost of collection as allowed under RCW 62A.3-515, but may not collect attorneys' fees or any other interest or damages as allowed under RCW 62A.3-515. A licensee may not threaten criminal prosecution as a method of collecting a delinquent small loan or threaten to take any legal action against the borrower which the licensee may not legally take.

(2) Unless invited by the borrower, a licensee may not visit a borrower's residence or place of employment for the purpose of collecting a delinquent small loan. A licensee may not impersonate a law enforcement official, or make any statements which might be construed as indicating an official connection with any federal, state, county, or city law enforcement agency, or any other governmental agency, while engaged in collecting a small loan.

(3) A licensee may not communicate with a borrower in such a manner as to harass, intimidate, abuse, or embarrass a borrower, including but not limited to communication at an unreasonable hour, with unreasonable frequency, by threats of force or violence, or by use of offensive language. A com-

munication shall be presumed to have been made for the purposes of harassment if it is initiated by the licensee for the purposes of collection and:

(a) It is made with a borrower or spouse in any form, manner, or place, more than three times in a single week;

(b) It is made with a borrower at his or her place of employment more than one time in a single week or made to a borrower after the licensee has been informed that the borrower's employer prohibits such communications;

(c) It is made with the borrower or spouse at his or her place of residence between the hours of 9:00 p.m. and 7:30 a.m.; or

(d) It is made to a party other than the borrower, the borrower's attorney, the licensee's attorney, or a consumer reporting agency if otherwise permitted by law except for purposes of acquiring location or contact information about the borrower.

(4) A licensee is required to maintain a communication log of all telephone and written communications with a borrower initiated by the licensee regarding any collection efforts including date, time, and the nature of each communication.

(5) If a dishonored check is assigned to any third party for collection, this section applies to the third party for the collection of the dishonored check.

(6) For the purposes of this section, "communication" includes any contact with a borrower, initiated by the licensee, in person, by telephone, or in writing (including e-mails, text messages, and other electronic writing) regarding the collection of a delinquent small loan, but does not include any of the following:

(a) Communication while a borrower is physically present in the licensee's place of business;

(b) An unanswered telephone call in which no message (other than a caller ID) is left, unless the telephone call violates subsection (3)(c) of this section; and

(c) An initial letter to the borrower that includes disclosures intended to comply with the federal fair debt collection practices act.

(7) For the purposes of this section, (a) a communication occurs at the time it is initiated by a licensee regardless of the time it is received or accessed by the borrower, and (b) a call to a number that the licensee reasonably believes is the borrower's cell phone will not constitute a communication with a borrower at the borrower's place of employment.

(8) For the purposes of this section, "week" means a series of seven consecutive days beginning on a Sunday. [2009 c 13 § 1; 2003 c 86 § 11.]

**31.45.084 Small loan installment plan—Terms—Restrictions. (Effective January 1, 2010.)** (1) If a borrower notifies a licensee that the borrower will be or is unable to repay a loan when it is due, the licensee must inform the borrower that the borrower may convert their small loan to an installment plan. The licensee must convert the small loan to an installment plan at the borrower's request. Each agreement for a loan installment plan must be in writing and acknowledged by both the borrower and the licensee. The licensee may not assess any other fee, interest charge, or other charge on the borrower as a result of converting the small loan into an installment plan. This installment plan

must provide for the payment of the total of payments due on the small loan over a period not less than ninety days for a loan amount of up to and including four hundred dollars. For a loaned amount over four hundred dollars, the installment plan must be a period not less than one hundred eighty days. The borrower may pay the total of installments at any time. The licensee may not charge any penalty, fee, or charge to the borrower for prepayment of the loan installment plan by the borrower. Each licensee shall conspicuously disclose to each borrower in the small loan agreement or small loan note that the borrower has access to such an installment plan. A licensee's violation of such an installment plan constitutes a violation of this chapter.

(2) The licensee must return any postdated checks that the borrower has given to the licensee for the original small loan at the initiation of the installment plan.

(3) A licensee may take postdated checks for installment plan payments at the time the installment plan is originated. If any check accepted as payment under the installment plan is dishonored, the licensee may not charge the borrower any fee for the dishonored check. If a borrower defaults on the installment plan, the licensee may charge the borrower a one-time installment plan default fee of twenty-five dollars.

(4) If the licensee enters into an installment plan with the borrower through an accredited third party, with certified credit counselors, that is representing the borrower, the licensee's failure to comply with the terms of that installment plan constitutes a violation of this chapter. [2009 c 510 § 4; 2003 c 86 § 12.]

**Finding—Intent—Liberal construction—2009 c 510:** See note following RCW 31.45.010.

**Effective date—2003 c 86 § 12:** "Section 12 of this act takes effect October 1, 2003." [2003 c 86 § 20.]

**31.45.085 Loan application—Required statement—Rules. (Effective January 1, 2010.)** (1)(a) In addition to other disclosures required by this chapter, the application for a small loan must include a statement that is substantially similar to the following: "At the time you repay this loan, you should have sufficient funds to meet your other financial obligations. If you cannot pay other bills because you are paying off this debt, you should go into the installment plan offered in connection with this loan."

(b) The statement in (a) of this subsection must be on the front page of the loan application and must be in at least twelve point type.

(2) The director may adopt rules to implement this section. [2009 c 510 § 5.]

**Finding—Intent—Liberal construction—2009 c 510:** See note following RCW 31.45.010.

**31.45.093 Information system—Access—Required information—Fees—Rules. (Effective January 1, 2010.)** (1) The director must, by contract with a vendor or service provider or otherwise, develop and implement a system by means of which a licensee may determine:

(a) Whether a consumer has an outstanding small loan;

(b) The number of small loans the consumer has outstanding;

(c) Whether the borrower is eligible for a loan under RCW 31.45.073;

(d) Whether the borrower is in an installment plan; and  
(e) Any other information necessary to comply with this chapter.

(2) The director may specify the form and contents of the system by rule. Any system must provide that the information entered into or stored by the system is:

(a) Accessible to and usable by licensees and the director from any location in this state; and

(b) Secured against public disclosure, tampering, theft, or unauthorized acquisition or use.

(3) If the system described in subsection (1) of this section is developed and implemented, a licensee making small loans under this chapter must enter or update the required information in subsection (1) of this section at the time that the small loan transaction is conducted by the licensee.

(4) A licensee must continue to enter and update all required information for any loans subject to this chapter that are outstanding or have not yet expired after the date on which the licensee no longer has the license or small loan endorsement required by this chapter. Within ten business days after ceasing to make loans subject to this chapter, the licensee must submit a plan for continuing compliance with this subsection to the director for approval. The director must promptly approve or disapprove the plan and may require the licensee to submit a new or modified plan that ensures compliance with this subsection.

(5) If the system described in subsection (1) of this section is developed and implemented, the director shall adopt rules to set the fees licensees shall pay to the vendor or service provider for the operation and administration of the system and the administration of this chapter by the department.

(6) The director shall adopt rules establishing standards for the retention, archiving, and deletion of information entered into or stored by the system described in subsection (1) of this section.

(7) The information in the system described in subsection (1) of this section is not subject to public inspection or disclosure under chapter 42.56 RCW. [2009 c 510 § 6.]

**Finding—Intent—Liberal construction—2009 c 510:** See note following RCW 31.45.010.

**31.45.095 Report by director—Contents. (Effective January 1, 2010.)** (1) The director must collect and submit the following information in a report to the financial services committees of the senate and house of representatives:

(a) The number of borrowers entered into an installment plan since January 1, 2010;

(b) How the number of borrowers in installment plans compares to the number of borrowers in installment plans in years previous to January 1, 2010;

(c) The number of borrowers who have defaulted since January 1, 2010;

(d) If known on January 1, 2010, how the number of borrowers who have defaulted compares to the number of borrowers who defaulted in years previous to January 1, 2010; and

(e) Any other information that the director believes is relevant or useful.

(2) Failure to provide the director information required by this section is a violation of this chapter. [2009 c 510 § 7.]

**Finding—Intent—Liberal construction—2009 c 510:** See note following RCW 31.45.010.

**31.45.901 Effective date—2009 c 510.** This act takes effect January 1, 2010. [2009 c 510 § 10.]

## Title 34

### ADMINISTRATIVE LAW

#### Chapters

#### 34.05 Administrative procedure act.

#### Chapter 34.05 RCW

#### ADMINISTRATIVE PROCEDURE ACT

##### Sections

34.05.110	Paperwork violations by small businesses—Waiver of penalty for first-time violations.
34.05.120	Extension of rights and responsibilities—State registered domestic partnerships. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )
34.05.270	Agency web sites for rule-making information.
34.05.325	Public participation—Concise explanatory statement.
34.05.350	Emergency rules and amendments.

**34.05.110 Paperwork violations by small businesses—Waiver of penalty for first-time violations.** (1) Except as provided in subsection (3) of this section, agencies shall waive any fines, civil penalties, or administrative sanctions for first-time paperwork violations by a small business.

(2) When an agency waives a fine, penalty, or sanction under this section, when possible it shall require the small business to correct the violation within a reasonable period of time, in a manner specified by the agency. If correction is impossible, no correction may be required and failure to correct is not grounds for reinstatement of fines, penalties, or sanctions under subsection (4)(b) of this section.

(3) Exceptions to the waiver requirement of this section may be made for any of the following reasons:

(a) The agency head determines that the effect of the violation presents a direct danger to the public health, results in a loss of income or benefits to an employee, poses a potentially significant threat to human health or the environment, or causes serious harm to the public interest;

(b) The violation involves a small business knowingly or willfully engaging in conduct that may result in a felony conviction;

(c) The violation is of a requirement concerning the assessment, collection, or administration of any tax, tax program, debt, revenue, receipt, a regulated entity's financial filings, or insurance rate or form filing;

(d) The waiver is in conflict with federal law or program requirements, federal requirements that are a prescribed condition to the allocation of federal funds to the state, or the requirements for eligibility of employers in this state for federal unemployment tax credits, as determined by the agency head;

(e) The small business committing the violation previously violated a substantially similar paperwork requirement; or

(f) The owner or operator of the small business committing the violation owns or operates, or owned or operated a different small business which previously violated a substantially similar paperwork requirement.

(4)(a) Nothing in this section prohibits an agency from waiving fines, civil penalties, or administrative sanctions incurred by a small business for a paperwork violation that is not a first-time offense.

(b) Any fine, civil penalty, or administrative sanction that is waived under this section may be reinstated and imposed in addition to any additional fines, penalties, or administrative sanctions associated with a subsequent violation for noncompliance with a substantially similar paperwork requirement, or failure to correct the previous violation as required by the agency under subsection (2) of this section.

(5) Nothing in this section may be construed to diminish the responsibility for any citizen or business to apply for and obtain a permit, license, or authorizing document that is required to engage in a regulated activity, or otherwise comply with state or federal law.

(6) Nothing in this section shall be construed to apply to small businesses required to provide accurate and complete information and documentation in relation to any claim for payment of state or federal funds or who are licensed or certified to provide care and services to vulnerable adults or children.

(7) As used in this section:

(a) "Small business" means a business with two hundred fifty or fewer employees.

(b) "Paperwork violation" means the violation of any statutory or regulatory requirement that mandates the collection of information by an agency, or the collection, posting, or retention of information by a small business. This includes but is not limited to requirements in the Revised Code of Washington, the Washington Administrative Code, the Washington State Register, or any other agency directive.

(c) "First-time paperwork violation" means the first instance of a particular or substantially similar paperwork violation. [2009 c 358 § 1.]

**34.05.120 Extension of rights and responsibilities—State registered domestic partnerships.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (1) Subject to the availability of funds appropriated for this specific purpose, except where inconsistent with federal law or regulations applicable to federal benefit programs, agencies shall amend their rules to reflect the intent of the legislature to ensure that all privileges, immunities, rights, benefits, or responsibilities granted or imposed by statute to an individual because that individual is or was a spouse in a marital relationship are granted or imposed on equivalent terms to an individual because that individual is or was in a state registered domestic partnership.

(2) Except where inconsistent with federal law or regulations applicable to federal benefit programs, all agency orders creating new rules, or amending existing rules, shall be formulated to reflect the intent stated in subsection (1) of this section.

(3) No agency rule is invalid because it does not comply with this section. [2009 c 521 § 2.]

**34.05.270 Agency web sites for rule-making information.** Within existing resources, each state agency shall maintain a web site that contains the agency's rule-making information. A direct link to the agency's rule-making page must be displayed on the agency's homepage. The rule-making web site shall include the complete text of all proposed rules, emergency rules, and permanent rules proposed or adopted within the past twelve months, or include a direct link to the index page on the Washington State Register web site that contains links to the complete text of all proposed rules, emergency rules, and permanent rules proposed or adopted within the past twelve months by that state agency. For proposed rules, the time, date, and place for the rule-making hearing and the procedures and timelines for submitting written comments and supporting data must be posted on the web site. [2009 c 93 § 1.]

**34.05.325 Public participation—Concise explanatory statement.** (1) The agency shall make a good faith effort to insure that the information on the proposed rule published pursuant to RCW 34.05.320 accurately reflects the rule to be presented and considered at the oral hearing on the rule. Written comment about a proposed rule, including supporting data, shall be accepted by an agency if received no later than the time and date specified in the notice, or such later time and date established at the rule-making hearing.

(2) The agency shall provide an opportunity for oral comment to be received by the agency in a rule-making hearing.

(3) If the agency possesses equipment capable of receiving telefacsimile transmissions or recorded telephonic communications, the agency may provide in its notice of hearing filed under RCW 34.05.320 that interested parties may comment on proposed rules by these means. If the agency chooses to receive comments by these means, the notice of hearing shall provide instructions for making such comments, including, but not limited to, appropriate telephone numbers to be used; the date and time by which comments must be received; required methods to verify the receipt and authenticity of the comments; and any limitations on the number of pages for telefacsimile transmission comments and on the minutes of tape recorded comments. The agency shall accept comments received by these means for inclusion in the official record if the comments are made in accordance with the agency's instructions.

(4) The agency head, a member of the agency head, or a presiding officer designated by the agency head shall preside at the rule-making hearing. Rule-making hearings shall be open to the public. The agency shall cause a record to be made of the hearing by stenographic, mechanical, or electronic means. Regardless of whether the agency head has delegated rule-making authority, the presiding official shall prepare a memorandum for consideration by the agency head, summarizing the contents of the presentations made at the rule-making hearing, unless the agency head presided or was present at substantially all of the hearings. The summarizing memorandum is a public document and shall be made available to any person in accordance with chapter 42.56 RCW.

(5) Rule-making hearings are legislative in character and shall be reasonably conducted by the presiding official to afford interested persons the opportunity to present comment

individually. All comments by all persons shall be made in the presence and hearing of other attendees. Written or electronic submissions may be accepted and included in the record. Rule-making hearings may be continued to a later time and place established on the record without publication of further notice under RCW 34.05.320.

(6)(a) Before it files an adopted rule with the code reviser, an agency shall prepare a concise explanatory statement of the rule:

(i) Identifying the agency's reasons for adopting the rule;

(ii) Describing differences between the text of the proposed rule as published in the register and the text of the rule as adopted, other than editing changes, stating the reasons for differences; and

(iii) Summarizing all comments received regarding the proposed rule, and responding to the comments by category or subject matter, indicating how the final rule reflects agency consideration of the comments, or why it fails to do so.

(b) The agency shall provide the concise explanatory statement to any person upon request or from whom the agency received comment. [2009 c 336 § 1; 2005 c 274 § 262; 1998 c 125 § 1; 1995 c 403 § 304; 1994 c 249 § 7; 1992 c 57 § 1; 1988 c 288 § 304.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

**Application—1995 c 403 §§ 201, 301-305, 401-405, and 801:** See note following RCW 34.05.328.

**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.

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**34.05.350 Emergency rules and amendments.** (1) If an agency for good cause finds:

(a) That immediate adoption, amendment, or repeal of a rule is necessary for the preservation of the public health, safety, or general welfare, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the public interest;

(b) That state or federal law or federal rule or a federal deadline for state receipt of federal funds requires immediate adoption of a rule; or

(c) In order to implement the requirements or reductions in appropriations enacted in any budget for fiscal years 2009, 2010, or 2011, which necessitates the need for the immediate adoption, amendment, or repeal of a rule, and that observing the time requirements of notice and opportunity to comment upon adoption of a permanent rule would be contrary to the fiscal needs or requirements of the agency,

the agency may dispense with those requirements and adopt, amend, or repeal the rule on an emergency basis. The agency's finding and a concise statement of the reasons for its finding shall be incorporated in the order for adoption of the emergency rule or amendment filed with the office of the code reviser under RCW 34.05.380 and with the rules review committee.

(2) An emergency rule adopted under this section takes effect upon filing with the code reviser, unless a later date is specified in the order of adoption, and may not remain in effect for longer than one hundred twenty days after filing. Identical or substantially similar emergency rules may not be adopted in sequence unless conditions have changed or the agency has filed notice of its intent to adopt the rule as a permanent rule, and is actively undertaking the appropriate procedures to adopt the rule as a permanent rule. This section does not relieve any agency from compliance with any law requiring that its permanent rules be approved by designated persons or bodies before they become effective.

(3) Within seven days after the rule is adopted, any person may petition the governor requesting the immediate repeal of a rule adopted on an emergency basis by any department listed in RCW 43.17.010. Within seven days after submission of the petition, the governor shall either deny the petition in writing, stating his or her reasons for the denial, or order the immediate repeal of the rule. In ruling on the petition, the governor shall consider only whether the conditions in subsection (1) of this section were met such that adoption of the rule on an emergency basis was necessary. If the governor orders the repeal of the emergency rule, any sanction imposed based on that rule is void. This subsection shall not be construed to prohibit adoption of any rule as a permanent rule. [2009 c 559 § 1; 1994 c 249 § 3; 1989 c 175 § 10; 1988 c 288 § 309; 1981 c 324 § 4; 1977 ex.s. c 240 § 8; 1959 c 234 § 3. Formerly RCW 34.04.030.]

**Effective date—2009 c 559:** "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 19, 2009]." [2009 c 559 § 2.]

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Legislative affirmation—Severability—1981 c 324:** See notes following RCW 34.05.010.

**Effective date—Severability—1977 ex.s. c 240:** See RCW 34.08.905 and 34.08.910.

## Title 35

### CITIES AND TOWNS

#### Chapters

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- 35.105 Urban forest management.

#### Chapter 35.02 RCW

#### INCORPORATION PROCEEDINGS

##### Sections

- 35.02.086 Elections—Candidates—Filing—Withdrawal—Ballot position.

**35.02.086 Elections—Candidates—Filing—Withdrawal—Ballot position.** Each candidate for a city or town elective position shall file a declaration of candidacy with the county auditor of the county in which all or the major portion

of the city or town is located not more than sixty days nor less than forty-five days prior to the primary election at which the initial elected officials are nominated. The elective positions shall be as provided in law for the type of city or town and form or plan of government specified in the petition to incorporate, and for the population of the city or town as determined by the county legislative authority or boundary review board where applicable. Any candidate may withdraw his or her declaration at any time within five days after the last day allowed for filing a declaration of candidacy. All names of candidates to be voted upon shall be printed upon the ballot alphabetically in groups under the designation of the respective titles of offices for which they are candidates. Names of candidates printed upon the ballot need not be rotated. [2009 c 107 § 5; 2006 c 344 § 20; 1986 c 234 § 11; 1965 c 7 § 35.02.086. Prior: 1953 c 219 § 9.]

**Effective date—2009 c 107:** See note following RCW 28A.343.300.

**Effective date—2006 c 344 §§ 1-16 and 18-40:** See note following RCW 29A.04.311.

## Chapter 35.07 RCW DISINCORPORATION

### Sections

35.07.090	Effect of disincorporation—Powers—Officers.
35.07.120	Receiver—Qualification—Bond.
35.07.130	Elected receiver—Failure to qualify—Court to appoint.
35.07.140	No receiver elected though indebtedness exists—Procedure.
35.07.150	Duties of receiver—Claims—Priority.
35.07.170	Receiver—Power to sell property.
35.07.190	Receiver's compensation.
35.07.200	Receiver—Removal for cause.
35.07.220	Receiver—Final account and discharge.

**35.07.090 Effect of disincorporation—Powers—Officers.** Upon disincorporation of a city or town, its powers and privileges as such, are surrendered to the state and it is absolved from any further duty to the state or its own inhabitants and all the offices appertaining thereto shall cease to exist immediately upon the entry of the result: PROVIDED, That if a receiver is required, the officers shall continue in the exercise of all their powers until a receiver has qualified as such, and thereupon shall surrender to him or her all property, money, vouchers, records and books of the city or town including those in any manner pertaining to its business. [2009 c 549 § 2001; 1965 c 7 § 35.07.090. Prior: 1933 c 128 § 1, part; 1897 c 69 § 6, part; RRS § 8919, part.]

**35.07.120 Receiver—Qualification—Bond.** The receiver must qualify within ten days after he or she has been declared elected, by filing with the county auditor a bond equal in penalty to the audited indebtedness and the established liabilities of the city or town with sureties approved by the board of county commissioners, or if the board is not in session, by the judge of the superior court of the county. The bond shall run to the state and shall be conditioned for the faithful performance of his or her duties as receiver and the prompt payment in the order of their priority of all lawful claims finally established as the funds come into his or her hands to discharge them. The bond shall be filed with the county auditor and shall be a public record and shall be for the benefit of every person who may be injured by the

receiver's failure to discharge his or her duty. [2009 c 549 § 2002; 1965 c 7 § 35.07.120. Prior: 1897 c 69 § 7; RRS § 8920.]

**35.07.130 Elected receiver—Failure to qualify—Court to appoint.** If the person elected receiver fails to qualify as such within the prescribed time, the council shall file in the superior court of the county a petition setting forth the fact of the election, its result and the failure of the person elected receiver to qualify within the prescribed time and praying for the appointment of another person as receiver. Notice of the filing of the petition and of the time fixed for hearing thereon must be served upon the person elected receiver at least three days before the time fixed for the hearing. If he or she cannot be found within the county, no notice need be served, and the court may proceed with full jurisdiction to determine the matter upon the hearing. Unless good cause to the contrary is shown, the court shall appoint some suitable person to act as receiver, who shall qualify as required by RCW 35.07.120 within ten days from the date of his or her appointment.

If the council fails to procure the appointment of a receiver, any person qualified to vote in the city or town may file such a petition and make such application. [2009 c 549 § 2003; 1965 c 7 § 35.07.130. Prior: 1897 c 69 § 8; RRS § 8921.]

**35.07.140 No receiver elected though indebtedness exists—Procedure.** If no receiver is elected upon the supposition that no indebtedness existed and it transpires that the municipality does have indebtedness or an outstanding liability, any interested person may file a petition in the superior court asking for the appointment of a receiver, and unless the indebtedness or liability is discharged, the court shall appoint some suitable person to act as receiver who shall qualify as required of any other receiver hereunder, within ten days from the date of his or her appointment. [2009 c 549 § 2004; 1965 c 7 § 35.07.140. Prior: 1897 c 69 § 15; RRS § 8928.]

**35.07.150 Duties of receiver—Claims—Priority.** The receiver, upon qualifying, shall take possession of all the property, money, vouchers, records and books of the former municipality including those in any manner pertaining to its business and proceed to wind up its affairs. He or she shall have authority to pay:

(1) All outstanding warrants and bonds in the order of their maturity with due regard to the fund on which they are properly a charge;

(2) All lawful claims against the corporation which have been audited and allowed by the council;

(3) All lawful claims which may be presented to him or her within the time limited by law for the presentation of such claims, but no claim shall be allowed or paid which is not presented within six months from the date of the disincorporation election;

(4) All claims that by final adjudication may come to be established as lawful claims against the corporation.

As between warrants, bonds and other claims, their priority shall be determined with regard to the fund on which



they are properly a charge. [2009 c 549 § 2005; 1965 c 7 § 35.07.150. Prior: 1897 c 69 § 9; RRS § 8922.]

*Accident claims, audits: Chapter 35.31 RCW, RCW 35.23.261.*

**35.07.170 Receiver—Power to sell property.** The receiver shall be authorized to sell at public auction after such public notice as the sheriff is required to give of like property sold on execution, all the property of the former municipality except such as is necessary for his or her use in winding up its affairs, and excepting also such as has been dedicated to public use.

Personal property shall be sold for cash.

Real property may be sold for all cash, or for one-half cash and the remainder in deferred payments, the last payment not to be later than one year from date of sale. Title shall not pass until all deferred payments have been fully paid. [2009 c 549 § 2006; 1965 c 7 § 35.07.170. Prior: 1897 c 69 § 10, part; RRS § 8923.]

**35.07.190 Receiver's compensation.** The receiver shall be entitled to deduct from any funds coming into his or her hands a commission of six percent on the first thousand dollars, five percent on the second thousand and four percent on any amount over two thousand dollars as his or her full compensation exclusive of necessary traveling expenses and necessary disbursements, but not exclusive of attorney's fees. [2009 c 549 § 2007; 1965 c 7 § 35.07.190. Prior: 1897 c 69 § 11; RRS § 8924.]

**35.07.200 Receiver—Removal for cause.** The receiver shall proceed to wind up the affairs of the corporation with diligence and for negligence or misconduct in the discharge of his or her duties may be removed by the superior court upon a proper showing made by a taxpayer of the former city or town or by an unsatisfied creditor thereof. [2009 c 549 § 2008; 1965 c 7 § 35.07.200. Prior: 1897 c 69 § 13, part; RRS § 8926, part.]

**35.07.220 Receiver—Final account and discharge.** Upon the final payment of all lawful demands against the former city or town, the receiver shall file a final account, together with all vouchers, with the clerk of the superior court. Any funds remaining in his or her hands shall be paid to the county treasurer for the use of the school district in which the former city or town was situated; and thereupon the receivership shall be at an end. [2009 c 549 § 2009; 1965 c 7 § 35.07.220. Prior: 1897 c 69 § 14; RRS § 8927.]

## Chapter 35.10 RCW

### CONSOLIDATION AND ANNEXATION OF CITIES AND TOWNS

#### Sections

35.10.360	Annexation—Transfer of fire department employees.
35.10.365	Annexation—Transfer of fire department employees—Rights and benefits.

**35.10.360 Annexation—Transfer of fire department employees.** (1) If any portion of a fire protection district is proposed for annexation to or incorporation into a city, code

city, or town, both the fire protection district and the city, code city, or town shall jointly inform the employees of the fire protection district about hires, separations, terminations, and any other changes in employment that are a direct consequence of annexation or incorporations at the earliest reasonable opportunity.

(2) Upon the annexation of two or more cities or code cities, any employee of the fire department of the former city or cities who (a) was at the time of annexation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the fire department of the annexed city or code city, as the case may be, (b) will, as a direct consequence of annexation, be separated from the employ of the former city, code city or town, and (c) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer employment to the fire department of the annexing city, as provided in this section and RCW 35.10.365 and 35.10.370.

(3) For purposes of this section and RCW 35.10.365 and 35.10.370, employee means an individual whose employment has been terminated because of annexation by a city, code city or town. [2009 c 60 § 1; 1986 c 254 § 4.]

**35.10.365 Annexation—Transfer of fire department employees—Rights and benefits.** (1) An eligible employee may transfer into the civil service system of the annexing city, code city, or town by filing a written request with the city, code city, or town civil service commission. Upon receipt of the request by the civil service commission, the transfer of employment must be made. The needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.10.360 and 35.10.370 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the city, code city, or town fire department when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the city, code city, or town shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies.

(2)(a) Upon transfer, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district, including rights to:

(i) Compensation at least equal to the level of compensation at the time of transfer, unless the employee's rank and duties have been reduced as a result of the transfer. If the transferring employee is placed in a position with reduced rank and duties, the employee's compensation may be adjusted, but the adjustment may not result in a decrease of greater than fifty percent of the difference between the employee's compensation before the transfer and the compensation level for the position that the employee is transferred to;

(ii) Retirement, vacation, sick leave, and any other accrued benefit;

(iii) Promotion and service time accrual; and

(iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

(b) (a) of this subsection does not apply if upon transfer an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions.

(3) If upon transfer, the transferring employee receives the rights, benefits, and privileges established under subsection (2)(a)(i) through (iv) of this section, those rights, benefits, and privileges are subject to collective bargaining at the end of the current bargaining period for the jurisdiction to which the employee has transferred.

(4) Such bargaining must take into account the years of service the transferring employee accumulated before the transfer and must be treated as if those years of service occurred in the jurisdiction to which the employee has transferred. [2009 c 60 § 2; 1994 c 73 § 1; 1986 c 254 § 5.]

**Effective date—1994 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 shall take effect immediately [March 23, 1994]." [1994 c 73 § 6.]

### Chapter 35.13 RCW

#### ANNEXATION OF UNINCORPORATED AREAS

##### Sections

35.13.010	Authority for annexation.
35.13.130	Direct petition method—Petition—Signers—Content.
35.13.171	Review board—Convening—Composition.
35.13.215	Annexation of fire districts—Transfer of employees.
35.13.225	Annexation of fire districts—Transfer of employees—Rights and benefits.
35.13.238	Annexation of territory served by fire districts, interlocal agreement process—Annexation of fire districts, transfer of employees.
35.13.252	Fire protection and safety in proposed annexed territory—Report request.
35.13.490	Annexation of territory used for an agricultural fair.

**35.13.010 Authority for annexation.** Any portion of a county not incorporated as part of a city or town but lying contiguous thereto may become a part of the city or town by annexation. An area proposed to be annexed to a city or town shall be deemed contiguous thereto even though separated by water or tide or shore lands on which no bona fide residence is maintained by any person. [2009 c 402 § 2; 1965 c 7 § 35.13.010. Prior: 1959 c 311 § 1; prior: (i) 1937 c 110 § 1; 1907 c 245 § 1; RRS § 8896. (ii) 1945 c 128 § 1; Rem. Supp. 1945 § 8909-10.]

**Intent—2009 c 402:** See note following RCW 35.13.490.

**Validation—1961 ex.s. c 16:** Validation of certain incorporations and annexations—Municipal corporations of the fourth class: See note following RCW 35.21.010.

**35.13.130 Direct petition method—Petition—Signers—Content.** A petition for annexation of an area contiguous to a city or town may be made in writing addressed to and filed with the legislative body of the municipality to which annexation is desired. Except where all the property sought to be annexed is property of a school district, and the school directors thereof file the petition for annexation as in RCW 28A.335.110 authorized, the petition must be signed by the

owners of not less than sixty percent in value according to the assessed valuation for general taxation of the property for which annexation is petitioned: PROVIDED, That in cities and towns with populations greater than one hundred sixty thousand located east of the Cascade mountains, the owner of tax exempt property may sign an annexation petition and have the tax exempt property annexed into the city or town, but the value of the tax exempt property shall not be used in calculating the sufficiency of the required property owner signatures unless only tax exempt property is proposed to be annexed into the city or town. The petition shall set forth a description of the property according to government legal subdivisions or legal plats which is in compliance with RCW 35.02.170, and shall be accompanied by a plat which outlines the boundaries of the property sought to be annexed. If the legislative body has required the assumption of all or any portion of city or town indebtedness by the area annexed, and/or the adoption of a comprehensive plan for the area to be annexed, these facts, together with a quotation of the minute entry of such requirement or requirements shall be set forth in the petition. [2009 c 60 § 3; 1990 c 33 § 566; 1981 c 66 § 1; 1975 1st ex.s. c 220 § 8; 1973 1st ex.s. c 164 § 12; 1971 c 69 § 2; 1965 ex.s. c 88 § 11; 1965 c 7 § 35.13.130. Prior: 1961 c 282 § 19; 1945 c 128 § 3; Rem. Supp. 1945 § 8908-12.]

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Severability—1981 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." [1981 c 66 § 2.]

**Legislative finding, intent—1975 1st ex.s. c 220:** See note following RCW 35.02.170.

**Severability—1971 c 69:** See note following RCW 35.13.125.

**35.13.171 Review board—Convening—Composition.** Within thirty days after the filing of a city's or town's annexation resolution pursuant to RCW 35.13.015 with the board of county commissioners or within thirty days after filing with the county commissioners a petition calling for an election on annexation, as provided in RCW 35.13.020, or within thirty days after approval by the legislative body of a city or town of a petition of property owners calling for annexation, as provided in RCW 35.13.130, the mayor of the city or town concerned that is not subject to the jurisdiction of a boundary review board under chapter 36.93 RCW, shall convene a review board composed of the following persons:

(1) The mayor of the city or town initiating the annexation by resolution, or the mayor in the event of a twenty percent annexation petition pursuant to RCW 35.13.020, or an alternate designated by the mayor;

(2) The chair of the board of county commissioners of the county wherein the property to be annexed is situated, or an alternate designated by him or her;

(3) The director of community, trade, and economic development, or an alternate designated by the director;

Two additional members to be designated, one by the mayor of the annexing city, which member shall be a resident property owner of the city, and one by the chair of the county legislative authority, which member shall be a resident of and a property owner or a resident or a property owner if there be no resident property owner in the area proposed to be

annexed, shall be added to the original membership and the full board thereafter convened upon call of the mayor: PROVIDED FURTHER, That three members of the board shall constitute a quorum. [2009 c 549 § 2010; 1995 c 399 § 35; 1985 c 6 § 2; 1973 1st ex.s. c 164 § 14; 1965 c 7 § 35.13.171. Prior: 1961 c 282 § 2.]

**35.13.215 Annexation of fire districts—Transfer of employees.** (1) If any portion of a fire protection district is proposed for annexation to or incorporation into a city, code city, or town, both the fire protection district and the city, code city, or town shall jointly inform the employees of the fire protection district about hires, separations, terminations, and any other changes in employment that are a direct consequence of annexation or incorporations at the earliest reasonable opportunity.

(2) If any portion of a fire protection district is annexed to or incorporated into a city, code city or town, any employee of the fire protection district who (a) was at the time of such annexation or incorporation employed exclusively or principally in performing the powers, duties, and functions which are to be performed by the city, code city or town fire department (b) will, as a direct consequence of annexation or incorporation, be separated from the employ of the fire protection district, and (c) can perform the duties and meet the minimum requirements of the position to be filled, then such employee may transfer employment to the civil service system of the city, code city or town fire department as provided for in this section and RCW 35.13.225 and 35.13.235.

(3) For purposes of this section and RCW 35.13.225 and 35.13.235, employee means an individual whose employment with a fire protection district has been terminated because the fire protection district was annexed by a city, code city or town for purposes of fire protection. [2009 c 60 § 4; 1986 c 254 § 7.]

**35.13.225 Annexation of fire districts—Transfer of employees—Rights and benefits.** (1) An eligible employee may transfer into the civil service system of the city, code city, or town fire department by filing a written request with the city, code city, or town civil service commission and by giving written notice of the request to the board of commissioners of the fire protection district. Upon receipt of the request by the civil service commission, the transfer of employment must be made. The needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.13.215 and 35.13.235 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the city, code city, or town fire department when appropriate positions become available: PROVIDED, That employees who are not immediately hired by the city, code city, or town shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies.

(2)(a) Upon transfer, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district, including rights to:

(i) Compensation at least equal to the level of compensation at the time of transfer, unless the employee's rank and duties have been reduced as a result of the transfer. If the transferring employee is placed in a position with reduced rank and duties, the employee's compensation may be adjusted, but the adjustment may not result in a decrease of greater than fifty percent of the difference between the employee's compensation before the transfer and the compensation level for the position that the employee is transferred to;

(ii) Retirement, vacation, sick leave, and any other accrued benefit;

(iii) Promotion and service time accrual; and

(iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

(b) (a) of this subsection does not apply if upon transfer an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions.

(3) If upon transfer, the transferring employee receives the rights, benefits, and privileges established under subsection (2)(a)(i) through (iv) of this section, those rights, benefits, and privileges are subject to collective bargaining at the end of the current bargaining period for the jurisdiction to which the employee has transferred.

(4) Such bargaining must take into account the years of service the transferring employee accumulated before the transfer and must be treated as if those years of service occurred in the jurisdiction to which the employee has transferred. [2009 c 60 § 5; 1994 c 73 § 3; 1986 c 254 § 8.]

**Effective date—1994 c 73:** See note following RCW 35.10.365.

**35.13.238 Annexation of territory served by fire districts, interlocal agreement process—Annexation of fire districts, transfer of employees.** (1)(a) An annexation by a city or town that is proposing to annex territory served by one or more fire protection districts may be accomplished by ordinance after entering into an interlocal agreement as provided in chapter 39.34 RCW with the county and the fire protection district or districts that have jurisdiction over the territory proposed for annexation.

(b) A city or town proposing to annex territory shall initiate the interlocal agreement process by sending notice to the fire protection district representative and county representative stating the city's or town's interest to enter into an interlocal agreement negotiation process. The parties have forty-five days to respond in the affirmative or negative. A negative response must state the reasons the parties do not wish to participate in an interlocal agreement negotiation. A failure to respond within the forty-five day period is deemed an affirmative response and the interlocal agreement negotiation process may proceed. The interlocal agreement process may not proceed if any negative responses are received within the forty-five day period.

(c) The interlocal agreement must describe the boundaries of the territory proposed for annexation and must be consistent with the boundaries identified in an ordinance describing the boundaries of the territory proposed for annexation and setting a date for a public hearing on the ordinance. If the boundaries of the territory proposed for annexation are agreed to by all parties, a notice of intention must be filed with the boundary review board created under RCW 36.93.030. However, the jurisdiction of the board may not be invoked as described in RCW 36.93.100 for annexations that are the subject of such agreement.

(2) An interlocal annexation agreement under this section must include the following:

(a) A statement of the goals of the agreement. Goals must include, but are not limited to:

(i) The transfer of revenues and assets between the fire protection districts and the city or town;

(ii) A consideration and discussion of the impact to the level of service of annexation on the unincorporated area, and an agreement that the impact on the ability of fire protection and emergency medical services within the incorporated area must not be negatively impacted at least through the budget cycle in which the annexation occurs;

(iii) A discussion with fire protection districts regarding the division of assets and its impact to citizens inside and outside the newly annexed area;

(iv) Community involvement, including an agreed upon schedule of public meetings in the area or areas proposed for annexation;

(v) Revenue sharing, if any;

(vi) Debt distribution;

(vii) Capital facilities obligations of the city, county, and fire protection districts;

(viii) An overall schedule or plan on the timing of any annexations covered under this agreement; and

(ix) A description of which of the annexing cities' development regulations will apply and be enforced in the area.

(b) The subject areas and policies and procedures the parties agree to undertake in annexations. Subject areas may include, but are not limited to:

(i) Roads and traffic impact mitigation;

(ii) Surface and storm water management;

(iii) Coordination and timing of comprehensive plan and development regulation updates;

(iv) Outstanding bonds and special or improvement district assessments;

(v) Annexation procedures;

(vi) Distribution of debt and revenue sharing for annexation proposals, code enforcement, and inspection services;

(vii) Financial and administrative services; and

(viii) Consultation with other service providers, including water-sewer districts, if applicable.

(c) A term of at least five years, which may be extended by mutual agreement of the city or town, the county, and the fire protection district.

(3) If the fire protection district, annexing city or town, and county reach an agreement on the enumerated goals, the annexation ordinance may proceed and is not subject to referendum. If only the annexing city or town and county reach an agreement on the enumerated goals, the city or town and county may proceed with annexation under the interlocal

agreement, but the annexation ordinance provided for in this section is subject to referendum for forty-five days after its passage. Upon the filing of a timely and sufficient referendum petition with the legislative body of the city or town, signed by qualified electors in a number not less than ten percent of the votes cast in the last general state election in the area to be annexed, the question of annexation must be submitted to the voters of the area in a general election if one is to be held within ninety days or at a special election called for that purpose according to RCW 29A.04.330. Notice of the election must be given as provided in RCW 35.13.080, and the election must be conducted as provided in the general election laws under Title 29A RCW. The annexation must be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition to the annexation.

After the expiration of the forty-fifth day from, but excluding, the date of passage of the annexation ordinance, if a timely and sufficient referendum petition has not been filed, the area annexed becomes a part of the city or town upon the date fixed in the ordinance of annexation.

(4) If any portion of a fire protection district is proposed for annexation to or incorporation into a city or town, both the fire protection district and the city or town shall jointly inform the employees of the fire protection district about hires, separations, terminations, and any other changes in employment that are a direct consequence of annexation or incorporation at the earliest reasonable opportunity.

(5) The needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.10.360 and 35.10.370 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the city or town fire department when appropriate positions become available. Employees who are not immediately hired by the city or town shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies.

(6)(a) Upon transfer, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district, including rights to:

(i) Compensation at least equal to the level of compensation at the time of transfer, unless the employee's rank and duties have been reduced as a result of the transfer. If the transferring employee is placed in a position with reduced rank and duties, the employee's compensation may be adjusted, but the adjustment may not result in a decrease of greater than fifty percent of the difference between the employee's compensation before the transfer and the compensation level for the position that the employee is transferred to;

(ii) Retirement, vacation, sick leave, and any other accrued benefit;

(iii) Promotion and service time accrual; and

(iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

(b) (a) of this subsection does not apply if upon transfer an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions.

(7) If upon transfer, the transferring employee receives the rights, benefits, and privileges established under subsection (6)(a)(i) through (iv) of this section, those rights, benefits, and privileges are subject to collective bargaining at the end of the current bargaining period for the jurisdiction to which the employee has transferred.

(8) Such bargaining must take into account the years of service the transferring employee accumulated before the transfer and must be treated as if those years of service occurred in the jurisdiction to which the employee has transferred. [2009 c 60 § 7.]

**35.13.252 Fire protection and safety in proposed annexed territory—Report request.** Upon the written request of a fire protection district, cities and towns annexing territory under this chapter shall, prior to completing the annexation, issue a report regarding the likely effects that the annexation and any associated asset transfers may have upon the safety of residents within and outside the proposed annexation area. The report must address, but is not limited to, the provisions of fire protection and emergency medical services within and outside of the proposed annexation area. A fire protection district may only request a report under this section when at least five percent of the assessed valuation of the fire protection district will be annexed. [2009 c 60 § 6.]

**35.13.490 Annexation of territory used for an agricultural fair.** (1) Territory owned by a county and used for an agricultural fair as provided in chapter 15.76 RCW or chapter 36.37 RCW may only be annexed to a city or town through the method prescribed in this section.

(a) The legislative body of the city or town proposing the annexation must submit a request for annexation and a legal description of the subject territory to the legislative authority of the county within which the territory is located.

(b) Upon receipt of the request and description, the county legislative authority has thirty days to review the proposal and determine if the annexation proceedings will continue. As a condition of approval, the county legislative authority may modify the proposal, but it may not add territory that was not included in the request and description. Approval of the county legislative authority is a condition precedent to further proceedings upon the request and there is no appeal of the county legislative authority's decision.

(c) If the county legislative authority determines that the proceedings may continue, it must, within thirty days of the determination, fix a date for a public hearing on the proposal, and cause notice of the hearing to be published at least once a week for two weeks prior to the hearing in one or more newspapers of general circulation in the territory proposed for annexation. The notice must also be posted in three public places within the subject territory, specify the time and place of the hearing, and invite interested persons to appear and voice approval or disapproval of the annexation. If the annexation proposal provides for assumption of indebtedness

or adoption of a proposed zoning regulation, the notice must include a statement of these requirements.

(d) If, following the conclusion of the hearing, a majority of the county legislative authority deems the annexation proposal to be in the best interest of the county, it may adopt a resolution approving of the annexation.

(e) If, following the county legislative authority's adoption of the annexation approval resolution, the legislative body of the city or town proposing annexation determines to effect the annexation, it must do so by ordinance. The ordinance: (i) May only include territory approved for annexation in the resolution adopted under (d) of this subsection; and (ii) must not exclude territory approved for annexation in the resolution adopted under (d) of this subsection. Upon passage of the annexation ordinance, a certified copy must be filed with the applicable county legislative authority.

(2) Any territory annexed through an ordinance adopted under this section is annexed and becomes a part of the city or town upon the date fixed in the ordinance. [2009 c 402 § 3.]

**Intent—2009 c 402:** "The legislature recognizes that agricultural fairs serve valuable educational, vocational, and recreational purposes that promote the public good and serve as showcases for an important sector of Washington's economy. The legislature also recognizes that counties provide territory for agricultural fairs and supporting services, thereby creating locales for economic and other beneficial activities. Washington's increasing population can, however, create significant annexation pressures that impact fairgrounds and surrounding lands.

In recognition of the many benefits of agricultural fairs and the importance of promoting effective annexation laws, the legislature intends to establish clear and logical procedures for the annexation of county-owned fairgrounds that are consistent with the longstanding requirement that these grounds may only be annexed with the consent of a majority of the county legislative authority." [2009 c 402 § 1.]

## Chapter 35.13A RCW

### WATER OR SEWER DISTRICTS— ASSUMPTION OF JURISDICTION

#### Sections

35.13A.090 Employment and rights of district employees.

**35.13A.090 Employment and rights of district employees.** Whenever a city acquires all of the facilities of a district, pursuant to this chapter, such a city shall offer to employ every full time employee of the district who is engaged in the operation of such a district's facilities on the date on which such city acquires the district facilities. When a city acquires any portion of the facilities of such a district, such a city shall offer to employ full time employees of the district as of the date of the acquisition of the facilities of the district who are not longer needed by the district.

Whenever a city employs a person who was employed immediately prior thereto by the district, arrangements shall be made:

(1) For the retention of all sick leave standing to the employee's credit in the plan of such district.

(2) For a vacation with pay during the first year of employment equivalent to that to which he or she would have been entitled if he or she had remained in the employment of the district. [2009 c 549 § 2011; 1999 c 153 § 32; 1971 ex.s. c 95 § 9.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

## Chapter 35.14 RCW

## COMMUNITY MUNICIPAL CORPORATIONS

## Sections

- 35.14.030 Community council—Employees—Office—Officers—Quorum—Meetings—Compensation and expenses.  
 35.14.060 Original term of existence of community municipal corporation—Continuation of existence—Procedure.

**35.14.030 Community council—Employees—Office—Officers—Quorum—Meetings—Compensation and expenses.** Each community council shall be staffed by a deputy to the city clerk of the city with which the service area is consolidated or annexed and shall be provided with such other clerical and technical assistance and a properly equipped office as may be necessary to carry out its functions.

Each community council shall elect a chair and vice chair from its membership. A majority of the council shall constitute a quorum. Each action of the community municipal corporation shall be by resolution approved by vote of the majority of all the members of the community council. Meetings shall be held at such times and places as provided in the rules of the community council. Members of the community council shall receive no compensation.

The necessary expenses of the community council shall be budgeted and paid by the city. [2009 c 549 § 2012; 1967 c 73 § 3.]

**35.14.060 Original term of existence of community municipal corporation—Continuation of existence—Procedure.** The original terms of existence of any community municipal corporation shall be for at least four years and until the first Monday in January next following a regular municipal election held in the city.

Any such community municipal corporation may be continued thereafter for additional periods of four years' duration with the approval of the voters at an election held and conducted in the manner provided for in this section.

Authorization for a community municipal corporation to continue its term of existence for each additional period of four years may be initiated pursuant to a resolution or a petition in the following manner:

(1) A resolution praying for such continuation may be adopted by the community council and shall be filed not less than seven months prior to the end of the term of existence of such corporation with the city council or other legislative body of the city in which the service area is located.

(2) A petition for continuation shall be signed by at least ten percent of the registered voters residing within the service area and shall be filed not less than six months prior to the end of the term of existence of such corporation with the city council or other legislative body of the city in which the service area is located.

At the same election at which a proposition is submitted to the voters of the service area for the continuation of the community municipal corporation for an additional period of four years, the community councilmembers of such municipal corporation shall be elected. The positions on such council shall be the same in number as the original or initial council and shall be numbered consecutively and elected at large. Declarations of candidacy and withdrawals shall be in the

same manner as is provided for members of the city council or other legislative body of the city.

Upon receipt of a petition, the city clerk shall examine the signatures thereon and certify to the sufficiency thereof. No person may withdraw his or her name from a petition after it has been filed.

Upon receipt of a valid resolution or upon duly certifying a petition for continuation of a community municipal corporation, the city clerk with whom the resolution or petition was filed shall cause a proposition on continuation of the term of existence of the community municipal corporation to be placed on the ballot at the next city general election. No person shall be eligible to vote on such proposition at such election unless he or she is a qualified voter and resident of the service area.

The ballots shall contain the words "For continuation of community municipal corporation" and "Against continuation of community municipal corporation" or words equivalent thereto, and shall also contain the names of the candidates to be voted for to fill the positions on the community council. The names of all candidates to be voted upon shall be printed on the ballot alphabetically in groups under the numbered position on the council for which they are candidates.

If the results of the election as certified by the county canvassing board reveal that a majority of the votes cast are for continuation, the municipal corporation shall continue in existence for an additional period of four years, and certificates of election shall be issued to the successful candidates who shall assume office at the same time as members of the city council or other legislative body of the city. [2009 c 549 § 2013; 1967 c 73 § 6.]

## Chapter 35.17 RCW

## COMMISSION FORM OF GOVERNMENT

## Sections

- 35.17.060 President.  
 35.17.070 Vice president.  
 35.17.080 Employees of commission.  
 35.17.150 Officers and employees—Passes, free services prohibited, exceptions—Penalty.  
 35.17.280 Legislative—Initiative petition—Checking by clerk.

**35.17.060 President.** The mayor shall be president of the commission. He or she shall preside at its meetings when present and shall oversee all departments and recommend to the commission, action on all matters requiring attention in any department. [2009 c 549 § 2014; 1965 c 7 § 35.17.060. Prior: 1911 c 116 § 15, part; RRS § 9104, part.]

**35.17.070 Vice president.** The commissioner of finance and accounting shall be vice president of the commission. In the absence or inability of the mayor, he or she shall perform the duties of president. [2009 c 549 § 2015; 1965 c 7 § 35.17.070. Prior: 1911 c 116 § 15, part; RRS § 9104, part.]

**35.17.080 Employees of commission.** The commission shall appoint by a majority vote a city clerk and such other officers and employees as the commission may by ordinance

provide. Any officer or employee appointed by the commission may be discharged at any time by vote of a majority of the members of the commission. Any commissioner may perform any duties pertaining to his or her department but without additional compensation therefor. [2009 c 549 § 2016; 1965 c 7 § 35.17.080. Prior: 1943 c 25 § 3, part; 1911 c 116 § 12, part; Rem. Supp. 1943 § 9101, part.]

**35.17.150 Officers and employees—Passes, free services prohibited, exceptions—Penalty.** No officer or employee, elected or appointed, shall receive from any enterprise operating under a public franchise any frank, free ticket, or free service or receive any service upon terms more favorable than are granted to the public generally: PROVIDED, That the provisions of this section shall not apply to free transportation furnished to police officers and firefighters in uniform nor to free service to city officials provided for in the franchise itself.

Any violation of the provisions of this section shall be a misdemeanor. [2009 c 549 § 2017; 1965 c 7 § 35.17.150. Prior: 1961 c 268 § 11; prior: 1911 c 116 § 17, part; RRS § 9106, part.]

**35.17.280 Legislative—Initiative petition—Checking by clerk.** Within ten days from the filing of a petition submitting a proposed ordinance the city clerk shall ascertain and append to the petition his or her certificate stating whether or not it is signed by a sufficient number of registered voters, using the registration records and returns of the preceding municipal election for his or her sources of information, and the commission shall allow him or her extra help for that purpose, if necessary. If the signatures are found by the clerk to be insufficient the petition may be amended in that respect within ten days from the date of the certificate. Within ten days after submission of the amended petition the clerk shall make an examination thereof and append his or her certificate thereto in the same manner as before. If the second certificate shall also show the number of signatures to be insufficient, the petition shall be returned to the person filing it. [2009 c 549 § 2018; 1965 c 7 § 35.17.280. Prior: (i) 1911 c 116 § 20, part; RRS § 9109, part. (ii) 1911 c 116 § 21, part; RRS § 9110, part.]

**Chapter 35.18 RCW  
COUNCIL-MANAGER PLAN**

Sections

35.18.005	Repealed.
35.18.010	The council-manager plan.
35.18.040	City manager—Qualifications.
35.18.050	City manager—Bond and oath.
35.18.060	City manager—Authority.
35.18.070	City manager—May serve two or more cities.
35.18.090	City manager—Department heads—Authority.
35.18.110	City manager—Interference by councilmembers.
35.18.120	City manager—Removal—Resolution and notice.
35.18.130	City manager—Removal—Reply and hearing.
35.18.150	Council—Eligibility.
35.18.170	Council meetings.
35.18.180	Council—Ordinances—Recording.
35.18.190	Mayor—Election—Vacancy.
35.18.200	Mayor—Duties.
35.18.280	Organization—Holding over by incumbent officials and employees.

**35.18.005 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**35.18.010 The council-manager plan.** Under the council-manager plan of city government, the councilmembers shall be the only elective officials. The council shall appoint an officer whose title shall be "city manager" who shall be the chief executive officer and head of the administrative branch of city or town government. The city manager shall be responsible to the council for the proper administration of all affairs of the city or town. [2009 c 549 § 2019; 1965 c 7 § 35.18.010. Prior: 1955 c 337 § 2; prior: (i) 1943 c 271 § 8, part; Rem. Supp. 1943 § 9198-17, part. (ii) 1943 c 271 § 12, part; Rem. Supp. 1943 § 9198-21, part. (iii) 1949 c 84 § 2, part; 1943 c 271 § 17, part; Rem. Supp. 1949 § 9198-26, part.]

**35.18.040 City manager—Qualifications.** The city manager need not be a resident. He or she shall be chosen by the council solely on the basis of his or her executive and administrative qualifications with special reference to his or her actual experience in, or his or her knowledge of, accepted practice in respect to the duties of his or her office. No person elected to membership on the council shall be eligible for appointment as city manager until one year has elapsed following the expiration of the term for which he or she was elected. [2009 c 549 § 2020; 1965 c 7 § 35.18.040. Prior: 1955 c 337 § 4; prior: (i) 1949 c 84 § 2, part; 1943 c 271 § 17, part; Rem. Supp. 1949 § 9198-26, part. (ii) 1943 c 271 § 12, part; Rem. Supp. 1943 § 9198-21, part.]

**35.18.050 City manager—Bond and oath.** Before entering upon the duties of his or her office the city manager shall take the official oath for the support of the government and the faithful performance of his or her duties and shall execute and file with the clerk of the council a bond in favor of the city or town in such sum as may be fixed by the council. [2009 c 549 § 2021; 1965 c 7 § 35.18.050. Prior: 1955 c 337 § 5; prior: 1943 c 271 § 12, part; Rem. Supp. 1943 § 9198-21, part.]

**35.18.060 City manager—Authority.** The powers and duties of the city manager shall be:

- (1) To have general supervision over the administrative affairs of the municipality;
- (2) To appoint and remove at any time all department heads, officers, and employees of the city or town, except members of the council, and subject to the provisions of any applicable law, rule, or regulation relating to civil service: PROVIDED, That the council may provide for the appointment by the mayor, subject to confirmation by the council, of the city planning commission, and other advisory citizens' committees, commissions and boards advisory to the city council: PROVIDED FURTHER, That the city manager shall appoint the municipal judge to a term of four years, subject to confirmation by the council. The municipal judge may be removed only on conviction of malfeasance or misconduct in office, or because of physical or mental disability rendering him or her incapable of performing the duties of his or her office. The council may cause an audit to be made of any

department or office of the city or town government and may select the persons to make it, without the advice or consent of the city manager;

(3) To attend all meetings of the council at which his or her attendance may be required by that body;

(4) To see that all laws and ordinances are faithfully executed, subject to the authority which the council may grant the mayor to maintain law and order in times of emergency;

(5) To recommend for adoption by the council such measures as he or she may deem necessary or expedient;

(6) To prepare and submit to the council such reports as may be required by that body or as he or she may deem it advisable to submit;

(7) To keep the council fully advised of the financial condition of the city or town and its future needs;

(8) To prepare and submit to the council a tentative budget for the fiscal year;

(9) To perform such other duties as the council may determine by ordinance or resolution. [2009 c 549 § 2022; 1987 c 3 § 5; 1965 ex.s. c 116 § 1; 1965 c 7 § 35.18.060. Prior: 1955 c 337 § 6; prior: (i) 1949 c 84 § 2, part; 1943 c 271 § 17, part; Rem. Supp. 1949 § 9198-26, part. (ii) 1949 c 84 § 1; 1943 c 271 § 15; Rem. Supp. 1949 § 9198-24. (iii) 1949 c 84 § 3, part; 1943 c 271 § 18, part; Rem. Supp. 1949 § 9198-27, part.]

**Severability—1987 c 3:** See note following RCW 3.70.010.

**35.18.070 City manager—May serve two or more cities.** Whether the city manager shall devote his or her full time to the affairs of one city or town shall be determined by the council. A city manager may serve two or more cities or towns in that capacity at the same time. [2009 c 549 § 2023; 1965 c 7 § 35.18.070. Prior: 1943 c 271 § 13; Rem. Supp. 1943 § 9198-22.]

**35.18.090 City manager—Department heads—Authority.** The city manager may authorize the head of a department or office responsible to him or her to appoint and remove subordinates in such department or office. Any officer or employee who may be appointed by the city manager, or by the head of a department or office, except one who holds his or her position subject to civil service, may be removed by the manager or other such appointing officer at any time. Subject to the provisions of RCW 35.18.060, the decision of the manager or other appointing officer, shall be final and there shall be no appeal therefrom to any other office, body, or court whatsoever. [2009 c 549 § 2024; 1965 c 7 § 35.18.090. Prior: 1955 c 337 § 7; prior: (i) 1949 c 84 § 2, part; 1943 c 271 § 17, part; Rem. Supp. 1949 § 9198-26, part. (ii) 1949 c 84 § 3, part; 1943 c 271 § 18, part; Rem. Supp. 1949 § 9198-27, part.]

**35.18.110 City manager—Interference by councilmembers.** Neither the council, nor any of its committees or members shall direct or request the appointment of any person to, or his or her removal from, office by the city manager or any of his or her subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the manager and neither the council nor any committee or member thereof shall give

orders to any subordinate of the city manager, either publicly or privately: PROVIDED, HOWEVER, That nothing herein shall be construed to prohibit the council, while in open session, from fully and freely discussing with the city manager anything pertaining to appointments and removals of city officers and employees and city affairs. [2009 c 549 § 2025; 1965 c 7 § 35.18.110. Prior: 1955 c 337 § 14; prior: 1943 c 271 § 19, part; Rem. Supp. 1943 § 9198-28, part.]

**35.18.120 City manager—Removal—Resolution and notice.** The city manager shall be appointed for an indefinite term and may be removed by a majority vote of the council.

At least thirty days before the effective date of his or her removal, the city manager must be furnished with a formal statement in the form of a resolution passed by a majority vote of the city council stating the council's intention to remove him or her and the reasons therefor. Upon passage of the resolution stating the council's intention to remove the manager, the council by a similar vote may suspend him or her from duty, but his or her pay shall continue until his or her removal becomes effective. [2009 c 549 § 2026; 1965 c 7 § 35.18.120. Prior: 1955 c 337 § 17; prior: 1943 c 271 § 14, part; Rem. Supp. 1943 § 9198-23, part.]

**35.18.130 City manager—Removal—Reply and hearing.** The city manager may, within thirty days from the date of service upon him or her of a copy thereof, reply in writing to the resolution stating the council's intention to remove him or her. In the event no reply is timely filed, the resolution shall upon the thirty-first day from the date of such service, constitute the final resolution removing the manager, and his or her services shall terminate upon that day. If a reply shall be timely filed with its clerk, the council shall fix a time for a public hearing upon the question of the manager's removal and a final resolution removing the manager shall not be adopted until a public hearing has been had. The action of the council in removing the manager shall be final. [2009 c 549 § 2027; 1965 c 7 § 35.18.130. Prior: 1955 c 337 § 18; prior: 1943 c 271 § 14, part; Rem. Supp. 1943 § 9198-23, part.]

**35.18.150 Council—Eligibility.** Only a qualified elector of the city or town may be a member of the council and upon ceasing to be such, or upon being convicted of a crime involving moral turpitude, or of violating the provisions of RCW 35.18.110, he or she shall immediately forfeit his or her office. [2009 c 549 § 2028; 1965 c 7 § 35.18.150. Prior: 1955 c 337 § 15; prior: (i) 1943 c 271 § 19, part; Rem. Supp. 1943 § 9198-28, part. (ii) 1943 c 271 § 9, part; Rem. Supp. 1943 § 9198-18, part.]

**35.18.170 Council meetings.** The council shall meet at the times and places fixed by ordinance but must hold at least one regular meeting each month. The clerk shall call special meetings of the council upon request of the mayor or any two members. At all meetings of the city council, a majority of the councilmembers shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed



by ordinance. Requests for special meetings shall state the subject to be considered and no other subject shall be considered at a special meeting.

All meetings of the council and of committees thereof shall be open to the public and the rules of the council shall provide that citizens of the city or town shall have a reasonable opportunity to be heard at any meetings in regard to any matter being considered thereat. [2009 c 549 § 2029; 1965 c 7 § 35.18.170. Prior: 1955 c 337 § 20; prior: 1943 c 271 § 7; Rem. Supp. 1943 § 9198-16.]

**35.18.180 Council—Ordinances—Recording.** No ordinance, resolution, or order, including those granting a franchise or valuable privilege, shall have any validity or effect unless passed by the affirmative vote of at least a majority of the members of the city or town council. Every ordinance or resolution adopted shall be signed by the mayor or two members, filed with the clerk within two days and by him or her recorded. [2009 c 549 § 2030; 1965 c 7 § 35.18.180. Prior: 1959 c 76 § 3; 1943 c 271 § 11; Rem. Supp. 1943 § 9198-20.]

**35.18.190 Mayor—Election—Vacancy.** Biennially at the first meeting of the new council the members thereof shall choose a chair from among their number who shall have the title of mayor. In addition to the powers conferred upon him or her as mayor, he or she shall continue to have all the rights, privileges and immunities of a member of the council. If a vacancy occurs in the office of mayor, the members of the council at their next regular meeting shall select a mayor from among their number for the unexpired term. [2009 c 549 § 2031; 1969 c 101 § 1; 1965 c 7 § 35.18.190. Prior: 1955 c 337 § 9; prior: 1943 c 271 § 8, part; Rem. Supp. 1943 § 9198-17, part.]

**35.18.200 Mayor—Duties.** The mayor shall preside at meetings of the council, and be recognized as the head of the city or town for all ceremonial purposes and by the governor for purposes of military law.

He or she shall have no regular administrative duties, but in time of public danger or emergency, if so authorized by the council, shall take command of the police, maintain law, and enforce order. [2009 c 549 § 2032; 1965 c 7 § 35.18.200. Prior: 1955 c 337 § 10; prior: 1943 c 271 § 8, part; Rem. Supp. 1943 § 9198-17, part.]

**35.18.280 Organization—Holding over by incumbent officials and employees.** Councilmembers shall take office at the times provided by RCW 35.18.270 as now or hereafter amended. The other city officials and employees who are incumbent at the time the council-manager plan takes effect shall hold office until their successors have been selected in accordance with the provisions of this chapter. [2009 c 549 § 2033; 1965 c 7 § 35.18.280. Prior: 1943 c 271 § 8, part; Rem. Supp. 1943 § 9198-17, part.]

## Chapter 35.20 RCW

### MUNICIPAL COURTS—CITIES OVER FOUR HUNDRED THOUSAND

#### Sections

35.20.105	Court administrator.
35.20.131	Director of traffic violations.
35.20.150	Election of judges—Vacancies.
35.20.170	Qualifications of judges—Practice of law prohibited.
35.20.180	Judges' oath of office, official bonds.
35.20.190	Additional judge.
35.20.220	Powers and duties of chief clerk—Remittance by city treasurer—Interest—Disposition.
35.20.240	First judges—Transfer of equipment.
35.20.258	Sentencing—Crimes against property—Criminal history check.

**35.20.105 Court administrator.** There shall be a court administrator of the municipal court appointed by the judges of the municipal court, subject to confirmation by a majority of the legislative body of the city, and removable by the judges of the municipal court subject to like confirmation. Before entering upon the duties of his or her office the court administrator shall take and subscribe an oath the same as required for officers of the city, and shall execute a penal bond in such sum and with such sureties as the legislative body of the city may direct and subject to their approval, conditioned for the faithful performance of his or her duties, and that he or she will pay over to the treasurer of said city all moneys belonging to the city which shall come into his or her hands as such court administrator. The court administrator shall be paid such compensation as the legislative body of the city may deem reasonable. The court administrator shall act under the supervision and control of the presiding judge of the municipal court and shall supervise the functions of the chief clerk and director of the traffic violations bureau or similar agency of the city, and perform such other duties as may be assigned to him or her by the presiding judge of the municipal court. [2009 c 549 § 2034; 1969 ex.s. c 147 § 2.]

**35.20.131 Director of traffic violations.** There shall be a director of the traffic violations bureau or such similar agency of the city as may be created by ordinance of said city. Said director shall be appointed by the judges of the municipal court subject to such civil service laws and rules as may be provided in such city. Said director shall act under the supervision of the court administrator of the municipal court and shall be responsible for the supervision of the traffic violations bureau or similar agency of the city. Upon \*this 1969 amendatory act becoming effective those employees connected with the traffic violations bureau under civil service status shall be continued in such employment and such classification. Before entering upon the duties of his or her office said director shall take and subscribe an oath the same as required for officers of the city and shall execute a penal bond in such sum and with such sureties as the legislative body of the city may direct and subject to their approval, conditioned for the faithful performance of his or her duties, and that he or she will faithfully account to and pay over to the treasurer of said city all moneys belonging to the city which shall come into his or her hands as such director. Said director shall be paid such compensation as the legislative body of the city may deem reasonable. [2009 c 549 § 2035; 1969 ex.s. c 147 § 3.]

\*Reviser's note: "this 1969 amendatory act" [1969 ex.s. c 147] became effective August 11, 1969.

**35.20.150 Election of judges—Vacancies.** The municipal judges shall be elected on the first Tuesday after the first Monday in November, 1958, and on the first Tuesday after the first Monday of November every fourth year thereafter by the electorate of the city in which the court is located. The auditor of the county concerned shall designate by number each position to be filled in the municipal court, and each candidate at the time of the filing of his or her declaration of candidacy shall designate by number so assigned the position for which he or she is a candidate, and the name of such candidate shall appear on the ballot only for such position. The name of the person who receives the greatest number of votes and of the person who receives the next greatest number of votes at the primary for a single nonpartisan position shall appear on the general election ballot under the designation therefor. Elections for municipal judge shall be nonpartisan. They shall hold office for a term of four years and until their successors are elected and qualified. The term of office shall start on the second Monday in January following such election. Any vacancy in the municipal court due to a death, disability or resignation of a municipal court judge shall be filled by the mayor, to serve out the unexpired term. Such appointment shall be subject to confirmation by the legislative body of the city. [2009 c 549 § 2036; 1975-'76 2nd ex.s. c 120 § 7; 1965 c 7 § 35.20.150. Prior: 1961 c 213 § 1; 1955 c 290 § 15.]

**Severability—1975-'76 2nd ex.s. c 120:** See note following RCW 29A.52.210.

*Times for holding elections: RCW 29A.04.311 through 29A.04.330.*

**35.20.170 Qualifications of judges—Practice of law prohibited.** No person shall be eligible to the office of judge of the municipal court unless he or she shall have been admitted to practice law before the courts of record of this state and is an elector of the city in which he or she files for office. No judge of said court during his or her term of office shall engage either directly or indirectly in the practice of law. [2009 c 549 § 2037; 1965 c 7 § 35.20.170. Prior: 1955 c 290 § 17.]

**35.20.180 Judges' oath of office, official bonds.** Every judge of such municipal court, before he or she enters upon the duties of his or her office, shall take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution of the State of Washington, and that I will faithfully discharge the duties of the office of judge of the municipal court of the city of . . . . (naming such city) according to the best of my ability; and I do further certify that I do not advocate, nor am I a member of an organization that advocates, the overthrow of the government of the United States by force or violence." The oath shall be filed in the office of the county auditor. He or she shall also give such bonds to the state and city for the faithful performance of his or her duties as may be by law or ordinance directed. [2009 c 549 § 2038; 1965 c 7 § 35.20.180. Prior: 1955 c 290 § 18.]

**35.20.190 Additional judge.** Whenever the number of departments of the municipal court is increased, the mayor of such city shall appoint a qualified person as provided in RCW 35.20.170 to act as municipal judge until the next general election. He or she shall be paid salaries in accordance with the provisions of this chapter and provided with the necessary court, office space and personnel as authorized herein. [2009 c 549 § 2039; 1967 c 241 § 4; 1965 c 7 § 35.20.190. Prior: 1955 c 290 § 19.]

**Application—1967 c 241:** See note following RCW 3.66.090.

**Severability—1967 c 241:** See RCW 3.74.932.

**35.20.220 Powers and duties of chief clerk—Remittance by city treasurer—Interest—Disposition.** (1) The chief clerk, under the supervision and direction of the court administrator of the municipal court, shall have the custody and care of the books, papers and records of the court. The chief clerk or a deputy shall be present during the session of the court and has the power to swear all witnesses and jurors, administer oaths and affidavits, and take acknowledgments. The chief clerk shall keep the records of the court and shall issue all process under his or her hand and the seal of the court. The chief clerk shall do and perform all things and have the same powers pertaining to the office as the clerks of the superior courts have in their office. He or she shall receive all fines, penalties, and fees of every kind and keep a full, accurate, and detailed account of the same. The chief clerk shall on each day pay into the city treasury all money received for the city during the day previous, with a detailed account of the same, and taking the treasurer's receipt therefor.

(2) Except as provided in RCW 10.99.080, the city treasurer shall remit monthly thirty-two percent of the noninterest money received under this section, other than for parking infractions and certain costs to the state treasurer. "Certain costs" as used in this subsection, means those costs awarded to prevailing parties in civil actions under RCW 4.84.010 or 36.18.040, or those costs awarded against convicted defendants in criminal actions under RCW 10.01.160, 10.46.190, or 36.18.040, or other similar statutes if such costs are specifically designated as costs by the court and are awarded for the specific reimbursement of costs incurred by the state, county, city, or town in the prosecution of the case, including the fees of defense counsel. Money remitted under this subsection to the state treasurer shall be deposited in the state general fund.

(3) The balance of the noninterest money received under this section shall be retained by the city and deposited as provided by law.

(4) Penalties, fines, bail forfeitures, fees, and costs may accrue interest at the rate of twelve percent per annum, upon assignment to a collection agency. Interest may accrue only while the case is in collection status.

(5) Interest retained by the court on penalties, fines, bail forfeitures, fees, and costs shall be split twenty-five percent to the state treasurer for deposit in the state general fund, twenty-five percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, twenty-five percent to the city general fund, and twenty-five percent to the city general fund to fund local courts. [2009 c 479 § 19; 2004 c 15 § 9; 1995 c 291 § 4; 1988

c 169 § 6; 1985 c 389 § 8; 1984 c 258 § 319; 1969 ex.s. c 147 § 5; 1965 c 7 § 35.20.220. Prior: 1955 c 290 § 22.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Intent—2004 c 15:** See note following RCW 10.34.130.

**Effective date—1985 c 389:** See note following RCW 27.24.070.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.34.130.

### 35.20.240 First judges—Transfer of equipment.

Upon the effective date of this chapter (June 8, 1955), any justice of the peace who was the duly appointed and acting police justice of the city shall become a judge of the municipal court upon his or her filing his or her oath of office and bond as required by this chapter, and shall serve as a judge of said municipal court until the regularly elected judges of the court shall qualify following their election in 1958, or thereafter as provided in RCW 35.20.150. Such judge shall be paid salaries in accordance with this chapter while so serving. Such salaries from the city and county shall be in lieu of those now (June 8, 1955) being paid to the justice of the peace acting as police justice of the city court: PROVIDED, That upon the justices of the peace qualifying as municipal judges under this chapter, the number of justices of the peace for such city shall be reduced accordingly as provided in RCW 35.20.190. Should any justice of the peace acting as police judge fail to qualify as a judge of the municipal court, the mayor of such city shall designate one of the other justices of the peace of that city to act as municipal judge until the next general election in November, 1958, and the qualifying of the regularly elected judge. All furniture and equipment belonging to the city and county in which the court is situated, now under the care and custody of the justice of the peace and municipal judge, shall be transferred to the municipal court for use in the operation and maintenance of such court. [2009 c 549 § 2041; 1965 c 7 § 35.20.240. Prior: 1955 c 290 § 24.]

**Reviser's note:** Justices of the peace and courts to be construed to mean district judges and courts. See RCW 3.30.015.

**35.20.258 Sentencing—Crimes against property—Criminal history check.** Before a sentence is imposed upon a defendant convicted of a crime against property, the court or the prosecuting authority shall check existing judicial information systems to determine the criminal history of the defendant. [2009 c 431 § 18.]

**Applicability—2009 c 431:** See note following RCW 9.94A.863.

## Chapter 35.21 RCW

### MISCELLANEOUS PROVISIONS

#### Sections

35.21.260	Streets—Annual report to secretary of transportation.
35.21.392	Contractors—Authority of city to verify registration and report violations.
35.21.684	Authority to regulate placement or use of homes—Regulation of manufactured homes—Issuance of permits—Restrictions on location of manufactured/mobile homes and entry or removal of recreational vehicles used as primary residences.
35.21.717	Taxation of internet access—Moratorium.
35.21.850	Taxation of motor carriers of freight for hire—Limitation—Exceptions.
35.21.910	Community athletics programs—Sex discrimination prohibited.

35.21.980 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)

**35.21.260 Streets—Annual report to secretary of transportation.** The governing authority of each city and town on or before May 31st of each year shall submit such records and reports regarding street operations in the city or town to the secretary of transportation on forms furnished by him or her as are necessary to enable him or her to compile an annual report thereon. [2009 c 549 § 2042; 1999 c 204 § 1; 1984 c 7 § 19; 1977 c 75 § 29; 1965 c 7 § 35.21.260. Prior: 1943 c 82 § 12; 1937 c 187 § 64; Rem. Supp. 1943 § 6450-64.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**35.21.392 Contractors—Authority of city to verify registration and report violations.** A city that issues a business license to a person required to be registered under chapter 18.27 RCW may verify that the person is registered under chapter 18.27 RCW and report violations to the department of labor and industries. The department of licensing shall conduct the verification for cities that participate in the master license system. [2009 c 432 § 2.]

**Report—2009 c 432:** See note following RCW 18.27.062.

**35.21.684 Authority to regulate placement or use of homes—Regulation of manufactured homes—Issuance of permits—Restrictions on location of manufactured/mobile homes and entry or removal of recreational vehicles used as primary residences.** (1) A city or town may not adopt an ordinance that has the effect, directly or indirectly, of discriminating against consumers' choices in the placement or use of a home in such a manner that is not equally applicable to all homes. Homes built to 42 U.S.C. Sec. 5401-5403 standards (as amended in 2000) must be regulated for the purposes of siting in the same manner as site built homes, factory built homes, or homes built to any other state construction or local design standard. However, except as provided in subsection (2) of this section, any city or town may require that:

- (a) A manufactured home be a new manufactured home;
- (b) The manufactured home be set upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground be enclosed by concrete or an approved concrete product which can be either load bearing or decorative;
- (c) The manufactured home comply with all local design standards applicable to all other homes within the neighborhood in which the manufactured home is to be located;
- (d) The home is thermally equivalent to the state energy code; and
- (e) The manufactured home otherwise meets all other requirements for a designated manufactured home as defined in RCW 35.63.160.

A city with a population of one hundred thirty-five thousand or more may choose to designate its building official as the person responsible for issuing all permits, including department of labor and industries permits issued under chapter 43.22 RCW in accordance with an interlocal agreement

under chapter 39.34 RCW, for alterations, remodeling, or expansion of manufactured housing located within the city limits under this section.

(2) A city or town may not adopt an ordinance that has the effect, directly or indirectly, of restricting the location of manufactured/mobile homes in manufactured/mobile home communities that were legally in existence before June 12, 2008, based exclusively on the age or dimensions of the manufactured/mobile home. This does not preclude a city or town from restricting the location of a manufactured/mobile home in manufactured/mobile home communities for any other reason including, but not limited to, failure to comply with fire, safety, or other local ordinances or state laws related to manufactured/mobile homes.

(3) Except as provided under subsection (4) of this section, a city or town may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a recreational vehicle used as a primary residence in manufactured/mobile home communities.

(4) Subsection (3) of this section does not apply to any local ordinance or state law that:

(a) Imposes fire, safety, or other regulations related to recreational vehicles;

(b) Requires utility hookups in manufactured/mobile home communities to meet state or federal building code standards for manufactured/mobile home communities; or

(c) Includes both of the following provisions:

(i) A recreational vehicle must contain at least one internal toilet and at least one internal shower; and

(ii) If the requirement in (c)(i) of this subsection is not met, a manufactured/mobile home community must provide toilets and showers.

(5) For the purposes of this section, "manufactured/mobile home community" has the same meaning as in RCW 59.20.030.

(6) This section does not override any legally recorded covenants or deed restrictions of record.

(7) This section does not affect the authority granted under chapter 43.22 RCW. [2009 c 79 § 1; 2008 c 117 § 1; 2004 c 256 § 2.]

**Findings—Intent—2004 c 256:** "The legislature finds that: Congress has preempted the regulation by the states of manufactured housing construction standards through adoption of construction standards for manufactured housing (42 U.S.C. Sec. 5401-5403); and this federal regulation is equivalent to the state's uniform building code. The legislature also finds that congress has declared that: (1) Manufactured housing plays a vital role in meeting the housing needs of the nation; and (2) manufactured homes provide a significant resource for affordable homeownership and rental housing accessible to all Americans (42 U.S.C. Sec. 5401-5403). The legislature intends to protect the consumers' rights to choose among a number of housing construction alternatives without restraint of trade or discrimination by local governments." [2004 c 256 § 1.]

**Effective date—2004 c 256:** "This act takes effect July 1, 2005." [2004 c 256 § 6.]

### 35.21.717 Taxation of internet access—Moratorium.

A city or town may tax internet access providers under generally applicable business taxes or fees, at a rate not to exceed the rate applied to a general service classification. For the purposes of this section, "internet access" has the same meaning as in RCW 82.04.297. [2009 c 535 § 1101; 2004 c 154 § 1; 2002 c 181 § 1; 1999 c 307 § 1; 1997 c 304 § 2.]

[2009 RCW Supp—page 540]

**Intent—Construction—2009 c 535:** See notes following RCW 82.04.192.

**Findings—1997 c 304:** "The legislature finds that the newly emerging business of providing internet service is providing widespread benefits to all levels of society. The legislature further finds that this business is important to our state's continued growth in the high-technology sector of the economy and that, as this industry emerges, it should not be burdened by new taxes that might not be appropriate for the type of service being provided. The legislature further finds that there is no clear statutory guidance as to how internet services should be classified for tax purposes and intends to ratify the state's current treatment of such services." [1997 c 304 § 1.]

**Severability—1997 c 304:** "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 304 § 6.]

**Effective date—1997 c 304:** "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 9, 1997]." [1997 c 304 § 7.]

### 35.21.850 Taxation of motor carriers of freight for hire—Limitation—Exceptions.

No demand for a fee or tax or penalty shall be made by a city or town against a motor carrier of freight for hire on gross income derived from providing transportation services more than four years after the close of the year in which the same accrued except (1) against a taxpayer who has been guilty of fraud or misrepresentation of a material fact; or (2) where a taxpayer has executed a written waiver of such limitations; or (3) against a taxpayer who has not registered as required by the ordinance of the city or town imposing such tax or fee, provided this subsection shall not apply to a taxpayer who has registered in any city or town where the taxpayer maintains an office or terminal, or in the case of a taxpayer who has paid a license fee or tax based on such gross receipts to any city or town levying same which may reasonably be construed to be the principal market of the taxpayer but in which he or she maintains no office or terminal. [2009 c 549 § 2043; 1982 c 169 § 3.]

**Applicability—1982 c 169:** See note following RCW 35.21.840.

**35.21.910 Community athletics programs—Sex discrimination prohibited.** The antidiscrimination provisions of RCW 49.60.500 apply to community athletics programs and facilities operated, conducted, or administered by a city or town. [2009 c 467 § 4.]

**Findings—Declarations—2009 c 467:** See note following RCW 49.60.500.

### 35.21.980 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

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

law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 78.]

## Chapter 35.22 RCW FIRST-CLASS CITIES

### Sections

35.22.130	Requisites of petition—Effect of favorable vote.
35.22.210	Separate designation of councilmembers in certain first-class cities.
35.22.280	Specific powers enumerated.
35.22.610	Police officers—Appointment without regard to residence authorized.
35.22.620	Public works or improvements—Limitations on work by public employees—Small works roster—Purchase of reused or recycled materials or products.

**35.22.130 Requisites of petition—Effect of favorable vote.** A petition containing the demand for the submission of the proposed charter amendment or for an election to be held for the purpose of electing a board of freeholders for the purpose of preparing a new charter for the city as provided in RCW 35.22.140 shall be filed with the city clerk and each signer shall write his or her place of residence after his or her signature. This and RCW 35.22.120 do not deprive city councils of the right to submit proposed charter amendments but affords a concurrent and additional method of submission. [2009 c 549 § 2044; 1967 c 123 § 2; 1965 c 7 § 35.22.130. Prior: (i) 1903 c 186 § 2; RRS § 8964. (ii) 1903 c 186 § 3; RRS § 8965.]

**35.22.210 Separate designation of councilmembers in certain first-class cities.** Any city of the first class having a population less than one hundred thousand by the last federal census and having a charter providing that each of its councilmembers shall be the commissioner of an administrative department of such city, may by ordinance provide for the separate designation of such councilmembers as officers, in accordance with such administrative departments, and for their filing for and election to office under such separate designations. [2009 c 549 § 2045; 1965 c 7 § 35.22.210. Prior: 1925 ex.s. c 61 § 1; RRS § 8948-1.]

**35.22.280 Specific powers enumerated.** Any city of the first class shall have power:

(1) To provide for general and special elections, for questions to be voted upon, and for the election of officers;

(2) To provide for levying and collecting taxes on real and personal property for its corporate uses and purposes, and to provide for the payment of the debts and expenses of the corporation;

(3) To control the finances and property of the corporation, and to acquire, by purchase or otherwise, such lands and other property as may be necessary for any part of the corporate uses provided for by its charter, and to dispose of any such property as the interests of the corporation may, from time to time, require;

(4) To borrow money for corporate purposes on the credit of the corporation, and to issue negotiable bonds therefor, on such conditions and in such manner as shall be prescribed in its charter; but no city shall, in any manner or for

any purpose, become indebted to an amount in the aggregate to exceed the limitation of indebtedness prescribed by chapter 39.36 RCW as now or hereafter amended;

(5) To issue bonds in place of or to supply means to meet maturing bonds or other indebtedness, or for the consolidation or funding of the same;

(6) To purchase or appropriate private property within or without its corporate limits, for its corporate uses, upon making just compensation to the owners thereof, and to institute and maintain such proceedings as may be authorized by the general laws of the state for the appropriation of private property for public use;

(7) To lay out, establish, open, alter, widen, extend, grade, pave, plank, establish grades, or otherwise improve streets, alleys, avenues, sidewalks, wharves, parks, and other public grounds, and to regulate and control the use thereof, and to vacate the same, and to authorize or prohibit the use of electricity at, in, or upon any of said streets, or for other purposes, and to prescribe the terms and conditions upon which the same may be so used, and to regulate the use thereof;

(8) To change the grade of any street, highway, or alley within its corporate limits, and to provide for the payment of damages to any abutting owner or owners who shall have built or made other improvements upon such street, highway, or alley at any point opposite to the point where such change shall be made with reference to the grade of such street, highway, or alley as the same existed prior to such change;

(9) To authorize or prohibit the locating and constructing of any railroad or street railroad in any street, alley, or public place in such city, and to prescribe the terms and conditions upon which any such railroad or street railroad shall be located or constructed; to provide for the alteration, change of grade, or removal thereof; to regulate the moving and operation of railroad and street railroad trains, cars, and locomotives within the corporate limits of said city; and to provide by ordinance for the protection of all persons and property against injury in the use of such railroads or street railroads;

(10) To provide for making local improvements, and to levy and collect special assessments on property benefited thereby, and for paying for the same or any portion thereof;

(11) To acquire, by purchase or otherwise, lands for public parks within or without the limits of such city, and to improve the same. When the language of any instrument by which any property is so acquired limits the use of said property to park purposes and contains a reservation of interest in favor of the grantor or any other person, and where it is found that the property so acquired is not needed for park purposes and that an exchange thereof for other property to be dedicated for park purposes is in the public interest, the city may, with the consent of the grantor or such other person, his or her heirs, successors, or assigns, exchange such property for other property to be dedicated for park purposes, and may make, execute, and deliver proper conveyances to effect the exchange. In any case where, owing to death or lapse of time, there is neither donor, heir, successor, or assignee to give consent, this consent may be executed by the city and filed for record with an affidavit setting forth all efforts made to locate people entitled to give such consent together with the facts which establish that no consent by such persons is attainable. Title to property so conveyed by the city shall vest in the grantee free and clear of any trust in favor of the public

arising out of any prior dedication for park purposes, but the right of the public shall be transferred and preserved with like force and effect to the property received by the city in such exchange;

(12) To construct and keep in repair bridges, viaducts, and tunnels, and to regulate the use thereof;

(13) To determine what work shall be done or improvements made at the expense, in whole or in part, of the owners of the adjoining contiguous, or proximate property, or others specially benefited thereby; and to provide for the manner of making and collecting assessments therefor;

(14) To provide for erecting, purchasing, or otherwise acquiring waterworks, within or without the corporate limits of said city, to supply said city and its inhabitants with water, or authorize the construction of same by others when deemed for the best interests of such city and its inhabitants, and to regulate and control the use and price of the water so supplied;

(15) To provide for lighting the streets and all public places, and for furnishing the inhabitants thereof with gas or other lights, and to erect, or otherwise acquire, and to maintain the same, or to authorize the erection and maintenance of such works as may be necessary and convenient therefor, and to regulate and control the use thereof;

(16) To establish and regulate markets, and to provide for the weighing, measuring, and inspection of all articles of food and drink offered for sale thereat, or at any other place within its limits, by proper penalties, and to enforce the keeping of proper legal weights and measures by all vendors in such city, and to provide for the inspection thereof. Whenever the words "public markets" are used in this chapter, and the public market is managed in whole or in part by a public corporation created by a city, the words shall be construed to include all real or personal property located in a district or area designated by a city as a public market and traditionally devoted to providing farmers, crafts vendors and other merchants with retail space to market their wares to the public. Property located in such a district or area need not be exclusively or primarily used for such traditional public market retail activities and may include property used for other public purposes including, but not limited to, the provision of human services and low-income or moderate-income housing;

(17) To erect and establish hospitals and pesthouses, and to control and regulate the same;

(18) To provide for establishing and maintaining reform schools for juvenile offenders;

(19) To provide for the establishment and maintenance of public libraries, and to appropriate, annually, such percent of all moneys collected for fines, penalties, and licenses as shall be prescribed by its charter, for the support of a city library, which shall, under such regulations as shall be prescribed by ordinance, be open for use by the public;

(20) To regulate the burial of the dead, and to establish and regulate cemeteries within or without the corporate limits, and to acquire land therefor by purchase or otherwise; to cause cemeteries to be removed beyond the limits of the corporation, and to prohibit their establishment within two miles of the boundaries thereof;

(21) To direct the location and construction of all buildings in which any trade or occupation offensive to the senses

or deleterious to public health or safety shall be carried on, and to regulate the management thereof; and to prohibit the erection or maintenance of such buildings or structures, or the carrying on of such trade or occupation within the limits of such corporation, or within the distance of two miles beyond the boundaries thereof;

(22) To provide for the prevention and extinguishment of fires and to regulate or prohibit the transportation, keeping, or storage of all combustible or explosive materials within its corporate limits, and to regulate and restrain the use of fireworks;

(23) To establish fire limits and to make all such regulations for the erection and maintenance of buildings or other structures within its corporate limits as the safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in safe condition;

(24) To regulate the manner in which stone, brick, and other buildings, party walls, and partition fences shall be constructed and maintained;

(25) To deepen, widen, dock, cover, wall, alter, or change the channels of waterways and courses, and to provide for the construction and maintenance of all such works as may be required for the accommodation of commerce, including canals, slips, public landing places, wharves, docks, and levees, and to control and regulate the use thereof;

(26) To control, regulate, or prohibit the anchorage, moorage, and landing of all watercrafts and their cargoes within the jurisdiction of the corporation;

(27) To fix the rates of wharfage and dockage, and to provide for the collection thereof, and to provide for the imposition and collection of such harbor fees as may be consistent with the laws of the United States;

(28) To license, regulate, control, or restrain wharf boats, tugs, and other boats used about the harbor or within such jurisdiction;

(29) To require the owners of public halls or other buildings to provide suitable means of exit; to provide for the prevention and abatement of nuisances, for the cleaning and purification of watercourses and canals, for the drainage and filling up of ponds on private property within its limits, when the same shall be offensive to the senses or dangerous to health; to regulate and control, and to prevent and punish, the defilement or pollution of all streams running through or into its corporate limits, and for the distance of five miles beyond its corporate limits, and on any stream or lake from which the water supply of said city is taken, for a distance of five miles beyond its source of supply; to provide for the cleaning of areas, vaults, and other places within its corporate limits which may be so kept as to become offensive to the senses or dangerous to health, and to make all such quarantine or other regulations as may be necessary for the preservation of the public health, and to remove all persons afflicted with any infectious or contagious disease to some suitable place to be provided for that purpose;

(30) To declare what shall be a nuisance, and to abate the same, and to impose fines upon parties who may create, continue, or suffer nuisances to exist;

(31) To regulate the selling or giving away of intoxicating, malt, vinous, mixed, or fermented liquors as authorized by the general laws of the state: PROVIDED, That no license

shall be granted to any person or persons who shall not first comply with the general laws of the state in force at the time the same is granted;

(32) To grant licenses for any lawful purpose, and to fix by ordinance the amount to be paid therefor, and to provide for revoking the same. However, no license shall be granted to continue for longer than one year from the date thereof. A city may not require a business to be licensed based solely upon registration under or compliance with the streamlined sales and use tax agreement;

(33) To regulate the carrying on within its corporate limits of all occupations which are of such a nature as to affect the public health or the good order of said city, or to disturb the public peace, and which are not prohibited by law, and to provide for the punishment of all persons violating such regulations, and of all persons who knowingly permit the same to be violated in any building or upon any premises owned or controlled by them;

(34) To restrain and provide for the punishment of vagrants, mendicants, prostitutes, and other disorderly persons;

(35) To provide for the punishment of all disorderly conduct, and of all practices dangerous to public health or safety, and to make all regulations necessary for the preservation of public morality, health, peace, and good order within its limits, and to provide for the arrest, trial, and punishment of all persons charged with violating any of the ordinances of said city. The punishment shall not exceed a fine of five thousand dollars or imprisonment in the city jail for one year, or both such fine and imprisonment. The punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Such cities alternatively may provide that violations of ordinances constitute a civil violation subject to monetary penalties, but no act which is a state crime may be made a civil violation;

(36) To project or extend its streets over and across any tidelands within its corporate limits, and along or across the harbor areas of such city, in such manner as will best promote the interests of commerce;

(37) To provide in their respective charters for a method to propose and adopt amendments thereto. [2009 c 549 § 2046; 2008 c 129 § 1; 1993 c 83 § 4; 1990 c 189 § 3; 1986 c 278 § 3; 1984 c 258 § 802; 1977 ex.s. c 316 § 20; 1971 ex.s. c 16 § 1; 1965 ex.s. c 116 § 2; 1965 c 7 § 35.22.280. Prior: 1890 p 218 § 5; RRS § 8966.]

**Effective date—1993 c 83:** See note following RCW 35.21.163.

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Severability—1977 ex.s. c 316:** See note following RCW 70.48.020.

**35.22.610 Police officers—Appointment without regard to residence authorized.** Notwithstanding the provisions of RCW 35.21.200, as now or hereafter amended, all cities of the first class shall have the right and authority to appoint and employ a person as a regular or special police officer of said city regardless of his or her place of residence or domicile at the date of his or her appointment.

This provision shall supersede any provision of any city charter to the contrary. [2009 c 549 § 2047; 1967 ex.s. c 37 § 1.]

*Residence requirements for appointive city officials and employees: RCW 35.21.200.*

**35.22.620 Public works or improvements—Limitations on work by public employees—Small works roster—Purchase of reused or recycled materials or products.** (1) As used in this section, the term "public works" means as defined in RCW 39.04.010.

(2) A first-class city may have public works performed by contract pursuant to public notice and call for competitive bids. As limited by subsection (3) of this section, a first-class city may have public works performed by city employees in any annual or biennial budget period equal to a dollar value not exceeding ten percent of the public works construction budget, including any amount in a supplemental public works construction budget, over the budget period. The amount of public works that a first-class city has a county perform for it under RCW 35.77.020 shall be included within this ten percent limitation.

If a first-class city has public works performed by public employees in any budget period that are in excess of this ten percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that city in its next budget period. Twenty percent of the motor vehicle fuel tax distributions to that city shall be withheld if two years after the year in which the excess amount of work occurred, the city has failed to so reduce the amount of public works that it has performed by public employees. The amount so withheld shall be distributed to the city when it has demonstrated in its reports to the state auditor that the amount of public works it has performed by public employees has been so reduced.

Whenever a first-class city has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works within that budget period shall be done by contract pursuant to public notice and call for competitive bids.

The state auditor shall report to the state treasurer any first-class city that exceeds this amount and the extent to which the city has or has not reduced the amount of public works it has performed by public employees in subsequent years.

(3) In addition to the percentage limitation provided in subsection (2) of this section, a first-class city shall not have public employees perform a public works project in excess of ninety thousand dollars if more than a single craft or trade is involved with the public works project, or a public works project in excess of forty-five thousand dollars if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

(4) In addition to the accounting and record-keeping requirements contained in RCW 39.04.070, every first-class

city annually shall prepare a report for the state auditor indicating the total public works construction budget and supplemental public works construction budget for that year, the total construction costs of public works performed by public employees for that year, and the amount of public works that is performed by public employees above or below ten percent of the total construction budget. However, if a city budgets on a biennial basis, this annual report shall indicate the amount of public works that is performed by public employees within the current biennial period that is above or below ten percent of the total biennial construction budget.

Each first-class city with a population of one hundred fifty thousand or less shall use the form required by RCW 43.09.205 to account and record costs of public works in excess of five thousand dollars that are not let by contract.

(5) The cost of a separate public works project shall be the costs of materials, supplies, equipment, and labor on the construction of that project. The value of the public works budget shall be the value of all the separate public works projects within the budget.

(6) The competitive bidding requirements of this section may be waived by the city legislative authority pursuant to RCW 39.04.280 if an exemption contained within that section applies to the work or contract.

(7) In lieu of the procedures of subsections (2) and (6) of this section, a first-class city may let contracts using the small works roster process in RCW 39.04.155.

Whenever possible, the city shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(8) The allocation of public works projects to be performed by city employees shall not be subject to a collective bargaining agreement.

(9) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(4), that are negotiated under chapter 39.35A RCW.

(10) Nothing in this section shall prohibit any first-class city from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused. [2009 c 229 § 3; 2002 c 94 § 1; 2000 c 138 § 203; 1998 c 278 § 2; 1993 c 198 § 9; 1989 c 431 § 59; 1987 c 120 § 1. Prior: 1985 c 219 § 1; 1985 c 169 § 6; 1979 ex.s. c 89 § 1; 1975 1st ex.s. c 56 § 1.]

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

**Severability—1989 c 431:** See RCW 70.95.901.

*Competitive bidding violations by municipal officer, penalties:* RCW 39.30.020.

*Subcontractors to be identified by bidder, when:* RCW 39.30.060.

## Chapter 35.23 RCW SECOND-CLASS CITIES

### Sections

35.23.010	Rights, powers, and privileges—Exchange of park purpose property.
35.23.111	City attorney—Duties.
35.23.131	City treasurer—Duties.
35.23.144	Combination of offices of treasurer with clerk—Powers of clerk.
35.23.352	Public works—Contracts—Bids—Small works roster—Purchasing requirements, recycled or reused materials or products.

35.23.410	Leasing of street ends on waterfront.
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**35.23.010 Rights, powers, and privileges—Exchange of park purpose property.** Every city of the second class shall be entitled "City of . . . ." (naming it), and by such name shall have perpetual succession; may sue and be sued in all courts and in all proceedings; shall have and use a common seal which it may alter at pleasure; may acquire, hold, lease, use and enjoy property of every kind and control and dispose of it for the common benefit; and, upon making a finding that any property acquired for park purposes is not useful for such purposes and that an exchange thereof for other property to be dedicated for park purposes is in the public interest, may, with the consent of the dedicator or donor, his or her heirs, successors or assigns, exchange such property for other property to be dedicated for park purposes and make, execute and deliver proper conveyances to effect the exchange. In any case where owing to death or lapse of time there is neither donor, heir, successor, nor assigns to give consent to the exchange, then this consent may be executed by the grantee. Title to property so conveyed by the city shall vest in the grantee free and clear of any trust in favor of the public arising out of any prior dedication for park purposes. [2009 c 549 § 2048; 1965 c 7 § 35.23.010. Prior: 1953 c 190 § 1; 1907 c 241 § 1; RRS § 9006.]

**35.23.111 City attorney—Duties.** The city attorney shall advise the city authorities and officers in all legal matters pertaining to the business of the city and shall approve all ordinances as to form. He or she shall represent the city in all actions brought by or against the city or against city officials in their official capacity. He or she shall perform such other duties as the city council by ordinance may direct. [2009 c 549 § 2049; 1965 c 7 § 35.24.110. Prior: 1915 c 184 § 26; 1893 c 70 § 11; 1890 p 192 § 132; RRS § 9140. Formerly RCW 35.24.110.]

*Employment of legal interns:* RCW 35.21.760.

**35.23.131 City treasurer—Duties.** The city treasurer shall receive and safely keep all money which comes into his or her hands as treasurer, for all of which he or she shall execute triplicate receipts, one to be filed with the city clerk. He or she shall receive all money due the city and disburse it on warrants issued by the clerk countersigned by the mayor, and not otherwise. He or she shall make monthly settlements with the city clerk at which time he or she shall deliver to the clerk the duplicate receipts for all money received and all canceled warrants as evidence of money paid. [2009 c 549 § 2050; 1965 c 7 § 35.24.130. Prior: 1915 c 184 § 24; 1893 c 70 § 8; 1890 p 192 § 132; RRS § 9138. Formerly RCW 35.24.130.]

**35.23.144 Combination of offices of treasurer with clerk—Powers of clerk.** In the event that the office of treasurer is combined with the office of clerk so as to become the office of clerk-treasurer, the clerk shall exercise all the powers vested in and perform all the duties required to be performed by the treasurer, and in cases where the law requires the treasurer to sign or execute any papers or documents, it shall not be necessary for the clerk to sign as treasurer, but



shall be sufficient if he or she signs as clerk. [2009 c 549 § 2051; 1969 c 116 § 4. Formerly RCW 35.24.144.]

**35.23.352 Public works—Contracts—Bids—Small works roster—Purchasing requirements, recycled or reused materials or products.** (1) Any second-class city or any town may construct any public works, as defined in RCW 39.04.010, by contract or day labor without calling for bids therefor whenever the estimated cost of the work or improvement, including cost of materials, supplies and equipment will not exceed the sum of sixty-five thousand dollars if more than one craft or trade is involved with the public works, or forty thousand dollars if a single craft or trade is involved with the public works or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

Whenever the cost of the public work or improvement, including materials, supplies and equipment, will exceed these figures, the same shall be done by contract. All such contracts shall be let at public bidding upon publication of notice calling for sealed bids upon the work. The notice shall be published in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, at least thirteen days prior to the last date upon which bids will be received. The notice shall generally state the nature of the work to be done that plans and specifications therefor shall then be on file in the city or town hall for public inspections, and require that bids be sealed and filed with the council or commission within the time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, postal money order, or surety bond to the council or commission for a sum of not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. The council or commission of the city or town shall let the contract to the lowest responsible bidder or shall have power by resolution to reject any or all bids and to make further calls for bids in the same manner as the original call.

When the contract is let then all bid proposal deposits shall be returned to the bidders except that of the successful bidder which shall be retained until a contract is entered into and a bond to perform the work furnished, with surety satisfactory to the council or commission, in accordance with RCW 39.08.030. If the bidder fails to enter into the contract in accordance with his or her bid and furnish a bond within ten days from the date at which he or she is notified that he or she is the successful bidder, the check or postal money order and the amount thereof shall be forfeited to the council or commission or the council or commission shall recover the amount of the surety bond. 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.

If no bid is received on the first call the council or commission may readvertise and make a second call, or may enter into a contract without any further call or may purchase the supplies, material or equipment and perform the work or improvement by day labor.

(2) The allocation of public works projects to be performed by city or town employees shall not be subject to a collective bargaining agreement.

(3) In lieu of the procedures of subsection (1) of this section, a second-class city or a town may let contracts using the small works roster process provided in RCW 39.04.155.

Whenever possible, the city or town shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(4) The form required by RCW 43.09.205 shall be to account and record costs of public works in excess of five thousand dollars that are not let by contract.

(5) The cost of a separate public works project shall be the costs of the materials, equipment, supplies, and labor on that construction project.

(6) Any purchase of supplies, material, or equipment, except for public work or improvement, where the cost thereof exceeds seven thousand five hundred dollars shall be made upon call for bids.

(7) Bids shall be called annually and at a time and in the manner prescribed by ordinance for the publication in a newspaper of general circulation in the city or town of all notices or newspaper publications required by law. The contract shall be awarded to the lowest responsible bidder.

(8) For advertisement and formal sealed bidding to be dispensed with as to purchases with an estimated value of fifteen thousand dollars or less, the council or commission must authorize by resolution, use of the uniform procedure provided in RCW 39.04.190.

(9) The city or town legislative authority may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

(10) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(4), that are negotiated under chapter 39.35A RCW.

(11) Nothing in this section shall prohibit any second class city or any town from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused. [2009 c 229 § 4; 2002 c 94 § 2; 2000 c 138 § 204; 1998 c 278 § 3; 1996 c 18 § 2. Prior: 1994 c 273 § 9; 1994 c 81 § 18; 1993 c 198 § 10; 1989 c 431 § 56; 1988 c 168 § 3; 1987 c 120 § 2; prior: 1985 c 469 § 24; 1985 c 219 § 2; 1985 c 169 § 7; 1979 ex.s. c 89 § 2; 1977 ex.s. c 41 § 1; 1974 ex.s. c 74 § 2; 1965 c 114 § 1; 1965 c 7 § 35.23.352; prior: 1957 c 121 § 1; 1951 c 211 § 1; prior: (i) 1907 c 241 § 52; RRS § 9055. (ii) 1915 c 184 § 31; RRS § 9145. (iii) 1947 c 151 § 1; 1890 p 209 § 166; Rem. Supp. 1947 § 9185.]

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

**Severability—1989 c 431:** See RCW 70.95.901.

*Competitive bidding violations by municipal officer, penalties:* RCW 39.30.020.

*Subcontractors to be identified by bidder, when:* RCW 39.30.060.

**35.23.410 Leasing of street ends on waterfront.** The city council may lease for business purposes portions of the ends of streets terminating in the waterfront or navigable waters of the city with the written consent of all the property owners whose properties abut upon the portion proposed to be leased. The lease may be made for any period not exceed-

ing fifteen years but must provide that at intervals of every five years during the term, the rental to be paid by the lessee shall be readjusted between him or her and the city by mutual agreement, or if they cannot agree by a board of arbitration, one to be chosen by the city, one by the lessee and the third by the other two, their decision to be final. The vote of two-thirds of all the councilmembers elected is necessary to authorize such a lease. [2009 c 549 § 2052; 1965 c 7 § 35.23.410. Prior: 1907 c 241 § 67, part; RRS § 9070, part.]

**35.23.440 Specific powers enumerated.** The city council of each second-class city shall have power and authority:

(1) Ordinances: To make and pass all ordinances, orders, and resolutions not repugnant to the Constitution of the United States or the state of Washington, or the provisions of this title, necessary for the municipal government and management of the affairs of the city, for the execution of the powers vested in said body corporate, and for the carrying into effect of the provisions of this title.

(2) License of shows: To fix and collect a license tax, for the purposes of revenue and regulation, on theatres, melodeons, balls, concerts, dances, theatrical, circus, or other performances, and all performances where an admission fee is charged, or which may be held in any house or place where wines or liquors are sold to the participators; also all shows, billiard tables, pool tables, bowling alleys, exhibitions, or amusements.

(3) Hotels, etc., licenses: To fix and collect a license tax for the purposes of revenue and regulation on and to regulate all taverns, hotels, restaurants, banks, brokers, manufactories, livery stables, express companies and persons engaged in transmitting letters or packages, railroad, stage, and steamboat companies or owners, whose principal place of business is in such city, or who have an agency therein.

(4) Peddlers', etc., licenses: To license, for the purposes of revenue and regulation, tax, prohibit, suppress, and regulate all raffles, hawkers, peddlers, pawnbrokers, refreshment or coffee stands, booths, or sheds; and to regulate as authorized by state law all tipling houses, dram shops, saloons, bars, and barrooms.

(5) Dance houses: To prohibit or suppress, or to license and regulate all dance houses, fandango houses, or any exhibition or show of any animal or animals.

(6) License vehicles: To license for the purposes of revenue and regulation, and to tax hackney coaches, cabs, omnibuses, drays, market wagons, and all other vehicles used for hire, and to regulate their stands, and to fix the rates to be charged for the transportation of persons, baggage, and property.

(7) Hotel runners: To license or suppress runners for steamboats, taverns, or hotels.

(8) License generally: To fix and collect a license tax for the purposes of revenue and regulation, upon all occupations and trades, and all and every kind of business authorized by law not heretofore specified. However, on any business, trade, or calling not provided by law to be licensed for state and county purposes, the amount of license shall be fixed at the discretion of the city council, as they may deem the interests and good order of the city may require. A city may not require a business to be licensed based solely upon registra-

tion under or compliance with the streamlined sales and use tax agreement.

(9) Riots: To prevent and restrain any riot or riotous assemblages, disturbance of the peace, or disorderly conduct in any place, house, or street in the city.

(10) Nuisances: To declare what shall be deemed nuisances; to prevent, remove, and abate nuisances at the expense of the parties creating, causing, or committing or maintaining the same, and to levy a special assessment on the land or premises whereon the nuisance is situated to defray the cost or to reimburse the city for the cost of abating the same.

(11) Stock pound: To establish, maintain, and regulate a common pound for estrays, and to appoint a poundkeeper, who shall be paid out of the fines and fees imposed and collected of the owners of any animals impounded, and from no other source; to prevent and regulate the running at large of any and all domestic animals within the city limits or any parts thereof, and to regulate or prevent the keeping of such animals within any part of the city.

(12) Control of certain trades: To control and regulate slaughterhouses, washhouses, laundries, tanneries, forges, and offensive trades, and to provide for their exclusion or removal from the city limits, or from any part thereof.

(13) Street cleaning: To provide, by regulation, for the prevention and summary removal of all filth and garbage in streets, sloughs, alleys, back yards, or public grounds of such city, or elsewhere therein.

(14) Gambling, etc.: To prohibit and suppress all gambling and all gambling or disorderly houses, and houses of ill fame, and all immoral and indecent amusements, exhibitions, and shows.

(15) Markets: To establish and regulate markets and market places.

(16) Speed of railroad cars: To fix and regulate the speed at which any railroad cars, streetcars, automobiles, or other vehicles may run within the city limits, or any portion thereof.

(17) City commons: To provide for and regulate the commons of the city.

(18) Fast driving: To regulate or prohibit fast driving or riding in any portion of the city.

(19) Combustibles: To regulate or prohibit the loading or storage of gunpowder and combustible or explosive materials in the city, or transporting the same through its streets or over its waters.

(20) Property: To have, purchase, hold, use, and enjoy property of every name or kind whatsoever, and to sell, lease, transfer, mortgage, convey, control, or improve the same; to build, erect, or construct houses, buildings, or structures of any kind needful for the use or purposes of such city.

(21) Fire department: To establish, continue, regulate, and maintain a fire department for such city, to change or reorganize the same, and to disband any company or companies of the said department; also, to discontinue and disband said fire department, and to create, organize, establish, and maintain a paid fire department for such city.

(22) Water supply: To adopt, enter into, and carry out means for securing a supply of water for the use of such city or its inhabitants, or for irrigation purposes therein.

(23) Overflow of water: To prevent the overflow of the city or to secure its drainage, and to assess the cost thereof to the property benefited.

(24) House numbers: To provide for the numbering of houses.

(25) Health board: To establish a board of health; to prevent the introduction and spread of disease; to establish a city infirmary and to provide for the indigent sick; and to provide and enforce regulations for the protection of health, cleanliness, peace, and good order of the city; to establish and maintain hospitals within or without the city limits; to control and regulate interments and to prohibit them within the city limits.

(26) Harbors and wharves: To build, alter, improve, keep in repair, and control the waterfront; to erect, regulate, and repair wharves, and to fix the rate of wharfage and transit of wharf, and levy dues upon vessels and commodities; and to provide for the regulation of berths, landing, stationing, and removing steamboats, sail vessels, rafts, barges, and all other watercraft; to fix the rate of speed at which steamboats and other steam watercraft may run along the waterfront of the city; to build bridges so as not to interfere with navigation; to provide for the removal of obstructions to the navigation of any channel or watercourses or channels.

(27) License of steamers: To license steamers, boats, and vessels used in any watercourse in the city, and to fix and collect a license tax thereon.

(28) Ferry licenses: To license ferries and toll bridges under the law regulating the granting of such license.

(29) Penalty for violation of ordinances: To provide that violations of ordinances with the punishment for any offense not exceeding a fine of five thousand dollars or imprisonment for more than one year, or both fine and imprisonment, but the punishment for any criminal ordinance shall be the same as the punishment provided in state law for the same crime. Alternatively, such a city may provide that a violation of an ordinance constitutes a civil violation subject to monetary penalties or to determine and impose fines for forfeitures and penalties, but no act which is a state crime may be made a civil violation. A violation of an order, regulation, or ordinance relating to traffic including parking, standing, stopping, and pedestrian offenses is a traffic infraction, except that violation of an order, regulation, or ordinance equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 remains a misdemeanor.

(30) Police department: To create and establish a city police; to prescribe their duties and their compensation; and to provide for the regulation and government of the same.

(31) Examine official accounts: To examine, either in open session or by committee, the accounts or doings of all officers or other persons having the care, management, or disposition of moneys, property, or business of the city.

(32) Contracts: To make all appropriations, contracts, or agreements for the use or benefit of the city and in the city's name.

(33) Streets and sidewalks: To provide by ordinance for the opening, laying out, altering, extending, repairing, grading, paving, planking, graveling, macadamizing, or otherwise improving of public streets, avenues, and other public ways, or any portion of any thereof; and for the construction, regulation, and repair of sidewalks and other street improvements,

all at the expense of the property to be benefited thereby, without any recourse, in any event, upon the city for any portion of the expense of such work, or any delinquency of the property holders or owners, and to provide for the forced sale thereof for such purposes; to establish a uniform grade for streets, avenues, sidewalks, and squares, and to enforce the observance thereof.

(34) Waterways: To clear, cleanse, alter, straighten, widen, fill up, or close any waterway, drain, or sewer, or any watercourse in such city when not declared by law to be navigable, and to assess the expense thereof, in whole or in part, to the property specially benefited.

(35) Sewerage: To adopt, provide for, establish, and maintain a general system of sewerage, draining, or both, and the regulation thereof; to provide funds by local assessments on the property benefited for the purpose aforesaid and to determine the manner, terms, and place of connection with main or central lines of pipes, sewers, or drains established, and compel compliance with and conformity to such general system of sewerage or drainage, or both, and the regulations of said council thereto relating, by the infliction of suitable penalties and forfeitures against persons and property, or either, for nonconformity to, or failure to comply with the provisions of such system and regulations or either.

(36) Buildings and parks: To provide for all public buildings, public parks, or squares, necessary or proper for the use of the city.

(37) Franchises: To permit the use of the streets for railroad or other public service purposes.

(38) Payment of judgments: To order paid any final judgment against such city, but none of its lands or property of any kind or nature, taxes, revenue, franchise, or rights, or interest, shall be attached, levied upon, or sold in or under any process whatsoever.

(39) Weighing of fuel: To regulate the sale of coal and wood in such city, and may appoint a measurer of wood and weigher of coal for the city, and define his or her duties, and may prescribe his or her term of office, and the fees he or she shall receive for his or her services: PROVIDED, That such fees shall in all cases be paid by the parties requiring such service.

(40) Hospitals, etc.: To erect and establish hospitals and pesthouses and to control and regulate the same.

(41) Waterworks: To provide for the erection, purchase, or otherwise acquiring of waterworks within or without the corporate limits of the city to supply such city and its inhabitants with water, and to regulate and control the use and price of the water so supplied.

(42) City lights: To provide for lighting the streets and all public places of the city and for furnishing the inhabitants of the city with gas, electric, or other light, and for the ownership, purchase or acquisition, construction, or maintenance of such works as may be necessary or convenient therefor: PROVIDED, That no purchase of any such water plant or light plant shall be made without first submitting the question of such purchase to the electors of the city.

(43) Parks: To acquire by purchase or otherwise land for public parks, within or without the limits of the city, and to improve the same.

(44) Bridges: To construct and keep in repair bridges, and to regulate the use thereof.

(45) Power of eminent domain: In the name of and for the use and benefit of the city, to exercise the right of eminent domain, and to condemn lands and property for the purposes of streets, alleys, parks, public grounds, waterworks, or for any other municipal purpose and to acquire by purchase or otherwise such lands and property as may be deemed necessary for any of the corporate uses provided for by this title, as the interests of the city may from time to time require.

(46) To provide for the assessment of taxes: To provide for the assessment, levying, and collecting of taxes on real and personal property for the corporate uses and purposes of the city and to provide for the payment of the debts and expenses of the corporation.

(47) Local improvements: To provide for making local improvements, and to levy and collect special assessments on the property benefited thereby and for paying the same or any portion thereof; to determine what work shall be done or improvements made, at the expense, in whole or in part, of the adjoining, contiguous, or proximate property, and to provide for the manner of making and collecting assessments therefor.

(48) Cemeteries: To regulate the burial of the dead and to establish and regulate cemeteries, within or without the corporate limits, and to acquire lands therefor by purchase or otherwise.

(49) Fire limits: To establish fire limits with proper regulations and to make all needful regulations for the erection and maintenance of buildings or other structures within the corporate limits as safety of persons or property may require, and to cause all such buildings and places as may from any cause be in a dangerous state to be put in a safe condition; to regulate the manner in which stone, brick, and other buildings, party walls, and partition fences shall be constructed and maintained.

(50) Safety and sanitary measures: To require the owners of public halls, theaters, hotels, and other buildings to provide suitable means of exit and proper fire escapes; to provide for the cleaning and purification of watercourses and canals and for the draining and filling up of ponds on private property within its limits when the same shall be offensive to the senses or dangerous to the health, and to charge the expense thereof to the property specially benefited, and to regulate and control and provide for the prevention and punishment of the defilement or pollution of all streams running in or through its corporate limits and a distance of five miles beyond its corporate limits, and of any stream or lake from which the water supply of the city is or may be taken and for a distance of five miles beyond its source of supply, and to make all quarantine and other regulations as may be necessary for the preservation of the public health and to remove all persons afflicted with any contagious disease to some suitable place to be provided for that purpose.

(51) To regulate liquor traffic: To regulate the selling or giving away of intoxicating, spirituous, malt, vinous, mixed, or fermented liquors as authorized by the general laws of the state.

(52) To establish streets on tidelands: To project or extend or establish streets over and across any tidelands within the limits of such city.

(53) To provide for the general welfare. [2009 c 549 § 2053; 2008 c 129 § 2; 1994 c 81 § 19; 1993 c 83 § 5; 1986 c

278 § 4. Prior: 1984 c 258 § 803; 1984 c 189 § 5; 1979 ex.s. c 136 § 28; 1977 ex.s. c 316 § 21; 1965 ex.s. c 116 § 7; 1965 c 7 § 35.23.440; prior: 1907 c 241 § 29; 1890 p 148 § 38; RRS § 9034.]

**Effective date—1994 c 81 § 19:** "Section 19 of this act shall take effect July 1, 1994." [1994 c 81 § 91.]

**Effective date—1993 c 83:** See note following RCW 35.21.163.

**Severability—1986 c 278:** See note following RCW 36.01.010.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Effective date—Severability—1979 ex.s. c 136:** See notes following RCW 46.63.010.

**Severability—1977 ex.s. c 316:** See note following RCW 70.48.020.

## Chapter 35.27 RCW

### TOWNS

#### Sections

35.27.030	Uncertain boundaries—Petition—Request for examination.
35.27.050	Report of survey.
35.27.090	Elections—Terms of office.
35.27.120	Oath and bond of officers.
35.27.170	Town treasurer—Duties.
35.27.190	Effect of consolidation of offices.
35.27.230	Records to be kept by clerk.
35.27.280	Town council—Quorum—Rules—Journal.
35.27.310	Ordinances—Clerk to keep book of ordinances.
35.27.330	Ordinances granting franchises—Requisites.
35.27.340	Audit and allowance of demands against town.

**35.27.030 Uncertain boundaries—Petition—Request for examination.** Whenever a petition is presented to the council of any incorporated town in this state, signed by not less than five electors of such town, setting forth that in the belief of the petitioners, the boundaries of said town are indefinite and uncertain and that on account of such indefiniteness and uncertainty the legality of the taxes levied within such town are in danger of being affected, and setting forth the particular causes or reasons of such alleged indefiniteness or uncertainty, it shall be the duty of the town council to cause the petition to be filed and recorded by the clerk, and to cause a copy of the same to be made and certified by the clerk and the corporate seal of such town to be attached to said certificate, and the mayor of such town shall forthwith present said certified copy of the petition to the board of county commissioners of the county wherein said town is situated, with a written request to be signed by him or her as such mayor that the said board of county commissioners proceed to examine the boundaries of such town or city, and make the same definite and certain. [2009 c 549 § 2054; 1965 c 7 § 35.27.030. Prior: 1899 c 79 § 1; RRS § 9195.]

**35.27.050 Report of survey.** The board of county commissioners, without unnecessary delay, shall make and file a report of their doings in the premises in the office of the county auditor, who shall transmit a certified copy thereof under the seal of the county, to the clerk of the town, and the clerk shall record the same in the records of the town, and keep the copy on file in his or her office. The report shall contain the description of the boundary of the town, as fixed by the board, written in plain words and figures and the boundaries so made and fixed shall be the boundaries of the town, and all the territory included within the boundary lines

so established shall be included in the town, and be a part thereof. [2009 c 549 § 2055; 1965 c 7 § 35.27.050. Prior: 1899 c 79 § 3; RRS § 9197.]

**35.27.090 Elections—Terms of office.** All general municipal elections in towns shall be held biennially in the odd-numbered years as provided in RCW 29A.04.330. The term of office of the mayor and treasurer shall be four years and until their successors are elected and qualified and assume office in accordance with RCW 29A.20.040: PROVIDED, That the term of the treasurer shall not commence in the same biennium in which the term of the mayor commences. Councilmembers shall be elected for four year terms and until their successors are elected and qualified and assume office in accordance with RCW 29A.20.040; three at one election and two at the next succeeding biennial election. [2009 c 549 § 2056; 1979 ex.s. c 126 § 23; 1965 c 7 § 35.27.090. Prior: 1963 c 200 § 16; 1961 c 89 § 4; prior: 1955 c 55 § 7; 1943 c 183 § 1, part; 1941 c 91 § 1, part; 1911 c 33 § 1, part; 1903 c 113 § 5, part; 1890 p 198 § 144, part; Rem. Supp. 1943 § 9165, part.]

**Purpose—1979 ex.s. c 126:** See RCW 29A.20.040(1).

**35.27.120 Oath and bond of officers.** Every officer of a town before entering upon the duties of his or her office shall take and file with the county auditor his or her oath of office. The clerk, treasurer, and marshal before entering upon their respective duties shall also each execute a bond approved by the council in such penal sum as the council by ordinance may determine, conditioned for the faithful performance of his or her duties including in the same bond the duties of all offices of which he or she is made ex officio incumbent.

All bonds, when approved, shall be filed with the town clerk, except the bonds of the clerk which shall be filed with the mayor. [2009 c 549 § 2057; 1986 c 167 § 19; 1965 c 7 § 35.27.120. Prior: 1890 p 199 § 145; RRS § 9166.]

**Severability—1986 c 167:** See note following RCW 29A.04.049.

**35.27.170 Town treasurer—Duties.** The town treasurer shall receive and safely keep all money which comes into his or her hands as treasurer, for all of which he or she shall give duplicate receipts, one of which shall be filed with the clerk. He or she shall pay out the money on warrants signed by the mayor and countersigned by the clerk and not otherwise. He or she shall make monthly settlements with the clerk. [2009 c 549 § 2058; 1965 c 7 § 35.27.170. Prior: 1961 c 89 § 6; prior: 1921 c 24 § 1, part; 1890 p 209 § 168, part; RRS § 9187, part.]

**35.27.190 Effect of consolidation of offices.** Upon the consolidation of the office of treasurer with that of clerk, the office of treasurer shall be abolished and the clerk shall exercise all the powers and perform all the duties required by statute or ordinance to be performed by the treasurer; in the execution of any papers his or her designation as clerk shall be sufficient.

Upon the consolidation of the office of clerk with that of treasurer, the treasurer shall exercise all the powers vested in and perform all the duties required to be performed by the

clerk. [2009 c 549 § 2059; 1965 c 7 § 35.27.190. Prior: (i) 1945 c 58 § 2; Rem. Supp. 1945 § 9177-2. (ii) 1945 c 58 § 3; Rem. Supp. 1945 § 9177-3.]

**35.27.230 Records to be kept by clerk.** The proceedings of the town council shall be kept in a book marked "records of council."

The town clerk shall keep a book marked "town accounts," in which shall be entered on the debit side all moneys received by the town including but not limited to proceeds from licenses and general taxes and in which shall be entered on the credit side all warrants drawn on the treasury.

He or she shall also keep a book marked "marshal's account" in which he or she shall charge the marshal with all licenses delivered to him or her and credit him or her with all money collected and paid in.

He or she shall also keep a book marked "treasurer's account" in which he or she shall keep a full account of the transactions of the town with the treasurer.

He or she shall also keep a book marked "licenses" in which he or she shall enter all licenses issued by him or her—the date thereof, to whom issued, for what, the time they expire, and the amount paid.

Each of the foregoing books, except the records of the council, shall have a general index sufficiently comprehensive to enable a person readily to ascertain matters contained therein.

He or she shall also keep a book marked "demands and warrants" in which he or she shall enter every demand against the town at the time of filing it. He or she shall state therein the final disposition of each demand and if it is allowed and a warrant drawn, he or she shall state the number of the warrant and its date. This book shall contain an index in which reference shall be made to each demand. [2009 c 549 § 2060; 1965 c 7 § 35.27.230. Prior: 1890 p 210 § 170, part; RRS § 9188, part.]

**35.27.280 Town council—Quorum—Rules—Journal.** A majority of the councilmembers shall constitute a quorum for the transaction of business, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance.

The mayor shall preside at all meetings of the council. The mayor shall have a vote only in case of a tie in the votes of the councilmembers. In the absence of the mayor the council may appoint a president pro tempore; in the absence of the clerk, the mayor or president pro tempore, shall appoint one of the councilmembers as clerk pro tempore. The council may establish rules for the conduct of its proceedings and punish any members or other person for disorderly behavior at any meeting. At the desire of any member, the ayes and noes shall be taken on any question and entered in the journal. [2009 c 549 § 2061; 1965 c 107 § 2; 1965 c 7 § 35.27.280. Prior: (i) 1890 p 201 § 151; RRS § 9172. (ii) 1890 p 201 § 152, part; RRS § 9173, part.]

**35.27.310 Ordinances—Clerk to keep book of ordinances.** The town clerk shall keep a book marked "ordinances" into which he or she shall copy all town ordinances,

with his or her certificate annexed to said copy stating that the foregoing ordinance is a true and correct copy of an ordinance of the town, and giving the number and title of the ordinance, and stating that it has been published or posted according to law. Such record copy, with the clerk's certificate, shall be prima facie evidence of the contents of the ordinance and of its passage and publication, and shall be admissible as such in any court or proceeding. Such record shall not be filed in any case but shall be returned to the custody of the clerk. Nothing herein shall be construed to prevent the proof of the passage and publication of ordinances in the usual way. The book of ordinances shall have a general index sufficiently comprehensive to enable a person readily to ascertain matters contained therein. [2009 c 549 § 2062; 1965 c 7 § 35.27.310. Prior: 1890 p 210 § 170, part; RRS § 9188, part.]

**35.27.330 Ordinances granting franchises—Requirements.** No ordinance or resolution granting any franchise for any purpose shall be passed by the council on the day of its introduction, nor within five days thereafter, nor at any other than a regular meeting, and no such ordinance or resolution shall have any validity or effect unless passed by the vote of at least three councilmembers. The town council may require a bond in a reasonable amount from any persons and corporations obtaining a franchise from the town conditioned for the faithful performance of the conditions and terms of the franchise and providing a recovery on the bond in case of failure to perform the terms and conditions of the franchise. [2009 c 549 § 2063; 1965 c 7 § 35.27.330. Prior: (i) 1890 p 201 § 153, part; RRS § 9174, part. (ii) 1907 c 228 § 1, part; RRS § 9199, part.]

**35.27.340 Audit and allowance of demands against town.** All demands against a town shall be presented to and audited by the council in accordance with such regulations as they may by ordinance prescribe. Upon allowance of a demand the mayor shall draw a warrant therefor upon the treasurer; the warrant shall be countersigned by the clerk and shall specify the purpose for which it is drawn.

The town clerk and his or her deputy shall take all necessary affidavits to claims against the town and certify them. [2009 c 549 § 2064; 1965 c 7 § 35.27.340. Prior: (i) 1890 p 210 § 170, part; RRS § 9188, part. (ii) 1890 p 204 § 156; RRS § 9179.]

### Chapter 35.32A RCW BUDGETS IN CITIES OVER THREE HUNDRED THOUSAND

#### Sections

35.32A.020 Budget director.  
35.32A.060 Emergency fund.

**35.32A.020 Budget director.** There shall be a budget director, appointed by the mayor without regard to civil service rules and regulations and subject to confirmation by a majority of the members of the city council, who shall be in charge of the city budget office and, under the direction of the mayor, shall be responsible for preparing the budget and supervising its execution. The budget director may be

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removed by the mayor upon filing with the city council a statement of his or her reasons therefor. [2009 c 549 § 2065; 1967 c 7 § 4.]

**35.32A.060 Emergency fund.** Every city having a population of over three hundred thousand may maintain an emergency fund, which fund balance shall not exceed thirty-seven and one-half cents per thousand dollars of assessed value. Such fund shall be maintained by an annual budget allowance. When the necessity therefor arises transfers may be made to the emergency fund from any tax-supported fund except bond interest and redemption funds.

The city council by an ordinance approved by two-thirds of all of its members may authorize the expenditure of sufficient money from the emergency fund, or other designated funds, to meet the expenses or obligations:

(1) Caused by fire, flood, explosion, storm, earthquake, epidemic, riot, insurrection, act of God, act of the public enemy or any other such happening that could not have been anticipated; or

(2) For the immediate preservation of order or public health or for the restoration to a condition of usefulness of public property the usefulness of which has been destroyed by accident; or

(3) In settlement of approved claims for personal injuries or property damages, exclusive of claims arising from the operation of a public utility owned by the city; or

(4) To meet mandatory expenditures required by laws enacted since the last budget was adopted.

The city council by an ordinance approved by three-fourths of all its members may appropriate from the emergency fund, or other designated funds, an amount sufficient to meet the actual necessary expenditures of the city for which insufficient or no appropriations have been made due to causes which could not reasonably have been foreseen at the time of the making of the budget.

An ordinance authorizing an emergency expenditure shall become effective immediately upon being approved by the mayor or upon being passed over his or her veto as provided by the city charter. [2009 c 549 § 2066; 1985 c 175 § 64; 1973 1st ex.s. c 195 § 20; 1967 c 7 § 8.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

### Chapter 35.33 RCW BUDGETS IN SECOND AND THIRD-CLASS CITIES, TOWNS, AND FIRST-CLASS CITIES UNDER THREE HUNDRED THOUSAND

#### Sections

35.33.011 Definitions.  
35.33.055 Budget—Preliminary—Filing—Copies.  
35.33.135 Revenue estimates—Amount to be raised by ad valorem taxes.  
35.33.170 Violations and penalties.

**35.33.011 Definitions.** Unless the context clearly indicates otherwise, the following words as used in this chapter shall have the meaning herein prescribed:

(1) "Chief administrative officer" as used in this chapter includes the mayor of cities or towns having a mayor-council form of government, the commissioners in cities or towns

having a commission form of government, the city manager, or any other city or town official designated by the charter or ordinances of such city or town under the plan of government governing the same, or the budget or finance officer designated by the mayor, manager or commissioners, to perform the functions, or portions thereof, contemplated by this chapter.

(2) "Clerk" as used in this chapter includes the officer performing the functions of a finance or budget director, comptroller, auditor, or by whatever title he or she may be known in any city or town.

(3) "Department" as used in this chapter includes each office, division, service, system or institution of the city or town for which no other statutory or charter provision is made for budgeting and accounting procedures or controls.

(4) "Fiscal year" as used in this chapter means that fiscal period set by the city or town pursuant to authority given under RCW 1.16.030.

(5) "Fund", as used in this chapter and "funds" where clearly used to indicate the plural of "fund", shall mean the budgeting or accounting entity authorized to provide a sum of money for specified activities or purposes.

(6) "Funds" as used in this chapter where not used to indicate the plural of "fund" shall mean money in hand or available for expenditure or payment of a debt or obligation.

(7) "Legislative body" as used in this chapter includes council, commission or any other group of officials serving as the legislative body of a city or town.

(8) Except as otherwise defined herein, municipal accounting terms used in this chapter shall have the meaning prescribed by the state auditor pursuant to RCW 43.09.200. [2009 c 549 § 2067; 1981 c 40 § 1; 1969 ex.s. c 95 § 1.]

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

### 35.33.055 Budget—Preliminary—Filing—Copies.

The chief administrative officer shall prepare the preliminary budget in detail, making any revisions or additions to the reports of the department heads deemed advisable by such chief administrative officer and at least sixty days before the beginning of the city's or town's next fiscal year he or she shall file it with the clerk as the recommendation of the chief administrative officer for the final budget. The clerk shall provide a sufficient number of copies of such preliminary budget and budget message to meet the reasonable demands of taxpayers therefor and have them available for distribution not later than six weeks before the beginning of the city's or town's next fiscal year. [2009 c 549 § 2068; 1969 ex.s. c 95 § 6.]

**35.33.135 Revenue estimates—Amount to be raised by ad valorem taxes.** At a time fixed by the city's or town's ordinance or city charter, not later than the first Monday in October of each year, the chief administrative officer shall provide the city's or town's legislative body with current information on estimates of revenues from all sources as adopted in the budget for the current year, together with estimates submitted by the clerk under RCW 35.33.051. The city's or town's legislative body and the city's or town's administrative officer or his or her designated representative shall consider the city's or town's total anticipated financial

requirements for the ensuing fiscal year, and the legislative body shall determine and fix by ordinance the amount to be raised by ad valorem taxes. Upon adoption of the ordinance fixing the amount of ad valorem taxes to be levied, the clerk shall certify the same to the board of county commissioners as required by RCW 84.52.020. [2009 c 549 § 2069; 1969 ex.s. c 95 § 20.]

**35.33.170 Violations and penalties.** Upon the conviction of any city or town official, department head or other city or town employee of knowingly failing, or refusing, without just cause, to perform any duty imposed upon such officer or employee by this chapter, or city charter or city or town ordinance, in connection with the giving of notice, the preparing and filing of estimates of revenues or expenditures or other information required for preparing a budget report in the time and manner required, or of knowingly making expenditures in excess of budget appropriations, he or she shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars for each separate violation. [2009 c 549 § 2070; 1969 ex.s. c 95 § 25.]

## Chapter 35.36 RCW

### EXECUTION OF BONDS BY PROXY— FIRST-CLASS CITIES

#### Sections

35.36.010	Appointment of proxies.
35.36.050	Liability of officer.
35.36.060	Notice to council.

**35.36.010 Appointment of proxies.** The mayor, city comptroller and city clerk of every city of the first class may each severally designate one or more bonded persons to affix his or her signature to any bond or bonds requiring his or her signature.

If the signature of one of these officers is affixed to a bond during his or her continuance in office by a proxy designated by him or her whose authority has not been revoked, the bond shall be as binding upon the city and all concerned as though the officer had signed the bond in person.

This chapter shall apply to all bonds, whether they constitute obligations of the city as a whole or of any local improvement or other district or subdivision thereof, whether they call for payment from the general funds of the city or from a local, special or other fund, and whether negotiable or otherwise. [2009 c 549 § 2071; 1965 c 7 § 35.36.010. Prior: 1929 c 212 § 1; RRS § 9005-5.]

**35.36.050 Liability of officer.** A mayor, comptroller, or clerk authorizing the affixing of his or her signature to a bond by a proxy shall be subject to the same liability personally and on his or her bond for any signature so affixed and to the same extent as if he or she had affixed his or her signature in person. [2009 c 549 § 2072; 1965 c 7 § 35.36.050. Prior: 1929 c 212 § 3; RRS § 9005-7.]

**35.36.060 Notice to council.** In order to designate a proxy to affix his or her signature to bonds, a mayor, comptroller, or clerk shall address a written notice to the governing body of the city giving the name of the person whom he or

she has selected therefor and stating generally or specifically what bonds are to be so signed.

Attached to or included in the notice shall be a written signature of the officer making the designation executed by the proposed proxy followed by the word "by" and his or her own signature; or, if the notice so states, the specimen signatures may consist of a facsimile reproduction of the officer's signature impressed by some mechanical process followed by the word "by" and the proxy's own signature.

If the authority is intended to include the signature upon bonds bearing an earlier date than the effective date of the notice, the prior dated bonds must be specifically described by reasonable reference thereto.

The notice designating a proxy shall be filed with the city comptroller or city clerk, together with the specimen signatures attached thereto and a record of the filing shall be made in the journal of the governing body. This record shall note the date and hour of filing and may be made by the official who keeps the journal at any time after filing of the notice, even during a period of recess or adjournment of the governing body. The notice shall be effective from the time of its recording. [2009 c 549 § 2073; 1965 c 7 § 35.36.060. Prior: 1929 c 212 § 2, part; RRS § 9005-6, part.]

### Chapter 35.37 RCW

#### FISCAL—CITIES UNDER TWENTY THOUSAND AND CITIES OTHER THAN FIRST CLASS—BONDS

##### Sections

35.37.120 General indebtedness bonds—Taxation—Failure to levy—Remedy.

**35.37.120 General indebtedness bonds—Taxation—Failure to levy—Remedy.** If the council of any city or town which has issued general indebtedness bonds fails to make any levy necessary to make principal or interest payments due on the bonds, the owner of any bond or interest payment which has been presented to the treasurer and payment thereof refused because of the failure to make a levy may file the bond together with any unpaid coupons with the county auditor, taking his or her receipt therefor.

The county auditor shall register bonds so filed, and the county legislative authority at its next session at which it levies the annual county tax shall add to the city's or town's levy a sum sufficient to realize the amount of principal and interest past due and to become due prior to the next annual levy to be collected and held by the county treasurer and paid out only upon warrants drawn by the county auditor as the payments mature in favor of the owner of the bond as shown by the auditor's register. Similar levies shall be made in each succeeding year until the bonds and any coupons or interest payments are fully satisfied.

This remedy is alternative and in addition to any other remedy which the owner of such a bond or coupon may have. [2009 c 549 § 2074; 1983 c 167 § 38; 1965 c 7 § 35.37.120. Prior: 1891 c 128 § 9; RRS § 9547.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

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### Chapter 35.38 RCW FISCAL—DEPOSITARIES

##### Sections

35.38.050 Treasurer's official bond not affected.

**35.38.050 Treasurer's official bond not affected.** The foregoing provisions of this chapter shall in no way affect the duty of a city or town treasurer to give bond to the city or town for the faithful performance of his or her duties in such amount as may be fixed by the city or town council or other governing body by ordinance. [2009 c 549 § 2075; 1965 c 7 § 35.38.050. Prior: (i) 1905 c 103 § 3; RRS § 5570. (ii) 1907 c 22 § 3; RRS § 5573.]

### Chapter 35.39 RCW FISCAL—INVESTMENT OF FUNDS

##### Sections

35.39.060 Investment of pension funds.

**35.39.060 Investment of pension funds.** Any city or town now or hereafter operating an employees' pension system with the approval of the board otherwise responsible for management of its respective funds may invest, reinvest, manage, contract, sell, or exchange investments acquired. Investments shall be made in accordance with investment policy duly established and published by the board. In discharging its duties under this section, the board shall act with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man or woman acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims; shall diversify the investments of the employees' pension system so as to minimize the risk of large losses; and shall act in accordance with the documents and instruments governing the employees' pension system, insofar as such documents and instruments are consistent with the provisions of this title. [2009 c 549 § 2076; 1982 c 166 § 1.]

**Effective date—1982 c 166:** "This act shall take effect July 1, 1982." [1982 c 166 § 9.]

### Chapter 35.43 RCW LOCAL IMPROVEMENTS—AUTHORITY— INITIATION OF PROCEEDINGS

##### Sections

35.43.030 Charters superseded—Application—Ordinances—Districts outside city authorized, within city authorized for transportation and infrastructure purposes.

35.43.040 Authority generally.

**35.43.030 Charters superseded—Application—Ordinances—Districts outside city authorized, within city authorized for transportation and infrastructure purposes.** This and the following chapters relating to municipal local improvements shall supersede the provisions of the charter of any city of the first class.

They shall apply to all incorporated cities and towns, including unclassified cities and towns operating under special charters.



The council of each city and town shall pass such general ordinance or ordinances as may be necessary to carry out their provisions and thereafter all proceedings relating to local improvements shall be conducted in accordance with this and the following chapters relating to municipal local improvements and the ordinance or ordinances of such city or town.

Cities or towns may form local improvement districts or utility local improvement districts composed entirely or in part of unincorporated territory outside of such city or town's corporate limits in the manner provided in this chapter, or, upon approval of the legislative authority of an adjoining city or town, may form local improvement districts or utility local improvement districts for transportation and infrastructure purposes that are composed entirely or in part of territory within that adjoining city or town. [2009 c 237 § 1; 1971 ex.s. c 116 § 4; 1967 c 52 § 2; 1965 c 7 § 35.43.030. Prior: 1963 c 56 § 1; prior: (i) 1911 c 98 § 60; 1899 c 146 § 1; RRS § 9413. (ii) 1911 c 98 § 67; RRS § 9420. (iii) 1911 c 98 § 71; RRS § 9424.]

**Effective date—2009 c 237:** "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 25, 2009]." [2009 c 237 § 2.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**35.43.040 Authority generally.** Whenever the public interest or convenience may require, the legislative authority of any city or town may order the whole or any part of any local improvement including but not restricted to those, or any combination thereof, listed below to be constructed, reconstructed, repaired, or renewed and landscaping including but not restricted to the planting, setting out, cultivating, maintaining, and renewing of shade or ornamental trees and shrubbery thereon; may order any and all work to be done necessary for completion thereof; and may levy and collect special assessments on property specially benefited thereby to pay the whole or any part of the expense thereof, viz:

(1) Alleys, avenues, boulevards, lanes, park drives, parkways, parking facilities, public places, public squares, public streets, their grading, regrading, planking, replanking, paving, repaving, macadamizing, remacadamizing, graveling, regravelling, piling, repiling, capping, recapping, or other improvement; if the management and control of park drives, parkways, and boulevards is vested in a board of park commissioners, the plans and specifications for their improvement must be approved by the board of park commissioners before their adoption;

(2) Auxiliary water systems;

(3) Auditoriums, field houses, gymnasiums, swimming pools, or other recreational, playground, museum, cultural, or arts facilities or structures;

(4) Bridges, culverts, and trestles and approaches thereto;

(5) Bulkheads and retaining walls;

(6) Dikes and embankments;

(7) Drains, sewers, and sewer appurtenances which as to trunk sewers shall include as nearly as possible all the territory which can be drained through the trunk sewer and sub-sewers connected thereto;

(8) Escalators or moving sidewalks together with the expense of operation and maintenance;

(9) Parks and playgrounds;

(10) Sidewalks, curbing, and crosswalks;

(11) Street lighting systems together with the expense of furnishing electrical energy, maintenance, and operation;

(12) Underground utilities transmission lines;

(13) Water mains, hydrants, and appurtenances which as to trunk water mains shall include as nearly as possible all the territory in the zone or district to which water may be distributed from the trunk water mains through lateral service and distribution mains and services;

(14) Fences, culverts, syphons, or coverings or any other feasible safeguards along, in place of, or over open canals or ditches to protect the public from the hazards thereof;

(15) Roadbeds, trackage, signalization, storage facilities for rolling stock, overhead and underground wiring, and any other stationary equipment reasonably necessary for the operation of an electrified public streetcar line;

(16) Systems of surface, underground, or overhead railways, tramways, buses, or any other means of local transportation except taxis, and including passenger, terminal, station parking, and related facilities and properties, and such other facilities as may be necessary for passenger and vehicular access to and from such terminal, station, parking, and related facilities and properties, together with all lands, rights-of-way, property, equipment, and accessories necessary for such systems and facilities;

(17) Convention center facilities or structures in cities incorporated before January 1, 1982, with a population over sixty thousand located in a county with a population over one million, other than the city of Seattle. Assessments for purposes of convention center facilities or structures may be levied only to the extent necessary to cover a funding shortfall that occurs when funds received from special excise taxes imposed pursuant to chapter 67.28 RCW are insufficient to fund the annual debt service for such facilities or structures, and may not be levied on property exclusively maintained as single-family or multifamily permanent residences whether they are rented, leased, or owner occupied;

(18) Programs of aquatic plant control, lake or river restoration, or water quality enhancement. Such programs shall identify all the area of any lake or river which will be improved and shall include the adjacent waterfront property specially benefited by such programs of improvements. Assessments may be levied only on waterfront property including any waterfront property owned by the department of natural resources or any other state agency. Notice of an assessment on a private leasehold in public property shall comply with provisions of chapter 79.44 RCW. Programs under this subsection shall extend for a term of not more than five years; and

(19) Railroad crossing protection devices, including maintenance and repair. Assessments for purposes of railroad crossing protection devices may not be levied on property owned or maintained by a railroad, railroad company, street railroad, or street railroad company, as defined in RCW 81.04.010, or a regional transit authority as defined in RCW 81.112.020. [2009 c 435 § 1; 1997 c 452 § 16; 1989 c 277 § 1; 1985 c 397 § 1; 1983 c 291 § 1; 1981 c 17 § 1; 1969 ex.s. c 258 § 1; 1965 c 7 § 35.43.040. Prior: 1959 c 75 § 1; 1957

c 144 § 2; prior: (i) 1911 c 98 § 1; RRS § 9352. (ii) 1945 c 190 § 1, part; 1915 c 168 § 6, part; 1913 c 131 § 1, part; 1911 c 98 § 6, part; Rem. Supp. 1945 § 9357, part. (iii) 1911 c 98 § 15; RRS § 9367. (iv) 1911 c 98 § 58, part; RRS § 9411, part.]

**Intent—Severability—1997 c 452:** See notes following RCW 67.28.080.

**Savings—1997 c 452:** See note following RCW 67.28.181.

**Authority supplemental—Severability—1985 c 397:** See RCW 35.51.900 and 35.51.901.

### Chapter 35.44 RCW

#### LOCAL IMPROVEMENTS— ASSESSMENTS AND REASSESSMENTS

##### Sections

35.44.190	Proceedings conclusive—Exceptions—Adjustments to assessments if other funds become available.
35.44.220	Procedure on appeal—Bond.
35.44.230	Procedure on appeal—Transcript.
35.44.270	Procedure on appeal—Certified copy of decision or order.

**35.44.190 Proceedings conclusive—Exceptions—Adjustments to assessments if other funds become available.** Whenever any assessment roll for local improvements has been confirmed by the council, the regularity, validity, and correctness of the proceedings relating to the improvement and to the assessment therefor, including the action of the council upon the assessment roll and the confirmation thereof shall be conclusive in all things upon all parties. They cannot in any manner be contested or questioned in any proceeding by any person unless he or she filed written objections to the assessment roll in the manner and within the time required by the provisions of this chapter and unless he or she prosecutes his or her appeal in the manner and within the time required by the provisions of this chapter.

No proceeding of any kind shall be commenced or prosecuted for the purpose of defeating or contesting any assessment or the sale of any property to pay an assessment or any certificate of delinquency issued therefor, or the foreclosure of any lien therefor, except that injunction proceedings may be brought to prevent the sale of any real estate upon the ground (1) that the property about to be sold does not appear upon the assessment roll or, (2) that the assessment has been paid.

If federal, local, or state funds become available for a local improvement after the assessment roll has been confirmed by the city legislative authority, the funds may be used to lower the assessments on a uniform basis. Any adjustments to the assessments because of the availability of federal or state funds may be made on the next annual payment. [2009 c 549 § 2077; 1985 c 397 § 9; 1965 c 7 § 35.44.190. Prior: 1911 c 98 § 23; RRS § 9375.]

**Severability—1985 c 397:** See RCW 35.51.901.

**35.44.220 Procedure on appeal—Bond.** At the time of filing the notice of appeal with the clerk of the superior court, the appellant shall execute and file with him or her a sufficient bond in the penal sum of two hundred dollars, with at least two sureties to be approved by the judge of the court, conditioned to prosecute the appeal without delay and, if

unsuccessful, to pay all reasonable costs and expenses which the city or town incurs by reason of the appeal. Upon application therefor, the court may order the appellant to execute and file such additional bonds as the necessity of the case may require. [2009 c 549 § 2078; 1971 ex.s. c 116 § 3; 1969 ex.s. c 258 § 8; 1965 c 7 § 35.44.220. Prior: 1957 c 143 § 4; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

**35.44.230 Procedure on appeal—Transcript.** Within ten days from the filing of the notice of appeal, the appellant shall file with the clerk of the superior court a transcript consisting of the assessment roll and his or her objections thereto, together with the ordinance confirming the assessment roll and the record of the council with reference to the assessment. This transcript, upon payment of the necessary fees therefor, shall be furnished by the city or town clerk and shall be certified by him or her to contain full, true and correct copies of all matters and proceedings required to be included in the transcript. The fees payable therefor shall be the same as those payable to the clerk of the superior court for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. [2009 c 549 § 2079; 1971 c 81 § 90; 1965 c 7 § 35.44.230. Prior: 1957 c 143 § 5; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

**35.44.270 Procedure on appeal—Certified copy of decision or order.** A certified copy of the decision of the superior court pertaining to assessments for local improvements shall be filed with the officer having custody of the assessment roll and he or she shall modify and correct the assessment roll in accordance with the decision. In the event appellate review of the decision is sought, a certified copy of the court's order shall be filed with the officer having custody of the assessment roll and the officer shall thereupon modify and correct the assessment roll in accordance with the order. [2009 c 549 § 2080; 1988 c 202 § 37; 1971 c 81 § 92; 1965 c 7 § 35.44.270. Prior: 1957 c 143 § 9; prior: 1911 c 98 § 22, part; RRS § 9374, part.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

### Chapter 35.45 RCW

#### LOCAL IMPROVEMENTS— BONDS AND WARRANTS

##### Sections

35.45.080	Remedy of bondholders.
35.45.090	Excess to be refunded—Demand—Right of action.
35.45.130	Warrants against local improvement fund authorized.
35.45.150	Installment notes—Interest certificates.

**35.45.080 Remedy of bondholders.** If a city or town fails to pay any bonds or to promptly collect any local improvement assessments when due, the owner of the bonds may proceed in his or her own name to collect the assessment and foreclose the lien thereof in any court of competent jurisdiction and shall recover in addition to the amount of the bond and interest thereon, five percent, together with the cost of suit. Any number of holders of bonds for any single improvement may join as plaintiffs and any number of own-

ers of property upon which the assessments are liens may be joined as defendants in the same suit.

The owners of local improvement bonds issued by a city or town after the creation of a local improvement guaranty fund therein, shall also have recourse against the local improvement guaranty fund of such city or town unless the ordinance under which the bonds were issued provides that the bonds are not secured by the local improvement guaranty fund. [2009 c 549 § 2081; 2002 c 41 § 3; 1965 c 7 § 35.45.080. Prior: (i) 1927 c 209 § 5, part; 1925 ex.s. c 183 § 5, part; 1923 c 141 § 5, part; RRS § 9351-5, part. (ii) 1911 c 98 § 51; 1899 c 124 § 6; RRS § 9404.]

**35.45.090 Excess to be refunded—Demand—Right of action.** Any funds in the treasury of any municipal corporation belonging to the fund of any local improvement district after the payment of the whole cost and expense of such improvement, in excess of the total sum required to defray all the expenditures by such municipal corporation on account thereof, shall be refunded, on demand, to the payers into such fund. Each such payer shall be entitled to such proportion of such excess as his or her original assessment bears to the entire original assessment levied for such improvement. Such municipal corporation may, after one year from the date on which the last installment becomes due, transfer any balance remaining on hand to the general fund of such municipal corporation, but shall, notwithstanding such transfer remain liable for the refund herein provided for until such refund shall have been made, unless the actual cost involved in making such refund shall exceed the excess in such fund.

Such demand shall be made in writing to the treasurer of such municipal corporation. No action shall be commenced in any court to obtain any such refund, except upon such demand, and until ninety days after making such demand. No excess shall be recovered in any action where the excess in the fund does not average the sum of one dollar in favor of all payers into such fund.

This section shall not be deemed to require the refunding of any balance left in any local improvement fund after the payment of all outstanding obligations issued against such fund, where such balance accrues from any saving in interest or from penalties collected upon delinquent assessments, but any such balance, whether accruing heretofore or hereafter, may be turned into the general fund or otherwise disposed of, as the legislative authority of the city may direct.

The provisions of this chapter relating to the refund of excess local improvement district funds shall not apply to any district whose obligations are guaranteed by the local improvement guaranty fund. [2009 c 549 § 2082; 1965 c 7 § 35.45.090. Prior: 1917 c 140 § 1; 1909 c 108 § 1; RRS § 9351.]

**35.45.130 Warrants against local improvement fund authorized.** Every city and town may provide by ordinance for the issuance of warrants in payment of the cost and expense of any local improvement, payable out of the local improvement district fund. The warrants shall bear interest at a rate or rates established by the issuing officer under the direction of the legislative authority of the city or town and

shall be redeemed either in cash or by local improvement bonds for the same improvement authorized by ordinance.

All warrants against any local improvement fund sold by the city or town or issued to a contractor and by him or her sold or hypothecated for a valuable consideration shall be claims and liens against the improvement fund against which they are drawn prior and superior to any right, lien, or claim of any surety upon the bond or bonds given to the city or town by or for the contractor to secure the performance of his or her contract or to secure the payment of persons who have performed work thereon, furnished materials therefor, or provisions and supplies for the carrying on of the work. [2009 c 549 § 2083; 1981 c 323 § 3; 1970 ex.s. c 56 § 36; 1965 c 7 § 35.45.130. Prior: 1953 c 117 § 1; prior: 1915 c 168 § 3; 1911 c 98 § 72; 1899 c 146 § 7; RRS 9425.]

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

**35.45.150 Installment notes—Interest certificates.** In addition to the issuance of bonds and warrants in payment of the cost and expense of any local improvement, any city or town may also issue and sell installment notes payable out of the local improvement district fund. Such installment notes may be issued any time after the thirty day period allowed by law for the payment of assessments of any district without penalty or interest, and may bear any denomination or denominations, the aggregate of which shall represent the balance of the cost and expense of the local improvement district which is to be borne by the property owners therein.

Application of local improvement district funds for the reduction of the principal and interest amounts due on any notes herein provided to finance said improvement shall be made not less than once each year beginning with the issue date thereof. Appropriate notification of such application of funds shall be made by the city or town treasurer to the registered payees of said notes, except those notes owned by funds of the issuing municipality. Such notes may be registered as provided in RCW 39.46.030. If more than one local improvement installment note is issued for a single district, said notes shall be numbered consecutively. All notes issued shall bear on the face thereof: (1) The name of the payee; (2) the number of the local improvement district from whose funds the notes are payable; (3) the date of issue of each note; (4) the date on which the note, or the final installment thereon shall become due; (5) the rate or rates of interest, as provided by the city or town legislative authority, to be paid on the unpaid balance thereof, and; (6) such manual or facsimile signatures and attestations as are required by state statute or city charter to appear on the warrants of each issuing municipality.

The reverse side of each installment note issued pursuant to this section shall bear a tabular payment record which shall indicate at prescribed installment dates, the receipt of any local improvement district funds for the purpose of servicing the debt evidenced by said notes. Such receipts shall first be applied toward the interest due on the unpaid balance of the note, and any additional moneys shall thereafter apply as a reduction of the principal amount thereof. The tabular payment record shall, in addition to the above, show the unpaid principal balance due on each installment note, together with sufficient space opposite each transaction affecting said note

for the manual signature of the city's or town's clerk, treasurer or other properly designated receiving officer of the municipality, or of any other registered payee presenting said note for such installment payments.

Whenever there are insufficient funds in a local improvement district to meet any payment of installment interest due on any note herein authorized, a noninterest-bearing defaulted installment interest certificate shall be issued by the city or town treasurer which shall consist of a written statement certifying the amount of such defaulted interest installment; the name of the payee of the note to whom the interest is due and the number of the local improvement district from whose funds the note and interest thereon is payable. Such certificates may be registered as provided in RCW 39.46.030. The certificate herein provided shall bear the manual signature of the city or town treasurer or his or her authorized agent. The defaulted installment interest certificate so issued shall be redeemed for the face amount thereof with any available funds in the local improvement guaranty fund.

Whenever at the date of maturity of any installment note issued pursuant to this section, there are insufficient funds in a local improvement district, due to delinquencies in the collection of assessments, to pay the final installment of the principal due thereon, the note shall be redeemed with any available funds in the local improvement guaranty fund for the amount of said final installment.

All certificates and notes issued pursuant to this section are to become subject to the same redemption privileges as apply to any local improvement district bonds and warrants now accorded the protection of the local improvement guaranty fund as provided in chapter 35.54 RCW, and whenever the certificates or notes issued as herein provided are redeemed by said local improvement guaranty fund, they shall be held therein as investments thereof in the same manner as prescribed for other defaulted local improvement district obligations.

Notwithstanding any other statutory provisions, local improvement installment notes authorized by this section which are within the protection of the local improvement guaranty fund law shall be considered legal investments for any available surplus funds of the issuing municipality which now or hereafter may be authorized to be invested in the city's or town's local improvement districts' bonds or warrants and shall be considered legal investments for all national and state banks, savings and loan institutions, and any and all other commercial banking or financial institutions to the same extent that the local improvement district bonds and any coupons issued pursuant to the provisions of this chapter have been and are legal investments for such institutions. Any such local improvement installment notes may be transferred or sold by said city or town upon such terms or conditions and in such manner as the local governing body of said city or town may determine, or may be issued to another fund of the city or town: PROVIDED, HOWEVER, That the same shall not be sold at less than par plus accrued interest.

Notwithstanding the provisions of this section, such notes and certificates may be issued, and such notes may be sold, in accordance with chapter 39.46 RCW. [2009 c 549 § 2084; 1983 c 167 § 44. Prior: 1981 c 323 § 4; 1981 c 156 § 2; prior: 1970 ex.s. c 93 § 2; 1970 ex.s. c 56 § 37; 1965 c 7 § 35.45.150; prior: 1961 c 165 § 1.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Severability—1970 ex.s. c 93:** See note following RCW 39.60.050.

**Purpose—1970 ex.s. c 56:** See note following RCW 39.52.020.

*Investment of public funds in notes, debentures:* RCW 39.60.050.

## Chapter 35.49 RCW LOCAL IMPROVEMENTS— COLLECTION OF ASSESSMENTS

### Sections

35.49.010	Collection by city treasurer—Notices.
35.49.040	Payment without interest or penalty.
35.49.090	Payment by joint owner.
35.49.100	Payment in error—Remedy.

**35.49.010 Collection by city treasurer—Notices.** All assessments for local improvements in local improvement districts shall be collected by the city treasurer and shall be kept in a separate fund to be known as "local improvement fund, district No. . . ." and shall be used for no other purpose than the redemption of warrants drawn upon and bonds issued against the fund to provide payment for the cost and expense of the improvement.

All assessments for local improvements in a utility local improvement district shall be collected by the city treasurer, shall be paid into the appropriate revenue bond fund, and shall be used for no other purpose than the redemption of revenue bonds issued to provide funds for the cost and expense of the improvement.

As soon as the assessment roll has been placed in the hands of the city or town treasurer for collection, he or she shall publish a notice in the official newspaper of the city or town once a week for two consecutive weeks, that the roll is in his or her hands for collection and that all or any portion of the assessment may be paid within thirty days from the date of the first publication of the notice without penalty, interest or costs.

Within fifteen days of the first newspaper publication, the city or town treasurer shall notify each owner or reputed owner whose name appears on the assessment roll, at the address shown on the tax rolls of the county treasurer for each item of property described on the list, of the nature of the assessment, of the amount of his or her real property subject to such assessment, of the total amount of assessment due, and of the time during which such assessment may be paid without penalty, interest, or costs. [2009 c 549 § 2085; 1972 ex.s. c 137 § 1; 1969 ex.s. c 258 § 13; 1967 c 52 § 13; 1965 c 7 § 35.49.010. Prior: (i) 1911 c 98 § 28; RRS § 9380. (ii) 1911 c 98 § 50, part; RRS § 9403, part.]

**Severability—1972 ex.s. c 137:** "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 137 § 6.]

**Construction—Severability—1967 c 52:** See notes following RCW 35.43.042.

**Saving—1927 c 275:** "All local improvement initiated or proceedings commenced by any city or town before the taking effect of this act, relating to the making of any local improvement, or the collection and foreclosure of local improvement, or the collection and foreclosure of local improvement assessments, and the sale of property therefor, shall proceed without being in any manner affected by the passage of this act; PROVIDED, That any city or town may at its option foreclose in the manner provided in this act the lien of

any local improvement assessment created prior to the effective date of this act, and cause deed to issue, but as to any such property purchased by such city or town at such foreclosure the same shall be held and sold by such city or town under and pursuant to the provisions of law in force and effect prior to the taking effect of this act." [1927 c 275 § 8.]

**35.49.040 Payment without interest or penalty.** The owner of any lot, tract, or parcel of land or other property charged with local improvement assessment may redeem it from all or any portion thereof by paying to the city or town treasurer all or any portion thereof without interest within thirty days after the first publication by the treasurer of notice that the assessment roll is in his or her hands for collection. [2009 c 549 § 2086; 1965 c 7 § 35.49.040. Prior: 1911 c 98 § 50, part; RRS § 9403, part.]

**35.49.090 Payment by joint owner.** If any assessment for a local improvement, or an installment thereof, or judgment for either of them is paid, or a certificate of sale for either of them is redeemed by a joint owner of any of the property so assessed, he or she may, after demand and refusal, recover from his or her co-owners, by an action brought in superior court, the respective portions of the payment which each co-owner should bear. He or she shall have a lien upon the undivided interests of his or her co-owners from the date of the payment made by him or her and in the action shall recover interest at ten percent from the date of payment by him or her and the costs of the action in addition to the principal sum due him or her. [2009 c 549 § 2087; 1965 c 7 § 35.49.090. Prior: 1911 c 98 § 62; RRS § 9415.]

**35.49.100 Payment in error—Remedy.** If, through error or inadvertence, a person pays any assessment for a local improvement or an installment thereof upon the lands of another, he or she may, after demand and refusal, recover from the owner of such lands, by an action in the superior court, the amount so paid and the costs of the action. [2009 c 549 § 2088; 1965 c 7 § 35.49.100. Prior: 1911 c 98 § 65; RRS § 9418.]

**Chapter 35.50 RCW  
LOCAL IMPROVEMENTS—  
FORECLOSURE OF ASSESSMENTS**

Sections

- 35.50.005 Filing of title, diagram, expense—Posting proposed roll.
- 35.50.225 Procedure—Form of summons.

**35.50.005 Filing of title, diagram, expense—Posting proposed roll.** Within fifteen days after any city or town has ordered a local improvement and created a local improvement district, the city or town shall cause to be filed with the officer authorized by law to collect the assessments for such improvement, the title of the improvement and district number and a copy of the diagram or print showing the boundaries of the district and preliminary assessment roll or abstract of same showing thereon the lots, tracts and parcels of land that will be specially benefited thereby and the estimated cost and expense of such improvement to be borne by each lot, tract, or parcel of land. Such officer shall immediately post the proposed assessment roll upon his or her index

of local improvement assessments against the properties affected by the local improvement. [2009 c 549 § 2089; 1969 ex.s. c 258 § 16; 1965 c 7 § 35.50.005. Prior: 1955 c 353 § 1.]

**35.50.225 Procedure—Form of summons.** In foreclosing local improvement assessments, the summons shall be substantially in the following form:

SUPERIOR COURT OF WASHINGTON  
FOR [ . . . . . ] COUNTY

. . . . . , <i>Plaintiff,</i> v. . . . . . , <i>Defendant.</i>	} } } }	No . . . . .  SUMMONS FOR FORECLOSURE OF LOCAL IMPROVEMENT   ASSESSMENT LIEN
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To the Defendant: A lawsuit has been started against you in the above entitled court by . . . . . , plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons. The purpose of this suit is to foreclose on your interest in the following described property:

[legal description]

which is located at:

[street address]

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within twenty days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he or she asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

**IMPORTANT NOTICE**

If judgment is taken against you, either by default or after hearing by the court, your property will be sold at public auction.

You may prevent the sale by paying the amount of the judgment at any time prior to the sale.

If your property is sold, you may redeem the property at any time up to two years after the date of the sale, by paying the amount for which the property was sold, plus interest and costs of the sale.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

[signed] .....

.....

Print or Type Name

( ) Plaintiff ( ) Plaintiff's Attorney

P.O. Address .....

Dated ..... Telephone Number .....

[2009 c 549 § 2090; 1982 c 91 § 6.]

Severability—1982 c 91: See note following RCW 35.50.030.

Chapter 35.53 RCW

LOCAL IMPROVEMENTS—DISPOSITION OF PROPERTY ACQUIRED

Sections

35.53.070 Termination of trust in certain property—Receivership—Regulations.

35.53.070 Termination of trust in certain property—Receivership—Regulations. In such an action the court after acquiring jurisdiction shall proceed as in the case of a receivership except that the city or town shall serve as trustee in lieu of a receiver.

The assets of the improvement districts involved shall be sold at such prices and in such manner as the court may deem advisable and be applied to the costs and expenses of the action and the liquidation of the bonds and warrants of the districts or revenue bonds to which utility local improvement assessments are pledged to pay.

No notice to present claims other than the summons in the action shall be necessary. Any claim presented shall be accompanied by the bonds and warrants upon which it is based. Dividends upon any bonds or warrants for which no claim was filed shall be paid into the general fund of the city or town, but the owner thereof may obtain it at any time within five years thereafter upon surrender and cancellation of his or her bonds and warrants.

Upon the termination of the receivership the city or town shall be discharged from all trusts relating to the property, funds, bonds, and warrants involved in the action. [2009 c 549 § 2091; 1967 c 52 § 23; 1965 c 7 § 35.53.070. Prior: 1929 c 142 § 1, part; RRS § 9384-1, part.]

Construction—Severability—1967 c 52: See notes following RCW 35.43.042.

Chapter 35.54 RCW

LOCAL IMPROVEMENTS—GUARANTY FUNDS

Sections

35.54.100 Deferral of collection of assessments for economically disadvantaged persons—Payment from guaranty fund—Lien—Payment dates for deferred obligations.

35.54.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)

35.54.100 Deferral of collection of assessments for economically disadvantaged persons—Payment from

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guaranty fund—Lien—Payment dates for deferred obligations. Whenever payment of a local improvement district assessment is deferred pursuant to the provisions of RCW 35.43.250 the amount of the deferred assessment shall be paid out of the local improvement guaranty fund. The local improvement guaranty fund shall have a lien on the benefited property in an amount equal to the deferral together with interest as provided for by the establishing ordinance.

The lien may accumulate up to an amount not to exceed the sum of two installments: PROVIDED, That the ordinance creating the local improvement district may provide for one or additional deferrals of up to two installments. Local improvement assessment obligations deferred under chapter 137, Laws of 1972 ex. sess. shall become payable upon the earliest of the following dates:

(1) Upon the date and pursuant to conditions established by the political subdivision granting the deferral; or

(2) Upon the sale of property which has a deferred assessment lien upon it from the purchase price; or

(3) Upon the death of the person to whom the deferral was granted from the value of his or her estate; except a surviving spouse shall be allowed to continue the deferral which shall then be payable by that spouse as provided in this section. [2009 c 549 § 2092; 1972 ex.s. c 137 § 3.]

Severability—1972 ex.s. c 137: See note following RCW 35.49.010.

35.54.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 79.]

Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192: See note following RCW 2.10.900.

Chapter 35.55 RCW

LOCAL IMPROVEMENTS—FILLING LOWLANDS

Sections

35.55.070 Hearing on assessment roll—Notice—Council's authority.

35.55.070 Hearing on assessment roll—Notice—Council's authority. When such assessment roll has been prepared it shall be filed in the office of the city clerk and thereupon the city clerk shall give notice by publication in at least three issues of the official paper that such roll is on file in his or her office and that at a date mentioned in said notice, which shall be at least twenty days after the date of the first

publication thereof, the city council will sit as a board of equalization to equalize said roll and to hear, consider and determine protests and objections against the same.

At the time specified in the notice, the city council shall sit as a board of equalization to equalize the roll and they may adjourn the sitting from time to time until the equalization of such roll is completed. The city council as board of equalization may hear, consider and determine objections and protests against any assessment and may make such alterations and modifications in the assessment roll as justice and equity may require. [2009 c 549 § 2093; 1965 c 7 § 35.55.070. Prior: 1909 c 147 § 6; RRS § 9437.]

### Chapter 35.56 RCW

#### LOCAL IMPROVEMENTS—FILLING AND DRAINING LOWLANDS—WATERWAYS

##### Sections

- 35.56.040 Conditions precedent to passage of ordinance—Protests.  
 35.56.080 Hearing on assessment roll—Notice—Council's authority.  
 35.56.140 Local improvement bonds—Guaranties.

**35.56.040 Conditions precedent to passage of ordinance—Protests.** Upon the introduction of an ordinance providing for such fill, if the city council or commission desires to proceed, it shall fix a time, not less than ten days, in which protests against said fill may be filed in the office of the city clerk. Thereupon it shall be the duty of the clerk of said city to publish in the official newspaper of said city in at least two consecutive issues thereof before the time fixed for the filing of protests, a notice of the time fixed for the filing of protests together with a copy of the proposed ordinance as introduced.

Protests against the proposed fill to be effective must be filed by the owners of more than half of the area of land situated within the proposed filling district exclusive of streets, alleys and public places on or before the date fixed for such filing. If an effective protest is filed the council shall not proceed further unless two-thirds of the members of the city council vote to proceed with the work; if the city is operating under a commission form of government composed of three commissioners, the commission shall not proceed further except by a unanimous affirmative vote of all the members thereof, if the commission is composed of five members, at least four affirmative votes thereof shall be necessary before proceeding.

If no effective protest is filed or if an effective protest is filed and two-thirds of the councilmembers vote to proceed with the work or in cases where cities are operating under the commission form of government, the commissioners vote unanimously or four out of five commissioners vote to proceed with the work, the city council or commission shall at such meeting or in a succeeding meeting proceed to pass the proposed ordinance for the work, with such amendments and modifications as to the said city council or commission of said city may seem proper. The local improvement district shall be called "filling district No. . . ." [2009 c 549 § 2094; 1965 c 7 § 35.56.040. Prior: 1913 c 16 § 2, part; RRS § 9450, part.]

**35.56.080 Hearing on assessment roll—Notice—Council's authority.** When such assessment roll has been prepared it shall be filed in the office of the city clerk and thereupon the city clerk shall give notice by publication in at least three issues of the official paper that such roll is on file in his or her office and on a date mentioned in said notice, which shall be at least twenty days after the date of the first publication thereof, the city council or commission will sit as a board of equalization to equalize said roll and to hear, consider and determine protests and objections against the same.

At the time specified in the notice, the city council or commission shall sit as a board of equalization to equalize the roll and they may adjourn the sitting from time to time until the equalization of such roll is completed. The city council or commission as such board of equalization may hear, consider and determine objections and protests against any assessment and make such alterations and modifications in the assessment roll as justice and equity may require. [2009 c 549 § 2095; 1965 c 7 § 35.56.080. Prior: 1913 c 16 § 6; RRS § 9454.]

**35.56.140 Local improvement bonds—Guaranties.** The city may guarantee the payment of the whole or any part of the bonds issued against a local improvement district, but the guaranties on the part of the city shall be made only by ordinance passed by the vote of not less than two-thirds of the councilmembers and the approval of the mayor, or three commissioners in case the governing body consist of three commissioners, or four where such city is governed by five commissioners. [2009 c 549 § 2096; 1965 c 7 § 35.56.140. Prior: 1913 c 16 § 10, part; RRS § 9458, part.]

### Chapter 35.57 RCW

#### PUBLIC FACILITIES DISTRICTS

##### Sections

- 35.57.010 Creation—Board of directors—Corporate powers.  
 35.57.020 Regional centers, recreational facilities—Charges and fees—Powers.  
 35.57.060 Expenditure of funds—Purposes.

**35.57.010 Creation—Board of directors—Corporate powers.** (1)(a) The legislative authority of any town or city located in a county with a population of less than one million may create a public facilities district.

(b) The legislative authorities of any contiguous group of towns or cities located in a county or counties each with a population of less than one million may enter an agreement under chapter 39.34 RCW for the creation and joint operation of a public facilities district.

(c) The legislative authority of any town or city, or any contiguous group of towns or cities, located in a county with a population of less than one million and the legislative authority of a contiguous county, or the legislative authority of the county or counties in which the towns or cities are located, may enter into an agreement under chapter 39.34 RCW for the creation and joint operation of a public facilities district.

(d) The legislative authority of a city located in a county with a population greater than one million may create a public facilities district, when the city has a total population of

less than one hundred fifteen thousand but greater than eighty thousand and commences construction of a regional center prior to July 1, 2008.

(e) At least two legislative authorities, one or more of which previously created a public facilities district or districts under (b) or (c) of this subsection, may create an additional public facilities district notwithstanding the fact that one or more of those towns or cities, with or without a county or counties, previously have created one or more public facilities districts within the geographic boundaries of the additional public facilities district. Those existing districts may continue their full corporate existence and activities notwithstanding the creation and existence of the additional district within all or part of the same geographic area. Additional public facilities districts formed under this subsection may be comprised of a maximum of three contiguous towns or cities separately or in combination with a maximum of two contiguous counties.

(2)(a) A public facilities district shall be coextensive with the boundaries of the city or town or contiguous group of cities or towns that created the district.

(b) A public facilities district created by an agreement between a town or city, or a contiguous group of towns or cities, and a contiguous county or the county in which they are located, shall be coextensive with the boundaries of the towns or cities, and the boundaries of the county or counties as to the unincorporated areas of the county or counties. The boundaries shall not include incorporated towns or cities that are not parties to the agreement for the creation and joint operation of the district.

(3)(a) A public facilities district created by a single city or town shall be governed by a board of directors consisting of five members selected as follows: (i) Two members appointed by the legislative authority of the city or town; and (ii) three members appointed by legislative authority based on recommendations from local organizations. The members appointed under (a)(i) of this subsection, shall not be members of the legislative authority of the city or town. The members appointed under (a)(ii) of this subsection, shall be based on recommendations received from local organizations that may include, but are not limited to the local chamber of commerce, local economic development council, and local labor council. The members shall serve four-year terms. Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for four-year terms.

(b) A public facilities district created by a contiguous group of cities and towns shall be governed by a board of directors consisting of seven members selected as follows: (i) Three members appointed by the legislative authorities of the cities and towns; and (ii) four members appointed by the legislative authorities of the cities and towns based on recommendations from local organizations. The members appointed under (b)(i) of this subsection shall not be members of the legislative authorities of the cities and towns. The members appointed under (b)(ii) of this subsection, shall be based on recommendations received from local organizations that include, but are not limited to the local chamber of commerce, local economic development council, local labor council, and a neighborhood organization that is directly

affected by the location of the regional center in their area. The members of the board of directors shall be appointed in accordance with the terms of the agreement under chapter 39.34 RCW for the joint operation of the district and shall serve four-year terms. Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for four-year terms.

(c) A public facilities district created by a town or city, or a contiguous group of towns or cities, and a contiguous county or the county or counties in which they are located, shall be governed by a board of directors consisting of seven members selected as follows: (i) Three members appointed by the legislative authorities of the cities, towns, and county; and (ii) four members appointed by the legislative authorities of the cities, towns, and county based on recommendations from local organizations. The members appointed under (c)(i) of this subsection shall not be members of the legislative authorities of the cities, towns, or county. The members appointed under (c)(ii) of this subsection shall be based on recommendations received from local organizations that include, but are not limited to, the local chamber of commerce, the local economic development council, the local labor council, and a neighborhood organization that is directly affected by the location of the regional center in their area. The members of the board of directors shall be appointed in accordance with the terms of the agreement under chapter 39.34 RCW for the joint operation of the district and shall serve four-year terms. Of the initial members, one must be appointed for a one-year term, one must be appointed for a two-year term, one must be appointed for a three-year term, and the remainder must be appointed for four-year terms.

(d)(i) A public facilities district created under subsection (1)(e) of this section may provide, in the agreement providing for its creation and operation, that the district must be governed by a board of directors appointed under (b) or (c) of this subsection, or by a board of directors of not more than nine members who are also members of the legislative authorities that created the public facilities district or of the governing boards of the public facilities district or districts, or both, previously created by those legislative authorities.

(ii) A board of directors formed under this subsection must have an equal number of members representing each city, town, or county participating in the public facilities district. If a public facilities district is created by an even number of legislative authorities, the members representing or appointed by those legislative authorities shall appoint an additional board member. For a board formed under this subsection to approve a proposition, the proposition must be approved by a majority of the members representing or appointed by each legislative authority participating in the public facilities district.

(4) A public facilities district is a municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(5) A public facilities district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purposes as well as all other powers that may now



or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, and to sue and be sued.

(6) A public facilities district may acquire and transfer real and personal property by lease, sublease, purchase, or sale. No direct or collateral attack on any public facilities district purported to be authorized or created in conformance with this chapter may be commenced more than thirty days after creation by the city and/or county legislative authority. [2009 c 533 § 1; 2007 c 486 § 1; 2002 c 363 § 1; 1999 c 165 § 1.]

**35.57.020 Regional centers, recreational facilities—Charges and fees—Powers.** (1)(a) Except for a public facilities district created under RCW 35.57.010(1)(e), a public facilities district is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, finance, and operate one or more regional centers. For purposes of this chapter, "regional center" means a convention, conference, or special events center, or any combination of facilities, and related parking facilities, serving a regional population constructed, improved, or rehabilitated after July 25, 1999, at a cost of at least ten million dollars, including debt service. "Regional center" also includes an existing convention, conference, or special events center, and related parking facilities, serving a regional population, that is improved or rehabilitated after July 25, 1999, where the costs of improvement or rehabilitation are at least ten million dollars, including debt service. A "special events center" is a facility, available to the public, used for community events, sporting events, trade shows, and artistic, musical, theatrical, or other cultural exhibitions, presentations, or performances. A regional center is conclusively presumed to serve a regional population if state and local government investment in the construction, improvement, or rehabilitation of the regional center is equal to or greater than ten million dollars.

(b) A public facilities district created under RCW 35.57.010(1)(e) is authorized to acquire, construct, own, remodel, maintain, equip, reequip, repair, finance, and operate one or more recreational facilities other than a ski area.

(2) A public facilities district may enter into contracts with any city or town for the purpose of exercising any powers of a community renewal agency under chapter 35.81 RCW.

(3) A public facilities district may impose charges and fees for the use of its facilities, and may accept and expend or use gifts, grants, and donations for the purpose of a regional center.

(4) A public facilities district may impose charges, fees, and taxes authorized in RCW 35.57.040, and use revenues derived therefrom for the purpose of paying principal and interest payments on bonds issued by the public facilities district to construct a regional center.

(5) Notwithstanding the establishment of a career, civil, or merit service system, a public facilities district may contract with a public or private entity for the operation or management of its public facilities.

(6) A public facilities district is authorized to use the supplemental alternative public works contracting procedures set forth in chapter 39.10 RCW in connection with the

design, construction, reconstruction, remodel, or alteration of any regional center.

(7) A city or town in conjunction with any special agency, authority, or other district established by a county or any other governmental agency is authorized to use the supplemental alternative public works contracting procedures set forth in chapter 39.10 RCW in connection with the design, construction, reconstruction, remodel, or alteration of any regional center funded in whole or in part by a public facilities district. [2009 c 533 § 2. Prior: 2002 c 363 § 2; 2002 c 218 § 25; 1999 c 165 § 2.]

**Severability—Savings—Construction—2002 c 218:** See notes following RCW 35.81.005.

**35.57.060 Expenditure of funds—Purposes.** (1) The board of directors of the public facilities district shall have authority to authorize the expenditure of funds for the public purposes of preparing and distributing information to the general public and promoting, advertising, improving, developing, operating, and maintaining a regional center. For promotional activities the district board must: (a) Identify the proposed expenditure in its annual budget; and (b) adopt written rules governing promotional hosting by employees, agents, and the board, including requirements for identifying and evaluating the public benefits to be derived and documenting the public benefits realized.

(2) Nothing contained in this section may be construed to authorize preparation and distribution of information to the general public for the purpose of influencing the outcome of a district election. [2009 c 167 § 2; 1999 c 165 § 6.]

## Chapter 35.58 RCW

### METROPOLITAN MUNICIPAL CORPORATIONS

#### Sections

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**35.58.070 Resolution, petition for election—Requirements, procedure.** A metropolitan municipal corporation may be created by vote of the qualified electors residing in a metropolitan area in the manner provided in this chapter. An election to authorize the creation of a metropolitan municipal corporation may be called pursuant to resolution or petition in the following manner:

(1) A resolution or concurring resolutions calling for such an election may be adopted by either:

- (a) The city council of a central city; or
- (b) The city councils of two or more component cities other than a central city; or
- (c) The board of commissioners of a central county.

A certified copy of such resolution or certified copies of such concurring resolutions shall be transmitted to the board of commissioners of the central county.

(2) A petition calling for such an election shall be signed by at least four percent of the qualified voters residing within the metropolitan area and shall be filed with the auditor of the central county.

Any resolution or petition calling for such an election shall describe the boundaries of the proposed metropolitan area, name the metropolitan function or functions which the metropolitan municipal corporation shall be authorized to perform initially and state that the formation of the metropolitan municipal corporation will be conducive to the welfare and benefit of the persons and property within the metropolitan area. After the filing of a first sufficient petition or resolution with such county auditor or board of county commissioners respectively, action by such auditor or board shall be deferred on any subsequent petition or resolution until after the election has been held pursuant to such first petition or resolution.

Upon receipt of such a petition, the auditor shall examine the same and certify to the sufficiency of the signatures thereon. For the purpose of examining the signatures on such petition, the auditor shall be permitted access to the voter registration books of each component county and each component city. No person may withdraw his or her name from a petition after it has been filed with the auditor. Within thirty days following the receipt of such petition, the auditor shall transmit the same to the board of commissioners of the central county, together with his or her certificate as to the sufficiency thereof. [2009 c 549 § 2097; 1965 c 7 § 35.58.070. Prior: 1957 c 213 § 7.]

**35.58.100 Additional functions—Authorized by election.** A metropolitan municipal corporation may be authorized to perform one or more metropolitan functions in addition to those which it has previously been authorized to perform, with the approval of the voters at an election, in the manner provided in this section.

An election to authorize a metropolitan municipal corporation to perform one or more additional metropolitan functions may be called pursuant to a resolution or a petition in the following manner:

- (1) A resolution calling for such an election may be adopted by:
  - (a) The city council of the central city; or
  - (b) The city councils of at least one-half in number of the component cities other than the central city; or
  - (c) The board of commissioners of the central county.
 Such resolution shall be transmitted to the metropolitan council.

(2) A petition calling for such an election shall be signed by at least four percent of the registered voters residing within the metropolitan area and shall be filed with the auditor of the central county.

Any resolution or petition calling for such an election shall name the additional metropolitan functions which the metropolitan municipal corporation shall be authorized to perform.

Upon receipt of such a petition, the auditor shall examine the signatures thereon and certify to the sufficiency thereof. For the purpose of examining the signatures on such petition, the auditor shall be permitted access to all voter registration books of any component county and of all component cities. No person may withdraw his or her name from a petition after it has been filed with the auditor. Within thirty days following the receipt of such petition, the auditor shall transmit the same to the metropolitan council, together with his or her certificate as to the sufficiency of signatures thereon.

Upon receipt of a valid resolution or duly certified petition calling for an election on the authorization of the performance of one or more additional metropolitan functions, the metropolitan council shall cause to be called a special election to be held not more than one hundred and twenty days nor less than sixty days following such receipt. Such special election shall be conducted and canvassed as provided in this chapter for an election on the question of forming a metropolitan municipal corporation. The ballot proposition shall be in substantially the following form:

"Shall the . . . . . metropolitan municipal corporation be authorized to perform the additional metropolitan functions of . . . . . (here insert the title of each of the additional functions to be authorized as set forth in the petition or resolution)?"

YES . . . . .   
NO . . . . .  "

If a majority of the persons voting on the proposition shall vote in favor thereof, the metropolitan municipal corporation shall be authorized to perform such additional metropolitan function or functions. [2009 c 549 § 2098; 1967 c 105 § 2; 1965 c 7 § 35.58.100. Prior: 1957 c 213 § 10.]

**35.58.130 Metropolitan council—Organization, chair, procedures.** At the first meeting of the metropolitan council following the formation of a metropolitan municipal corporation, the mayor of the central city shall serve as temporary chair. As its first official act the council shall elect a chair. The chair shall be a voting member of the council and shall preside at all meetings. In the event of his or her absence or inability to act the council shall select one of its members to act as chair pro tempore. A majority of all members of the council shall constitute a quorum for the transaction of business. A smaller number of councilmembers than a quorum may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as the council may provide. The council shall determine its own rules and order of business, shall provide by resolution for the manner and time of holding all regular and special meetings and shall keep a journal of its proceedings which shall be a public record. Every legislative act of the council of a general or permanent nature shall be by resolution. [2009 c 549 § 2099; 1965 c 7 § 35.58.130. Prior: 1957 c 213 § 13.]

**35.58.140 Metropolitan council—Terms.** Each member of a metropolitan council except those selected under the provisions of RCW 35.58.120, shall hold office at the pleasure of the body which selected him or her. Each member, who shall hold office *ex officio*, may not hold office after he or she ceases to hold the position of elected county executive, mayor, commissioner, or councilmember. The chair shall hold office until the second Tuesday in July of each even-numbered year and may, if reelected, serve more than one term. Each member shall hold office until his or her successor has been selected as provided in this chapter. [2009 c 549 § 2100; 1971 ex.s. c 303 § 6; 1969 ex.s. c 135 § 2; 1967 c 105 § 4; 1965 c 7 § 35.58.140. Prior: 1957 c 213 § 14.]

**35.58.150 Metropolitan council—Vacancies.** A vacancy in the office of a member of the metropolitan council shall be filled in the same manner as provided for the original selection. The meeting of mayors to fill a vacancy of the member selected under the provisions of RCW 35.58.120 or of special district representatives to fill a vacancy of a member selected under RCW 35.58.120 shall be held at such time and place as shall be designated by the chair of the metropolitan council after ten days' written notice mailed to the mayors of each of the cities specified in RCW 35.58.120 or to the representatives of the special purpose districts specified in RCW 35.58.120, whichever is applicable. [2009 c 549 § 2101; 1984 c 44 § 1; 1967 c 105 § 5; 1965 c 7 § 35.58.150. Prior: 1957 c 213 § 15.]

**35.58.160 Metropolitan council—Compensation—Waiver of compensation.** The chair and committee chairs of the metropolitan council except elected public officials serving on a full-time salaried basis may receive such compensation as the other members of the metropolitan council shall provide. Members of the council other than the chair and committee chairs shall receive compensation of fifty dollars per day or portion thereof for attendance at metropolitan council or committee meetings, or for performing other services on behalf of the metropolitan municipal corporation, but not exceeding a total of four thousand eight hundred dollars in any year, in addition to any compensation which they may receive as officers of component cities or counties: PROVIDED, That elected public officers serving in such capacities on a full-time basis shall not receive compensation for attendance at metropolitan, council, or committee meetings, or otherwise performing services on behalf of the metropolitan municipal corporation: PROVIDED FURTHER, That committee chairs shall not receive compensation in any one year greater than one-third of the compensation authorized for the county commissioners or county councilmembers of the central county.

Any member of the council may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the council as provided in this section. The waiver, to be effective, must be filed any time after the member's selection and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

All members of the council shall be reimbursed for expenses actually incurred by them in the conduct of official

business for the metropolitan municipal corporation. [2009 c 549 § 2102; 1985 c 330 § 1; 1974 ex.s. c 84 § 2; 1965 c 7 § 35.58.160. Prior: 1957 c 213 § 16.]

**35.58.210 Metropolitan water pollution abatement advisory committee.** If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan water pollution abatement, the metropolitan council shall, prior to the effective date of the assumption of such function, cause a metropolitan water pollution abatement advisory committee to be formed by notifying the legislative body of each component city and county which operates a sewer system to appoint one person to serve on such advisory committee and the board of commissioners of each water-sewer district which operates a sewer system, any portion of which lies within the metropolitan area, to appoint one person to serve on such committee who shall be a commissioner of such a water-sewer district. The metropolitan water pollution abatement advisory committee shall meet at the time and place provided in the notice and elect a chair. The members of such committee shall serve at the pleasure of the appointing bodies and shall receive no compensation other than reimbursement for expenses actually incurred in the performance of their duties. The function of such advisory committee shall be to advise the metropolitan council in matters relating to the performance of the water pollution abatement function. [2009 c 549 § 2103; 1999 c 153 § 33; 1974 ex.s. c 70 § 7; 1965 c 7 § 35.58.210. Prior: 1957 c 213 § 21.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**35.58.230 Metropolitan water advisory committee.** If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan water supply, the metropolitan council shall, prior to the effective date of the assumption of such function, cause a metropolitan water advisory committee to be formed by notifying the legislative body of each component city which operates a water system to appoint one person to serve on such advisory committee and the board of commissioners of each water-sewer district that operates a water system, any portion of which lies within the metropolitan area, to appoint one person to serve on such committee who shall be a water-sewer district commissioner. The metropolitan water advisory committee shall meet at the time and place provided in the notice and elect a chair. The members of such committee shall serve at the pleasure of the appointing bodies and shall receive no compensation other than reimbursement for expenses actually incurred in the performance of their duties. The function of such advisory committee shall be to advise the metropolitan council with respect to matters relating to the performance of the water supply function.

The requirement to create a metropolitan water advisory committee shall not apply to a county that has assumed the rights, powers, functions, and obligations of the metropolitan municipal corporation under chapter 36.56 RCW. [2009 c 549 § 2104; 1999 c 153 § 35; 1993 c 240 § 5; 1965 c 7 § 35.58.230. Prior: 1957 c 213 § 23.]

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**35.58.265 Acquisition of existing transportation system—Assumption of labor contracts—Transfer of employees—Preservation of employee benefits—Collective bargaining.** If a metropolitan municipal corporation shall perform the metropolitan transportation function and shall acquire any existing transportation system, it shall assume and observe all existing labor contracts relating to such system and, to the extent necessary for operation of facilities, all of the employees of such acquired transportation system whose duties are necessary to operate efficiently the facilities acquired shall be appointed to comparable positions to those which they held at the time of such transfer, and no employee or retired or pensioned employee of such systems shall be placed in any worse position with respect to pension seniority, wages, sick leave, vacation or other benefits that he or she enjoyed as an employee of such system prior to such acquisition. The metropolitan municipal corporation shall engage in collective bargaining with the duly appointed representatives of any employee labor organization having existing contracts with the acquired transportation system and may enter into labor contracts with such employee labor organization. [2009 c 549 § 2105; 1965 c 91 § 1.]

*Retention of employees, preservation of pension rights and other benefits upon acquisition of metropolitan facility: RCW 35.58.380 through 35.58.400.*

**35.58.270 Metropolitan transit commission.** If a metropolitan municipal corporation shall be authorized to perform the function of metropolitan transportation with a commission form of management, a metropolitan transit commission shall be formed prior to the effective date of the assumption of such function. Except as provided in this section, the metropolitan transit commission shall exercise all powers of the metropolitan municipal corporation with respect to metropolitan transportation facilities, including but not limited to the power to construct, acquire, maintain, operate, extend, alter, repair, control and manage a local public transportation system within and without the metropolitan area, to establish new passenger transportation services and to alter, curtail, or abolish any services as the commission may deem desirable and to fix tolls and fares.

The comprehensive plan for public transportation service and any amendments thereof shall be adopted by the metropolitan council and the metropolitan transit commission shall provide transportation facilities and service consistent with such plan. The metropolitan transit commission shall authorize expenditures for transportation purposes within the budget adopted by the metropolitan council. Tolls and fares may be fixed or altered by the commission only after approval thereof by the metropolitan council. Bonds of the metropolitan municipal corporation for public transportation purposes shall be issued by the metropolitan council as provided in this chapter.

The metropolitan transit commission shall consist of seven members. Six of such members shall be appointed by the metropolitan council and the seventh member shall be the chair of the metropolitan council who shall be ex officio the chair of the metropolitan transit commission. Three of the six appointed members of the commission shall be residents of the central city and three shall be residents of the metropolitan area outside of the central city. The three central city

members of the first metropolitan transit commission shall be selected from the existing transit commission of the central city, if there be a transit commission in such city. The terms of first appointees shall be for one, two, three, four, five and six years, respectively. Thereafter, commissioners shall serve for a term of four years. Compensation of transit commissioners shall be determined by the metropolitan council.

The requirement to create a metropolitan transit commission shall not apply to a county that has assumed the rights, powers, functions, and obligations of the metropolitan municipal corporation under chapter 36.56 RCW. [2009 c 549 § 2106; 1993 c 240 § 6; 1967 c 105 § 12; 1965 c 7 § 35.58.270. Prior: 1957 c 213 § 27.]

**35.58.370 Merit system.** The metropolitan council shall establish and provide for the operation and maintenance of a personnel merit system for the employment, classification, promotion, demotion, suspension, transfer, layoff and discharge of its appointive officers and employees solely on the basis of merit and fitness without regard to political influence or affiliation. The person appointed or body created for the purpose of administering such personnel system shall have power to make, amend and repeal rules and regulations as are deemed necessary for such merit system. Such rules and regulations shall provide:

(1) That the person to be discharged or demoted must be presented with the reasons for such discharge or demotion specifically stated; and

(2) That he or she shall be allowed a reasonable time in which to reply thereto in writing and that he or she be given a hearing thereon within a reasonable time. [2009 c 549 § 2107; 1965 c 7 § 35.58.370. Prior: 1957 c 213 § 37.]

**35.58.390 Prior employees pension rights preserved.** Where a metropolitan municipal corporation employs a person employed immediately prior thereto by a component city or county, or by a special district, such employee shall be deemed to remain an employee of such city, county, or special district for the purposes of any pension plan of such city, county, or special district, and shall continue to be entitled to all rights and benefits thereunder as if he or she had remained as an employee of the city, county, or special district, until the metropolitan municipal corporation has provided a pension plan and such employee has elected, in writing, to participate therein.

Until such election, the metropolitan municipal corporation shall deduct from the remuneration of such employee the amount which such employee is or may be required to pay in accordance with the provisions of the plan of such city, county, or special district and the metropolitan municipal corporation shall pay to the city, county, or special district any amounts required to be paid under the provisions of such plan by employer or employee. [2009 c 549 § 2108; 1965 c 7 § 35.58.390. Prior: 1957 c 213 § 39.]

*Preservation of pension rights upon acquisition of transportation system: RCW 35.58.265.*

*Public employment, civil service and pensions: Title 41 RCW.*

**35.58.400 Prior employees sick leave and vacation rights preserved.** Where a metropolitan municipal corpora-

tion employs a person employed immediately prior thereto by a component city or county or by a special district, the employee shall be deemed to remain an employee of such city, county, or special district for the purposes of any sick leave credit plan of the component city, county, or special district until the metropolitan municipal corporation has established a sick leave credit plan for its employees, whereupon the metropolitan municipal corporation shall place to the credit of the employee the sick leave credits standing to his or her credit in the plan of such city, county, or special district.

Where a metropolitan municipal corporation employs a person theretofore employed by a component city, county, or by a special district, the metropolitan municipal corporation shall, during the first year of his or her employment by the metropolitan municipal corporation, provide for such employee a vacation with pay equivalent to that which he or she would have been entitled if he or she had remained in the employment of the city, county, or special district. [2009 c 549 § 2109; 1965 c 7 § 35.58.400. Prior: 1957 c 213 § 40.]

*Preservation of sick leave, vacation, and other benefits upon acquisition of transportation system: RCW 35.58.265.*

**35.58.460 Revenue bonds—Issuance, sale, form, term, payment, reserves, actions.** (1) A metropolitan municipal corporation may issue revenue bonds to provide funds to carry out its authorized metropolitan water pollution abatement, water supply, garbage disposal or transportation purposes, without submitting the matter to the voters of the metropolitan municipal corporation. The metropolitan council shall create a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the metropolitan council may obligate the metropolitan municipal corporation to pay such amounts of the gross revenue of the particular utility constructed, acquired, improved, added to, or repaired out of the proceeds of sale of such bonds, as the metropolitan council shall determine and may obligate the metropolitan municipal corporation to pay such amounts out of otherwise unpledged revenue which may be derived from the ownership, use or operation of properties or facilities owned, used or operated incident to the performance of the authorized function for which such bonds are issued or out of otherwise unpledged fees, tolls, charges, tariffs, fares, rentals, special taxes or other sources of payment lawfully authorized for such purpose, as the metropolitan council shall determine. The principal of, and interest on, such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue of such utility or any other revenue, fees, tolls, charges, tariffs, fares, special taxes or other authorized sources pledged to the payment of such bonds.

Such revenue bonds and the interest thereon issued against such fund or funds shall be a valid claim of the owners thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the metropolitan municipal corporation.

Each such revenue bond shall state upon its face that it is payable from such special fund or funds, and all revenue bonds issued under this chapter shall be negotiable securities within the provisions of the law of this state. Such revenue

bonds may be registered either as to principal only or as to principal and interest as provided in RCW 39.46.030, or may be bearer bonds; shall be in such denominations as the metropolitan council shall deem proper; shall be payable at such time or times and at such places as shall be determined by the metropolitan council; shall bear interest at such rate or rates as shall be determined by the metropolitan council; shall be signed by the chair and attested by the secretary of the metropolitan council, any of which signatures may be facsimile signatures, and the seal of the metropolitan municipal corporation shall be impressed or imprinted thereon; any attached interest coupons shall be signed by the facsimile signatures of said officials.

Such revenue bonds shall be sold in such manner, at such price and at such rate or rates of interest as the metropolitan council shall deem to be for the best interests of the metropolitan municipal corporation, either at public or private sale.

The metropolitan council may at the time of the issuance of such revenue bonds make such covenants with the owners of said bonds as it may deem necessary to secure and guarantee the payment of the principal thereof and the interest thereon, including but not being limited to covenants to set aside adequate reserves to secure or guarantee the payment of such principal and interest, to maintain rates sufficient to pay such principal and interest and to maintain adequate coverage over debt service, to appoint a trustee or trustees for the bond owners to safeguard the expenditure of the proceeds of sale of such bonds and to fix the powers and duties of such trustee or trustees and to make such other covenants as the metropolitan council may deem necessary to accomplish the most advantageous sale of such bonds. The metropolitan council may also provide that revenue bonds payable out of the same source may later be issued on a parity with revenue bonds being issued and sold.

The metropolitan council may include in the principal amount of any such revenue bond issue an amount to establish necessary reserves, an amount for working capital and an amount necessary for interest during the period of construction of any such metropolitan facilities plus six months. The metropolitan council may, if it deems it to the best interest of the metropolitan municipal corporation, provide in any contract for the construction or acquisition of any metropolitan facilities or additions or improvements thereto or replacements or extensions thereof that payment therefor shall be made only in such revenue bonds at the par value thereof.

If the metropolitan municipal corporation shall fail to carry out or perform any of its obligations or covenants made in the authorization, issuance and sale of such bonds, the owner of any such bond may bring action against the metropolitan municipal corporation and compel the performance of any or all of such covenants.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2009 c 549 § 2110; 1993 c 240 § 14; 1983 c 167 § 48; 1974 ex.s. c 70 § 8; 1970 ex.s. c 56 § 39; 1970 ex.s. c 11 § 2; 1969 ex.s. c 255 § 18; 1969 ex.s. c 232 § 17; 1967 c 105 § 14; 1965 c 7 § 35.58.460. Prior: 1957 c 213 § 46.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**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.

*Alternative authority to issue revenue bonds:* RCW 39.46.150, 39.46.160.

*Funds for reserve purposes may be included in issue amount:* RCW 39.44.140.

### 35.58.530 Annexation—Requirements, procedure.

Territory located within a component county that is annexed to a component city after the establishment of a metropolitan municipal corporation shall by such act be annexed to the metropolitan municipal corporation. Territory within a metropolitan municipal corporation may be annexed to a city which is not within such metropolitan municipal corporation in the manner provided by law and in such event either (1) such city may be annexed to such metropolitan municipal corporation by ordinance of the legislative body of the city concurred in by resolution of the metropolitan council, or (2) if such city shall not be so annexed such territory shall remain within the metropolitan municipal corporation unless such city shall by resolution of its legislative body request the withdrawal of such territory subject to any outstanding indebtedness of the metropolitan corporation and the metropolitan council shall by resolution consent to such withdrawal.

Any territory located within a component county that is contiguous to a metropolitan municipal corporation and lying wholly within an incorporated city or town may be annexed to such metropolitan municipal corporation by ordinance of the legislative body of such city or town requesting such annexation concurred in by resolution of the metropolitan council.

Any other territory located within a component county that is adjacent to a metropolitan municipal corporation may be annexed thereto by vote of the qualified electors residing in the territory to be annexed, in the manner provided in this chapter. An election to annex such territory may be called pursuant to a petition or resolution in the following manner:

(1) A petition calling for such an election shall be signed by at least four percent of the qualified voters residing within the territory to be annexed and shall be filed with the auditor of the central county.

(2) A resolution calling for such an election may be adopted by the metropolitan council.

Any resolution or petition calling for such an election shall describe the boundaries of the territory to be annexed, and state that the annexation of such territory to the metropolitan municipal corporation will be conducive to the welfare and benefit of the persons or property within the metropolitan municipal corporation and within the territory proposed to be annexed.

Upon receipt of such a petition, the auditor shall examine the same and certify to the sufficiency of the signatures thereon. Within thirty days following the receipt of such petition, the auditor shall transmit the same to the metropolitan council, together with his or her certificate as to the sufficiency thereof. [2009 c 549 § 2111; 1993 c 240 § 18; 1969 ex.s. c 135 § 3; 1967 c 105 § 15; 1965 c 7 § 35.58.530. Prior: 1957 c 213 § 53.]

### 35.58.600 Collaboration with local coordinating coalitions to advance transportation services for persons with

**special transportation needs.** A municipality, as defined in RCW 35.58.272, and each regional transit authority shall work collaboratively with the appropriate local coordinating coalition or coalitions as described under RCW 47.06B.070 to advance the coordination of and maximize efficiencies in transportation services provided to persons with special transportation needs as defined in RCW 47.06B.012. [2009 c 515 § 13.]

## Chapter 35.61 RCW

### METROPOLITAN PARK DISTRICTS

#### Sections

- 35.61.135 Contracts—Competitive bidding—Small works roster—Exemption.
- 35.61.230 Objections—Appeal.
- 35.61.380 Community athletics programs—Sex discrimination prohibited.

**35.61.135 Contracts—Competitive bidding—Small works roster—Exemption.** (1) All work ordered, the estimated cost of which is in excess of twenty thousand dollars, shall be let by contract and competitive bidding. Before awarding any such contract the board of park commissioners shall publish a notice in a newspaper of general circulation where the district is located at least once thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work, plans, and specifications which must at the time of publication of such notice be on file in the office of the board of park commissioners subject to the public inspection. The notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of park commissioners on or before the day and hour named therein.

Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the metropolitan park district for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the metropolitan park district as liquidated damages the amount specified in the bond, unless the bidder enters into a contract in accordance with the bidder's bid, and no bid shall be considered unless accompanied by such check, cash, or bid bond. At the time and place named such bids shall be publicly opened and read and the board of park commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting the bidder's own plans and specifications. The board of park commissioners may reject all bids for good cause and readvertise and in such case all checks, cash, or bid bonds shall be returned to the bidders. If the contract is let, then all checks, cash, or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract is entered into for doing the work, and a bond to perform such work furnished with sureties satisfactory to the board of park commissioners in the full amount of the contract price between the bidder and the metropolitan park district in accordance with the bid. If the bidder fails to enter into the contract in accordance with the bid and furnish the bond

within ten days from the date at which the bidder is notified that the bidder is the successful bidder, the check, cash, or bid bonds and the amount thereof shall be forfeited to the metropolitan park district. If the bidder fails to enter into a contract in accordance with the bidder's bid, and the board of park commissioners deems it necessary to take legal action to collect on any bid bond required by this section, then the metropolitan park district is entitled to collect from the bidder any legal expenses, including reasonable attorneys' fees occasioned thereby. 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.

(2) As an alternative to requirements under subsection (1) of this section, a metropolitan park district may let contracts using the small works roster process under RCW 39.04.155.

(3) Any purchase of materials, supplies, or equipment, with an estimated cost in excess of forty thousand dollars, shall be by contract. Any purchase of materials, supplies, or equipment, with an estimated cost of less than fifty thousand dollars shall be made using the process provided in RCW 39.04.190. Any purchase of materials, supplies, or equipment with an estimated cost of fifty thousand dollars or more shall be made by competitive bidding following the procedure for letting contracts for projects under subsection (1) of this section.

(4) As an alternative to requirements under subsection (3) of this section, a metropolitan park district may let contracts for purchase of materials, supplies, or equipment with the suppliers designated on current state agency, county, city, or town purchasing rosters for the materials, supplies, or equipment, when the roster has been established in accordance with the competitive bidding law for purchases applicable to the state agency, county, city, or town. The price and terms for purchases shall be as described on the applicable roster.

(5) The park board may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within RCW 39.04.280 applies to the purchase or public work. [2009 c 229 § 10; 2001 c 29 § 1.]

**35.61.230 Objections—Appeal.** Any person, firm or corporation feeling aggrieved by the assessment against his or her or its property may file objections with the city council and may appeal from the order confirming the assessment roll in the same manner as objections and appeals are made in regard to local improvements in cities of the first class. [2009 c 549 § 2112; 1965 c 7 § 35.61.230. Prior: 1943 c 264 § 16; Rem. Supp. 1943 § 6741-16; prior: 1907 c 98 § 17; RRS § 6736.]

*Appeal of assessments and reassessments: RCW 35.44.200 through 35.44.270.*

**35.61.380 Community athletics programs—Sex discrimination prohibited.** The antidiscrimination provisions of RCW 49.60.500 apply to community athletics programs and facilities operated, conducted, or administered by a metropolitan park district. [2009 c 467 § 5.]

**Findings—Declarations—2009 c 467:** See note following RCW 49.60.500.

**Chapter 35.63 RCW**

**PLANNING COMMISSIONS**

Sections

35.63.020	Commissioners—Manner of appointment.
35.63.030	Commissioners—Number—Tenure—Compensation.
35.63.040	Commissions—Organization—Meeting—Rules.
35.63.100	Restrictions—Recommendations of commission—Hearings—Adoption of comprehensive plan—Certifying—Filing or recording.
35.63.126	Development regulations—Jurisdictions specified—Electric vehicle infrastructure—City retrofitting incentive programs.
35.63.127	Development regulations—Jurisdictions specified—Electric vehicle infrastructure—County retrofitting incentive programs.

**35.63.020 Commissioners—Manner of appointment.**

If any council or board desires to avail itself of the powers conferred by this chapter it shall create a city or county planning commission consisting of from three to twelve members to be appointed by the mayor or chair of the municipality and confirmed by the council or board: PROVIDED, That in cities of the first class having a commission form of government consisting of three or more members, the commissioner of public works shall appoint the planning commission, which appointment shall be confirmed by a majority of the city commissioners. Cities of the first class operating under self-government charters may extend the membership and the duties and powers of its commission beyond those prescribed in this chapter. [2009 c 549 § 2113; 1965 c 7 § 35.63.020. Prior: (i) 1935 c 44 § 2, part; RRS § 9322-2, part. (ii) 1935 c 44 § 12; RRS § 9322-12.]

**35.63.030 Commissioners—Number—Tenure—Compensation.**

The ordinance, resolution or act creating the commission shall set forth the number of members to be appointed, not more than one-third of which number may be ex officio members by virtue of office held in any municipality. The term of office for ex officio members shall correspond to their respective tenures. The term of office for the first appointive members appointed to such commission shall be designated from one to six years in such manner as to provide that the fewest possible terms will expire in any one year. Thereafter the term of office for each appointive member shall be six years.

Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired term. Members may be removed, after public hearing, by the appointing official, with the approval of his or her council or board, for inefficiency, neglect of duty or malfeasance in office.

The members shall be selected without respect to political affiliations and they shall serve without compensation. [2009 c 549 § 2114; 1965 c 7 § 35.63.030. Prior: 1935 c 44 § 2, part; RRS § 9322-2, part.]

**35.63.040 Commissions—Organization—Meeting—Rules.**

The commission shall elect its own chair and create and fill such other offices as it may determine it requires. The commission shall hold at least one regular meeting in each month for not less than nine months in each year. It shall adopt rules for transaction of business and shall keep a written record of its meetings, resolutions, transactions, findings and determinations which record shall be a public record.

[2009 c 549 § 2115; 1965 c 7 § 35.63.040. Prior: 1935 c 44 § 3; RRS § 9322-3.]

**35.63.100 Restrictions—Recommendations of commission—Hearings—Adoption of comprehensive plan—Certifying—Filing or recording.** The commission may recommend to its council or board the plan prepared by it as a whole, or may recommend parts of the plan by successive recommendations; the parts corresponding with geographic or political sections, division or subdivisions of the municipality, or with functional subdivisions of the subject matter of the plan, or in the case of counties, with suburban settlement or arterial highway area. It may also prepare and recommend any amendment or extension thereof or addition thereto.

Before the recommendation of the initial plan to the municipality the commission shall hold at least one public hearing thereon, giving notice of the time and place by one publication in a newspaper of general circulation in the municipality and in the official gazette, if any, of the municipality.

The council may adopt by resolution or ordinance and the board may adopt by resolution the plan recommended to it by the commission, or any part of the plan, as the comprehensive plan.

A true copy of the resolution of the board adopting or embodying such plan or any part thereof or any amendment thereto shall be certified by the clerk of the board and filed with the county auditor. A like certified copy of any map or plat referred to or adopted by the county resolution shall likewise be filed with the county auditor. The auditor shall record the resolution and keep on file the map or plat.

The original resolution or ordinance of the council adopting or embodying such plan or any part thereof or any amendment thereto shall be certified by the clerk of the city and filed by him or her. The original of any map or plat referred to or adopted by the resolution or ordinance of the council shall likewise be certified by the clerk of the city and filed by him or her. The clerk shall keep on file the resolution or ordinance and map or plat. [2009 c 549 § 2116; 1967 ex.s. c 144 § 8; 1965 c 7 § 35.63.100. Prior: 1935 c 44 § 8; RRS § 9322-8.]

**Effective date—1967 ex.s. c 144:** The effective date of 1967 ex.s. c 144 is July 30, 1967.

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030.

**Validation—1967 ex.s. c 144:** "Any city comprehensive plan and all amendments thereto which have been filed or recorded with the county auditor prior to the effective date of this 1967 amendatory act shall be valid and need not be refiled with the clerk of the city to remain valid and in full force and effect." [1967 ex.s. c 144 § 10.]

**35.63.126 Development regulations—Jurisdictions specified—Electric vehicle infrastructure—City retrofitting incentive programs.** (1) By July 1, 2010, the development regulations of any jurisdiction:

(a) Adjacent to Interstate 5, Interstate 90, Interstate 405, or state route number 520, with a population over twenty thousand, and located in a county with a population over one million five hundred thousand; or

(b) Adjacent to Interstate 5 and located in a county with a population greater than six hundred thousand; or

(c) Adjacent to Interstate 5 and located in a county with a state capitol within its borders; planning under this chapter must allow electric vehicle infrastructure as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(2) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction adjacent to Interstate 5, Interstate 90, Interstate 405, or state route number 520 planning under this chapter must allow electric vehicle infrastructure as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(3) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction planning under this chapter must allow battery charging stations as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(4) Cities are authorized to adopt incentive programs to encourage the retrofitting of existing structures with the electrical outlets capable of charging electric vehicles. Incentives may include bonus height, site coverage, floor area ratio, and transferable development rights for use in urban growth areas.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(6) If federal funding for public investment in electric vehicles, electric vehicle infrastructure, or alternative fuel distribution infrastructure is not provided by February 1,



2010, subsection (1) of this section is null and void. [2009 c 459 § 9.]

**Finding—Purpose—2009 c 459:** See note following RCW 47.80.090.  
*Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.*

**35.63.127 Development regulations—Jurisdictions specified—Electric vehicle infrastructure—County retrofitting incentive programs.** (1) By July 1, 2010, the development regulations of any jurisdiction with a population over six hundred thousand or with a state capitol within its borders planning under this chapter must allow electric vehicle infrastructure as a use in all areas within one mile of Interstate 5, Interstate 90, Interstate 405, or state route number 520, except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(2) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction adjacent to Interstate 5, Interstate 90, Interstate 405, or state route number 520 planning under this chapter must allow electric vehicle infrastructure as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(3) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction planning under this chapter must allow battery charging stations as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(4) Counties are authorized to adopt incentive programs to encourage the retrofitting of existing structures with the electrical outlets capable of charging electric vehicles. Incentives may include bonus height, site coverage, floor area ratio, and transferable development rights for use in urban growth areas.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support

an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(6) If federal funding for public investment in electric vehicles, electric vehicle infrastructure, or alternative fuel distribution infrastructure is not provided by February 1, 2010, subsection (1) of this section is null and void. [2009 c 459 § 13.]

**Finding—Purpose—2009 c 459:** See note following RCW 47.80.090.  
*Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.*

### Chapter 35.68 RCW

#### SIDEWALKS, GUTTERS, CURBS, AND DRIVEWAYS—ALL CITIES AND TOWNS

##### Sections

35.68.020 Resolution—Contents.

**35.68.020 Resolution—Contents.** No such improvement shall be undertaken or required except pursuant to a resolution of the council or commission of the city or town, hereinafter referred to as the city council. The resolution shall state whether the cost of the improvement shall be borne by the city or whether all or a specified portion shall be borne by the city or whether all or a specified portion shall be borne by the abutting property owner; or whether the abutting owner is required to construct the improvement at his or her own cost and expense. If the abutting owner is required to construct the improvement the resolution shall specify the time within which the construction shall be commenced and completed; and further that if the improvement or construction is not undertaken and completed within the time specified that the city will perform or complete the improvement and assess the cost against the abutting owner. [2009 c 549 § 2117; 1965 c 7 § 35.68.020. Prior: 1949 c 177 § 2; Rem. Supp. 1949 § 9332b.]

### Chapter 35.69 RCW

#### SIDEWALKS—CONSTRUCTION, RECONSTRUCTION IN FIRST AND SECOND-CLASS CITIES

##### Sections

35.69.030 Notice to owners—Service—Contents—Assessment—Collection.

**35.69.030 Notice to owners—Service—Contents—Assessment—Collection.** Whenever the city council of any such city has adopted such resolution it shall cause a notice to be served on the owner of the property directly abutting on such portion of such street, instructing him or her to construct or reconstruct a sidewalk on such portion in accordance with the plans and specifications which shall be attached to such notice. The notice shall be deemed sufficiently served if

delivered in person to the owner or if left at the home of such owner with a person of suitable age and discretion then resident therein, or with an agent of such owner, authorized to collect rentals on such property, or, if the owner is a nonresident of the state of Washington, by mailing a copy to his or her last known address, or if he or she is unknown or if his or her address is unknown, then by posting a copy in a conspicuous place at such portion of the street where the improvement is to be made. The notice shall specify a reasonable time within which such construction or reconstruction shall be made, and shall state that in case the owner fails to make the same within such time, the city will proceed to make it through the officer or department thereof charged with the inspection of sidewalks and that such officer or department will report to the city council, at a subsequent date, to be definitely stated in the notice, an assessment roll showing the lot or parcel of land directly abutting on such portion of the street so improved, the cost of the improvement, and the name of the owner, if known, and that the city council at the time stated in the notice or at the time or times to which the same may be adjourned, will hear any and all protests against the proposed assessment. Upon the expiration of the time fixed within which the owner is required to construct or reconstruct such sidewalk, if the owner has failed to perform such work, the city may proceed to perform it, and the officer or department of the city performing the work shall, within the time fixed in the notice, report to the city council an assessment roll showing the lot or parcel of land directly abutting on that portion of the street so improved, the cost of the work, and the name of the owner, if known. The city council shall, at the time in such notice designated, or at an adjourned time or times, assess the cost of such improvement against said property and shall fix the time and manner for payment thereof, which said assessment shall become a lien upon said property and shall be collected in the manner as is provided by law for collection of local improvements assessments under this title. [2009 c 549 § 2118; 1965 c 7 § 35.69.030. Prior: 1927 c 203 § 3; RRS § 9332-3.]

### Chapter 35.70 RCW

#### SIDEWALKS—CONSTRUCTION IN SECOND-CLASS CITIES AND TOWNS

##### Sections

35.70.030	Convenience and necessity reported by superintendent.
35.70.040	Council's resolution and notice—Adoption.
35.70.060	Notice of resolution and order—Service.

**35.70.030 Convenience and necessity reported by superintendent.** If in the judgment of the officer or department having superintendence of streets and public places, public convenience or safety requires that a sidewalk be constructed along either side of any street, he or she shall report the fact to the city or town council immediately. [2009 c 549 § 2119; 1965 c 7 § 35.70.030. Prior: 1915 c 149 § 2, part; RRS § 9156, part.]

**35.70.040 Council's resolution and notice—Adoption.** If upon receiving a report from the proper officer, the city or town council deems the construction of the proposed sidewalk necessary or convenient for the public it shall by an

appropriate resolution order the sidewalk constructed and shall cause a written notice to be served upon the owner of each parcel of land abutting upon that portion and side of the street where the sidewalk is constructed requiring him or her to construct the sidewalk in accordance with the resolution. [2009 c 549 § 2120; 1965 c 7 § 35.70.040. Prior: 1915 c 149 § 2, part; RRS § 9156, part.]

**35.70.060 Notice of resolution and order—Service.** The notice shall be served:

(1) By delivering a copy to the owner or reputed owner of each parcel of land affected, or to the authorized agent of the owners, or

(2) By leaving a copy thereof at the usual place of abode of the owner in the city or town with a person of suitable age and discretion residing therein, or

(3) If the owner is a nonresident of the city or town and his or her place of residence is known by mailing a copy to the owner addressed to his or her last known place of residence, or

(4) If the place of residence of the owner is unknown or if the owner of any parcel of land affected is unknown, by publication in the official newspaper of the city or town once a week for two consecutive weeks. The notice shall specify a reasonable time within which the sidewalk shall be constructed which in the case of publication of the notice shall not be less than sixty days from the date of the first publication of such notice. [2009 c 549 § 2121; 1985 c 469 § 36; 1965 c 7 § 35.70.060. Prior: 1915 c 149 § 4; RRS § 9158.]

### Chapter 35.71 RCW PEDESTRIAN MALLS

##### Sections

35.71.050	Real estate appraisers—Report.
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**35.71.050 Real estate appraisers—Report.** The corporate authority is authorized to engage duly qualified real estate appraisers, for the purpose of determining the value, or legal damages, if any, to any person, owning or having any legal or equitable interest in any real property who contends that he or she would suffer damage if a projected mall were established; in connection therewith the city shall take into account any increment in value that may result from the establishment of the mall. The appraisers shall submit their findings in writing to the chief executive of the city. [2009 c 549 § 2122; 1965 c 7 § 35.71.050. Prior: 1961 c 111 § 5.]

### Chapter 35.77 RCW STREETS—PLANNING, ESTABLISHMENT, CONSTRUCTION, AND MAINTENANCE

##### Sections

35.77.030	Agreements with county for planning, establishment, construction, and maintenance—County may use road fund—Payments by city—Contracts, bids.
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**35.77.030 Agreements with county for planning, establishment, construction, and maintenance—County may use road fund—Payments by city—Contracts, bids.**

Pursuant to an agreement authorized by RCW 35.77.020, the board of county commissioners may expend funds from the county road fund for the construction, repair, and maintenance of the streets of such city or town and for engineering and administrative services. Payments by a city or town under such an agreement shall be made to the county treasurer and by him or her deposited in the county road fund. Such construction, repair, maintenance, and engineering service shall be ordered by resolution and proceedings conducted in respect thereto in the same manner as provided for the construction, repair, and maintenance of county roads by counties, and for the preparation of maps, plans and specifications, advertising and award of contracts therefor: PROVIDED, That except in case of emergency all construction work performed by a county on city streets pursuant to RCW 35.77.020 through 35.77.040, which exceeds ten thousand dollars, shall be done by contract, unless after advertisement and solicitation of competitive bids it appears that bids are unobtainable or that the lowest bid exceeds the amount for which such construction can be done by means other than contract. No street construction project shall be divided into lesser component parts for the purpose of avoiding the requirements for competitive bidding. [2009 c 549 § 2123; 1965 c 7 § 35.77.030. Prior: 1961 c 245 § 2.]

### Chapter 35.82 RCW

## HOUSING AUTHORITIES LAW

#### Sections

35.82.050	Conflicts of interest for commissioners, employees, and appointees.
35.82.060	Removal of commissioners.
35.82.180	Additional remedies conferable by authority.

**35.82.050 Conflicts of interest for commissioners, employees, and appointees.** (1) No commissioner, employee, or appointee to any decision-making body for the housing authority shall own or hold an interest in any contract or property or engage in any business, transaction, or professional or personal activity, that would:

(a) Be, or appear to be, in conflict with the commissioner's, employee's, or appointee's official duties to any decision-making body for the housing authority duties relating to the housing authority served by or subject to the authority of such commissioner, employee, or appointee to any decision-making body for the housing authority;

(b) Secure, or appear to secure, unwarranted privileges or advantages for such commissioner, employee, or appointee to any decision-making body for the housing authority, or others; or

(c) Prejudice, or appear to prejudice, such commissioner's, employee's, or appointee's to any decision-making body for the housing authority independence of judgment in exercise of his or her official duties relating to the housing authority served by or subject to the authority of the commissioner, employee, or appointee to any decision-making body for the housing authority.

(2) No commissioner, employee, or appointee to any decision-making body for the housing authority shall act in an official capacity in any manner in which such commissioner, employee, or appointee to any decision-making body

of the housing authority has a direct or indirect financial or personal involvement.

(3) No commissioner, employee, or appointee to any decision-making body for the housing authority shall use his or her public office or employment to secure financial gain to such commissioner, employee, or appointee to any decision-making body for the housing authority.

(4) If any commissioner or employee of an authority or any appointee to any decision-making body for the housing authority owns or controls an interest direct or indirect in any property included or planned to be included in any housing project, he or she immediately shall disclose the same in writing to the authority and such disclosure shall be entered upon the minutes of the authority. Failure to disclose such interest shall constitute misconduct in office. Upon such disclosure such commissioner, employee, or appointee to any decision-making body for the housing authority shall not participate in any action by the authority affecting such property.

(5) No provision of this section shall preclude a tenant of the public housing authority from serving as a commissioner, employee, or appointee to any decision-making body of the housing authority. No provision of this section shall preclude a tenant of the public housing authority who is serving as a commissioner, employee, or appointee to any decision-making body of the housing authority from voting on any issue or decision, or participating in any action by the authority, unless a conflict of interest, as set forth in subsections (1) through (4) of this section, exists as to that particular tenant and the particular property or interest at issue before, or subject to action by the housing authority. [2009 c 549 § 2124; 1998 c 140 § 3; 1965 c 7 § 35.82.050. Prior: 1939 c 23 § 6; RRS § 6889-6. Formerly RCW 74.24.050.]

**35.82.060 Removal of commissioners.** For inefficiency or neglect of duty or misconduct in office, a commissioner of an authority may be removed by the mayor (or in the case of an authority for a county, by the governing body of said county), but a commissioner shall be removed only after he or she shall have been given a copy of the charges at least ten days prior to the hearing thereon and had an opportunity to be heard in person or by counsel. In the event of the removal of any commissioner, a record of the proceedings, together with the charges and findings thereon, shall be filed in the office of the clerk. [2009 c 549 § 2125; 1965 c 7 § 35.82.060. Prior: 1939 c 23 § 7; RRS § 6889-7. Formerly RCW 74.24.060.]

**35.82.180 Additional remedies conferable by authority.** An authority shall have power by its resolution, trust indenture, mortgage, lease or other contract to confer upon any obligee holding or representing a specified amount in bonds, or holding a lease, the right (in addition to all rights that may otherwise be conferred), upon the happening of an event of default as defined in such resolution or instrument, by suit, action or proceeding in any court of competent jurisdiction:

(1) To cause possession of any housing project or any part thereof to be surrendered to any such obligee.

(2) To obtain the appointment of a receiver of any housing project of said authority or any part thereof and of the

rents and profits therefrom. If such receiver be appointed, he or she may enter and take possession of such housing project or any part thereof and operate and maintain same, and collect and receive all fees, rents, revenues, or other charges thereafter arising therefrom, and shall keep such moneys in a separate account or accounts and apply the same in accordance with the obligations of said authority as the court shall direct.

(3) To require said authority and the commissioners thereof to account as if it and they were the trustees of an express trust. [2009 c 549 § 2126; 1965 c 7 § 35.82.180. Prior: 1939 c 23 § 19; RRS § 6889-19. Formerly RCW 74.24.180.]

### Chapter 35.84 RCW

#### UTILITY AND OTHER SERVICES BEYOND CITY LIMITS

##### Sections

35.84.050 Firefighter injured outside corporate limits.

**35.84.050 Firefighter injured outside corporate limits.** Whenever a firefighter engages in any duty outside the limits of such municipality, such duty shall be considered as part of his or her duty as firefighter for the municipality, and a firefighter who is injured while engaged in such duties outside the limits of the municipality shall be entitled to the same benefits that he or she or his or her family would be entitled to receive had he or she been injured within the municipality. [2009 c 549 § 2127; 1965 c 7 § 35.84.050. Prior: 1941 c 96 § 2; Rem. Supp. 1941 § 9563-1.]

### Chapter 35.86A RCW

#### OFF-STREET PARKING— PARKING COMMISSIONS

##### Sections

35.86A.060 Parking commission—Chair—Rules—Resolutions.

**35.86A.060 Parking commission—Chair—Rules—Resolutions.** The parking commission shall select from its members a chair, and may establish its own rules, regulations and procedures not inconsistent with this chapter. No resolution shall be adopted by the parking commission except upon the concurrence of at least three members. [2009 c 549 § 2128; 1969 ex.s. c 204 § 6.]

### Chapter 35.87 RCW

#### PARKING FACILITIES— CONVEYANCE OF LAND FOR IN CITIES OVER THREE HUNDRED THOUSAND

##### Sections

35.87.010 through 35.87.040 Repealed.

**35.87.010 through 35.87.040 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

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### Chapter 35.88 RCW

#### WATER POLLUTION—PROTECTION FROM

##### Sections

35.88.050 Prosecution—Trial—Abatement of nuisance.  
35.88.060 Health officers and mayor must enforce.  
35.88.090 Inland cities over one hundred thousand—Investigation of disposal systems by secretary of social and health services.

**35.88.050 Prosecution—Trial—Abatement of nuisance.** If upon the trial of any person for the violation of any of the provisions of this chapter he or she is found guilty of creating or maintaining a nuisance or of violating any of the provisions of this chapter, he or she shall forthwith abate the nuisance, and if he or she fails so to do within one day after such conviction, unless further time is granted by the court, a warrant shall be issued by the court wherein the conviction was obtained, directed to the sheriff of the county in which such nuisance exists and the sheriff shall forthwith proceed to abate the said nuisance and the cost thereof shall be taxed against the person so convicted as a part of the costs of such case. [2009 c 549 § 2129; 1965 c 7 § 35.88.050. Prior: 1899 c 70 § 3; RRS § 9475.]

**35.88.060 Health officers and mayor must enforce.** The city health officer, city physician, board of public health, mayor, or any other officer, who has the sanitary condition of the city or town in charge, shall see that the provisions of this chapter are enforced and upon complaint being made to any such officer of an alleged violation, he or she shall immediately investigate the said complaint and if the same appears to be well founded he or she shall file a complaint against the person or persons violating any of the provisions of this chapter and cause their arrest and prosecution. [2009 c 549 § 2130; 1965 c 7 § 35.88.060. Prior: 1899 c 70 § 4; RRS § 9476.]

**35.88.090 Inland cities over one hundred thousand—Investigation of disposal systems by secretary of social and health services.** The secretary of social and health services shall have the power, and it shall be his or her duty, to investigate the system of disposal of sewage, garbage, feculent matter, offal, refuse, filth, or any animal, mineral, or vegetable matter or substance, by cities not located on tidewater, having a population of one hundred thousand or more, and if he or she shall determine upon investigation that any such system or systems of disposal is or may be injurious or dangerous to health, he or she shall have the power, and it shall be his or her duty, to order such city or cities to provide for, construct, and maintain a system or systems of disposal which will not be injurious or dangerous to health. [2009 c 549 § 2131; 1979 c 141 § 41; 1965 c 7 § 35.88.090. Prior: 1941 c 186 § 2; Rem. Supp. 1941 § 9354-2.]

### Chapter 35.91 RCW

#### MUNICIPAL WATER AND SEWER FACILITIES ACT

##### Sections

35.91.020 Contracts with owners of real estate for water or sewer facilities—Reimbursement of costs by subsequent users—Contract requirements.

**35.91.020 Contracts with owners of real estate for water or sewer facilities—Reimbursement of costs by subsequent users—Contract requirements.** (1)(a) Except as provided under subsection (2) of this section, the governing body of any city, town, county, water-sewer district, or drainage district, hereinafter referred to as a "municipality" may contract with owners of real estate for the construction of storm, sanitary, or combination sewers, pumping stations, and disposal plants, water mains, hydrants, reservoirs, or appurtenances, hereinafter called "water or sewer facilities," within their boundaries or (except for counties) within ten miles from their corporate limits connecting with the public water or sewerage system to serve the area in which the real estate of such owners is located, and to provide for a period of not to exceed twenty years for the reimbursement of such owners and their assigns by any owner of real estate who did not contribute to the original cost of such water or sewer facilities and who subsequently tap onto or use the same of a fair pro rata share of the cost of the construction of said water or sewer facilities, including not only those directly connected thereto, but also users connected to laterals or branches connecting thereto, subject to such reasonable rules and regulations as the governing body of such municipality may provide or contract, and notwithstanding the provisions of any other law.

(b) If authorized by ordinance or contract, a municipality may participate in financing the development of water or sewer facilities development projects authorized by, and in accordance with, (a) of this subsection. Unless otherwise provided by ordinance or contract:

(i) Municipalities that contribute to the financing of water or sewer facilities projects under this section have the same rights to reimbursement as owners of real estate who make contributions as authorized under this section; and

(ii) If the projects are jointly financed by a combination of municipal funding and private funding by real estate owners, the amount of reimbursement received by each participant in the financing must be a pro rata share.

(c) A municipality seeking reimbursement from an owner of real estate under this section is limited to the dollar amount authorized under this chapter and may not collect any additional reimbursement, assessment, charge, or fee for the infrastructure or facilities that were constructed under the applicable ordinance, contract, or agreement. This does not prevent the collection of amounts for services or infrastructure that are additional expenditures not subject to such ordinance, contract, or agreement.

(2)(a) The contract may provide for an extension of the twenty-year reimbursement period for a time not to exceed the duration of any moratorium, phasing ordinance, concurrency designation, or other governmental action that prevents making applications for, or the approval of, any new development within the benefit area for a period of six months or more.

(b) Upon the extension of the reimbursement period pursuant to (a) of this subsection, the contract must specify the duration of the contract extension and must be filed and recorded with the county auditor. Property owners who are subject to the reimbursement obligations under subsection (1) of this section shall be notified by the contracting municipality of the extension filed under this subsection.

(3) Each contract shall include a provision requiring that every two years from the date the contract is executed a property owner entitled to reimbursement under this section provide the contracting municipality with information regarding the current contract name, address, and telephone number of the person, company, or partnership that originally entered into the contract. If the property owner fails to comply with the notification requirements of this subsection within sixty days of the specified time, then the contracting municipality may collect any reimbursement funds owed to the property owner under the contract. Such funds must be deposited in the capital fund of the municipality.

(4) To the extent it may require in the performance of such contract, such municipality may install said water or sewer facilities in and along the county streets in the area to be served as hereinabove provided, subject to such reasonable requirements as to the manner of occupancy of such streets as the county may by resolution provide. The provisions of such contract shall not be effective as to any owner of real estate not a party thereto unless such contract has been recorded in the office of the county auditor of the county in which the real estate of such owner is located prior to the time such owner taps into or connects to said water or sewer facilities. [2009 c 344 § 1; 2009 c 230 § 1; 2006 c 88 § 2; 1999 c 153 § 38; 1981 c 313 § 11; 1967 c 113 § 1; 1965 c 7 § 35.91.020. Prior: 1959 c 261 § 2.]

**Reviser's note:** This section was amended by 2009 c 230 § 1 and by 2009 c 344 § 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).

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**Severability—1981 c 313:** See note following RCW 36.94.020.

## Chapter 35.92 RCW MUNICIPAL UTILITIES

### Sections

35.92.260	Acquisition of water rights—Mode of assessment.
35.92.360	Energy conservation plan—Financing authorized for energy conservation projects in structures or equipment—Limitations.

**35.92.260 Acquisition of water rights—Mode of assessment.** When a city or town makes local improvements for any of the purposes specified in RCW 35.92.220 and 35.92.230, as now or hereafter amended, the proceedings relative to the creation of districts, financing of improvements, levying and collecting assessments and all other procedure shall be had, and the legislative authority shall proceed in accordance with the provisions of the laws relating to local improvement districts in cities of the first class: PROVIDED, That when the improvement is initiated upon petition, the petition shall set forth the fact that the signers are the owners according to the records in the office of the county auditor, of property to an aggregate amount of a majority of the surface area within the limits of the assessment district to be created: PROVIDED FURTHER, That when an assessment is made for any purpose other than the construction or reconstruction of any system or means of distribution or delivery of water, it shall not be necessary for the legislative authority to be furnished with a statement of the aggregate

assessed valuation of the real estate exclusive of improvements in the district according to the valuation last placed upon it for purposes of general taxation, or the estimated amount of the cost of the improvement to be borne by each tract of land or other property, but a statement by the engineer or other officer, showing the estimated cost of the improvement per square foot, shall be sufficient: PROVIDED FURTHER, That when the legislative authority of a city or town shall deem it necessary to levy special assessments for the purposes specified in RCW 35.92.230, as now or hereafter amended, other than for the purpose of paying the costs of acquiring, constructing or reconstructing any system or means of distribution or delivery of water for irrigation or domestic purposes, the legislative authority for such city or town may hold a single hearing on the assessment rolls for all irrigation local improvement districts within the city or town. Such legislative authority shall fix the date of such hearing and shall direct the city or town clerk to give notice thereof, in the form prescribed by RCW 35.44.080, by publication thereof in a legal newspaper of general circulation in the city or town, once, not less than fifteen days prior to the date fixed for hearing; and by mailing, not less than fifteen days prior to the date fixed for hearing, notice thereof to the owner or reputed owner of each item of property described on the assessment roll whose name appears on such roll at the address of such owner or reputed owner shown on the tax rolls of the county treasurer for each such item of property: PROVIDED FURTHER, That when an assessment roll is once prepared and does not include the cost of purchase, construction, or reconstruction of works of delivery or distribution and the legislative authority of such city or town decides to raise a similar amount the ensuing year, it shall not be necessary to prepare a new assessment roll, but the legislative authority may pass a resolution of intention estimating the cost for the ensuing year to be the same as the preceding year, and directing the clerk to give notice stating the estimated cost per square foot of all land within the district and refer persons interested to the books of the treasurer, and fixing the date for a hearing on such assessment roll. Notice of such hearing shall be given by the city or town clerk in the form and manner required in the preceding proviso. The treasurer shall be present at the hearing and shall note any changes on his or her books. The legislative authority shall have the same right to make changes in the assessment roll as in an original assessment, and after all changes have been made it shall, by ordinance, confirm the assessment and direct the treasurer to extend it on the books of his or her office. [2009 c 549 § 2132; 1965 c 130 § 3; 1965 c 7 § 35.92.260. Prior: 1915 c 112 § 5; RRS § 9499. Formerly RCW 80.40.260.]

**35.92.360 Energy conservation plan—Financing authorized for energy conservation projects in structures or equipment—Limitations.** (1) Any city or town engaged in the generation, sale, or distribution of energy is hereby authorized, within limits established by the Constitution of the state of Washington, to assist the owners of structures or equipment in financing the acquisition and installation of materials and equipment, for compensation or otherwise, for the conservation or more efficient use of energy in such structures or equipment pursuant to an energy conservation plan adopted by the city or town if the cost per unit of energy

saved or produced by the use of such materials and equipment is less than the cost per unit of energy produced by the next least costly new energy resource which the city or town could acquire to meet future demand. Any financing authorized under this chapter shall only be used for conservation purposes in existing structures, and such financing shall not be used for any purpose which results in a conversion from one energy source to another. For the purposes of this section, "conservation purposes in existing structures" may include projects to allow a municipal electric utility's customers to generate all or a portion of their own electricity through the on-site installation of a distributed electricity generation system that uses as its fuel solar, wind, geothermal, or hydropower, or other renewable resource that is available on-site and not from a commercial source. Such projects shall not be considered "a conversion from one energy source to another" which is limited to the change or substitution of one commercial energy supplier for another commercial energy supplier. Except where otherwise authorized, such assistance shall be limited to:

(a) Providing an inspection of the structure or equipment, either directly or through one or more inspectors under contract, to determine and inform the owner of the estimated cost of purchasing and installing conservation materials and equipment for which financial assistance will be approved and the estimated life cycle savings in energy costs that are likely to result from the installation of such materials or equipment;

(b) Providing a list of businesses who sell and install such materials and equipment within or in close proximity to the service area of the city or town, each of which businesses shall have requested to be included and shall have the ability to provide the products in a workmanlike manner and to utilize such materials in accordance with the prevailing national standards;

(c) Arranging to have approved conservation materials and equipment installed by a private contractor whose bid is acceptable to the owner of the residential structure and verifying such installation; and

(d) Arranging or providing financing for the purchase and installation of approved conservation materials and equipment. Such materials and equipment shall be purchased from a private business and shall be installed by a private business or the owner.

(2) Pay back shall be in the form of incremental additions to the utility bill, billed either together with use charge or separately. Loans shall not exceed two hundred forty months in length. [2009 c 416 § 1; 2002 c 276 § 2; 1989 c 268 § 1; 1979 ex.s. c 239 § 2.]

**Findings—Intent—2002 c 276:** "The legislature finds that energy conservation can take many useful and cost-effective forms, and that the types of conservation projects available to utilities and customers evolve with time as technologies are developed and market conditions change. In some cases, electricity conservation projects are most cost-effective when they reduce the total amount of electricity consumed by an individual customer, and in other cases they can be cost-effective by reducing the amount of electricity a customer needs to purchase from an electric utility.

The legislature intends to encourage and support a broad array of cost-effective energy conservation by electric utilities and customers alike by clarifying that public utilities may assist in the financing of projects that allow customers to generate their own electricity from renewable resources that do not depend on commercial sources of fuel thereby reducing the

amount of electricity a public utility needs to generate or acquire on their customers' behalf." [2002 c 276 § 1.]

**Effective date—Contingency—1979 ex.s. c 239:** "This 1979 act shall take effect on the same date as the proposed amendment to Article VIII of the state Constitution, authorizing the use of public moneys or credit to promote conservation or more efficient use of energy, is validly submitted and is approved and ratified by the voters at a general election held in November, 1979. If the proposed amendment is not so approved and ratified, this 1979 act shall be null and void in its entirety." [1979 ex.s. c 239 § 4.] The referenced constitutional amendment (1979 Substitute Senate Joint Resolution No. 120) was approved by the voters on November 6, 1979. See Article VIII, section 10 of the state Constitution.

## Chapter 35.94 RCW

### SALE OR LEASE OF MUNICIPAL UTILITIES

#### Sections

- 35.94.020 Procedure.  
35.94.030 Execution of lease or conveyance.

**35.94.020 Procedure.** The legislative authority of the city, if it deems it advisable to lease or sell the works, plant, or system, or any part thereof, shall adopt a resolution stating whether it desires to lease or sell. If it desires to lease, the resolution shall state the general terms and conditions of the lease, but not the rent. If it desires to sell the general terms of sale shall be stated, but not the price. The resolution shall direct the city clerk, or other proper official, to publish the resolution not less than once a week for four weeks in the official newspaper of the city, together with a notice calling for sealed bids to be filed with the clerk or other proper official not later than a certain time, accompanied by a certified check payable to the order of the city, for such amount as the resolution shall require, or a deposit of a like sum in money. Each bid shall state that the bidder agrees that if his or her bid is accepted and he or she fails to comply therewith within the time hereinafter specified, the check or deposit shall be forfeited to the city. If bids for a lease are called for, bidders shall bid the amount to be paid as the rent for each year of the term of the lease. If bids for a sale are called for, the bids shall state the price offered. The legislative authority of the city may reject any or all bids and accept any bid which it deems best. At the first meeting of the legislative authority of the city held after the expiration of the time fixed for receiving bids, or at some later meeting, the bids shall be considered. In order for the legislative authority to declare it advisable to accept any bid it shall be necessary for two-thirds of all the members elected to the legislative authority to vote in favor of a resolution making the declaration. If the resolution is adopted it shall be necessary, in order that the bid be accepted, to enact an ordinance accepting it and directing the execution of a lease or conveyance by the mayor and city clerk or other proper official. The ordinance shall not take effect until it has been submitted to the voters of the city for their approval or rejection at the next general election or at a special election called for that purpose, and a majority of the voters voting thereon have approved it. If approved it shall take effect as soon as the result of the vote is proclaimed by the mayor. If it is so submitted and fails of approval, it shall be rejected and annulled. The mayor shall proclaim the vote as soon as it is properly certified. [2009 c 549 § 2133; 1985 c 469 § 40; 1965 c 7 § 35.94.020. Prior: 1917 c 137 § 2; RRS

§ 9513. Cf. 1907 c 86 §§ 1-3; 1897 c 106 §§ 1-4. Formerly RCW 80.48.020.]

*Elections: Title 29A RCW.*

**35.94.030 Execution of lease or conveyance.** Upon the taking effect of the ordinance the mayor and the city clerk or other proper official shall execute, in the name and on behalf of the city, the lease or conveyance directed thereby. The lessee or grantee shall accept and execute the instrument within ten days after notice of its execution by the city or forfeit to the city, the amount of the check or deposit accompanying his or her bid: PROVIDED, That if litigation in good faith is instituted within ten days to determine the rights of the parties, no forfeiture shall take place unless the lessee or grantee fails for five days after the termination of the litigation in favor of the city to accept and execute the lease or conveyance. [2009 c 549 § 2134; 1965 c 7 § 35.94.030. Prior: 1917 c 137 § 3; RRS § 9514. Cf. 1907 c 86 §§ 1-3; 1897 c 106 §§ 1-4. Formerly RCW 80.48.030.]

## Chapter 35.96 RCW

### ELECTRIC AND COMMUNICATION FACILITIES— CONVERSION TO UNDERGROUND

#### Sections

- 35.96.050 Notice to owners to convert service lines to underground—  
Objections—Hearing—Time limitation for conversion.

**35.96.050 Notice to owners to convert service lines to underground—Objections—Hearing—Time limitation for conversion.** When service from the underground electric and communication facilities is available in all or part of a conversion area, the city or town shall mail a notice to the owners of all structures or improvements served from the existing overhead facilities in the area, which notice shall state that:

- (1) Service from the underground facilities is available;
- (2) All electric and communication service lines from the existing overhead facilities within the area to any structure or improvement must be disconnected and removed within ninety days after the date of the mailing of the notice;
- (3) Should such owner fail to convert such service lines from overhead to underground within ninety days after the date of the mailing of the notice, the city or town will order the electric and communication utilities to disconnect and remove the service lines;
- (4) Should the owner object to the disconnection and removal of the service lines he or she may file his or her written objections thereto with the city or town clerk within thirty days after the date of the mailing of the notice and failure to so object within such time will constitute a waiver of his or her right thereafter to object to such disconnection and removal.

If the owner of any structure or improvement served from the existing overhead electric and communication facilities within a conversion area shall fail to convert to underground the service lines from such overhead facilities to such structure or improvement within ninety days after the mailing to him or her of the notice, the city or town shall order the electric and communication utilities to disconnect and

remove all such service lines: PROVIDED, That if the owner has filed his or her written objections to such disconnection and removal with the city or town clerk within thirty days after the mailing of the notice then the city or town shall not order such disconnection and removal until after the hearing on such objections.

Upon the timely filing by the owner of objections to the disconnection and removal of the service lines, the legislative authority of such city or town, or a committee thereof, shall conduct a hearing to determine whether the removal of all or any part of the service lines is in the public benefit. The hearing shall be held at such time as the legislative authority of such city or town may establish for hearings on the objections and shall be held in accordance with the regularly established procedure set by the legislative authority of the city or town. If the hearing is before a committee, the committee shall following the hearing report its recommendation to the legislative authority of the city or town for final action. The determination reached by the legislative authority shall be final in the absence of an abuse of discretion. [2009 c 549 § 2135; 1967 c 119 § 6.]

### Chapter 35.101 RCW

#### TOURISM PROMOTION AREAS

##### Sections

- 35.101.010 Definitions.  
35.101.052 Lodging charge—Contract for administration and collection of by department of revenue.

**35.101.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Area" means a tourism promotion area.

(2) "Legislative authority" means the legislative authority of any county with a population greater than forty thousand, or of any city or town within such a county, including unclassified cities or towns operating under special charters. However, in any county with a population of one million or more, the legislative authority shall be comprised of two or more jurisdictions acting jointly as the legislative authority under an interlocal agreement created under chapter 39.34 RCW for the joint establishment and operation of a tourism promotion area.

(3) "Lodging business" means a person that furnishes lodging taxable by the state under chapter 82.08 RCW that has forty or more lodging units.

(4) "Tourism promotion" means activities and expenditures designed to increase tourism and convention business, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists, and operating tourism destination marketing organizations. [2009 c 442 § 1; 2003 c 148 § 1.]

**35.101.052 Lodging charge—Contract for administration and collection of by department of revenue.** (1) A legislative authority shall contract, prior to the effective date of an ordinance imposing a lodging charge under RCW 35.101.050, for the administration and collection of the charge by the state department of revenue. The department may deduct a percentage amount, as provided by contract, for

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the administration and collection expenses incurred by the department.

(2) This section only applies to a legislative authority consisting of a county with a population of one million or more or a city or town within such a county. [2009 c 442 § 2.]

### Chapter 35.102 RCW

#### MUNICIPAL BUSINESS AND OCCUPATION TAX

##### Sections

- 35.102.150 Allocation of income—Printing and publishing activities.

**35.102.150 Allocation of income—Printing and publishing activities.** Notwithstanding RCW 35.102.130, a city that imposes a business and occupation tax must allocate a person's gross income from the activities of printing, and of publishing newspapers, periodicals, or magazines, to the principal place in this state from which the taxpayer's business is directed or managed. As used in this section, the activities of printing, and of publishing newspapers, periodicals, or magazines are those activities to which the tax rates in RCW 82.04.260(14) and 82.04.280(1) apply. [2009 c 461 § 4; 2006 c 272 § 1.]

**Effective date—Contingent effective date—2009 c 461:** See note following RCW 82.04.280.

**Effective date—2006 c 272:** "This act takes effect January 1, 2008." [2006 c 272 § 2.]

### Chapter 35.103 RCW

#### FIRE DEPARTMENTS— PERFORMANCE MEASURES

##### Sections

- 35.103.050 Maintenance of response times in newly annexed areas—Firefighter transfers.

**35.103.050 Maintenance of response times in newly annexed areas—Firefighter transfers.** Cities and towns conducting annexations of all or part of fire protection districts shall, at least through the budget cycle, or the following budget cycle if the annexation occurs in the last half of the current budget cycle, in which the annexation occurs, maintain existing fire protection and emergency services response times in the newly annexed areas consistent with response times recorded prior to the annexation as defined in the previous annual report for the fire protection district and as reported in RCW 52.33.040. If the city or town is unable to maintain these service levels in the newly annexed area, the transfer of firefighters from the annexed fire protection district as a direct result of the annexation must occur pursuant to RCW 35.13.238 (4) through (8). [2009 c 60 § 8.]

### Chapter 35.104 RCW

#### HEALTH SCIENCES AND SERVICES AUTHORITIES

##### Sections

- 35.104.060 Powers and duties.

**35.104.060 Powers and duties.** (1) The authority has all the general powers necessary to carry out its purposes and



duties and to exercise its specific powers, including the authority may:

- (a) Sue and be sued in its own name;
- (b) Make and execute agreements, contracts, and other instruments, with any public or private entity or person, in accordance with this chapter;
- (c) Employ, contract with, or engage independent counsel, financial advisors, auditors, other technical or professional assistants, and such other personnel as are necessary or desirable to implement this chapter;
- (d) Establish such special funds, and control deposits to and disbursements from them, as it finds convenient for the implementation of this chapter;
- (e) Enter into contracts with public and private entities for research to be conducted in this state;
- (f) Delegate any of its powers and duties if consistent with the purposes of this chapter;
- (g) Exercise any other power reasonably required to implement the purposes of this chapter; and
- (h) Hire staff and pay administrative costs; however, such expenses shall be paid from moneys provided by the sponsoring local government and moneys received from gifts, grants, and bequests and the interest earned on the authority's accounts and investments. During the 2009-2011 fiscal biennium, up to ten percent of the amounts received under RCW 82.14.480 may be used by a health services and sciences authority for the purposes of subsections (1)(c) and (h) of this section.

(2) In addition to other powers and duties prescribed in this chapter, the authority is empowered to:

- (a) Use the authority's public moneys, leveraging those moneys with amounts received from other public and private sources in accordance with contribution agreements, to promote bioscience-based economic development, and to advance new therapies and procedures to combat disease and promote public health;
- (b) Solicit and receive gifts, grants, and bequests, and enter into contribution agreements with private entities and public entities to receive moneys in consideration of the authority's promise to leverage those moneys with the revenue generated by the tax authorized under RCW 82.14.480 and contributions from other public entities and private entities, in order to use those moneys to promote bioscience-based economic development and advance new therapies and procedures to combat disease and promote public health;
- (c) Hold funds received by the authority in trust for their use pursuant to this chapter to promote bioscience-based economic development and advance new therapies and procedures to combat disease and promote public health;
- (d) Manage its funds, obligations, and investments as necessary and consistent with its purpose, including the segregation of revenues into separate funds and accounts;
- (e) Make grants to entities pursuant to contract to promote bioscience-based economic development and advance new therapies and procedures to combat disease and promote public health. Grant agreements shall specify the deliverables to be provided by the recipient pursuant to the grant. Grants to private entities may only be provided under a contractual agreement that ensures the state will receive appropriate consideration, such as an assurance of job creation or retention, or the delivery of services that provide for the pub-

lic health, safety, and welfare. The authority shall solicit requests for funding and evaluate the requests by reference to factors such as: (i) The quality of the proposed research; (ii) its potential to improve health outcomes, with particular attention to the likelihood that it will also lower health care costs, substitute for a more costly diagnostic or treatment modality, or offer a breakthrough treatment for a particular disease or condition; (iii) its potential to leverage additional funding; (iv) its potential to provide health care benefits; (v) its potential to stimulate employment; and (vi) evidence of public and private collaboration;

(f) Create one or more advisory boards composed of scientists, industrialists, and others familiar with health sciences and services; and

(g) Adopt policies and procedures to facilitate the orderly process of grant application, review, and reward.

(3) The records of the authority shall be subject to audit by the office of the state auditor. [2009 c 564 § 921; 2007 c 251 § 6.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Captions not law—Severability—2007 c 251:** See notes following RCW 35.104.010.

## Chapter 35.105 RCW

### URBAN FOREST MANAGEMENT

#### Sections

35.105.010 Definitions.

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

(1) "Community and urban forest assessment" means an analysis of the community and urban forest inventory to: Establish the scope and scale of forest-related benefits and services; determine the economic valuation of such benefits, highlight trends, and issues of concern; identify high priority areas to be addressed; outline strategies for addressing the critical issues and urban landscapes; and identify opportunities for retaining trees, expanding forest canopy, and planting additional trees to sustain Washington's urban and community forests.

(2) "Community and urban forest inventory" means a management tool designed to gauge the condition, management status, health, and diversity of a community and urban forest. An inventory may evaluate individual trees or groups of trees or canopy cover within community and urban forests, and will be periodically updated by the department of natural resources.

(3) "Department" means the department of commerce.

(4) "Evergreen community ordinances" means ordinances adopted by the legislative body of a city, town, or county that relate to urban forests and are consistent with this chapter.

(5) "Evergreen community" means a city, town, or county designated as such under RCW 35.105.030.

(6) "Management plan" means an evergreen community urban forest management plan developed pursuant to this chapter.

(7) "Public facilities" has the same meaning as defined in RCW 36.70A.030.

(8) "Public forest" means urban forests owned by the state, city, town, county, or other public entity within or adjacent to the urban growth areas.

(9) "Reforestation" means establishing and maintaining trees and urban forest canopy in plantable spaces such as street rights-of-way, transportation corridors, interchanges and highways, riparian areas, unstable slopes, shorelines, public lands, and property of willing private landowners.

(10) "Tree canopy" means the layer of leaves, branches, and stems of trees that cover the ground when viewed from above and that can be measured as a percentage of a land area shaded by trees.

(11) "Urban forest" has the same definition as provided for the term "community and urban forest" in RCW 76.15.010. [2009 c 565 § 21; 2008 c 299 § 2.]

**Short title—2008 c 299:** "This act may be known and cited as the evergreen communities act." [2008 c 299 § 37.]

## Title 35A

### OPTIONAL MUNICIPAL CODE

#### Chapters

- 35A.01 Interpretation of terms.**
- 35A.02 Procedure for incorporated municipality to become a noncharter code city.**
- 35A.06 Adoption and abandonment of noncharter code city classification or plan of government.**
- 35A.08 Procedure for adoption of charter as charter code city.**
- 35A.12 Mayor-council plan of government.**
- 35A.13 Council-manager plan of government.**
- 35A.14 Annexation by code cities.**
- 35A.21 Provisions affecting all code cities.**
- 35A.33 Budgets in code cities.**
- 35A.36 Execution of bonds by proxy in code cities.**
- 35A.40 Fiscal provisions applicable to code cities.**
- 35A.42 Public officers and agencies, meetings, duties and powers.**
- 35A.63 Planning and zoning in code cities.**
- 35A.92 Fire departments—Performance measures.**

#### Chapter 35A.01 RCW

##### INTERPRETATION OF TERMS

#### Sections

- 35A.01.080 Repealed.
- 35A.01.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

**35A.01.080 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**35A.01.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)** For the purposes of this chapter, the terms spouse, marriage, marital, husband,

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wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 80.]

#### Chapter 35A.02 RCW

##### PROCEDURE FOR INCORPORATED MUNICIPALITY TO BECOME A NONCHARTER CODE CITY

#### Sections

- 35A.02.055 Election of new officers—Exception where same general plan of government is retained.

#### **35A.02.055 Election of new officers—Exception where same general plan of government is retained.**

Where a city elects to become a noncharter code city under one of the optional plans of government provided in Title 35A RCW for code cities which involves the same general plan of government as that under which the city operated prior to the choice and where with the change in classification the number of council positions in a city remains the same or increases from five to seven, the procedures for the first election of officers which appear in RCW 35A.02.050 shall not be followed. When membership in a city council remains the same or is increased upon becoming a noncharter code city, the terms of incumbent councilmembers shall not be affected. If the number of councilmembers is increased from five to seven, the city council shall, by majority vote, pursuant to RCW 35A.12.050 and 35A.13.020, appoint two persons to serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year term and one person shall be elected for a four-year term.

A first election of all officers upon a change in classification to a noncharter code city is also not required where the change in classification otherwise retains the same general or specific plan of government and where the change in classification results in a decrease in the number of council positions in a city.

If the membership in a city council is decreased from seven to five members upon adopting the classification of noncharter code city, this decrease in the number of councilmembers shall be determined in the following manner: The councilmembers shall determine by lot which two council positions shall be eliminated upon the expiration of their terms of office. The terms of the remaining councilmembers shall not be affected. [2009 c 549 § 3001; 1979 ex.s. c 18 § 8.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

## Chapter 35A.06 RCW

ADOPTION AND ABANDONMENT OF  
NONCHARTER CODE CITY CLASSIFICATION  
OR PLAN OF GOVERNMENT

## Sections

35A.06.050 Abandonment—Election.

**35A.06.050 Abandonment—Election.** The proposal for abandonment of a plan of government as authorized in RCW 35A.06.030 and for adoption of the plan named in the resolution or petition shall be voted upon at the next general election in accordance with RCW 29A.04.330, or at a special election held prior to the next general election in accordance with the resolution of the legislative body. The ballot title and statement of the proposition shall be prepared by the city attorney as provided in RCW 35A.29.120. [2009 c 7 § 1; 2004 c 268 § 2; 1994 c 223 § 29; 1979 ex.s. c 18 § 15; 1967 ex.s. c 119 § 35A.06.050.]

**Effective date—2009 c 7:** "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 [February 18, 2009]." [2009 c 7 § 2.]

**Effective date—2004 c 268:** "This act takes effect July 1, 2004." [2004 c 268 § 3.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

## Chapter 35A.08 RCW

PROCEDURE FOR ADOPTION OF CHARTER  
AS CHARTER CODE CITY

## Sections

35A.08.020 Determining population.

35A.08.040 Election on question—Election of charter commission.

35A.08.050 Organization of charter commission—Vacancies—Duties.

**35A.08.020 Determining population.** For the purposes of this chapter, the population of a city shall be the number of residents shown by the figures released for the most recent official state or federal census, by a population determination made under the direction of the office of financial management, or by a city census conducted in the following manner:

(1) The legislative authority of any such city may provide by ordinance for the appointment by the mayor thereof, of such number of persons as may be designated in the ordinance to make an enumeration of all persons residing within the corporate limits of the city. The enumerators so appointed, before entering upon their duties, shall take an oath for the faithful performance thereof and within five days after their appointment proceed, within their respective districts, to make an enumeration of all persons residing therein, with their names and places of residence.

(2) Immediately upon the completion of the enumeration, the enumerators shall make return thereof upon oath to the legislative authority of the city, who at its next meeting or as soon thereafter as practicable, shall canvass and certify the returns.

(3) If it appears therefrom that the whole number of persons residing within the corporate limits of the city is ten thousand or more, the mayor and clerk under the corporate seal of the city shall certify the number so ascertained to the secretary of state, who shall file it in his or her office. This

certificate when so filed shall be conclusive evidence of the population of the city. [2009 c 549 § 3002; 1979 c 151 § 32; 1967 ex.s. c 119 § 35A.08.020.]

*Population determinations, office of financial management: Chapter 43.62 RCW.*

**35A.08.040 Election on question—Election of charter commission.** The election on the question whether to adopt a charter and become a charter code city and the nomination and election of the members of the charter commission shall be conducted, and the result declared, according to the laws regulating and controlling elections in the city. Candidates for election to the charter commission must be nominated by petition signed by ten registered voters of the city and residents therein for a period of at least two years preceding the election. A nominating petition shall be filed within the time allowed for filing declarations of candidacy and shall be verified by an affidavit of one or more of the signers to the effect that the affiant believes that the candidate and all of the signers are registered voters of the city and he or she signed the petition in good faith for the purpose of endorsing the person named therein for election to the charter commission. A written acceptance of the nomination by the nominee shall be affixed to the petition when filed with the county auditor. Nominating petitions need not be in the form prescribed in RCW 35A.01.040. Any nominee may withdraw his or her nomination by a written statement of withdrawal filed at any time not later than five days before the last day allowed for filing nominations. The positions on the charter commission shall be designated by consecutive numbers one through fifteen, and the positions so designated shall be considered as separate offices for all election purposes. A nomination shall be made for a specific numbered position. [2009 c 549 § 3003; 1990 c 259 § 7; 1967 ex.s. c 119 § 35A.08.040.]

**35A.08.050 Organization of charter commission—Vacancies—Duties.** Within ten days after its election the charter commission shall hold its first meeting, elect one of the members as chair, and adopt such rules for the conduct of its business as it may deem advisable. In the event of a vacancy in the charter commission, the remaining members shall fill it by appointment thereto of some properly qualified person. A majority shall constitute a quorum for transaction of business but final charter recommendations shall require a majority vote of the whole membership of the commission. The commission shall study the plan of government of the city, compare it with other available plans of government, and determine whether, in its judgment, the government of the city could be strengthened, made more responsive or accountable to the people, or whether its operation could be made more economical or more efficient by amendment of the existing plan or adoption of another plan of government. The commission shall consider the plans of government described in this title but shall not be limited to such plans in its recommendations for the government of the city and may frame a charter for any plan it deems suitable for the good government of the city; except that the provisions of such charter shall not be valid if inconsistent with the Constitution of this state, the provisions of this title, or the general laws of the state, insofar as they are applicable to cities governed

under this title. [2009 c 549 § 3004; 1967 ex.s. c 119 § 35A.08.050.]

### Chapter 35A.12 RCW

#### MAYOR-COUNCIL PLAN OF GOVERNMENT

##### Sections

- 35A.12.010 Elective city officers—Size of council.
- 35A.12.030 Eligibility to hold elective office.
- 35A.12.065 Pro tempore appointments.
- 35A.12.070 Compensation of elective officers—Expenses.
- 35A.12.080 Oath and bond of officers.
- 35A.12.100 Duties and authority of the mayor—Veto—Tie-breaking vote.
- 35A.12.110 Council meetings.
- 35A.12.120 Council—Quorum—Rules—Voting.
- 35A.12.130 Ordinances—Style—Requisites—Veto.
- 35A.12.150 Ordinances—Authentication and recording.
- 35A.12.170 Audit and allowance of demands against city.

#### **35A.12.010 Elective city officers—Size of council.**

The government of any noncharter code city or charter code city electing to adopt the mayor-council plan of government authorized by this chapter shall be vested in an elected mayor and an elected council. The council of a noncharter code city having less than twenty-five hundred inhabitants shall consist of five members; when there are twenty-five hundred or more inhabitants, the council shall consist of seven members. A city with a population of less than twenty-five hundred at the time of reclassification as an optional municipal code city may choose to maintain a seven-member council. The decision concerning the number of councilmembers shall be made by the council and be incorporated as a section of the ordinance adopting for the city the classification of noncharter code city. If the population of a city after having become a code city decreases from twenty-five hundred or more to less than twenty-five hundred, it shall continue to have a seven member council. If, after a city has become a mayor-council code city, its population increases to twenty-five hundred or more inhabitants, the number of council offices in such city may increase from five to seven members upon the affirmative vote of a majority of the existing council to increase the number of council offices in the city. When the population of a mayor-council code city having five council offices increases to five thousand or more inhabitants, the number of council offices in the city shall increase from five to seven members. In the event of an increase in the number of council offices, the city council shall, by majority vote, pursuant to RCW 35A.12.050, appoint two persons to serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year term and one person shall be elected for a four-year term. The number of inhabitants shall be determined by the most recent official state or federal census or determination by the state office of financial management. A charter adopted under the provisions of this title, incorporating the mayor-council plan of government set forth in this chapter, may provide for an uneven number of councilmembers not exceeding eleven.

A noncharter code city of less than five thousand inhabitants which has elected the mayor-council plan of government and which has seven council offices may establish a five-member council in accordance with the following procedure. At least six months prior to a municipal general elec-

tion, the city council shall adopt an ordinance providing for reduction in the number of council offices to five. The ordinance shall specify which two council offices, the terms of which expire at the next general election, are to be terminated. The ordinance shall provide for the renumbering of council positions and shall also provide for a two-year extension of the term of office of a retained council office, if necessary, in order to comply with RCW 35A.12.040.

However, a noncharter code city that has retained its old mayor-council plan of government, as provided in RCW 35A.02.130, is subject to the laws applicable to that old plan of government. [2009 c 549 § 3005; 1997 c 361 § 6; 1994 c 223 § 30; 1994 c 81 § 71; 1985 c 106 § 1; 1983 c 128 § 1; 1979 ex.s. c 18 § 19; 1979 c 151 § 33; 1967 ex.s. c 119 § 35A.12.010.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

*Population determinations, office of financial management: Chapter 43.62 RCW.*

**35A.12.030 Eligibility to hold elective office.** No person shall be eligible to hold elective office under the mayor-council plan unless the person is a registered voter of the city at the time of filing his or her declaration of candidacy and has been a resident of the city for a period of at least one year next preceding his or her election. Residence and voting within the limits of any territory which has been included in, annexed to, or consolidated with such city is construed to have been residence within the city. A mayor or councilmember shall hold within the city government no other public office or employment except as permitted under the provisions of chapter 42.23 RCW. [2009 c 549 § 3006; 1979 ex.s. c 18 § 20; 1967 ex.s. c 119 § 35A.12.030.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.12.065 Pro tempore appointments.** Biennially at the first meeting of a new council, or periodically, the members thereof, by majority vote, may designate one of their number as mayor pro tempore or deputy mayor for such period as the council may specify, to serve in the absence or temporary disability of the mayor; or, in lieu thereof, the council may, as the need may arise, appoint any qualified person to serve as mayor pro tempore in the absence or temporary disability of the mayor. In the event of the extended excused absence or disability of a councilmember, the remaining members by majority vote may appoint a councilmember pro tempore to serve during the absence or disability. [2009 c 549 § 3007; 1967 ex.s. c 119 § 35A.12.065.]

**35A.12.070 Compensation of elective officers—Expenses.** The salaries of the mayor and the councilmembers shall be fixed by ordinance and may be revised from time to time by ordinance, but any increase in the compensation attaching to an office shall not be applicable to the term then being served by the incumbent if such incumbent is a member of the city legislative body fixing his or her own compensation or as mayor in a mayor-council code city casts a tie-breaking vote relating to such ordinance: PROVIDED, That if the mayor of such a city does not cast such a vote, his or her salary may be increased during his or her term of office.

Until the first elective officers under this mayor-council plan of government may lawfully be paid the compensation provided by such salary ordinance, such officers shall be entitled to be compensated in the same manner and in the same amount as the compensation paid to officers of such city performing comparable services immediately prior to adoption of this mayor-council plan.

Until a salary ordinance can be passed and become effective as to elective officers of a newly incorporated code city, such first officers shall be entitled to compensation as follows: In cities having less than five thousand inhabitants, the mayor shall be entitled to a salary of one hundred and fifty dollars per calendar month and a councilmember shall be entitled to twenty dollars per meeting for not more than two meetings per month; in cities having more than five thousand but less than fifteen thousand inhabitants, the mayor shall be entitled to a salary of three hundred and fifty dollars per calendar month and a councilmember shall be entitled to one hundred and fifty dollars per calendar month; in cities having more than fifteen thousand inhabitants, the mayor shall be entitled to a salary of twelve hundred and fifty dollars per calendar month and a councilmember shall be entitled to four hundred dollars per calendar month: PROVIDED, That such interim compensation shall remain in effect only until a salary ordinance is passed and becomes effective as to such officers, and the amounts herein provided shall not be construed as fixing the usual salary of such officers. The mayor and councilmembers shall receive reimbursement for their actual and necessary expenses incurred in the performance of the duties of their office, or the council by ordinance may provide for a per diem allowance. Procedure for approval of claims for expenses shall be as provided by ordinance. [2009 c 549 § 3008; 1971 ex.s. c 251 § 5; 1967 ex.s. c 119 § 35A.12.070.]

**Severability—1971 ex.s. c 251:** See RCW 35A.90.050.

*Limitations on salaries: State Constitution Art. 11 § 8.*

**35A.12.080 Oath and bond of officers.** Any officer before entering upon the performance of his or her duties may be required to take an oath or affirmation as prescribed by charter or by ordinance for the faithful performance of his or her duties. The oath or affirmation shall be filed with the county auditor. The clerk, treasurer, if any, chief of police, and such other officers or employees as may be designated by ordinance or by charter shall be required to furnish annually an official bond conditioned on the honest and faithful performance of their official duties. The terms and penalty of official bonds and the surety therefor shall be prescribed by ordinance or charter and the bond shall be approved by the chief administrative officer of the city. The premiums on such bonds shall be paid by the city. When the furnishing of an official bond is required of an officer or employee, compliance with such provisions shall be an essential part of qualification for office. [2009 c 549 § 3009; 1986 c 167 § 20; 1967 ex.s. c 119 § 35A.12.080.]

**Severability—1986 c 167:** See note following RCW 29A.04.049.

**35A.12.100 Duties and authority of the mayor—Veto—Tie-breaking vote.** The mayor shall be the chief executive and administrative officer of the city, in charge of

all departments and employees, with authority to designate assistants and department heads. The mayor may appoint and remove a chief administrative officer or assistant administrative officer, if so provided by ordinance or charter. He or she shall see that all laws and ordinances are faithfully enforced and that law and order is maintained in the city, and shall have general supervision of the administration of city government and all city interests. All official bonds and bonds of contractors with the city shall be submitted to the mayor or such person as he or she may designate for approval or disapproval. He or she shall see that all contracts and agreements made with the city or for its use and benefit are faithfully kept and performed, and to this end he or she may cause any legal proceedings to be instituted and prosecuted in the name of the city, subject to approval by majority vote of all members of the council. The mayor shall preside over all meetings of the city council, when present, but shall have a vote only in the case of a tie in the votes of the councilmembers with respect to matters other than the passage of any ordinance, grant, or revocation of franchise or license, or any resolution for the payment of money. He or she shall report to the council concerning the affairs of the city and its financial and other needs, and shall make recommendations for council consideration and action. He or she shall prepare and submit to the council a proposed budget, as required by chapter 35A.33 RCW. The mayor shall have the power to veto ordinances passed by the council and submitted to him or her as provided in RCW 35A.12.130 but such veto may be overridden by the vote of a majority of all councilmembers plus one more vote. The mayor shall be the official and ceremonial head of the city and shall represent the city on ceremonial occasions, except that when illness or other duties prevent the mayor's attendance at an official function and no mayor pro tempore has been appointed by the council, a member of the council or some other suitable person may be designated by the mayor to represent the city on such occasion. [2009 c 549 § 3010; 1979 ex.s. c 18 § 22; 1967 ex.s. c 119 § 35A.12.100.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.12.110 Council meetings.** The city council and mayor shall meet regularly, at least once a month, at a place and at such times as may be designated by the city council. All final actions on resolutions and ordinances must take place within the corporate limits of the city. Special meetings may be called by the mayor or any three members of the council by written notice delivered to each member of the council at least twenty-four hours before the time specified for the proposed meeting. All actions that have heretofore been taken at special council meetings held pursuant to this section, but for which the number of hours of notice given has been at variance with requirements of RCW 42.30.080, are hereby validated. All council meetings shall be open to the public except as permitted by chapter 42.30 RCW. No ordinance or resolution shall be passed, or contract let or entered into, or bill for the payment of money allowed at any meeting not open to the public, nor at any public meeting the date of which is not fixed by ordinance, resolution, or rule, unless public notice of such meeting has been given by such notice to each local newspaper of general circulation and to each local radio or television station, as provided in RCW

42.30.080 as now or hereafter amended. Meetings of the council shall be presided over by the mayor, if present, or otherwise by the mayor pro tempore, or deputy mayor if one has been appointed, or by a member of the council selected by a majority of the councilmembers at such meeting. Appointment of a councilmember to preside over the meeting shall not in any way abridge his or her right to vote on matters coming before the council at such meeting. In the absence of the clerk, a deputy clerk or other qualified person appointed by the clerk, the mayor, or the council, may perform the duties of clerk at such meeting. A journal of all proceedings shall be kept, which shall be a public record. [2009 c 549 § 3011; 1993 c 199 § 3; 1979 ex.s. c 18 § 23; 1967 ex.s. c 119 § 35A.12.110.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.12.120 Council—Quorum—Rules—Voting.** At all meetings of the council a majority of the councilmembers shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by ordinance. The council shall determine its own rules and order of business, and may establish rules for the conduct of council meetings and the maintenance of order. At the desire of any member, any question shall be voted upon by roll call and the ayes and nays shall be recorded in the journal.

The passage of any ordinance, grant or revocation of franchise or license, and any resolution for the payment of money shall require the affirmative vote of at least a majority of the whole membership of the council. [2009 c 549 § 3012; 1967 ex.s. c 119 § 35A.12.120.]

**35A.12.130 Ordinances—Style—Requisites—Veto.** The enacting clause of all ordinances shall be as follows: "The city council of the city of . . . . do ordain as follows:" No ordinance shall contain more than one subject and that must be clearly expressed in its title.

No ordinance or any section or subsection thereof shall be revised or amended unless the new ordinance sets forth the revised ordinance or the amended section or subsection at full length.

No ordinance shall take effect until five days after the date of its publication unless otherwise provided by statute or charter, except that an ordinance passed by a majority plus one of the whole membership of the council, designated therein as a public emergency ordinance necessary for the protection of public health, public safety, public property or the public peace, may be made effective upon adoption, but such ordinance may not levy taxes, grant, renew, or extend a franchise, or authorize the borrowing of money.

Every ordinance which passes the council in order to become valid must be presented to the mayor; if he or she approves it, he or she shall sign it, but if not, he or she shall return it with his or her written objections to the council and the council shall cause his or her objections to be entered at large upon the journal and proceed to a reconsideration thereof. If upon reconsideration a majority plus one of the whole membership, voting upon a call of ayes and nays, favor its passage, the ordinance shall become valid notwithstanding

the mayor's veto. If the mayor fails for ten days to either approve or veto an ordinance, it shall become valid without his or her approval. Ordinances shall be signed by the mayor and attested by the clerk. [2009 c 549 § 3013; 1967 ex.s. c 119 § 35A.12.130.]

**35A.12.150 Ordinances—Authentication and recording.** The city clerk shall authenticate by his or her signature and record in full in a properly indexed book kept for the purpose all ordinances and resolutions adopted by the council. Such book, or copies of ordinances and resolutions, shall be available for inspection by the public at reasonable times and under reasonable conditions. [2009 c 549 § 3014; 1967 ex.s. c 119 § 35A.12.150.]

**35A.12.170 Audit and allowance of demands against city.** All demands against a code city shall be presented and audited in accordance with such regulations as may be prescribed by charter or ordinance; and upon the allowance of a demand, the clerk shall draw a warrant upon the treasurer for it, which warrant shall be countersigned by the mayor, or such person as he or she may designate, and shall specify the fund from which it is to be paid; or, payment may be made by a bank check when authorized by the legislative body of the code city under authority granted by RCW 35A.40.020, which check shall bear the signatures of the officers designated by the legislative body as required signatories of checks of such city, and shall specify the fund from which it is to be paid. [2009 c 549 § 3015; 1967 ex.s. c 119 § 35A.12.170.]

## Chapter 35A.13 RCW

### COUNCIL-MANAGER PLAN OF GOVERNMENT

#### Sections

- 35A.13.010 City officers—Size of council.
- 35A.13.020 Election of councilmembers—Eligibility—Terms—Vacancies—Forfeiture of office—Council chair.
- 35A.13.030 Mayor—Election—Chair to be mayor—Duties.
- 35A.13.033 Election on proposition to designate person elected to position one as chair—Subsequent holders of position one to be chair.
- 35A.13.035 Mayor pro tempore or deputy mayor.
- 35A.13.040 Compensation of councilmembers—Expenses.
- 35A.13.050 City manager—Qualifications.
- 35A.13.060 City manager may serve two or more cities.
- 35A.13.070 City manager—Bond and oath.
- 35A.13.080 City manager—Powers and duties.
- 35A.13.100 City manager—Department heads—Authority.
- 35A.13.120 City manager—Interference by councilmembers.
- 35A.13.130 City manager—Removal—Resolution and notice.
- 35A.13.140 City manager—Removal—Reply and hearing.

**35A.13.010 City officers—Size of council.** The councilmembers shall be the only elective officers of a code city electing to adopt the council-manager plan of government authorized by this chapter, except where statutes provide for an elective municipal judge. The council shall appoint an officer whose title shall be "city manager" who shall be the chief executive officer and head of the administrative branch of the city government. The city manager shall be responsible to the council for the proper administration of all affairs of the code city. The council of a noncharter code city having less than twenty-five hundred inhabitants shall consist of five members; when there are twenty-five hundred or more inhab-

itants the council shall consist of seven members: PROVIDED, That if the population of a city after having become a code city decreases from twenty-five hundred or more to less than twenty-five hundred, it shall continue to have a seven member council. If, after a city has become a council-manager code city its population increases to twenty-five hundred or more inhabitants, the number of council offices in such city may increase from five to seven members upon the affirmative vote of a majority of the existing council to increase the number of council offices in the city. When the population of a council-manager code city having five council offices increases to five thousand or more inhabitants, the number of council offices in the city shall increase from five to seven members. In the event of an increase in the number of council offices, the city council shall, by majority vote, pursuant to RCW 35A.13.020, appoint two persons to serve in these offices until the next municipal general election, at which election one person shall be elected for a two-year term and one person shall be elected for a four-year term. The number of inhabitants shall be determined by the most recent official state or federal census or determination by the state office of financial management. A charter adopted under the provisions of this title, incorporating the council-manager plan of government set forth in this chapter may provide for an uneven number of councilmembers not exceeding eleven.

A noncharter code city of less than five thousand inhabitants which has elected the council-manager plan of government and which has seven council offices may establish a five-member council in accordance with the following procedure. At least six months prior to a municipal general election, the city council shall adopt an ordinance providing for reduction in the number of council offices to five. The ordinance shall specify which two council offices, the terms of which expire at the next general election, are to be terminated. The ordinance shall provide for the renumbering of council positions and shall also provide for a two-year extension of the term of office of a retained council office, if necessary, in order to comply with RCW 35A.12.040.

However, a noncharter code city that has retained its old council-manager plan of government, as provided in RCW 35A.02.130, is subject to the laws applicable to that old plan of government. [2009 c 549 § 3016; 1994 c 223 § 35; 1994 c 81 § 72; 1987 c 3 § 16; 1985 c 106 § 2; 1983 c 128 § 2; 1979 ex.s. c 18 § 24; 1979 c 151 § 34; 1967 ex.s. c 119 § 35A.13.010.]

**Severability—1987 c 3:** See note following RCW 3.70.010.

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

*Population determinations, office of financial management: Chapter 43.62 RCW.*

**35A.13.020 Election of councilmembers—Eligibility—Terms—Vacancies—Forfeiture of office—Council chair.** In council-manager code cities, eligibility for election to the council, the manner of electing councilmembers, the numbering of council positions, the terms of councilmembers, the occurrence and the filling of vacancies, the grounds for forfeiture of office, and appointment of a mayor pro tempore or deputy mayor or councilmember pro tempore shall be governed by the corresponding provisions of RCW 35A.12.030, 35A.12.040, 35A.12.050, 35A.12.060, and

35A.12.065 relating to the council of a code city organized under the mayor-council plan, except that in council-manager cities where all council positions are at-large positions, the city council may, pursuant to RCW 35A.13.033, provide that the person elected to council position one shall be the council chair and shall carry out the duties prescribed by RCW 35A.13.030. [2009 c 549 § 3017; 1994 c 223 § 36; 1975 1st ex.s. c 155 § 1; 1967 ex.s. c 119 § 35A.13.020.]

**35A.13.030 Mayor—Election—Chair to be mayor—Duties.** Biennially at the first meeting of the new council the members thereof shall choose a chair from among their number unless the chair is elected pursuant to RCW 35A.13.033. The chair of the council shall have the title of mayor and shall preside at meetings of the council. In addition to the powers conferred upon him or her as mayor, he or she shall continue to have all the rights, privileges, and immunities of a member of the council. The mayor shall be recognized as the head of the city for ceremonial purposes and by the governor for purposes of military law. He or she shall have no regular administrative duties, but in time of public danger or emergency, if so authorized by ordinance, shall take command of the police, maintain law, and enforce order. [2009 c 549 § 3018; 1975 1st ex.s. c 155 § 2; 1967 ex.s. c 119 § 35A.13.030.]

**35A.13.033 Election on proposition to designate person elected to position one as chair—Subsequent holders of position one to be chair.** The city council of a council-manager city may by resolution place before the voters of the city, a proposition to designate the person elected to council position one as the chair of the council with the powers and duties set forth in RCW 35A.13.030. If a majority of those voting on the proposition cast a positive vote, then at all subsequent general elections at which position one is on the ballot, the person who is elected to position one shall become the chair upon taking office. [2009 c 549 § 3019; 1975 1st ex.s. c 155 § 3.]

**35A.13.035 Mayor pro tempore or deputy mayor.** Biennially at the first meeting of a new council, or periodically, the members thereof, by majority vote, may designate one of their number as mayor pro tempore or deputy mayor for such period as the council may specify, to serve in the absence or temporary disability of the mayor; or, in lieu thereof, the council may, as the need may arise, appoint any qualified person to serve as mayor pro tempore in the absence or temporary disability of the mayor. In the event of the extended excused absence or disability of a councilmember, the remaining members by majority vote may appoint a councilmember pro tempore to serve during the absence or disability. [2009 c 549 § 3020; 1969 ex.s. c 81 § 1.]

**Effective date—1969 ex.s. c 81:** "This 1969 amendatory act shall take effect July 1, 1969." [1969 ex.s. c 81 § 7.]

**35A.13.040 Compensation of councilmembers—Expenses.** The salaries of the councilmembers, including the mayor, shall be fixed by ordinance and may be revised from time to time by ordinance, but any increase or reduction in the compensation attaching to an office shall not become effective until the expiration of the term then being served by the

incumbent: PROVIDED, That compensation of councilmembers may not be increased or diminished after their election nor may the compensation of the mayor be increased or diminished after the mayor has been chosen by the council.

Until councilmembers of a newly organized council-manager code city may lawfully be paid as provided by salary ordinance, such councilmembers shall be entitled to compensation in the same manner and in the same amount as councilmembers of such city prior to the adoption of this council-manager plan.

Until a salary ordinance can be passed and become effective as to elective officers of a newly incorporated code city, the first councilmembers shall be entitled to compensation as follows: In cities having less than five thousand inhabitants—twenty dollars per meeting for not more than two meetings per month; in cities having more than five thousand but less than fifteen thousand inhabitants—a salary of one hundred and fifty dollars per calendar month; in cities having more than fifteen thousand inhabitants—a salary of four hundred dollars per calendar month. A councilmember who is occupying the position of mayor, in addition to his or her salary as a councilmember, shall be entitled, while serving as mayor, to an additional amount per calendar month, or portion thereof, equal to twenty-five percent of the councilmember salary: PROVIDED, That such interim compensation shall remain in effect only until a salary ordinance is passed and becomes effective as to such officers, and the compensation provided herein shall not be construed as fixing the usual compensation of such officers. Councilmembers shall receive reimbursement for their actual and necessary expenses incurred in the performance of the duties of their office, or the council by ordinance may provide for a per diem allowance. Procedure for approval of claims for expenses shall be as provided by ordinance. [2009 c 549 § 3021; 1979 ex.s. c 18 § 25; 1967 ex.s. c 119 § 35A.13.040.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.13.050 City manager—Qualifications.** The city manager need not be a resident at the time of his or her appointment, but shall reside in the code city after his or her appointment unless such residence is waived by the council. He or she shall be chosen by the council solely on the basis of his or her executive and administrative qualifications with special reference to his or her actual experience in, or his or her knowledge of, accepted practice in respect to the duties of his or her office. No person elected to membership on the council shall be eligible for appointment as city manager until one year has elapsed following the expiration of the term for which he or she was elected. [2009 c 549 § 3022; 1967 ex.s. c 119 § 35A.13.050.]

**35A.13.060 City manager may serve two or more cities.** Whether the city manager shall devote his or her full time to the affairs of one code city shall be determined by the council. A city manager may serve two or more cities in that capacity at the same time. [2009 c 549 § 3023; 1967 ex.s. c 119 § 35A.13.060.]

**35A.13.070 City manager—Bond and oath.** Before entering upon the duties of his or her office the city manager

shall take an oath or affirmation for the faithful performance of his or her duties and shall execute and file with the clerk of the council a bond in favor of the code city in such sum as may be fixed by the council. The premium on such bond shall be paid by the city. [2009 c 549 § 3024; 1967 ex.s. c 119 § 35A.13.070.]

**35A.13.080 City manager—Powers and duties.** The powers and duties of the city manager shall be:

(1) To have general supervision over the administrative affairs of the code city;

(2) To appoint and remove at any time all department heads, officers, and employees of the code city, except members of the council, and subject to the provisions of any applicable law, rule, or regulation relating to civil service: PROVIDED, That the council may provide for the appointment by the mayor, subject to confirmation by the council, of a city planning commission, and other advisory citizens' committees, commissions, and boards advisory to the city council: PROVIDED FURTHER, That if the municipal judge of the code city is appointed, such appointment shall be made by the city manager subject to confirmation by the council, for a four year term. The council may cause an audit to be made of any department or office of the code city government and may select the persons to make it, without the advice or consent of the city manager;

(3) To attend all meetings of the council at which his or her attendance may be required by that body;

(4) To see that all laws and ordinances are faithfully executed, subject to the authority which the council may grant the mayor to maintain law and order in times of emergency;

(5) To recommend for adoption by the council such measures as he or she may deem necessary or expedient;

(6) To prepare and submit to the council such reports as may be required by that body or as he or she may deem it advisable to submit;

(7) To keep the council fully advised of the financial condition of the code city and its future needs;

(8) To prepare and submit to the council a proposed budget for the fiscal year, as required by chapter 35A.33 RCW, and to be responsible for its administration upon adoption;

(9) To perform such other duties as the council may determine by ordinance or resolution. [2009 c 549 § 3025; 1987 c 3 § 17; 1967 ex.s. c 119 § 35A.13.080.]

**Severability—1987 c 3:** See note following RCW 3.70.010.

**35A.13.100 City manager—Department heads—Authority.** The city manager may authorize the head of a department or office responsible to him or her to appoint and remove subordinates in such department or office. Any officer or employee who may be appointed by the city manager, or by the head of a department or office, except one who holds his or her position subject to civil service, may be removed by the manager or other such appointing officer at any time subject to any applicable law, rule, or regulation relating to civil service. Subject to the provisions of RCW 35A.13.080 and any applicable civil service provisions, the decision of the manager or other appointing officer, shall be final and there shall be no appeal therefrom to any other



office, body, or court whatsoever. [2009 c 549 § 3026; 1967 ex.s. c 119 § 35A.13.100.]

**35A.13.120 City manager—Interference by councilmembers.** Neither the council, nor any of its committees or members, shall direct the appointment of any person to, or his or her removal from, office by the city manager or any of his or her subordinates. Except for the purpose of inquiry, the council and its members shall deal with the administrative service solely through the manager and neither the council nor any committee or member thereof shall give orders to any subordinate of the city manager, either publicly or privately. The provisions of this section do not prohibit the council, while in open session, from fully and freely discussing with the city manager anything pertaining to appointments and removals of city officers and employees and city affairs. [2009 c 549 § 3027; 1967 ex.s. c 119 § 35A.13.120.]

**35A.13.130 City manager—Removal—Resolution and notice.** The city manager shall be appointed for an indefinite term and may be removed by a majority vote of the council. At least thirty days before the effective date of his or her removal, the city manager must be furnished with a formal statement in the form of a resolution passed by a majority vote of the city council stating the council's intention to remove him or her and the reasons therefor. Upon passage of the resolution stating the council's intention to remove the manager, the council by a similar vote may suspend him or her from duty, but his or her pay shall continue until his or her removal becomes effective. [2009 c 549 § 3028; 1967 ex.s. c 119 § 35A.13.130.]

**35A.13.140 City manager—Removal—Reply and hearing.** The city manager may, within thirty days from the date of service upon him or her of a copy thereof, reply in writing to the resolution stating the council's intention to remove him or her. In the event no reply is timely filed, the resolution shall upon the thirty-first day from the date of such service, constitute the final resolution removing the manager and his or her services shall terminate upon that day. If a reply shall be timely filed with the city clerk, the council shall fix a time for a public hearing upon the question of the manager's removal and a final resolution removing the manager shall not be adopted until a public hearing has been had. The action of the council in removing the manager shall be final. [2009 c 549 § 3029; 1967 ex.s. c 119 § 35A.13.140.]

## Chapter 35A.14 RCW

### ANNEXATION BY CODE CITIES

#### Sections

35A.14.010	Authority for annexation.
35A.14.190	Organization of annexation review board—Rules—Journal—Authority.
35A.14.480	Annexation of territory served by fire districts—Interlocal agreement process.
35A.14.485	Annexation of fire districts—Transfer of employees.
35A.14.488	Fire protection and safety in proposed annexed territory—Report request.
35A.14.490	Annexation of territory used for an agricultural fair.

**35A.14.010 Authority for annexation.** Any portion of a county not incorporated as part of a city or town but lying contiguous to a code city may become a part of the charter code city or noncharter code city by annexation. An area proposed to be annexed to a charter code city or noncharter code city shall be deemed contiguous thereto even though separated by water or tide or shore lands and, upon annexation of such area, any such intervening water and/or tide or shore lands shall become a part of such annexing city. [2009 c 402 § 4; 1967 ex.s. c 119 § 35A.14.010.]

**Intent—2009 c 402:** See note following RCW 35.13.490.

**35A.14.190 Organization of annexation review board—Rules—Journal—Authority.** The members of each annexation review board shall elect from among the members a chair and a vice chair, and may employ a non-member as chief clerk, who shall be the secretary of the board. The board shall determine its own rules and order of business, shall provide by resolution for the time and manner of holding regular or special meetings, and shall keep a journal of its proceedings which shall be a public record. A majority of all the members shall constitute a quorum for the transaction of business.

The chief clerk of the board, the chair, or the vice chair shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas to any public officer or employee ordering him or her to testify before the board and produce public records, papers, books or documents. The chief clerk, the chair or the vice chair may invoke the aid of any court of competent jurisdiction to carry out such powers.

The planning departments of the county, other counties, and any city, and any state or regional planning agency shall furnish such information to the board at its request as may be reasonably necessary for the performance of its duties.

At the request of the board, the state attorney general shall provide counsel for the board. [2009 c 549 § 3030; 1967 ex.s. c 119 § 35A.14.190.]

**35A.14.480 Annexation of territory served by fire districts—Interlocal agreement process.** (1)(a) An annexation by a code city proposing to annex territory served by one or more fire protection districts may be accomplished by ordinance after entering into an interlocal agreement as provided in chapter 39.34 RCW with the county and the fire protection district or districts that have jurisdiction over the territory proposed for annexation.

(b) A code city proposing to annex territory shall initiate the interlocal agreement process by sending notice to the fire protection district representative and county representative stating the code city's interest to enter into an interlocal agreement negotiation process. The parties have forty-five days to respond in the affirmative or negative. A negative response must state the reasons the parties do not wish to participate in an interlocal agreement negotiation. A failure to respond within the forty-five day period is deemed an affirmative response and the interlocal agreement negotiation process may proceed. The interlocal agreement process may not proceed if any negative responses are received within the forty-five day period.

(c) The interlocal agreement must describe the boundaries of the territory proposed for annexation and must be consistent with the boundaries identified in an ordinance describing the boundaries of the territory proposed for annexation and setting a date for a public hearing on the ordinance. If the boundaries of the territory proposed for annexation are agreed to by all parties, a notice of intention must be filed with the boundary review board created under RCW 36.93.030. However, the jurisdiction of the board may not be invoked as described in RCW 36.93.100 for annexations that are the subject of such agreement.

(2) An interlocal annexation agreement under this section must include the following:

(a) A statement of the goals of the agreement. Goals must include, but are not limited to:

(i) The transfer of revenues and assets between the fire protection district and the code city;

(ii) A consideration and discussion of the impact to the level of service of annexation on the unincorporated area, and an agreement that the impact on the ability of fire protection and emergency medical services within the incorporated area must not be negatively impacted at least through the budget cycle in which the annexation occurs;

(iii) A discussion with fire protection districts regarding the division of assets and its impact to citizens inside and outside the newly annexed area;

(iv) Community involvement, including an agreed upon schedule of public meetings in the area or areas proposed for annexation;

(v) Revenue sharing, if any;

(vi) Debt distribution;

(vii) Capital facilities obligations of the code city, county, and fire protection districts;

(viii) An overall schedule or plan on the timing of any annexations covered under this agreement; and

(ix) A description of which of the annexing code cities' development regulations will apply and be enforced in the area.

(b) The subject areas and policies and procedures the parties agree to undertake in annexations. Subject areas may include, but are not limited to:

(i) Roads and traffic impact mitigation;

(ii) Surface and storm water management;

(iii) Coordination and timing of comprehensive plan and development regulation updates;

(iv) Outstanding bonds and special or improvement district assessments;

(v) Annexation procedures;

(vi) Distribution of debt and revenue sharing for annexation proposals, code enforcement, and inspection services;

(vii) Financial and administrative services; and

(viii) Consultation with other service providers, including water-sewer districts, if applicable.

(c) A term of at least five years, which may be extended by mutual agreement of the code city, the county, and the fire protection district.

(3) If the fire protection district, annexing code city, and county reach an agreement on the enumerated goals, the annexation ordinance may proceed and is not subject to referendum. If only the annexing code city and county reach an agreement on the enumerated goals, the code city and county

may proceed with annexation under the interlocal agreement, but the annexation ordinance provided for in this section is subject to referendum for forty-five days after its passage. Upon the filing of a timely and sufficient referendum petition with the legislative body of the code city, signed by qualified electors in a number not less than ten percent of the votes cast in the last general state election in the area to be annexed, the question of annexation must be submitted to the voters of the area in a general election if one is to be held within ninety days or at a special election called for that purpose according to RCW 29A.04.330. Notice of the election must be given as provided in RCW 35A.14.070, and the election must be conducted as provided in the general election laws under Title 29A RCW. The annexation must be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition to the annexation.

After the expiration of the forty-fifth day from, but excluding, the date of passage of the annexation ordinance, if a timely and sufficient referendum petition has not been filed, the area annexed becomes a part of the code city upon the date fixed in the ordinance of annexation. [2009 c 60 § 9.]

**35A.14.485 Annexation of fire districts—Transfer of employees.** (1) If any portion of a fire protection district is proposed for annexation to or incorporation into a code city, both the fire protection district and the code city shall jointly inform the employees of the fire protection district about hires, separations, terminations, and any other changes in employment that are a direct consequence of annexation or incorporation at the earliest reasonable opportunity.

(2) An eligible employee may transfer into the civil service system of the code city fire department by filing a written request with the code city civil service commission and by giving written notice of the request to the board of commissioners of the fire protection district. Upon receipt of the request by the civil service commission, the transfer of employment must be made. The needed employees shall be taken in order of seniority and the remaining employees who transfer as provided in this section and RCW 35.10.360 and 35.10.370 shall head the list for employment in the civil service system in order of their seniority, to the end that they shall be the first to be reemployed in the code city fire department when appropriate positions become available. Employees who are not immediately hired by the code city shall be placed on a reemployment list for a period not to exceed thirty-six months unless a longer period is authorized by an agreement reached between the collective bargaining representatives of the employees of the annexing and annexed fire agencies and the annexing and annexed fire agencies.

(3)(a) Upon transfer, an employee is entitled to the employee rights, benefits, and privileges to which he or she would have been entitled as an employee of the fire protection district, including rights to:

(i) Compensation at least equal to the level of compensation at the time of transfer, unless the employee's rank and duties have been reduced as a result of the transfer. If the transferring employee is placed in a position with reduced rank and duties, the employee's compensation may be adjusted, but the adjustment may not result in a decrease of greater than fifty percent of the difference between the employee's compensation before the transfer and the com-

compensation level for the position that the employee is transferred to;

(ii) Retirement, vacation, sick leave, and any other accrued benefit;

(iii) Promotion and service time accrual; and

(iv) The length or terms of probationary periods, including no requirement for an additional probationary period if one had been completed before the transfer date.

(b) (a) of this subsection does not apply if upon transfer an agreement for different terms of transfer is reached between the collective bargaining representatives of the transferring employees and the participating fire protection jurisdictions.

(4) If upon transfer, the transferring employee receives the rights, benefits, and privileges established under subsection (3)(a)(i) through (iv) of this section, those rights, benefits, and privileges are subject to collective bargaining at the end of the current bargaining period for the jurisdiction to which the employee has transferred.

(5) Such bargaining must take into account the years of service the transferring employee accumulated before the transfer and must be treated as if those years of service occurred in the jurisdiction to which the employee has transferred. [2009 c 60 § 10.]

**35A.14.488 Fire protection and safety in proposed annexed territory—Report request.** Upon the written request of a fire protection district, code cities annexing territory under this chapter shall, prior to completing the annexation, issue a report regarding the likely effects that the annexation and any associated asset transfers may have upon the safety of residents within and outside the proposed annexation area. The report must address, but is not limited to, the provisions of fire protection and emergency medical services within and outside of the proposed annexation area. A fire protection district may only request a report under this section when at least five percent of the assessed valuation of the fire protection district will be annexed. [2009 c 60 § 11.]

**35A.14.490 Annexation of territory used for an agricultural fair.** (1) Territory owned by a county and used for an agricultural fair as provided in chapter 15.76 RCW or chapter 36.37 RCW may only be annexed to a code city through the method prescribed in this section.

(a) The legislative body of the city proposing the annexation must submit a request for annexation and a legal description of the subject territory to the legislative authority of the county within which the territory is located.

(b) Upon receipt of the request and description, the county legislative authority has thirty days to review the proposal and determine if the annexation proceedings will continue. As a condition of approval, the county legislative authority may modify the proposal, but it may not add territory that was not included in the request and description. Approval of the county legislative authority is a condition precedent to further proceedings upon the request and there is no appeal of the county legislative authority's decision.

(c) If the county legislative authority determines that the proceedings may continue, it must, within thirty days of the determination, fix a date for a public hearing on the proposal,

and cause notice of the hearing to be published at least once a week for two weeks prior to the hearing in one or more newspapers of general circulation in the territory proposed for annexation. The notice must also be posted in three public places within the subject territory, specify the time and place of the hearing, and invite interested persons to appear and voice approval or disapproval of the annexation. If the annexation proposal provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice must include a statement of these requirements.

(d) If, following the conclusion of the hearing, a majority of the county legislative authority deems the annexation proposal to be in the best interest of the county, it may adopt a resolution approving of the annexation.

(e) If, following the county legislative authority's adoption of the annexation approval resolution, the legislative body of the city proposing annexation determines to effect the annexation, it must do so by ordinance. The ordinance: (i) May only include territory approved for annexation in the resolution adopted under (d) of this subsection; and (ii) must not exclude territory approved for annexation in the resolution adopted under (d) of this subsection. Upon passage of the annexation ordinance, a certified copy must be filed with the applicable county legislative authority.

(2) Any territory annexed through an ordinance adopted under this section is annexed and becomes a part of the code city upon the date fixed in the ordinance. [2009 c 402 § 5.]

**Intent—2009 c 402:** See note following RCW 35.13.490.

## Chapter 35A.21 RCW

### PROVISIONS AFFECTING ALL CODE CITIES

#### Sections

- 35A.21.030 Mandatory duties of code city officers.
- 35A.21.312 Authority to regulate placement or use of homes—Regulation of manufactured homes—Issuance of permits—Restrictions on location of manufactured/mobile homes and entry or removal of recreational vehicles used as primary residences.
- 35A.21.340 Contractors—Authority of city to verify registration and report violations.
- 35A.21.350 Community athletics programs—Sex discrimination prohibited.

**35A.21.030 Mandatory duties of code city officers.** Except as otherwise provided in this title, every officer of a code city shall perform, in the manner provided, all duties of his or her office which are imposed by state law on officers of every other class of city who occupy a like position and perform like functions. [2009 c 549 § 3031; 1967 ex.s. c 119 § 35A.21.030.]

**35A.21.312 Authority to regulate placement or use of homes—Regulation of manufactured homes—Issuance of permits—Restrictions on location of manufactured/mobile homes and entry or removal of recreational vehicles used as primary residences.** (1) A code city may not adopt an ordinance that has the effect, directly or indirectly, of discriminating against consumers' choices in the placement or use of a home in such a manner that is not equally applicable to all homes. Homes built to 42 U.S.C. Sec. 5401-5403 standards (as amended in 2000) must be regulated for the purposes of siting in the same manner as site

built homes, factory built homes, or homes built to any other state construction or local design standard. However, except as provided in subsection (2) of this section, any code city may require that:

(a) A manufactured home be a new manufactured home;  
 (b) The manufactured home be set upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground be enclosed by concrete or an approved concrete product which can be either load bearing or decorative;

(c) The manufactured home comply with all local design standards applicable to all other homes within the neighborhood in which the manufactured home is to be located;

(d) The home is thermally equivalent to the state energy code; and

(e) The manufactured home otherwise meets all other requirements for a designated manufactured home as defined in RCW 35.63.160.

A code city with a population of one hundred thirty-five thousand or more may choose to designate its building official as the person responsible for issuing all permits, including department of labor and industries permits issued under chapter 43.22 RCW in accordance with an interlocal agreement under chapter 39.34 RCW, for alterations, remodeling, or expansion of manufactured housing located within the city limits under this section.

(2) A code city may not adopt an ordinance that has the effect, directly or indirectly, of restricting the location of manufactured/mobile homes in manufactured/mobile home communities that were legally in existence before June 12, 2008, based exclusively on the age or dimensions of the manufactured/mobile home. This does not preclude a code city from restricting the location of a manufactured/mobile home in manufactured/mobile home communities for any other reason including, but not limited to, failure to comply with fire, safety, or other local ordinances or state laws related to manufactured/mobile homes.

(3) Except as provided under subsection (4) of this section, a code city may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a recreational vehicle used as a primary residence in manufactured/mobile home communities.

(4) Subsection (3) of this section does not apply to any local ordinance or state law that:

(a) Imposes fire, safety, or other regulations related to recreational vehicles;

(b) Requires utility hookups in manufactured/mobile home communities to meet state or federal building code standards for manufactured/mobile home communities or recreational vehicle parks; or

(c) Includes both of the following provisions:

(i) A recreational vehicle must contain at least one internal toilet and at least one internal shower; and

(ii) If the requirement in (c)(i) of this subsection is not met, a manufactured/mobile home community must provide toilets and showers.

(5) For the purposes of this section, "manufactured/mobile home community" has the same meaning as in RCW 59.20.030.

(6) This section does not override any legally recorded covenants or deed restrictions of record.

(7) This section does not affect the authority granted under chapter 43.22 RCW. [2009 c 79 § 2; 2008 c 117 § 2; 2004 c 256 § 3.]

**Findings—Intent—Effective date—2004 c 256:** See notes following RCW 35.21.684.

**35A.21.340 Contractors—Authority of city to verify registration and report violations.** A city that issues a business license to a person required to be registered under chapter 18.27 RCW may verify that the person is registered under chapter 18.27 RCW and report violations to the department of labor and industries. The department of licensing shall conduct the verification for cities that participate in the master license system. [2009 c 432 § 3.]

**Report—2009 c 432:** See note following RCW 18.27.062.

**35A.21.350 Community athletics programs—Sex discrimination prohibited.** The antidiscrimination provisions of RCW 49.60.500 apply to community athletics programs and facilities operated, conducted, or administered by a code city. [2009 c 467 § 6.]

**Findings—Declarations—2009 c 467:** See note following RCW 49.60.500.

## Chapter 35A.33 RCW BUDGETS IN CODE CITIES

### Sections

- 35A.33.010 Definitions.
- 35A.33.052 Preliminary budget.
- 35A.33.135 Levy for ad valorem tax.
- 35A.33.160 Violations and penalties.

**35A.33.010 Definitions.** Unless the context clearly indicates otherwise, the following words as used in this chapter shall have the meaning herein prescribed:

(1) "Chief administrative officer" as used in this chapter includes the mayor of cities having a mayor-council form of government, the commissioners in cities having a commission form of government, the city manager, or any other city official designated by the charter or ordinances of such city under the plan of government governing the same, or the budget or finance officer designated by the mayor, manager or commissioners, to perform the functions, or portions thereof, contemplated by this chapter.

(2) "Clerk" as used in this chapter includes the officer performing the functions of a finance or budget director, comptroller, auditor, or by whatever title he or she may be known in any code city.

(3) "Council" as used in this chapter includes the commissioners in cities having a commission form of government and any other group of city officials serving as the legislative body of a code city.

(4) "Department" as used in this chapter includes each office, division, service, system or institution of the city for which no other statutory or charter provision is made for budgeting and accounting procedures or controls.

(5) "Fiscal year" as used in this chapter means that fiscal period set by the code city pursuant to authority given under RCW 1.16.030.

(6) "Fund", as used in this chapter and "funds" where clearly used to indicate the plural of "fund", shall mean the budgeting or accounting entity authorized to provide a sum of money for specified activities or purposes.

(7) "Funds" as used in this chapter where not used to indicate the plural of "fund" shall mean money in hand or available for expenditure or payment of a debt or obligation.

(8) Except as otherwise defined herein, municipal accounting terms used in this chapter have the meaning prescribed in "Governmental Accounting, Auditing and Financial Reporting" prepared by the National Committee on Governmental Accounting, 1968. [2009 c 549 § 3032; 1969 ex.s. c 81 § 2; 1967 ex.s. c 119 § 35A.33.010.]

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

**Effective date—1969 ex.s. c 81:** See note following RCW 35A.13.035.

**35A.33.052 Preliminary budget.** The chief administrative officer shall prepare the preliminary budget in detail, making any revisions or addition to the reports of the department heads deemed advisable by such chief administrative officer and at least sixty days before the beginning of the city's next fiscal year he or she shall file it with the city clerk as the recommendation of the chief administrative officer for the final budget. The clerk shall provide a sufficient number of copies of such preliminary budget and budget message to meet the reasonable demands of taxpayers therefor and have them available for distribution not later than six weeks before the beginning of the city's next fiscal year. [2009 c 549 § 3033; 1967 ex.s. c 119 § 35A.33.052.]

**35A.33.135 Levy for ad valorem tax.** At a time fixed by the city's ordinance or charter, not later than the first Monday in October of each year, the chief administrative officer shall provide the city's legislative body with current information on estimates of revenues from all sources as adopted in the budget for the current year, together with estimates submitted by the clerk under RCW 35A.33.050. The city's legislative body and the city's administrative officer or his or her designated representative shall consider the city's total anticipated financial requirements for the ensuing fiscal year, and the legislative body shall determine and fix by ordinance the amount to be raised by ad valorem taxes. Upon adoption of the ordinance fixing the amount of ad valorem taxes to be levied, the clerk shall certify the same to the board of county commissioners as required by RCW 84.52.020. [2009 c 549 § 3034; 1967 ex.s. c 119 § 35A.33.135.]

**35A.33.160 Violations and penalties.** Upon the conviction of any city official, department head or other city employee of knowingly failing, or refusing, without just cause, to perform any duty imposed upon such officer or employee by this chapter, or city ordinance or charter, in connection with the giving of notice, the preparing and filing of estimates of revenues or expenditures or other information required for preparing a budget report in the time and manner required, or of knowingly making expenditures in excess of budget appropriations, he or she shall be guilty of a misdemeanor and shall be fined not more than five hundred dollars

for each separate violation. [2009 c 549 § 3035; 1967 ex.s. c 119 § 35A.33.160.]

## Chapter 35A.36 RCW EXECUTION OF BONDS BY PROXY IN CODE CITIES

### Sections

35A.36.010 Appointment of proxies.  
35A.36.050 Liability of officer.  
35A.36.060 Notice to council.

**35A.36.010 Appointment of proxies.** The mayor, finance officer, city clerk, or other officer of a code city who is authorized or required by law, charter, or ordinance to execute bonds of the city or any subdivision or district thereof may designate one or more bonded persons to affix such officer's signature to any bond or bonds requiring his or her signature. If the signature of one of these officers is affixed to a bond during his or her continuance in office by a proxy designated by him or her whose authority has not been revoked, the bond shall be as binding upon the city and all concerned as though the officer had signed the bond in person. This chapter shall apply to all bonds, whether they constitute obligations of the city as a whole or of any local improvement or other district or subdivision thereof, whether they call for payment from the general funds of the city or from a local, special or other fund, and whether negotiable or otherwise. [2009 c 549 § 3036; 1967 ex.s. c 119 § 35A.36.010.]

**35A.36.050 Liability of officer.** A code city officer authorizing the affixing of his or her signature to a bond by a proxy shall be subject to the same liability personally and on his or her bond for any signature so affixed and to the same extent as if he or she had affixed his or her signature in person. [2009 c 549 § 3037; 1967 ex.s. c 119 § 35A.36.050.]

**35A.36.060 Notice to council.** In order to designate a proxy to affix his or her signature to bonds, a code city officer shall address a written notice to the legislative body of the city giving the name of the person whom he or she has selected therefor and stating generally or specifically what bonds are to be so signed.

Attached to or included in the notice shall be a written signature of the officer making the designation executed by the proposed proxy followed by the word "by" and his or her own signature; or, if the notice so states, the specimen signatures may consist of a facsimile reproduction of the officer's signature impressed by some mechanical process followed by the word "by" and the proxy's own signature.

If the authority is intended to include the signature upon bonds bearing an earlier date than the effective date of the notice, the prior dated bonds must be specifically described by reasonable reference thereto.

The notice designating a proxy shall be filed with the city finance officer or city clerk, together with the specimen signatures attached thereto and a record of the filing shall be made in the journal of the legislative body. This record shall note the date and hour of filing and may be made by the official who keeps the journal at any time after the filing of the

notice, even during a period of recess or adjournment of the legislative body. The notice shall be effective from the time of its recording. [2009 c 549 § 3038; 1967 ex.s. c 119 § 35A.36.060.]

### Chapter 35A.40 RCW

#### FISCAL PROVISIONS APPLICABLE TO CODE CITIES

##### Sections

35A.40.210 Public work or improvement—Procedures—Purchases.

**35A.40.210 Public work or improvement—Procedures—Purchases.** Procedures for any public work or improvement for code cities shall be governed by RCW 35.23.352.

Purchases for code cities with twenty thousand population or more shall be governed by RCW 35.22.620. Purchases for code cities with under twenty thousand population shall be governed by RCW 35.23.352. [2009 c 229 § 5; 1989 c 11 § 8; 1979 ex.s. c 89 § 3.]

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

### Chapter 35A.42 RCW

#### PUBLIC OFFICERS AND AGENCIES, MEETINGS, DUTIES AND POWERS

##### Sections

35A.42.010 City treasurer—Miscellaneous authority and duties.

35A.42.030 Continuity of government—Enemy attack.

**35A.42.010 City treasurer—Miscellaneous authority and duties.** In addition to authority granted and duties imposed upon code city treasurers by this title, code city treasurers, or the officers designated by charter or ordinance to perform the duties of a treasurer, shall have the duties and the authority to perform the following: (1) As provided in RCW 8.12.500 relating to bonds and compensation payments in eminent domain proceedings; (2) as provided in RCW 68.52.050 relating to cemetery improvement funds; (3) as provided in RCW 41.28.080 relating to custody of employees' retirement funds; (4) as provided in RCW 47.08.100 relating to the use of city street funds; (5) as provided in RCW 46.68.080 relating to motor vehicle funds; (6) as provided in RCW 41.16.020 and chapter 41.20 RCW relating to police and firefighters' relief and pension boards; (7) as provided in chapter 42.20 RCW relating to misappropriation of funds; and (8) as provided in chapter 39.60 RCW relating to investment of municipal funds. The treasurer shall be subject to the penalties imposed for the violation of any of such provisions. Where a provision of this title, or the general law, names the city treasurer as an officer of a board or other body, or assigns duties to a city treasurer, such position shall be filled, or such duties performed, by the officer of a code city who is performing the duties usually performed by a city treasurer, although he or she may not have that designation. [2009 c 549 § 3039; 1987 c 331 § 78; 1984 c 258 § 320; 1967 ex.s. c 119 § 35A.42.010.]

**Effective date—1987 c 331:** See RCW 68.05.900.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.34.130.

**35A.42.030 Continuity of government—Enemy attack.** In the event that the mayor, manager or other chief executive officer of any code city is unavailable by reason of enemy attack to exercise the powers and to discharge the duties of his or her office, his or her successor or substitute shall be selected in the manner provided by RCW 42.14.050 subject to rules and regulations providing for the appointment of temporary interim successors adopted under RCW 42.14.070. [2009 c 549 § 3040; 1967 ex.s. c 119 § 35A.42.030.]

### Chapter 35A.63 RCW

#### PLANNING AND ZONING IN CODE CITIES

##### Sections

35A.63.020 Planning agency—Creation—Powers and duties—Conflicts of interest.

35A.63.107 Development regulations—Jurisdictions specified—Electric vehicle infrastructure.

35A.63.110 Board of adjustment—Creation—Powers and duties.

**35A.63.020 Planning agency—Creation—Powers and duties—Conflicts of interest.** By ordinance a code city may create a planning agency and provide for its membership, organization, and expenses. The planning agency shall serve in an advisory capacity to the chief administrative officer or the legislative body, or both, as may be provided by ordinance and shall have such other powers and duties as shall be provided by ordinance. If any person or persons on a planning agency concludes that he or she has a conflict of interest or an appearance of fairness problem with respect to a matter pending before the agency so that he or she cannot discharge his or her duties on such an agency, he or she shall disqualify himself or herself from participating in the deliberations and the decision-making process with respect to the matter. If this occurs, the appointing authority that appoints such a person may appoint a person to serve as an alternate on the agency to serve in his or her stead in regard to such a matter. [2009 c 549 § 3041; 1979 ex.s. c 18 § 33; 1967 ex.s. c 119 § 35A.63.020.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

**35A.63.107 Development regulations—Jurisdictions specified—Electric vehicle infrastructure.** (1) By July 1, 2010, the development regulations of any jurisdiction:

(a) Adjacent to Interstate 5, Interstate 90, Interstate 405, or state route number 520, with a population over twenty thousand, and located in a county with a population over one million five hundred thousand; or

(b) Adjacent to Interstate 5 and located in a county with a population greater than six hundred thousand; or

(c) Adjacent to Interstate 5 and located in a county with a state capitol within its borders; planning under this chapter must allow electric vehicle infrastructure as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the

effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(2) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction adjacent to Interstate 5, Interstate 90, Interstate 405, or state route number 520 planning under this chapter must allow electric vehicle infrastructure as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(3) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction planning under this chapter must allow battery charging stations as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(4) Cities are authorized to adopt incentive programs to encourage the retrofitting of existing structures with the electrical outlets capable of charging electric vehicles. Incentives may include bonus height, site coverage, floor area ratio, and transferable development rights for use in urban growth areas.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(6) If federal funding for public investment in electric vehicles, electric vehicle infrastructure, or alternative fuel distribution infrastructure is not provided by February 1, 2010, subsection (1) of this section is null and void. [2009 c 459 § 10.]

**Finding—Purpose—2009 c 459:** See note following RCW 47.80.090.

*Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.*

**35A.63.110 Board of adjustment—Creation—Powers and duties.** A code city which pursuant to this chapter creates a planning agency and which has twenty-five hundred or more inhabitants, by ordinance, shall create a board of adjustment and provide for its membership, terms of office, organization, jurisdiction. A code city which pursuant to this chapter creates a planning agency and which has a population of less than twenty-five hundred may, by ordinance, similarly create a board of adjustment. In the event a code city with a population of less than twenty-five hundred creates a planning agency, but does not create a board of adjustment, the code city shall provide that the city legislative authority shall itself hear and decide the items listed in subdivisions (1), (2), and (3) of this section. The action of the board of adjustment shall be final and conclusive, unless, within twenty-one days from the date of the action, the original applicant or an adverse party makes application to the superior court for the county in which that city is located for a writ of certiorari, a writ of prohibition, or a writ of mandamus. No member of the board of adjustment shall be a member of the planning agency or the legislative body. Subject to conditions, safeguards, and procedures provided by ordinance, the board of adjustment may be empowered to hear and decide:

(1) Appeals from orders, recommendations, permits, decisions, or determinations made by a code city official in the administration or enforcement of the provisions of this chapter or any ordinances adopted pursuant to it.

(2) Applications for variances from the terms of the zoning ordinance, the official map ordinance or other land-use regulatory ordinances under procedures and conditions prescribed by city ordinance, which among other things shall provide that no application for a variance shall be granted unless the board of adjustment finds:

(a) The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which the application was filed is located; and

(b) That such variance is necessary, because of special circumstances relating to the size, shape, topography, location, or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

(c) That the granting of such variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the vicinity and zone in which the subject property is situated.

(3) Applications for conditional-use permits, unless such applications are to be heard and decided by the planning agency. A conditional use means a use listed among those classified in any given zone but permitted to locate only after review as herein provided in accordance with standards and criteria set forth in the zoning ordinance.

(4) Such other quasi judicial and administrative determinations as may be delegated by ordinance.

In deciding any of the matters referred to in subsections (1), (2), (3), and (4) of this section, the board of adjustment shall issue a written report giving the reasons for its decision. If a code city provides for a hearing examiner and vests in him or her the authority to hear and decide the items listed in subdivisions (1), (2), and (3) of this section pursuant to RCW

35A.63.170, then the provisions of this section shall not apply to such a city. [2009 c 549 § 3042; 2001 c 200 § 1; 1979 ex.s. c 18 § 34; 1967 ex.s. c 119 § 35A.63.110.]

**Severability—1979 ex.s. c 18:** See note following RCW 35A.01.070.

### Chapter 35A.92 RCW

#### FIRE DEPARTMENTS— PERFORMANCE MEASURES

##### Sections

35A.92.050 Maintenance of response times in newly annexed areas—Firefighter transfers.

**35A.92.050 Maintenance of response times in newly annexed areas—Firefighter transfers.** Code cities conducting annexations of all or part of fire protection districts shall, at least through the budget cycle, or the following budget cycle if the annexation occurs in the last half of the current budget cycle, in which the annexation occurs, maintain existing fire protection and emergency services response times in the newly annexed areas consistent with response times recorded prior to the annexation as defined in the previous annual report for the fire protection district and as reported in RCW 52.33.040. If the code city is unable to maintain these service levels in the newly annexed area, the transfer of firefighters from the annexed fire protection district as a direct result of the annexation must occur as outlined in RCW 35A.14.485. [2009 c 60 § 12.]

## Title 36 COUNTIES

### Chapters

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- 36.08 Transfer of territory where city's harbor lies in two counties.
- 36.09 New county—Liability for debts.
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### Chapter 36.01 RCW GENERAL PROVISIONS

#### Sections

- 36.01.225 Authority to regulate placement or use of homes—Regulation of manufactured homes—Restrictions on location of manufactured/mobile homes and entry or removal of recreational vehicles used as primary residences.
- 36.01.270 Contractors—Authority of county to verify registration and report violations.
- 36.01.280 Community athletics programs—Sex discrimination prohibited.

**36.01.225 Authority to regulate placement or use of homes—Regulation of manufactured homes—Restrictions on location of manufactured/mobile homes and entry or removal of recreational vehicles used as primary residences.** (1) A county may not adopt an ordinance that has the effect, directly or indirectly, of discriminating against consumers' choices in the placement or use of a home in such a manner that is not equally applicable to all homes. Homes built to 42 U.S.C. Sec. 5401-5403 standards (as amended in 2000) must be regulated for the purposes of siting in the same manner as site built homes, factory built homes, or homes built to any other state construction or local design standard. However, except as provided in subsection (2) of this section, any county may require that:

- (a) A manufactured home be a new manufactured home;
- (b) The manufactured home be set upon a permanent foundation, as specified by the manufacturer, and that the space from the bottom of the home to the ground be enclosed by concrete or an approved concrete product which can be either load bearing or decorative;



(c) The manufactured home comply with all local design standards applicable to all other homes within the neighborhood in which the manufactured home is to be located;

(d) The home is thermally equivalent to the state energy code; and

(e) The manufactured home otherwise meets all other requirements for a designated manufactured home as defined in RCW 35.63.160.

(2) A county may not adopt an ordinance that has the effect, directly or indirectly, of restricting the location of manufactured/mobile homes in manufactured/mobile home communities, as defined in RCW 59.20.030, which were legally in existence before June 12, 2008, based exclusively on the age or dimensions of the manufactured/mobile home. This does not preclude a county from restricting the location of a manufactured/mobile home in manufactured/mobile home communities for any other reason including, but not limited to, failure to comply with fire, safety, or other local ordinances or state laws related to manufactured/mobile homes.

(3) A county may not adopt an ordinance that has the effect, directly or indirectly, of preventing the entry or requiring the removal of a recreational vehicle used as a primary residence in manufactured/mobile home communities, as defined in RCW 59.20.030, unless the recreational vehicle fails to comply with the fire, safety, or other local ordinances or state laws related to recreational vehicles.

(4) This section does not override any legally recorded covenants or deed restrictions of record.

(5) This section does not affect the authority granted under chapter 43.22 RCW. [2009 c 79 § 3; 2008 c 117 § 3; 2004 c 256 § 4.]

**Findings—Intent—Effective date—2004 c 256:** See notes following RCW 35.21.684.

**36.01.270 Contractors—Authority of county to verify registration and report violations.** A county that issues a business license to a person required to be registered under chapter 18.27 RCW may verify that the person is registered under chapter 18.27 RCW and report violations to the department of labor and industries. [2009 c 432 § 4.]

**Report—2009 c 432:** See note following RCW 18.27.062.

**36.01.280 Community athletics programs—Sex discrimination prohibited.** The antidiscrimination provisions of RCW 49.60.500 apply to community athletics programs and facilities operated, conducted, or administered by a county. [2009 c 467 § 7.]

**Findings—Declarations—2009 c 467:** See note following RCW 49.60.500.

**Chapter 36.08 RCW**

**TRANSFER OF TERRITORY WHERE CITY'S HARBOR LIES IN TWO COUNTIES**

Sections

- 36.08.020 Conduct of election—Proclamation of change.
- 36.08.070 Arbitration of differences.
- 36.08.090 Transcript of records by county auditor.

**36.08.020 Conduct of election—Proclamation of change.** The election shall be conducted in all respects as general elections are conducted under the laws governing general elections, in so far as they may be applicable, except that there shall be triplicate returns made, one to each of the respective county auditors and another to the office of the secretary of state. The ballots used at such election shall contain the words "for transferring territory," or "against transferring territory." The votes shall be canvassed, as by law required, within twenty days, and if three-fifths of the votes cast in the territory at such election are "for transferring territory," the territory described in the petition shall become a part of and be added to and made a part of the county contiguous thereto, and within thirty days after the canvass of the returns of the election, the governor shall issue his or her proclamation of the change of county lines. [2009 c 549 § 4001; 1963 c 4 § 36.08.020. Prior: 1891 c 144 § 2; RRS § 3973.]

**36.08.070 Arbitration of differences.** If the board of appraisers and adjusters do not agree on any subject, value, or settlement, they shall choose a third person from an adjoining county to settle their differences, and the decision thus arrived at shall be final. [2009 c 549 § 4002; 1963 c 4 § 36.08.070. Prior: 1891 c 144 § 7; RRS § 3978.]

**36.08.090 Transcript of records by county auditor.** The county auditor of the county to which any territory may be transferred may take transcripts of all records, books, papers, etc., on file in the office of the county auditor of the county from which the territory has been transferred, which may be necessary to perfect the records of his or her county, and for this purpose he or she shall have access to the records of the county from which such territory is stricken, free of cost. [2009 c 549 § 4003; 1963 c 4 § 36.08.090. Prior: 1891 c 144 § 9; RRS § 3980.]

**Chapter 36.09 RCW**

**NEW COUNTY—LIABILITY FOR DEBTS**

Sections

- 36.09.020 Procedure to settle amount charged new county—Basis of apportionment.
- 36.09.040 Payment of indebtedness—Transfer of property.

**36.09.020 Procedure to settle amount charged new county—Basis of apportionment.** The auditor of the old county shall give the auditor of the new county reasonable notice to meet him or her on a certain day at the county seat of the old county, or at some other convenient place, to settle upon and fix the amount which the new county shall pay. In doing so, they shall not charge either county with any share of debts arising from the erection of public buildings, or out of the construction of roads or bridges which shall be and remain, after the division, within the limits of the other county, and of the other debts they shall apportion to each county such a share of the indebtedness as may be just and equitable, taking into consideration the population of such portion of territory so forming a part of the said counties while so united, and also the relative advantages, derived from the old county organization. [2009 c 549 § 4004; 1963

c 4 § 36.09.020. Prior: (i) Code 1881 § 2658; 1863 p 538 § 4; 1854 p 330 § 2; RRS § 3987. FORMER PART OF SECTION: 1909 c 79 § 1, part; Code 1881 § 2662, part; RRS § 3991, part. Now codified in RCW 36.09.050.]

**36.09.040 Payment of indebtedness—Transfer of property.** The auditor of the county indebted upon such decision shall give to the auditor of the other county his or her order upon the treasurer for the amount to be paid out of the proper fund, as in other cases, and also make out a transfer of such property as shall be assigned to either county. [2009 c 549 § 4005; 1963 c 4 § 36.09.040. Prior: Code 1881 § 2660; 1863 p 539 § 6; 1854 p 330 § 4; RRS § 3989.]

### Chapter 36.13 RCW

#### CLASSIFICATION OF COUNTIES

##### Sections

36.13.040 County census authorized—Information to be given enumerators.

**36.13.040 County census authorized—Information to be given enumerators.** All persons resident in the county, having knowledge of the facts, shall give the information required herein to any duly authorized census enumerator when requested by him or her. [2009 c 549 § 4006; 1963 c 4 § 36.13.040. Prior: 1923 c 177 § 4; RRS § 4200-9.]

### Chapter 36.16 RCW

#### COUNTY OFFICERS—GENERAL

##### Sections

36.16.040 Oath of office.  
36.16.060 Place of filing oaths and bonds.  
36.16.070 Deputies and employees.  
36.16.087 Deputies and employees—County treasurer—Prior deeds validated.  
36.16.090 Office space.  
36.16.120 Officers must complete business.

**36.16.040 Oath of office.** Every person elected to county office shall before he or she enters upon the duties of his or her office take and subscribe an oath or affirmation that he or she will faithfully and impartially discharge the duties of his or her office to the best of his or her ability. This oath, or affirmation, shall be administered and certified by an officer authorized to administer oaths, without charge therefor. [2009 c 549 § 4007; 1963 c 4 § 36.16.040. Prior: 1955 c 157 § 6; prior: (i) Code 1881 § 2666; 1869 p 303 § 4; 1863 p 541 § 4; 1854 p 420 § 4; RRS § 4045. (ii) Code 1881 § 2708, part; 1869 p 310 § 4, part; 1863 p 549 § 4, part; 1854 p 424 § 4, part; RRS § 4084, part. (iii) 1943 c 249 § 1; Code 1881 § 2739; 1863 p 553 § 2, part; 1854 p 426 § 2; Rem. Supp. 1943 § 4107. (iv) 1886 p 61 § 4, part; 1883 p 73 § 9, part; Code 1881 § 2163, part; 1877 p 246 § 5, part; 1863 p 408 § 3, part; 1860 p 334 § 3, part; 1858 p 12 § 3, part; 1854 p 417 § 3, part; RRS § 4129, part. (v) 1897 c 71 § 44; 1893 c 124 § 46; Code 1881 § 2753; 1854 p 428 § 2; RRS § 4141. (vi) Code 1881 § 2774; 1863 p 558 § 9; 1854 p 435 § 9; RRS § 4156. (vii) Code 1881 § 2775, part; 1863 p 559 § 1, part; 1854 p 436 § 1, part; RRS § 4176, part. (viii) Code 1881 § 2096; 1869 p 374 § 18; RRS § 4231. (ix) 1909 c 97 p 280 §

1, part; 1903 c 104 § 13, part; 1899 c 142 § 5, part; 1897 c 118 § 30, part; 1890 p 355 § 10, part; Code 1881 § 3170, part; RRS § 4767, part. (x) 1925 ex.s. c 130 § 55; 1891 c 140 § 46; 1890 p 548 § 50; RRS § 11138.]

*Election officials, oaths of office: RCW 29A.44.490 through 29A.44.520.*

*Examiner of titles, oath of: RCW 65.12.090.*

**36.16.060 Place of filing oaths and bonds.** Every county officer, before entering upon the duties of his or her office, shall file his or her oath of office in the office of the county auditor and his or her official bond in the office of the county clerk: PROVIDED, That the official bond of the county clerk, after first being recorded by the county auditor, shall be filed in the office of the county treasurer.

Oaths and bonds of deputies shall be filed in the offices in which the oaths and bonds of their principals are required to be filed. [2009 c 549 § 4008; 1963 c 4 § 36.16.060. Prior: 1955 c 157 § 8; prior: (i) 1895 c 53 § 2, part; RRS § 71, part. (ii) 1890 p 35 § 5, part; RRS § 9934, part.]

**36.16.070 Deputies and employees.** In all cases where the duties of any county office are greater than can be performed by the person elected to fill it, the officer may employ deputies and other necessary employees with the consent of the board of county commissioners. The board shall fix their compensation and shall require what deputies shall give bond and the amount of bond required from each. The sureties on deputies' bonds must be approved by the board and the premium therefor is a county expense.

A deputy may perform any act which his or her principal is authorized to perform. The officer appointing a deputy or other employee shall be responsible for the acts of his or her appointees upon his or her official bond and may revoke each appointment at pleasure. [2009 c 549 § 4009; 1969 ex.s. c 176 § 92; 1963 c 4 § 36.16.070. Prior: 1959 c 216 § 3; 1957 c 219 § 2; prior: (i) Code 1881 § 2716; 1869 p 312 § 10; 1863 p 550 § 7; 1854 p 425 § 7; RRS § 4093. (ii) Code 1881 § 2741; 1863 p 553 § 4; 1854 p 427 § 4; RRS § 4108. (iii) Code 1881 § 2767, part; 1871 p 110 § 1, part; 1863 p 557 § 2, part; 1854 p 434 § 2, part; RRS § 4160, part. (iv) 1905 c 60 § 1; RRS § 4177. (v) 1905 c 60 § 2; RRS § 4178. (vi) 1905 c 60 § 3; RRS § 4179. (vii) 1949 c 200 § 1, part; 1945 c 87 § 1, part; 1937 c 197 § 3, part; 1925 ex.s. c 148 § 6, part; Rem. Supp. 1949 § 4200-5a, part. (viii) 1943 c 260 § 1; Rem. Supp. 1943 § 4200-5b.]

*County clerk, deputies of: Chapter 2.32 RCW.*

**36.16.087 Deputies and employees—County treasurer—Prior deeds validated.** In all cases in which the county treasurer of any county in the state of Washington shall have executed a tax deed or deeds prior to February 21, 1903, either to his or her county or to any private person or persons or corporation whomsoever, said deed or deeds shall not be deemed invalid by reason of the county treasurer who executed the same not having affixed a seal of office to the same, or having affixed a seal not an official seal; nor shall said deed or deeds be deemed invalid by reason of the fact that at the date of the execution of said deed or deeds there was in the state of Washington no statute providing for an official seal for the office of county treasurer. [2009 c 549 §

4010; 1963 c 4 § 36.16.087. Prior: 1903 c 15 § 2; RRS § 4126. Formerly RCW 36.16.080.]

**36.16.090 Office space.** The boards of county commissioners of the several counties of the state shall provide a suitable furnished office for each of the county officers in their respective courthouses and may provide additional offices elsewhere for the officers at the board's discretion. [2009 c 105 § 1; 1963 c 4 § 36.16.090. Prior: 1893 c 82 § 1; Code 1881 § 2677; 1869 p 306 § 15; 1854 p 422 § 15; RRS § 4032. SLC-RO-14.]

**36.16.120 Officers must complete business.** All county officers shall complete the business of their offices, to the time of the expiration of their respective terms, and in case any officer, at the close of his or her term, leaves to his or her successor official labor to be performed, which it was his or her duty to perform, he or she shall be liable to his or her successor for the full value of such services. [2009 c 549 § 4011; 1963 c 4 § 36.16.120. Prior: 1890 p 315 § 43; RRS § 4031.]

### Chapter 36.17 RCW

#### SALARIES OF COUNTY OFFICERS

##### Sections

36.17.042	Weekly or biweekly pay periods.
36.17.045	Deductions for contributions, payments, and dues authorized.
36.17.050	Salary withheld, when authorized.
36.17.900	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )

**36.17.042 Weekly or biweekly pay periods.** In addition to the pay periods permitted under RCW 36.17.040, counties may pay county officers and employees using the following methods:

(1) The legislative authority of any county may establish a weekly or biweekly pay period where county officers and employees receive their compensation not later than seven days following the end of each pay period for services rendered during that pay period, except as authorized under subsection (3) of this section.

(2) In a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW, the county legislative authority may establish a weekly or biweekly pay period where the county officers and employees receive their compensation not later than thirteen days following the end of each pay period for services rendered during that pay period.

(3) The legislative authority of any county that currently uses a semimonthly pay period under RCW 36.17.040 may adopt a biweekly pay period. In such counties, county officers and employees shall receive their compensation not later than thirteen days following the end of each pay period for services rendered during that pay period. [2009 c 239 § 1; 1995 c 38 § 3; 1994 c 301 § 5; 1977 c 42 § 1.]

**Acts of municipal officers ratified and confirmed—1995 c 38:** See note following RCW 3.02.045.

**36.17.045 Deductions for contributions, payments, and dues authorized.** Employees of the counties shall have the right to voluntarily authorize the monthly deduction of their pledges to the United Good Neighbor or its successor, monthly payment to a credit union as defined in RCW 31.12.005, and monthly dues to a labor union, from their salaries or wages. When such written authorization is received by the county auditor, he or she shall make such monthly deduction. [2009 c 337 § 1; 1963 c 164 § 3.]

**36.17.050 Salary withheld, when authorized.** If the superior court issues a declaratory judgment under RCW 36.16.125 finding that a county officer has abandoned his or her duties, the county officer may not be paid a salary. [2009 c 337 § 2; 1999 c 71 § 3; 1963 c 4 § 36.17.050. Prior: 1890 p 314 § 38; RRS § 4221.]

**36.17.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 81.]

### Chapter 36.18 RCW

#### FEES OF COUNTY OFFICERS

##### Sections

36.18.012	Various fees collected—Division with state.
36.18.016	Various fees collected—Not subject to division.
36.18.018	Fees to state court, administrative office of the courts—Appellate review fee and surcharge—Variable fee for copies and reports.
36.18.020	Clerk's fees, surcharges.
36.18.025	Portion of filing fees to be remitted to state treasurer.
36.18.030	Coroner's fees.
36.18.050	Fees in special cases.
36.18.060	Fees payable in advance—Exception.
36.18.070	Single mileage chargeable when.
36.18.080	Fee schedule to be kept posted.
36.18.090	Itemized receipt to be given.
36.18.110	Repealed.
36.18.120	Repealed.
36.18.130	Repealed.
36.18.160	Penalty for taking illegal fees.
36.18.180	Office to be declared vacant on conviction.

**36.18.012 Various fees collected—Division with state.** (1) Revenue collected under this section is subject to division with the state.

(2) The party filing a transcript or abstract of judgment or verdict from a United States court held in this state, or from the superior court of another county or from a district

court in the county of issuance, shall pay at the time of filing a fee of twenty dollars.

(3) The clerk shall collect a fee of twenty dollars for: Filing a document not related to or a part of a proceeding, civil or criminal, or a probate matter, required or permitted to be filed in the clerk's office for which no other charge is provided by law.

(4) If the defendant serves or files an answer to an unlawful detainer complaint under chapter 59.18 or 59.20 RCW, the plaintiff shall pay before proceeding with the unlawful detainer action one hundred twelve dollars.

(5) Any party filing a counterclaim, cross-claim, or third-party claim in an unlawful detainer action under chapter 59.18 or 59.20 RCW shall pay the equivalent to the total filing fee of an unlawful detainer action pursuant to RCW 36.18.020, including the fee for an unlawful detainer answer pursuant to subsection (4) of this section.

(6) For a restrictive covenant for filing a petition to strike discriminatory provisions in real estate under RCW 49.60.227 a fee of twenty dollars must be charged.

(7) A fee of twenty dollars must be charged for filing a will only, when no probate of the will is contemplated.

(8) A fee of twenty dollars must be charged for filing a petition, written agreement, or written memorandum in a nonjudicial probate dispute under RCW 11.96A.220, if it is filed within an existing case in the same court.

(9) A fee of thirty-five dollars must be charged for filing a petition regarding a common law lien under RCW 60.70.060.

(10) For the filing of a tax warrant for unpaid taxes or overpayment of benefits by any agency of the state of Washington, a fee of five dollars on or after July 22, 2001, and for the filing of such a tax warrant or overpayment of benefits on or after July 1, 2003, a fee of twenty dollars, of which forty-six percent of the first five dollars is directed to the state general fund. [2009 c 479 § 20; 2009 c 417 § 1; 2006 c 192 § 1; 2005 c 457 § 17; 2001 c 146 § 1; 1999 c 42 § 634; 1996 c 211 § 1; 1995 c 292 § 12.]

**Reviser's note:** This section was amended by 2009 c 417 § 1 and by 2009 c 479 § 20, 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—2009 c 479:** See note following RCW 2.56.030.

**Intent—2005 c 457:** See note following RCW 43.08.250.

**Part headings and captions not law—Effective date—1999 c 42:** See RCW 11.96A.901 and 11.96A.902.

**36.18.016 Various fees collected—Not subject to division.** (1) Revenue collected under this section is not subject to division under RCW 36.18.025 or 27.24.070.

(2)(a) For the filing of a petition for modification of a decree of dissolution or paternity, within the same case as the original action, and any party filing a counterclaim, cross-claim, or third-party claim in any such action, a fee of thirty-six dollars must be paid.

(b) The party filing the first or initial petition for dissolution, legal separation, or declaration concerning the validity of marriage shall pay, at the time and in addition to the filing fee required under RCW 36.18.020, a fee of thirty dollars. The clerk of the superior court shall transmit monthly twenty-four dollars of the thirty-dollar fee collected under this sub-

section to the state treasury for deposit in the domestic violence prevention account. The remaining six dollars shall be retained by the county for the purpose of supporting community-based services within the county for victims of domestic violence, except for five percent of the six dollars, which may be retained by the court for administrative purposes.

(3)(a) The party making a demand for a jury of six in a civil action shall pay, at the time, a fee of one hundred twenty-five dollars; if the demand is for a jury of twelve, a fee of two hundred fifty dollars. If, after the party demands a jury of six and pays the required fee, any other party to the action requests a jury of twelve, an additional one hundred twenty-five dollar fee will be required of the party demanding the increased number of jurors.

(b) Upon conviction in criminal cases a jury demand charge of one hundred twenty-five dollars for a jury of six, or two hundred fifty dollars for a jury of twelve may be imposed as costs under RCW 10.46.190.

(4) For preparing a certified copy of an instrument on file or of record in the clerk's office, for the first page or portion of the first page, a fee of five dollars, and for each additional page or portion of a page, a fee of one dollar must be charged. For authenticating or exemplifying an instrument, a fee of two dollars for each additional seal affixed must be charged. For preparing a copy of an instrument on file or of record in the clerk's office without a seal, a fee of fifty cents per page must be charged. When copying a document without a seal or file that is in an electronic format, a fee of twenty-five cents per page must be charged. For copies made on a compact disc, an additional fee of twenty dollars for each compact disc must be charged.

(5) For executing a certificate, with or without a seal, a fee of two dollars must be charged.

(6) For a garnishee defendant named in an affidavit for garnishment and for a writ of attachment, a fee of twenty dollars must be charged.

(7) For filing a supplemental proceeding, a fee of twenty dollars must be charged.

(8) For approving a bond, including justification on the bond, in other than civil actions and probate proceedings, a fee of two dollars must be charged.

(9) For the issuance of a certificate of qualification and a certified copy of letters of administration, letters testamentary, or letters of guardianship, there must be a fee of five dollars.

(10) For the preparation of a passport application, the clerk may collect an execution fee as authorized by the federal government.

(11) For clerk's services such as performing historical searches, compiling statistical reports, and conducting exceptional record searches, the clerk may collect a fee not to exceed thirty dollars per hour.

(12) For processing ex parte orders, the clerk may collect a fee of thirty dollars.

(13) For duplicated recordings of court's proceedings there must be a fee of ten dollars for each audio tape and twenty-five dollars for each video tape or other electronic storage medium.

(14) For registration of land titles, Torrens Act, under RCW 65.12.780, a fee of twenty dollars must be charged.

(15) For the issuance of extension of judgment under RCW 6.17.020 and chapter 9.94A RCW, a fee of two hundred dollars must be charged. When the extension of judgment is at the request of the clerk, the two hundred dollar charge may be imposed as court costs under RCW 10.46.190.

(16) A facilitator surcharge of up to twenty dollars must be charged as authorized under RCW 26.12.240.

(17) For filing a water rights statement under RCW 90.03.180, a fee of twenty-five dollars must be charged.

(18) For filing a claim of frivolous lien under RCW 60.04.081, a fee of thirty-five dollars must be charged.

(19) For preparation of a change of venue, a fee of twenty dollars must be charged by the originating court in addition to the per page charges in subsection (4) of this section.

(20) A service fee of five dollars for the first page and one dollar for each additional page must be charged for receiving faxed documents, pursuant to Washington state rules of court, general rule 17.

(21) For preparation of clerk's papers under RAP 9.7, a fee of fifty cents per page must be charged.

(22) For copies and reports produced at the local level as permitted by RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(23) Investment service charge and earnings under RCW 36.48.090 must be charged.

(24) Costs for nonstatutory services rendered by clerk by authority of local ordinance or policy must be charged.

(25) For filing a request for mandatory arbitration, a filing fee may be assessed against the party filing a statement of arbitrability not to exceed two hundred twenty dollars as established by authority of local ordinance. This charge shall be used solely to offset the cost of the mandatory arbitration program.

(26) For filing a request for trial de novo of an arbitration award, a fee not to exceed two hundred fifty dollars as established by authority of local ordinance must be charged.

(27) A public agency may not charge a fee to a law enforcement agency, for preparation, copying, or mailing of certified copies of the judgment and sentence, information, affidavit of probable cause, and/or the notice of requirement to register, of a sex offender convicted in a Washington court, when such records are necessary for risk assessment, preparation of a case for failure to register, or maintenance of a sex offender's registration file.

(28) For the filing of a will or codicil under the provisions of chapter 11.12 RCW, a fee of twenty dollars must be charged.

(29) For the collection of unpaid legal financial obligations, the clerk may impose an annual fee of up to one hundred dollars, pursuant to RCW 9.94A.780.

(30) A surcharge of up to twenty dollars may be charged in dissolution and legal separation actions as authorized by RCW 26.12.260.

The revenue to counties from the fees established in this section shall be deemed to be complete reimbursement from the state for the state's share of benefits paid to the superior court judges of the state prior to July 24, 2005, and no claim shall lie against the state for such benefits. [2009 c 417 § 2; 2007 c 496 § 204; 2006 c 192 § 2. Prior: 2005 c 457 § 18; 2005 c 374 § 2; 2005 c 202 § 1; 2002 c 338 § 2; 2001 c 146 §

2; 2000 c 170 § 1; 1999 c 397 § 8; 1996 c 56 § 5; 1995 c 292 § 14.]

**Effective dates—2007 c 496 §§ 201, 202, 204, and 501:** See note following RCW 26.12.260.

**Part headings not law—2007 c 496:** See note following RCW 26.09.002.

**Intent—2005 c 457:** See note following RCW 43.08.250.

**36.18.018 Fees to state court, administrative office of the courts—Appellate review fee and surcharge—Variable fee for copies and reports.** (1) State revenue collected by county clerks under subsection (2) of this section must be transmitted to the appropriate state court. The administrative office of the courts shall retain fees collected under subsection (3) of this section.

(2) For appellate review under RAP 5.1(b), two hundred fifty dollars must be charged.

(3) For all copies and reports produced by the administrative office of the courts as permitted under RCW 2.68.020 and supreme court policy, a variable fee must be charged.

(4) Until July 1, 2011, in addition to the fee established under subsection (2) of this section, a surcharge of thirty dollars is established for appellate review. The county clerk shall transmit this surcharge to the state treasurer for deposit in the judicial stabilization trust account. [2009 c 572 § 3; 2005 c 282 § 43; 1995 c 292 § 15.]

**Effective date—2009 c 572:** See note following RCW 43.79.505.

**36.18.020 Clerk's fees, surcharges.** (1) Revenue collected under this section is subject to division with the state under RCW 36.18.025 and with the county or regional law library fund under RCW 27.24.070, except as provided in subsection (5) of this section.

(2) Clerks of superior courts shall collect the following fees for their official services:

(a) In addition to any other fee required by law, the party filing the first or initial document in any civil action, including, but not limited to an action for restitution, adoption, or change of name, and any party filing a counterclaim, cross-claim, or third-party claim in any such civil action, shall pay, at the time the document is filed, a fee of two hundred dollars except, in an unlawful detainer action under chapter 59.18 or 59.20 RCW for which the plaintiff shall pay a case initiating filing fee of forty-five dollars, or in proceedings filed under RCW 28A.225.030 alleging a violation of the compulsory attendance laws where the petitioner shall not pay a filing fee. The forty-five dollar filing fee under this subsection for an unlawful detainer action shall not include an order to show cause or any other order or judgment except a default order or default judgment in an unlawful detainer action.

(b) Any party, except a defendant in a criminal case, filing the first or initial document on an appeal from a court of limited jurisdiction or any party on any civil appeal, shall pay, when the document is filed, a fee of two hundred dollars.

(c) For filing of a petition for judicial review as required under RCW 34.05.514 a filing fee of two hundred dollars.

(d) For filing of a petition for unlawful harassment under RCW 10.14.040 a filing fee of fifty-three dollars.

(e) For filing the notice of debt due for the compensation of a crime victim under RCW 7.68.120(2)(a) a fee of two hundred dollars.

(f) In probate proceedings, the party instituting such proceedings, shall pay at the time of filing the first document therein, a fee of two hundred dollars.

(g) For filing any petition to contest a will admitted to probate or a petition to admit a will which has been rejected, or a petition objecting to a written agreement or memorandum as provided in RCW 11.96A.220, there shall be paid a fee of two hundred dollars.

(h) Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, a defendant in a criminal case shall be liable for a fee of two hundred dollars.

(i) With the exception of demands for jury hereafter made and garnishments hereafter issued, civil actions and probate proceedings filed prior to midnight, July 1, 1972, shall be completed and governed by the fee schedule in effect as of January 1, 1972: PROVIDED, That no fee shall be assessed if an order of dismissal on the clerk's record be filed as provided by rule of the supreme court.

(3) No fee shall be collected when a petition for relinquishment of parental rights is filed pursuant to RCW 26.33.080 or for forms and instructional brochures provided under RCW 26.50.030.

(4) No fee shall be collected when an abstract of judgment is filed by the county clerk of another county for the purposes of collection of legal financial obligations.

(5) Until July 1, 2011, in addition to the fees required by this section, clerks of superior courts shall collect the surcharges required by this subsection, which shall be remitted to the state treasurer for deposit in the judicial stabilization trust account:

(a) On filing fees under subsection (2)(b) of this section, a surcharge of twenty dollars; and

(b) On all other filing fees required by this section except for filing fees in subsection (2)(d) and (h) of this section, a surcharge of thirty dollars. [2009 c 572 § 4; 2009 c 479 § 21; 2009 c 417 § 3. Prior: 2005 c 457 § 19; 2005 c 374 § 5; 2000 c 9 § 1; 1999 c 42 § 635; 1996 c 211 § 2; prior: 1995 c 312 § 70; 1995 c 292 § 10; 1993 c 435 § 1; 1992 c 54 § 1; 1989 c 342 § 1; prior: 1987 c 382 § 3; 1987 c 202 § 201; 1987 c 56 § 3; prior: 1985 c 24 § 1; 1985 c 7 § 104; 1984 c 263 § 29; 1981 c 330 § 5; 1980 c 70 § 1; 1977 ex.s. c 107 § 1; 1975 c 30 § 1; 1973 c 16 § 1; 1973 c 38 § 1; prior: 1972 ex.s. c 57 § 5; 1972 ex.s. c 20 § 1; 1970 ex.s. c 32 § 1; 1967 c 26 § 9; 1963 c 4 § 36.18.020; prior: 1961 c 304 § 1; 1961 c 41 § 1; 1951 c 51 § 5; 1907 c 56 § 1, part, p 89; 1903 c 151 § 1, part, p 294; 1893 c 130 § 1, part, p 421; Code 1881 § 2086, part, p 355; 1869 p 364 § 1, part; 1863 p 391 § 1, part; 1861 p 34 § 1, part; 1854 p 368 § 1, part; RRS § 497, part.]

**Rules of court:** Cf. *RAP 14.3, 18.22.*

**Reviser's note:** This section was amended by 2009 c 417 § 3, 2009 c 479 § 21, and by 2009 c 572 § 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 date—2009 c 572:** See note following RCW 43.79.505.

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Intent—2005 c 457:** See note following RCW 43.08.250.

**Part headings and captions not law—Effective date—1999 c 42:** See RCW 11.96A.901 and 11.96A.902.

**Short title—1995 c 312:** See note following RCW 13.32A.010.

[2009 RCW Supp—page 598]

**Effective date—1992 c 54:** "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 April 1, 1992." [1992 c 54 § 7.]

**Severability—Effective date—1989 c 342:** See RCW 59.18.910 and 59.18.911.

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

**Effective date—Severability—1984 c 263:** See RCW 26.50.901 and 26.50.902.

**Severability—1981 c 330:** See note following RCW 3.62.060.

**Effective date—1972 ex.s. c 20:** "This act shall take effect July 1, 1972." [1972 ex.s. c 20 § 3.]

**Effective date—1967 c 26:** See note following RCW 43.70.150.

**36.18.025 Portion of filing fees to be remitted to state treasurer.** Forty-six percent of the money received from filing fees paid pursuant to RCW 36.18.020, except those collected for the filing of warrants for unpaid taxes or overpayments by state agencies as outlined in RCW 36.18.012(10), shall be transmitted by the county treasurer each month to the state treasurer for deposit in the state general fund. [2009 c 479 § 22; 2001 c 146 § 3; 1992 c 54 § 2; 1985 c 389 § 9; 1984 c 258 § 322; 1972 ex.s. c 20 § 2.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Effective date—1992 c 54:** See note following RCW 36.18.020.

**Effective date—1985 c 389:** See note following RCW 27.24.070.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.34.130.

**Effective date—1972 ex.s. c 20:** See note following RCW 36.18.020.

**36.18.030 Coroner's fees.** Coroners shall collect for their official services, the following fees:

For each inquest held, besides mileage, twenty dollars.

For issuing a venire, two dollars.

For drawing all necessary writings, two dollars for first page and one dollar for each page thereafter.

For mileage each way, per mile, ten cents.

For performing the duties of a sheriff, he or she shall receive the same fees as a sheriff would receive for the same service. [2009 c 549 § 4014; 1963 c 4 § 36.18.030. Prior: 1959 c 263 § 7; 1907 c 56 § 1, part, p 93; 1903 c 151 § 1, part, p 296; 1893 c 130 § 1, part, p 424; Code 1881 § 2086, part, p 360; 1869 p 372 § 7, part; 1863 p 391 § 1, part, p 396; 1861 p 34 § 1, part, p 39; 1854 p 368 § 1, part, p 373; RRS §§ 497, part, 4185.]

**36.18.050 Fees in special cases.** Every officer who shall be called on or required to perform service for which no fees or compensation are provided for in this chapter shall be allowed fees similar and equal to those allowed him or her for services of the same kind for which allowance is made herein. [2009 c 549 § 4015; 1963 c 4 § 36.18.050. Prior: Code 1881 § 2098; 1869 p 374 § 20; 1863 p 398 § 5; 1861 p 41 § 5; 1854 p 375 § 4; RRS § 4234.]

**36.18.060 Fees payable in advance—Exception.** The officers mentioned in this chapter except the county sheriff shall not, in any case, except for the state or county, perform any official services unless the fees prescribed therefor are paid in advance, and on such payment the officer must pre-

form the services required. The county sheriff may allow payment to be made after official services have been performed as the sheriff deems appropriate. For every failure or refusal to perform official duty when the fees are tendered, the officer is liable on his or her official bond. [2009 c 549 § 4016; 1981 c 194 § 2; 1963 c 4 § 36.18.060. Prior: 1890 p 315 § 39; RRS § 506.]

**Severability—1981 c 194:** See note following RCW 36.18.040.

**36.18.070 Single mileage chargeable when.** When any sheriff, constable or coroner serves more than one process in the same cause or on the same person not requiring more than one journey from his or her office, he or she shall receive mileage only for the most distant service. [2009 c 549 § 4017; 1963 c 4 § 36.18.070. Prior: Code 1881 § 2094; 1869 p 373 § 16; RRS § 501.]

**36.18.080 Fee schedule to be kept posted.** Every county officer entitled to collect fees from the public shall keep posted in his or her office a plain and legible statement of the fees allowed by law and failure so to do shall subject the officer to a fine of one hundred dollars and costs, to be recovered in any court of competent jurisdiction. [2009 c 549 § 4018; 1963 c 4 § 36.18.080. Prior: 1890 p 315 § 41; RRS § 4223. Cf. Code 1881 § 2091; 1869 p 373 § 13.]

**36.18.090 Itemized receipt to be given.** Every officer, when requested so to do, shall make out a bill of his or her fees in every case, and for any services, specifying each particular item thereof, and receipt the same when it is paid, which bill of fees shall always be subject to examination and correction by the courts. Any officer who fails to comply with the requirements of this section shall be liable to the person paying the fees in treble the amount so paid. [2009 c 549 § 4019; 1963 c 4 § 36.18.090. Prior: (i) 1890 p 315 § 40; RRS § 4222. (ii) Code 1881 § 2102; 1869 p 374 § 24; 1863 p 398 § 3; 1861 p 41 § 3; 1854 p 376 § 6; RRS § 4235.]

**36.18.110 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**36.18.120 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**36.18.130 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**36.18.160 Penalty for taking illegal fees.** If any officer takes more or greater fees than are allowed by law he or she shall be subject to prosecution, and on conviction, shall be removed from office and fined in a sum not exceeding one thousand dollars. [2009 c 549 § 4021; 1963 c 4 § 36.18.160. Prior: Code 1881 § 2090; 1869 p 373 § 12; RRS § 4225. Cf. RCW 9.33.040.]

**36.18.180 Office to be declared vacant on conviction.** The board of county commissioners of any county in this state, upon receiving a certified copy of the record of conviction of any officer for receiving illegal fees, or where the officer collects fees and fails to account for the same, upon

proof thereof must declare his or her office vacant and appoint his or her successor. [2009 c 549 § 4022; 1963 c 4 § 36.18.180. Prior: 1890 p 315 § 42; RRS § 4224.]

## Chapter 36.22 RCW COUNTY AUDITOR

### Sections

36.22.010	Duties of auditor.
36.22.030	May administer oaths.
36.22.040	Duty to audit claims against county.
36.22.050	Issuance of warrants—Multiple warrants.
36.22.090	Warrants of political subdivisions.
36.22.120	Temporary clerk may be appointed.
36.22.150	Duty of retiring auditor or his or her representative in case of death.
36.22.170	Surcharge for preservation of historical documents—Distribution of revenue to county and state treasurer—Creation of account.
36.22.179	Surcharge for local homeless housing and assistance—Use.

### **36.22.010 Duties of auditor.** The county auditor:

(1) Shall be recorder of deeds and other instruments in writing which by law are to be filed and recorded in and for the county for which he or she is elected;

(2) Shall keep an account current with the county treasurer, charge all money received as shown by receipts issued and credit all disbursements paid out according to the record of settlement of the treasurer with the legislative authority;

(3) Shall make out and transmit to the state auditor a statement of the state fund account with the county in accordance with standards developed by the state auditor. The statement must be available to the public;

(4) Shall make available a complete exhibit of the prior-year finances of the county including, but not limited to, a statement of financial condition and financial operation in accordance with standards developed by the state auditor. This exhibit shall be made available after the financial records are closed for the prior year;

(5) Shall make out a register of all warrants legally authorized and directed to be issued by the legislative body at any regular or special meeting. The auditor shall make the data available to the county treasurer. The auditor shall retain the original of the register of warrants for future reference;

(6) As clerk of the board of county commissioners, shall:  
Record all of the proceedings of the legislative authority;  
Make full entries of all of their resolutions and decisions on all questions concerning the raising of money for and the allowance of accounts against the county;

Record the vote of each member on any question upon which there is a division or at the request of any member present;

Sign all orders made and warrants issued by order of the legislative authority for the payment of money;

Record the reports of the county treasurer of the receipts and disbursements of the county;

Preserve and file all accounts acted upon by the legislative authority;

Preserve and file all petitions and applications for franchises and record the action of the legislative authority thereon;

Record all orders levying taxes;

Perform all other duties required by any rule or order of the legislative authority. [2009 c 337 § 3; 1995 c 194 § 1; 1984 c 128 § 2; 1963 c 4 § 36.22.010. Prior: 1955 c 157 § 9; prior: (i) Code 1881 § 2707; 1869 p 310 §§ 1, 2, 3; 1863 p 549 §§ 1, 2, 3; 1854 p 424 §§ 1, 2, 3; RRS § 4083. (ii) Code 1881 § 2709; RRS § 4085. (iii) Code 1881 § 2711; RRS § 4088. (iv) 1893 c 119 § 2; Code 1881 § 2712; 1869 p 311 § 6; 1863 p 550 § 6; 1854 p 425 § 6; RRS § 4089. (v) 1893 c 119 § 3; Code 1881 § 2571; RRS § 4090. (vi) 1893 c 119 § 4; Code 1881 § 2713; 1869 p 311 § 7; 1867 p 130 § 1; RRS § 4091. (vii) 1893 c 119 § 5; Code 1881 § 2714; 1869 p 311 § 8; 1867 p 131 § 2; RRS § 4092. (viii) 1893 c 119 § 7; Code 1881 § 2718; 1869 p 312 § 13; RRS § 4095. (ix) Code 1881 § 2719; RRS § 4098. (x) 1893 c 119 § 8; Code 1881 § 2720; RRS § 4099.]

**36.22.030 May administer oaths.** Auditors and their deputies may administer oaths necessary in the performance of their duties and in all other cases where oaths are required by law to be administered and take acknowledgments of deeds and other instruments in writing: PROVIDED, That any deputy county auditor, in administering such oath or taking such acknowledgment, shall certify to the same in his or her own name as deputy, and not in the name of his or her principal, and shall attach thereto the seal of the office: PROVIDED, That all oaths administered or acknowledgments taken by any deputy of any county auditor certifying to the same in the name of his or her principal by himself or herself as such deputy, prior to the taking effect of chapter 119, Laws of 1893 be and the same are hereby legalized and made valid and binding. [2009 c 549 § 4023; 1963 c 4 § 36.22.030. Prior: 1893 c 119 § 6; Code 1881 § 2717; 1869 p 312 § 11; 1863 p 550 § 8; 1854 p 425 § 8; RRS § 4094.]

**36.22.040 Duty to audit claims against county.** The county auditor shall audit all claims, demands, and accounts against the county which by law are chargeable to the county, except such cost or fee bills as are by law to be examined or approved by some other judicial tribunal or officer. Such claims as it is his or her duty to audit shall be presented to the board of county commissioners for their examination and allowance. [2009 c 549 § 4024; 1963 c 4 § 36.22.040. Prior: 1893 c 119 § 1, part; Code 1881 § 2710, part; 1869 p 310 § 5, part; 1863 p 549 § 5, part; 1854 p 425 § 5, part; RRS § 4086, part.]

**36.22.050 Issuance of warrants—Multiple warrants.** For claims allowed by the county commissioners, and also for cost bills and other lawful claims duly approved by the competent tribunal designated by law for their allowance, he or she shall draw a warrant on the county treasurer, made payable to the claimant or his or her order, bearing date from the time of and regularly numbered in the order of their issue. If there is not sufficient cash in the county treasury to cover such claims or cost bills, or if a claimant requests, the auditor may issue a number of smaller warrants, the total principal amounts of which shall equal the amount of said claim or cost bill. [2009 c 549 § 4025; 1975 c 31 § 1; 1969 ex.s. c 87 § 1; 1963 c 4 § 36.22.050. Prior: (i) 1893 c 119 § 1, part; Code 1881 § 2710, part; 1869 p 310 § 5, part; 1863 p 549 § 5, part;

1854 p 425 § 5, part; RRS § 4086, part. (ii) 1893 c 48 § 2; RRS § 4087.]

**36.22.090 Warrants of political subdivisions.** All warrants for the payment of claims against diking, ditch, drainage and irrigation districts and school districts of the second class, who do not issue their own warrants, as well as political subdivisions within the county for which no other provision is made by law, shall be drawn and issued by the county auditor of the county wherein such subdivision is located, upon proper approval by the governing body thereof. [2009 c 337 § 4; 1975 c 43 § 31; 1973 c 111 § 4; 1963 c 4 § 36.22.090. Prior: 1915 c 74 § 1; RRS § 4096.]

**Effective date—Severability—1975 c 43:** See notes following RCW 28A.535.050.

**Severability—1973 c 111:** See note following RCW 28A.330.230.

**36.22.120 Temporary clerk may be appointed.** In case the auditor is unable to attend to the duties of his or her office during any session of the board of county commissioners, and has no deputy by him or her appointed in attendance, the board may temporarily appoint a suitable person not by law disqualified from acting as such to perform the auditor's duties. [2009 c 549 § 4026; 1963 c 4 § 36.22.120. Prior: Code 1881 § 2723; 1869 p 313 § 15; 1863 p 550 § 12; 1854 p 425 § 11; RRS § 4101.]

**36.22.150 Duty of retiring auditor or his or her representative in case of death.** Each auditor, on retiring from office, shall deliver to his or her successor the seal of office and all the books, records, and instruments of writing belonging to the office, and take his or her receipt therefor. In case of the death of the auditor, his or her legal representatives shall deliver over the seal, books, records and papers. [2009 c 549 § 4027; 1963 c 4 § 36.22.150. Prior: Code 1881 § 2725; 1869 p 314 § 22; RRS § 4104.]

**36.22.170 Surcharge for preservation of historical documents—Distribution of revenue to county and state treasurer—Creation of account.** (1)(a) Except as provided in (b) of this subsection, a surcharge of five dollars per instrument shall be charged by the county auditor for each document recorded, which will be in addition to any other charge authorized by law. One dollar of the surcharge shall be used at the discretion of the county commissioners to promote historical preservation or historical programs, which may include preservation of historic documents.

(b) A surcharge of two dollars per instrument shall be charged by the county auditor for each document presented for recording by the employment security department, which will be in addition to any other charge authorized by law.

(2) Of the remaining revenue generated through the surcharges under subsection (1) of this section:

(a) Fifty percent shall be transmitted monthly to the state treasurer who shall distribute such funds to each county treasurer within the state in July of each year in accordance with the formula described in RCW 36.22.190. The county treasurer shall place the funds received in a special account titled the auditor's centennial document preservation and modernization account to be used solely for ongoing preservation of



historical documents of all county offices and departments and shall not be added to the county current expense fund; and

(b) Fifty percent shall be retained by the county and deposited in the auditor's operation and maintenance fund for ongoing preservation of historical documents of all county offices and departments.

(3) The centennial document preservation and modernization account is hereby created in the custody of the state treasurer and shall be classified as a treasury trust account. State distributions from the centennial document preservation and modernization account shall be made without appropriation. [2009 c 337 § 5; 2005 c 442 § 1; 1993 c 37 § 1; 1989 c 204 § 3.]

**Findings—1989 c 204:** See note following RCW 36.22.160.

**36.22.179 Surcharge for local homeless housing and assistance—Use.** (1) In addition to the surcharge authorized in RCW 36.22.178, and except as provided in subsection (2) of this section, an additional surcharge of ten dollars shall be charged by the county auditor for each document recorded, which will be in addition to any other charge allowed by law. During the 2009-11 and 2011-13 biennia, the surcharge shall be thirty dollars. The funds collected pursuant to this section are to be distributed and used as follows:

(a) The auditor shall retain two percent for collection of the fee, and of the remainder shall remit sixty percent to the county to be deposited into a fund that must be used by the county and its cities and towns to accomplish the purposes of chapter 484, Laws of 2005, six percent of which may be used by the county for administrative costs related to its homeless housing plan, and the remainder for programs which directly accomplish the goals of the county's local homeless housing plan, except that for each city in the county which elects as authorized in RCW 43.185C.080 to operate its own local homeless housing program, a percentage of the surcharge assessed under this section equal to the percentage of the city's local portion of the real estate excise tax collected by the county shall be transmitted at least quarterly to the city treasurer, without any deduction for county administrative costs, for use by the city for program costs which directly contribute to the goals of the city's local homeless housing plan; of the funds received by the city, it may use six percent for administrative costs for its homeless housing program.

(b) The auditor shall remit the remaining funds to the state treasurer for deposit in the home security fund account. The department may use twelve and one-half percent of this amount for administration of the program established in RCW 43.185C.020, including the costs of creating the state-wide homeless housing strategic plan, measuring performance, providing technical assistance to local governments, and managing the homeless housing grant program. The remaining eighty-seven and one-half percent is to be used by the department to:

(i) Provide housing and shelter for homeless people including, but not limited to: Grants to operate, repair, and staff shelters; grants to operate transitional housing; partial payments for rental assistance; consolidated emergency assistance; overnight youth shelters; and emergency shelter assistance; and

(ii) Fund the homeless housing grant program.

(2) The surcharge imposed in this section does not apply to (a) assignments or substitutions of previously recorded deeds of trust, or (b) documents recording a birth, marriage, divorce, or death or any documents otherwise exempted from a recording fee under state law. [2009 c 462 § 1; 2007 c 427 § 4; 2005 c 484 § 9.]

**Findings—Conflict with federal requirements—Effective date—2005 c 484:** See RCW 43.185C.005, 43.185C.901, and 43.185C.902.

## Chapter 36.23 RCW COUNTY CLERK

### Sections

36.23.020	New bond may be required.
36.23.040	Custody and delivery of records.
36.23.080	Office at county seat.

**36.23.020 New bond may be required.** When the judge or judges of any court, or a majority of them, believe that the clerk of the court does not have a good and sufficient bond on file, or that the bond is not large enough in amount, such judge or judges shall enter an order requiring him or her, within such time as may be specified in the order, to execute and present to them a good and sufficient bond, in such sum as may be fixed by the order. In case of his or her failure to file the bond within ten days from the expiration of the date fixed the judge or judges shall declare the office vacant. [2009 c 549 § 4028; 1963 c 4 § 36.23.020. Prior: 1895 c 53 § 3; RRS § 72.]

**36.23.040 Custody and delivery of records.** The clerk shall be responsible for the safe custody and delivery to his or her successor of all books and papers belonging to his or her office. [2009 c 549 § 4029; 1963 c 4 § 36.23.040. Prior: Code 1881 § 2181; 1863 p 418 § 8; 1854 p 367 § 8; RRS § 76.]

**36.23.080 Office at county seat.** The clerk of the superior court shall keep an office at the county seat of the county of which he or she is clerk. [2009 c 105 § 2; 1963 c 4 § 36.23.080. Prior: 1891 c 57 § 1; RRS § 73, part. Cf. Code 1881 § 2125.]

## Chapter 36.24 RCW COUNTY CORONER

### Sections

36.24.010	To act as sheriff under certain conditions.
36.24.020	Inquests.
36.24.040	Duty of coroner's jury—Oath.
36.24.070	Verdict of jury.
36.24.080	Testimony reduced to writing in certain cases and witnesses recognized.
36.24.090	Procedure where accused is under arrest.
36.24.110	Form of warrant.
36.24.155	Undisposed of remains—Entrusting to funeral homes or mortuaries.
36.24.170	Coroner not to practice law.
36.24.180	Audit of coroner's account.

**36.24.010 To act as sheriff under certain conditions.** The coroner shall perform the duties of the sheriff in all cases

where the sheriff is interested or otherwise incapacitated from serving; and whenever the coroner acts as sheriff he or she shall possess the powers and perform all the duties of sheriff, and shall be liable on his or her official bond in like manner as the sheriff would be, and shall be entitled to the same fees as are allowed by law to the sheriff for similar services: PROVIDED, That nothing herein contained shall prevent the court from appointing a suitable person to discharge such duties, as provided by RCW 36.28.090. [2009 c 549 § 4031; 1963 c 4 § 36.24.010. Prior: 1897 c 21 § 1; Code 1881 § 2776; 1863 p 559 § 2; 1854 p 436 § 2; RRS § 4180.]

**36.24.020 Inquests.** Any coroner, in his or her discretion, may hold an inquest if the coroner suspects that the death of a person was unnatural, or violent, or resulted from unlawful means, or from suspicious circumstances, or was of such a nature as to indicate the possibility of death by the hand of the deceased or through the instrumentality of some other person: PROVIDED, That, except under suspicious circumstances, no inquest shall be held following a traffic death.

The coroner in the county where an inquest is to be convened pursuant to this chapter shall notify the superior court to provide persons to serve as a jury of inquest to hear all the evidence concerning the death and to inquire into and render a true verdict on the cause of death. Jurors shall be selected and summoned in the same manner and shall have the same qualifications as specified in chapter 2.36 RCW. The prosecuting attorney having jurisdiction shall be notified in advance of any such inquest to be held, and at his or her discretion may be present at and assist the coroner in the conduct of the same. The coroner may adjourn the inquest from time to time as he or she may deem necessary.

The costs of inquests shall be borne by the county in which the inquest is held. [2009 c 549 § 4032; 1988 c 188 § 18; 1963 c 4 § 36.24.020. Prior: 1953 c 188 § 3; Code 1881 § 2777; 1863 p 560 § 3; 1854 p 436 § 3; RRS § 4181.]

**Legislative findings—Severability—Effective date—1988 c 188:** See notes following RCW 2.36.010.

**36.24.040 Duty of coroner’s jury—Oath.** When four or more of the jurors attend, they shall be sworn by the coroner to inquire who the person was, and when, where, and by what means he or she came to his or her death, and into the circumstances attending his or her death, and to render a true verdict therein, according to the evidence afforded them, or arising from the inspection of the body. [2009 c 549 § 4033; 1963 c 4 § 36.24.040. Prior: Code 1881 § 2779; 1863 p 560 § 5; 1854 p 436 § 5; RRS § 4183.]

**36.24.070 Verdict of jury.** After hearing the testimony, the jury shall render its verdict and certify the same in writing signed by the jurors, and setting forth who the person killed is, if known, and when, where and by what means he or she came to his or her death; or if he or she was killed, or his or her death was occasioned by the act of another by criminal means, who is guilty thereof, if known. [2009 c 549 § 4034; 1963 c 4 § 36.24.070. Prior: 1953 c 188 § 4; Code 1881 § 2782; 1863 p 560 § 8; 1854 p 437 § 8; RRS § 4187.]

**36.24.080 Testimony reduced to writing in certain cases and witnesses recognized.** In all cases where murder or manslaughter is supposed to have been committed, the testimony of witnesses taken before the coroner’s jury shall be reduced to writing by the coroner, or under his or her direction, and he or she shall also recognize such witnesses to appear and testify in the superior court of the county, and shall forthwith file the written testimony, inquisition, and recognizance with the clerk of such court. [2009 c 549 § 4035; 1963 c 4 § 36.24.080. Prior: Code 1881 § 2783; 1863 p 561 § 9; 1854 p 437 § 9; RRS § 4188.]

**36.24.090 Procedure where accused is under arrest.** If the person charged with the commission of the offense has been arrested before the inquisition has been filed, the coroner shall deliver the recognizance and the inquisition, with the testimony taken, to the magistrate before whom such person may be brought, who shall return the same, with the depositions and statements taken before him or her to the clerk of the superior court of the county. [2009 c 549 § 4036; 1963 c 4 § 36.24.090. Prior: Code 1881 § 2784; 1863 p 561 § 10; 1854 p 437 § 10; RRS § 4189.]

**36.24.110 Form of warrant.** The coroner’s warrant shall be in substantially the following form:

State of Washington, }  
County of . . . . . } ss.

To any sheriff or constable of the county.

An inquisition having been this day found by the coroner’s jury, before me, stating that A B has come to his or her death by the act of C D, by criminal means (or as the case may be, as found by the inquisition), you are therefore commanded, in the name of the state of Washington, forthwith to arrest the above named C D, and take him or her before the nearest or most accessible magistrate in this county.

Given under my hand this . . . . day of . . . . ., A.D. 19. . .

E F, coroner of the county of . . . . .

[2009 c 549 § 4037; 1963 c 4 § 36.24.110. Prior: Code 1881 § 2786; 1863 p 561 § 12; 1854 p 437 § 12; RRS § 4191.]

**36.24.155 Undisposed of remains—Entrusting to funeral homes or mortuaries.** Whenever anyone shall die within a county without making prior plans for the disposition of his or her body and there is no other person willing to provide for the disposition of the body, the county coroner shall cause such body to be entrusted to a funeral home in the county where the body is found. Disposition shall be on a rotation basis, which shall treat equally all funeral homes or mortuaries desiring to participate, such rotation to be established by the coroner after consultation with representatives of the funeral homes or mortuaries in the county or counties involved. [2009 c 549 § 4038; 1969 ex.s. c 259 § 2.]

*Undisposed of human remains, disposition of: RCW 68.50.230.*

**36.24.170 Coroner not to practice law.** The coroner shall not appear or practice as attorney in any court, except in defense of himself or herself or his or her deputies. [2009 c 549 § 4039; 1963 c 4 § 36.24.170. Prior: 1891 c 45 § 4, part; Code 1881 § 2770, part; 1863 p 558 § 5, part; 1854 p 434 § 5, part; RRS § 4171, part.]

**36.24.180 Audit of coroner's account.** Before auditing and allowing the account of the coroner the board of county commissioners shall require from him or her a verified statement in writing, accounting for all money or other property found upon persons on whom inquests have been held by him or her, and that the money or property mentioned in it has been delivered to the legal representatives of the deceased, or to the county treasurer. [2009 c 549 § 4040; 1963 c 4 § 36.24.180. Prior: Code 1881 § 2792; 1863 p 562 § 18; 1854 p 438 § 18; RRS § 4197.]

### Chapter 36.26 RCW PUBLIC DEFENDER

#### Sections

36.26.050	Reports—Records—Costs and expenses.
36.26.060	Compensation—Office—Assistants, clerks, investigators, etc.
36.26.070	Duty to represent indigent defendants.
36.26.080	Duty to counsel, defend, and prosecute appeals.

**36.26.050 Reports—Records—Costs and expenses.** The public defender shall make an annual report to each board of county commissioners within his or her district. If any public defender district embraces more than one county or a cooperating city, the public defender shall maintain records of expenses allocable to each county or city within the district, and shall charge such expenses only against the county or city for which the services were rendered or the costs incurred. The boards of county commissioners of counties and the governing authority of any city participating jointly in a public defender district are authorized to provide for the sharing of the costs of the district by mutual agreement, for any costs which cannot be specifically apportioned to any particular county or city within the district.

Expenditures by the public defender shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties or cities. [2009 c 549 § 4041; 1969 c 94 § 5.]

**36.26.060 Compensation—Office—Assistants, clerks, investigators, etc.** (1) The board of county commissioners shall:

(a) Fix the compensation of the public defender and of any staff appointed to assist him or her in the discharge of his or her duties: PROVIDED, That the compensation of the public defender shall not exceed that of the county prosecutor in those districts which comprise only one county;

(b) Provide office space, furniture, equipment and supplies for the use of the public defender suitable for the conduct of his or her office in the discharge of his or her duties, or provide an allowance in lieu of facilities and supplies.

(2) The public defender may appoint as many assistant attorney public defenders, clerks, investigators, stenographers and other employees as the board of county commis-

sioners considers necessary in the discharge of his or her duties as a public defender. [2009 c 549 § 4042; 1969 c 94 § 6.]

**36.26.070 Duty to represent indigent defendants.** The public defender must represent, without charge to any accused, every indigent person who is or has been arrested or charged with a crime for which court appointed counsel for indigent defendants is required either under the Constitution of the United States or under the Constitution and laws of the state of Washington:

(1) If such arrested person or accused, having been apprised of his or her constitutional and statutory rights to counsel, requests the appointment of counsel to represent him or her; and

(2) If a court, on its own motion or otherwise, does not appoint counsel to represent the accused; and

(3) Unless the arrested person or accused, having been apprised of his or her right to counsel in open court, affirmatively rejects or intelligently repudiates his or her constitutional and statutory rights to be represented by counsel. [2009 c 549 § 4043; 1984 c 76 § 18; 1969 c 94 § 7.]

**36.26.080 Duty to counsel, defend, and prosecute appeals.** Whenever the public defender represents any indigent person held in custody without commitment or charged with any criminal offense, he or she must (1) counsel and defend such person, and (2) prosecute any appeals and other remedies, whether before or after conviction, which he or she considers to be in the interests of justice. [2009 c 549 § 4044; 1969 c 94 § 8.]

### Chapter 36.27 RCW PROSECUTING ATTORNEY

#### Sections

36.27.010	Eligibility to office.
36.27.030	Disability of prosecuting attorney.
36.27.040	Appointment of deputies—Special and temporary deputies.
36.27.050	Special emoluments prohibited.
36.27.070	Office at county seat.

**36.27.010 Eligibility to office.** No person shall be eligible to the office of prosecuting attorney in any county of this state, unless he or she is a qualified elector therein, and has been admitted as an attorney and counselor of the courts of this state. [2009 c 549 § 4045; 1963 c 4 § 36.27.010. Prior: 1891 c 55 § 4; RRS § 4128. Cf. 1883 p 72 § 7.]

**36.27.030 Disability of prosecuting attorney.** When from illness or other cause the prosecuting attorney is temporarily unable to perform his or her duties, the court or judge may appoint some qualified person to discharge the duties of such officer in court until the disability is removed.

When any prosecuting attorney fails, from sickness or other cause, to attend a session of the superior court of his or her county, or is unable to perform his or her duties at such session, the court or judge may appoint some qualified person to discharge the duties of such session, and the appointee shall receive a compensation to be fixed by the court, to be deducted from the stated salary of the prosecuting attorney,

not exceeding, however, one-fourth of the quarterly salary of the prosecuting attorney: PROVIDED, That in counties wherein there is no person qualified for the position of prosecuting attorney, or wherein no qualified person will consent to perform the duties of that office, the judge of the superior court shall appoint some suitable person, a duly admitted and practicing attorney-at-law and resident of the state to perform the duties of prosecuting attorney for such county, and he or she shall receive such reasonable compensation for his or her services as shall be fixed and ordered by the court, to be paid by the county for which the services are performed. [2009 c 549 § 4046; 1963 c 4 § 36.27.030. Prior: (i) 1891 c 55 § 5; RRS § 114. (ii) 1893 c 52 § 1; 1886 p 62 § 14; 1883 p 74 § 19; Code 1881 § 2166; 1879 p 95 § 14; 1877 p 248 § 15; 1863 p 409 § 6; 1860 p 335 § 5; 1858 p 13 § 6; 1854 p 417 § 6; RRS § 4135.]

**36.27.040 Appointment of deputies—Special and temporary deputies.** The prosecuting attorney may appoint one or more deputies who shall have the same power in all respects as their principal. Each appointment shall be in writing, signed by the prosecuting attorney, and filed in the county auditor's office. Each deputy thus appointed shall have the same qualifications required of the prosecuting attorney, except that such deputy need not be a resident of the county in which he or she serves. The prosecuting attorney may appoint one or more special deputy prosecuting attorneys upon a contract or fee basis whose authority shall be limited to the purposes stated in the writing signed by the prosecuting attorney and filed in the county auditor's office. Such special deputy prosecuting attorney shall be admitted to practice as an attorney before the courts of this state but need not be a resident of the county in which he or she serves and shall not be under the legal disabilities attendant upon prosecuting attorneys or their deputies except to avoid any conflict of interest with the purpose for which he or she has been engaged by the prosecuting attorney. The prosecuting attorney shall be responsible for the acts of his or her deputies and may revoke appointments at will.

Two or more prosecuting attorneys may agree that one or more deputies for any one of them may serve temporarily as deputy for any other of them on terms respecting compensation which are acceptable to said prosecuting attorneys. Any such deputy thus serving shall have the same power in all respects as if he or she were serving permanently.

The provisions of chapter 39.34 RCW shall not apply to such agreements.

The provisions of RCW 41.56.030(2) shall not be interpreted to permit a prosecuting attorney to alter the at-will relationship established between the prosecuting attorney and his or her appointed deputies by this section for a period of time exceeding his or her term of office. Neither shall the provisions of RCW 41.56.030(2) require a prosecuting attorney to alter the at-will relationship established by this section. [2009 c 549 § 4047; 2000 c 23 § 2; 1975 1st ex.s. c 19 § 2; 1963 c 4 § 36.27.040. Prior: 1959 c 30 § 1; 1943 c 35 § 1; 1903 c 7 § 1; 1891 c 55 § 6; 1886 p 63 § 17; 1883 p 76 § 23; Code 1881 § 2142; 1879 p 95 § 16; Rem. Supp. 1943 § 115.]

[2009 RCW Supp—page 604]

**36.27.050 Special emoluments prohibited.** No prosecuting attorney shall receive any fee or reward from any person, on behalf of any prosecution, or for any of his or her official services, except as provided in this title, nor shall he or she be engaged as attorney or counsel for any party in any action depending upon the same facts involved in any criminal proceeding. [2009 c 549 § 4048; 1963 c 4 § 36.27.050. Prior: 1888 p 189 § 1; 1886 p 62 § 12; 1883 p 74 § 17; Code 1881 § 2164; 1879 p 94 § 12; 1877 p 248 § 13; 1863 p 409 § 8; 1860 p 335 § 7; 1858 p 13 § 8; 1854 p 417 § 7; RRS § 4138.]

**36.27.070 Office at county seat.** The prosecuting attorney of each county in the state of Washington must keep an office at the county seat of the county of which he or she is prosecuting attorney. [2009 c 549 § 4049; 1963 c 4 § 36.27.070. Prior: 1909 c 122 § 1; RRS § 4139.]

## Chapter 36.28 RCW COUNTY SHERIFF

### Sections

36.28.010	General duties.
36.28.020	Powers of deputies, regular and special.
36.28.030	New or additional bond of sheriff.
36.28.040	May demand fees in advance.
36.28.050	May demand indemnifying bond.
36.28.090	Service of process when sheriff disqualified.
36.28.130	Actions by successors and by officials after expiration of term of office validated.
36.28.150	Liability for fault or misconduct.
36.28.160	Office at county seat.
36.28.170	Standard uniform for sheriffs and deputies.
36.28.180	Allowance for clothing and other incidentals.

**36.28.010 General duties.** The sheriff is the chief executive officer and conservator of the peace of the county. In the execution of his or her office, he or she and his or her deputies:

(1) Shall arrest and commit to prison all persons who break the peace, or attempt to break it, and all persons guilty of public offenses;

(2) Shall defend the county against those who, by riot or otherwise, endanger the public peace or safety;

(3) Shall execute the process and orders of the courts of justice or judicial officers, when delivered for that purpose, according to law;

(4) Shall execute all warrants delivered for that purpose by other public officers, according to the provisions of particular statutes;

(5) Shall attend the sessions of the courts of record held within the county, and obey their lawful orders or directions;

(6) Shall keep and preserve the peace in their respective counties, and quiet and suppress all affrays, riots, unlawful assemblies and insurrections, for which purpose, and for the service of process in civil or criminal cases, and in apprehending or securing any person for felony or breach of the peace, they may call to their aid such persons, or power of their county as they may deem necessary. [2009 c 549 § 4050; 1965 c 92 § 1; 1963 c 4 § 36.28.010. Prior: (i) 1891 c 45 § 1; RRS § 4157. (ii) Code 1881 § 2769; 1863 p 557 § 4; 1854 p 434 § 4; RRS § 4168.]

**36.28.020 Powers of deputies, regular and special.**

Every deputy sheriff shall possess all the power, and may perform any of the duties, prescribed by law to be performed by the sheriff, and shall serve or execute, according to law, all process, writs, precepts, and orders, issued by lawful authority.

Persons may also be deputed by the sheriff in writing to do particular acts; including the service of process in civil or criminal cases, and the sheriff shall be responsible on his or her official bond for their default or misconduct. [2009 c 549 § 4051; 1963 c 4 § 36.28.020. Prior: 1961 c 35 § 2; prior: (i) Code 1881 § 2767, part; 1871 p 110 § 1, part; 1863 p 557 § 2, part; 1854 p 434 § 2, part; RRS § 4160, part. (ii) 1886 p 174 § 1; Code 1881 § 2768; 1863 p 557 § 3; 1854 p 434 § 3; RRS § 4167.]

**36.28.030 New or additional bond of sheriff.**

Whenever the company acting as surety on the official bond of a sheriff is disqualified, insolvent, or the penalty of the bond becomes insufficient on account of recovery had thereon, or otherwise, the sheriff shall submit a new or additional bond for approval to the board of county commissioners, if in session, or, if not in session, for the approval of the chair of such board, and file the same, when approved, in the office of the county clerk of his or her county, and such new or additional bond shall be in a penal sum sufficient in amount to equal the sum specified in the original bond when added to the penalty of any existing bond, so that under one or more bonds there shall always be an enforceable obligation of the surety on the official bond or bonds of the sheriff in a penal sum of not less than the amount of the bond as originally approved. [2009 c 549 § 4052; 1963 c 4 § 36.28.030. Prior: 1943 c 139 § 2; Rem. Supp. 1943 § 4155-1.]

**36.28.040 May demand fees in advance.**

No sheriff, deputy sheriff, or coroner shall be liable for any damages for neglecting or refusing to serve any civil process unless his or her legal fees are first tendered him or her. [2009 c 549 § 4053; 1963 c 4 § 36.28.040. Prior: 1941 c 237 § 1, part; 1935 c 33 § 1, part; Code 1881 § 2772, part; 1863 p 558 § 7, part; 1854 p 434 § 7, part; Rem. Supp. 1941 § 4172, part.]

**36.28.050 May demand indemnifying bond.**

If any property levied upon by virtue of any writ of attachment or execution or other order issued to the sheriff out of any court in this state is claimed by any person other than the defendant, and such person or his or her agent or attorney makes affidavit of his or her title thereto or his or her right to possession thereof, stating the value thereof and the basis of such right or title, the sheriff may release such levy, unless the plaintiff on demand indemnifies the sheriff against such claim by an undertaking executed by a sufficient surety.

No claim to such property by any person other than the defendant shall be valid against the sheriff, unless the supporting affidavit is made. Notwithstanding receipt of a proper claim the sheriff shall retain such property under levy a reasonable time to demand such indemnity.

Any sheriff, or other levying officer, may require an indemnifying bond of the plaintiff in all cases where he or she has to take possession of personal property. [2009 c 549 § 4054; 1963 c 4 § 36.28.050. Prior: 1941 c 237 § 1, part; 1935

c 33 § 1, part; Code 1881 § 2772, part; 1863 p 558 § 7, part; 1854 p 434 § 7, part; Rem. Supp. 1941 § 4172, part.]

**36.28.090 Service of process when sheriff disqualified.**

When there is no sheriff of a county, or he or she is disqualified from any cause from discharging any particular duty, it shall be lawful for the officer or person commanding or desiring the discharge of that duty to appoint some suitable person, a citizen of the county, to execute the same: PROVIDED, That final process shall in no case be executed by any person other than the legally authorized officer; or in case he or she is disqualified, some suitable person appointed by the court, or judge thereof, out of which the process issues, who shall make such appointment in writing; and before such appointment shall take effect, the person appointed shall give security to the party interested for the faithful performance of his or her duties, which bond of suretyship shall be in writing, approved by the court or judge appointing him or her, and be placed on file with the papers in the case. [2009 c 549 § 4055; 1963 c 4 § 36.28.090. Prior: Code 1881 § 745; 1869 p 172 § 687; RRS § 4170.]

**36.28.130 Actions by successors and by officials after expiration of term of office validated.**

In all cases where any sheriff, constable or coroner has executed any writ or other process delivered to him or her by his or her predecessor, or has completed any business commenced by his or her predecessor under any writ or process, and has completed any other business commenced by his or her predecessor, and in all cases where any sheriff, constable or coroner has executed any writ or other process, or completed any business connected with his or her office after the expiration of his or her term of office, which writ or process he or she had commenced to execute, or which business he or she had commenced to perform, prior to the expiration of his or her term of office, such action shall be valid and effectual for all purposes. [2009 c 549 § 4056; 1963 c 4 § 36.28.130. Prior: 1895 c 17 § 2; RRS § 4175.]

**36.28.150 Liability for fault or misconduct.**

Whenever any sheriff neglects to make due return of any writ or other process delivered to him or her to be executed, or is guilty of any default or misconduct in relation thereto, he or she shall be liable to fine or attachment, or both, at the discretion of the court, subject to appeal, such fine, however, not to exceed two hundred dollars; and also to an action for damages to the party aggrieved. [2009 c 549 § 4057; 1963 c 4 § 36.28.150. Prior: Code 1881 § 2771; 1863 p 558 § 6; 1854 p 434 § 6; RRS § 4169.]

**36.28.160 Office at county seat.**

The sheriff must keep an office at the county seat of the county of which he or she is sheriff. [2009 c 105 § 3; 1963 c 4 § 36.28.160. Prior: 1891 c 45 § 2; RRS § 4158. SLC-RO-14.]

**36.28.170 Standard uniform for sheriffs and deputies.**

The executive secretary of the Washington state association of elected county officials, upon written approval of a majority of the sheriffs in the state, shall file with the secretary of state a description of a standard uniform which may be

withdrawn or modified by re-filing in the same manner as originally filed. A uniform of the description so filed shall thereafter be reserved exclusively for the use of sheriffs and their deputies: PROVIDED, That the filing of a standard uniform description shall not make mandatory the adoption of said uniform by any county sheriff or his or her deputies. [2009 c 549 § 4059; 1963 c 50 § 1.]

**36.28.180 Allowance for clothing and other incidentals.** A county may from available funds provide for an allowance for clothing and other incidentals necessary to the performance of official duties for the sheriff and his or her deputies. [2009 c 549 § 4060; 1979 c 132 § 1; 1963 c 50 § 2.]

### Chapter 36.28A RCW

#### ASSOCIATION OF SHERIFFS AND POLICE CHIEFS

##### Sections

36.28A.040 Statewide city and county jail booking and reporting system—Standards committee—Statewide automated victim information and notification system—Statewide unified sex offender notification and registration program—Liability immunity.

**36.28A.040 Statewide city and county jail booking and reporting system—Standards committee—Statewide automated victim information and notification system—Statewide unified sex offender notification and registration program—Liability immunity.** (1) No later than July 1, 2002, the Washington association of sheriffs and police chiefs shall implement and operate an electronic statewide city and county jail booking and reporting system. The system shall serve as a central repository and instant information source for offender information and jail statistical data. The system may be placed on the Washington state justice information network and be capable of communicating electronically with every Washington state city and county jail and with all other Washington state criminal justice agencies as defined in RCW 10.97.030.

(2) After the Washington association of sheriffs and police chiefs has implemented an electronic jail booking system as described in subsection (1) of this section, if a city or county jail or law enforcement agency receives state or federal funding to cover the entire cost of implementing or reconfiguring an electronic jail booking system, the city or county jail or law enforcement agency shall implement or reconfigure an electronic jail booking system that is in compliance with the jail booking system standards developed pursuant to subsection (4) of this section.

(3) After the Washington association of sheriffs and police chiefs has implemented an electronic jail booking system as described in subsection (1) of this section, city or county jails, or law enforcement agencies that operate electronic jail booking systems, but choose not to accept state or federal money to implement or reconfigure electronic jail booking systems, shall electronically forward jail booking information to the Washington association of sheriffs and police chiefs. At a minimum the information forwarded shall include the name of the offender, vital statistics, the date the offender was arrested, the offenses arrested for, the date and time an offender is released or transferred from a city or county jail, and if available, the mug shot. The electronic for-

mat in which the information is sent shall be at the discretion of the city or county jail, or law enforcement agency forwarding the information. City and county jails or law enforcement agencies that forward jail booking information under this subsection are not required to comply with the standards developed under subsection (4)(b) of this section.

(4) The Washington association of sheriffs and police chiefs shall appoint, convene, and manage a statewide jail booking and reporting system standards committee. The committee shall include representatives from the Washington association of sheriffs and police chiefs correction committee, the information service board's justice information committee, the judicial information system, at least two individuals who serve as jailers in a city or county jail, and other individuals that the Washington association of sheriffs and police chiefs places on the committee. The committee shall have the authority to:

(a) Develop and amend as needed standards for the statewide jail booking and reporting system and for the information that must be contained within the system. At a minimum, the system shall contain:

(i) The offenses the individual has been charged with;

(ii) Descriptive and personal information about each offender booked into a city or county jail. At a minimum, this information shall contain the offender's name, vital statistics, address, and mugshot;

(iii) Information about the offender while in jail, which could be used to protect criminal justice officials that have future contact with the offender, such as medical conditions, acts of violence, and other behavior problems;

(iv) Statistical data indicating the current capacity of each jail and the quantity and category of offenses charged;

(v) The ability to communicate directly and immediately with the city and county jails and other criminal justice entities; and

(vi) The date and time that an offender was released or transferred from a local jail;

(b) Develop and amend as needed operational standards for city and county jail booking systems, which at a minimum shall include the type of information collected and transmitted, and the technical requirements needed for the city and county jail booking system to communicate with the statewide jail booking and reporting system;

(c) Develop and amend as needed standards for allocating grants to city and county jails or law enforcement agencies that will be implementing or reconfiguring electronic jail booking systems.

(5)(a) A statewide automated victim information and notification system shall be added to the city and county jail booking and reporting system. The system shall:

(i) Automatically notify a registered victim via the victim's choice of telephone, letter, or e-mail when any of the following events affect an offender housed in any Washington state city or county jail or department of corrections facility:

- (A) Is transferred or assigned to another facility;
- (B) Is transferred to the custody of another agency outside the state;
- (C) Is given a different security classification;
- (D) Is released on temporary leave or otherwise;
- (E) Is discharged;

(F) Has escaped; or

(G) Has been served with a protective order that was requested by the victim;

(ii) Automatically notify a registered victim via the victim's choice of telephone, letter, or e-mail when an offender has:

(A) An upcoming court event where the victim is entitled to be present, if the court information is made available to the statewide automated victim information and notification system administrator at the Washington association of sheriffs and police chiefs;

(B) An upcoming parole, pardon, or community supervision hearing; or

(C) A change in the offender's parole, probation, or community supervision status including:

(I) A change in the offender's supervision status; or

(II) A change in the offender's address;

(iii) Automatically notify a registered victim via the victim's choice of telephone, letter, or e-mail when a sex offender has:

(A) Updated his or her profile information with the state sex offender registry; or

(B) Become noncompliant with the state sex offender registry;

(iv) Permit a registered victim to receive the most recent status report for an offender in any Washington state city and county jail, department of corrections, or sex offender registry by calling the statewide automated victim information and notification system on a toll-free telephone number or by accessing the statewide automated victim information and notification system via a public web site. All registered victims calling the statewide automated victim information and notification system will be given the option to have live operator assistance to help use the program on a twenty-four hour, three hundred sixty-five day per year basis;

(v) Permit a crime victim to register, or registered victim to update, the victim's registration information for the statewide automated victim information and notification system by calling a toll-free telephone number or by accessing a public web site; and

(vi) Ensure that the offender information contained within the statewide automated victim information and notification system is updated frequently to timely notify a crime victim that an offender has been released or discharged or has escaped. However, the failure of the statewide automated victim information and notification system to provide notice to the victim does not establish a separate cause of action by the victim against state officials, local officials, law enforcement officers, or any related correctional authorities.

(b) Participation in the statewide automated victim information and notification program satisfies any obligation to notify the crime victim of an offender's custody status and the status of the offender's upcoming court events so long as:

(i) Information making offender and case data available is provided on a timely basis to the statewide automated victim information and notification program; and

(ii) Information a victim submits to register and participate in the victim notification system is only used for the sole purpose of victim notification.

(c) Automated victim information and notification systems in existence and operational as of July 22, 2007, shall not be required to participate in the statewide system.

(6) When funded, the Washington association of sheriffs and police chiefs shall implement and operate an electronic statewide unified sex offender notification and registration program.

(7) An appointed or elected official, public employee, or public agency as defined in RCW 4.24.470, or combination of units of government and its employees, as provided in RCW 36.28A.010, are immune from civil liability for damages for any release of information or the failure to release information related to the statewide automated victim information and notification system, the electronic statewide unified sex offender notification and registration program, and the jail booking and reporting system as described in this section, so long as the release was without gross negligence. The immunity provided under this subsection applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the general public. [2009 c 31 § 1; 2007 c 204 § 1; 2001 c 169 § 3; 2000 c 3 § 1.]

**Contingent expiration date—2000 c 3:** "If the Washington association of sheriffs and police chiefs does not receive federal funding for purposes of this act by December 31, 2000, this act is null and void." [2000 c 3 § 4.] According to the Washington association of sheriffs and police chiefs, federal funding for the purposes of chapter 3, Laws of 2000, was received by December 31, 2000.

## Chapter 36.29 RCW COUNTY TREASURER

### Sections

36.29.024	Investment expenses.
36.29.025	Official seal.
36.29.130	Duty to collect taxes.
36.29.170	Office at county seat.

**36.29.024 Investment expenses.** The county treasurer may deduct the amounts necessary to reimburse the treasurer's office for the actual expenses the office incurs and to repay any county funds appropriated and expended for the initial administrative costs of establishing a county investment pool provided in RCW 36.29.022. These funds shall be used by the county treasurer as a revolving fund to defray the cost of administering the pool without regard to budget limitations. Any credits or payments to political subdivisions shall be calculated and made in a manner which equitably reflects the differing amounts of the political subdivision's respective deposits in the county investment pool and the differing periods of time for which the amounts were placed in the county investment pool. A county investment pool must be available for investment of funds of any local government that invests its money with the county under the provisions of RCW 36.29.020, and a county treasurer shall follow the request from the local government to invest its funds in the pool. As used in this section "actual expenses" include only the county treasurer's direct and out-of-pocket costs and do not include indirect or loss of opportunity costs. As used in this section, "direct costs" means those costs that can be identified specifically with the administration of the county investment pool. Direct costs include: (1) Compensation of

employees for the time devoted and identified specifically to administering the pool; and (2) the cost of materials, services, or equipment acquired, consumed, or expended specifically for the purpose of administering the pool. [2009 c 553 § 1; 2004 c 79 § 3; 1988 c 281 § 5.]

**Severability—1988 c 281:** See RCW 39.59.900.

**36.29.025 Official seal.** The county treasurer in each of the organized counties of the state of Washington, shall be by his or her county provided with a seal of office for the authentication of all tax deeds, papers, writing and documents required by law to be certified or authenticated by him or her. Such seal shall bear the device of crosskeys and the words: Official Seal Treasurer . . . . . County, Washington; and an imprint of such seal, together with the certificate of the county treasurer that such seal has been regularly adopted, shall be filed in the office of the county auditor of such county. [2009 c 549 § 4061; 1963 c 4 § 36.29.025. Prior: 1903 c 15 § 1; RRS § 4125.]

**36.29.130 Duty to collect taxes.** The county treasurer, upon receipt of the tax roll, shall proceed to collect and receipt for the municipal taxes extended thereon at the same time and in the same manner as he or she proceeds in the collection of other taxes on such roll. [2009 c 549 § 4062; 1963 c 4 § 36.29.130. Prior: 1893 c 72 § 7; RRS § 11334.]

**36.29.170 Office at county seat.** The county treasurer shall keep an office at the county seat, and shall keep the same open for transaction of business during business hours; and the treasurer and the treasurer's deputy are authorized to administer all oaths necessary in the discharge of the duties of the office. [2009 c 105 § 4; 2001 c 299 § 9; 1963 c 4 § 36.29.170. Prior: Code 1881 § 2742; 1863 p 553 § 5; 1854 p 427 § 5; RRS § 4110.]

## Chapter 36.32 RCW

### COUNTY COMMISSIONERS

#### Sections

36.32.050	Elected by entire county.
36.32.060	Conditions of official bond.
36.32.100	Chair of board—Election, powers.
36.32.135	Official seal.
36.32.235	Competitive bids—Purchasing department—Counties with a population of four hundred thousand or more—Public works procedures—Exceptions.
36.32.240	Competitive bids—Purchasing department—Counties with a population of less than four hundred thousand.
36.32.250	Competitive bids—Contract procedure—Contracts under forty thousand dollars—Small works roster process.
36.32.310	Compensation for extra services.
36.32.330	Appeals from board's action.

**36.32.050 Elected by entire county.** County commissioners shall be elected by the qualified voters of the county and the person receiving the highest number of votes for the office of commissioner for the district in which he or she resides shall be declared duly elected from that district. [2009 c 549 § 4063; 1963 c 4 § 36.32.050. Prior: 1895 c 110 § 1; 1893 c 39 § 1; 1891 c 67 § 6; 1890 p 317 § 3; RRS § 4042.]

**36.32.060 Conditions of official bond.** The bond of each county commissioner shall be payable to the county, and it shall be conditioned that the commissioner shall well and faithfully discharge the duties of his or her office, and not approve, audit, or order paid any illegal, unwarranted, or unjust claim against the county for personal services. [2009 c 549 § 4064; 1963 c 4 § 36.32.060. Prior: 1955 c 157 § 10; prior: 1921 c 132 § 1, part; 1893 c 75 § 7, part; RRS § 4046, part.]

**36.32.100 Chair of board—Election, powers.** The board of county commissioners at their first session after the general election shall elect one of its number to preside at its meetings. He or she shall sign all documents requiring the signature of the board, and his or her signature as chair of the board shall be as legal and binding as if all members had affixed their names. In case the chair is absent at any meeting of the board, all documents requiring the signature of the board shall be signed by both members present. [2009 c 549 § 4065; 1963 c 4 § 36.32.100. Prior: Code 1881 § 2676; 1869 p 305 § 14; 1867 p 55 § 14; 1863 p 542 § 14; 1854 p 421 § 14; RRS § 4051.]

**36.32.135 Official seal.** The county commissioners of each county shall have and use a seal for the purpose of sealing their proceedings, and copies of the same when signed and sealed by the said county commissioners, and attested by their clerk, shall be admitted as evidence of such proceedings in the trial of any cause in any court in this state; and until such seal shall be provided, the private seal of the chair of such board of county commissioners shall be adopted as a seal. [2009 c 549 § 4066; 1963 c 4 § 36.32.135. Prior: Code 1881 § 2672; 1854 p 421 § 10; RRS § 4069. Formerly RCW 36.16.080.]

**36.32.235 Competitive bids—Purchasing department—Counties with a population of four hundred thousand or more—Public works procedures—Exceptions.** (1) In each county with a population of four hundred thousand or more which by resolution establishes a county purchasing department, the purchasing department shall enter into leases of personal property on a competitive basis and purchase all supplies, materials, and equipment on a competitive basis, for all departments of the county, as provided in this chapter and chapter 39.04 RCW, except that the county purchasing department is not required to make purchases that are paid from the county road fund or equipment rental and revolving fund.

(2) As used in this section, "public works" has the same definition as in RCW 39.04.010.

(3) Except as otherwise specified in this chapter or in chapter 36.77 RCW, all counties subject to these provisions shall contract on a competitive basis for all public works after bids have been submitted to the county upon specifications therefor. Such specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection.

(4) An advertisement shall be published in the county official newspaper stating the time and place where bids will be opened, the time after which bids will not be received, the character of the work to be done, the materials and equipment



to be furnished, and that specifications therefor may be seen at the office of the clerk of the county legislative authority. An advertisement shall also be published in a legal newspaper of general circulation in or as near as possible to that part of the county in which such work is to be done. If the county official newspaper is a newspaper of general circulation covering at least forty percent of the residences in that part of the county in which such public works are to be done, then the publication of an advertisement of the applicable specifications in the county official newspaper is sufficient. Such advertisements shall be published at least once at least thirteen days prior to the last date upon which bids will be received.

(5) The bids shall be in writing, shall be filed with the clerk, shall be opened and read in public at the time and place named therefor in the advertisements, and after being opened, shall be filed for public inspection. No bid may be considered for public work unless it is accompanied by a bid deposit in the form of a surety bond, postal money order, cash, cashier's check, or certified check in an amount equal to five percent of the amount of the bid proposed.

(6) The contract for the public work shall be awarded to the lowest responsible bidder. Any or all bids may be rejected for good cause. The county legislative authority shall require from the successful bidder for such public work a contractor's bond in the amount and with the conditions imposed by law.

(7) If the bidder to whom the contract is awarded fails to enter into the contract and furnish the contractor's bond as required within ten days after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the county and the contract awarded to the next lowest and best bidder. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by the county legislative authority. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry.

(8) As limited by subsection (10) of this section, a county subject to these provisions may have public works performed by county employees in any annual or biennial budget period equal to a dollar value not exceeding ten percent of the public works construction budget, including any amount in a supplemental public works construction budget, over the budget period.

Whenever a county subject to these provisions has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works except emergency work under subsection (12) of this section within that budget period shall be done by contract pursuant to public notice and call for competitive bids as specified in subsection (3) of this section. The state auditor shall report to the state treasurer any county subject to these provisions that exceeds this amount and the extent to which the county has or has not reduced the amount of public works it has performed by public employees in subsequent years.

(9) If a county subject to these provisions has public works performed by public employees in any budget period that are in excess of this ten percent limitation, the amount in excess of the permitted amount shall be reduced from the oth-

erwise permitted amount of public works that may be performed by public employees for that county in its next budget period. Ten percent of the motor vehicle fuel tax distributions to that county shall be withheld if two years after the year in which the excess amount of work occurred, the county has failed to so reduce the amount of public works that it has performed by public employees. The amount withheld shall be distributed to the county when it has demonstrated in its reports to the state auditor that the amount of public works it has performed by public employees has been reduced as required.

(10) In addition to the percentage limitation provided in subsection (8) of this section, counties subject to these provisions containing a population of four hundred thousand or more shall not have public employees perform a public works project in excess of ninety thousand dollars if more than a single craft or trade is involved with the public works project, or a public works project in excess of forty-five thousand dollars if only a single craft or trade is involved with the public works project. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by public employees on a single project.

The cost of a separate public works project shall be the costs of materials, supplies, equipment, and labor on the construction of that project. The value of the public works budget shall be the value of all the separate public works projects within the budget.

(11) In addition to the accounting and recordkeeping requirements contained in chapter 39.04 RCW, any county which uses public employees to perform public works projects under RCW 36.32.240(1) shall prepare a year-end report to be submitted to the state auditor indicating the total dollar amount of the county's public works construction budget and the total dollar amount for public works projects performed by public employees for that year.

The year-end report submitted pursuant to this subsection to the state auditor shall be in accordance with the standard form required by RCW 43.09.205.

(12) Notwithstanding any other provision in this section, counties may use public employees without any limitation for emergency work performed under an emergency declared pursuant to RCW 36.32.270, and any such emergency work shall not be subject to the limitations of this section. Publication of the description and estimate of costs relating to correcting the emergency may be made within seven days after the commencement of the work. Within two weeks of the finding that such an emergency existed, the county legislative authority shall adopt a resolution certifying the damage to public facilities and costs incurred or anticipated relating to correcting the emergency. Additionally this section shall not apply to architectural and engineering or other technical or professional services performed by public employees in connection with a public works project.

(13) In lieu of the procedures of subsections (3) through (11) of this section, a county may let contracts using the small works roster process provided in RCW 39.04.155.

Whenever possible, the county shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(14) The allocation of public works projects to be performed by county employees shall not be subject to a collective bargaining agreement.

(15) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(4), that are negotiated under chapter 39.35A RCW.

(16) Nothing in this section prohibits any county from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

(17) This section does not apply to contracts between the public stadium authority and a team affiliate under RCW 36.102.060(4), or development agreements between the public stadium authority and a team affiliate under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8). [2009 c 229 § 6; 2000 c 138 § 206; 1997 c 220 § 401 (Referendum Bill No. 48, approved June 17, 1997); 1996 c 219 § 2.]

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

**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.

**36.32.240 Competitive bids—Purchasing department—Counties with a population of less than four hundred thousand.** (1) In any county the county legislative authority may by resolution establish a county purchasing department.

(2) In each county with a population of less than four hundred thousand which exercises this option, the purchasing department shall contract on a competitive basis for all public works, enter into leases of personal property on a competitive basis, and purchase all supplies, materials, and equipment, on a competitive basis, for all departments of the county, as provided in this chapter and chapter 39.04 RCW, except that the county purchasing department is not required to make purchases for the county hospital, or make purchases that are paid from the county road fund or equipment rental and revolving fund. [2009 c 229 § 7; 1996 c 219 § 1; 1993 c 198 § 5; 1991 c 363 § 57; 1985 c 169 § 8; 1983 c 3 § 77; 1974 ex.s. c 52 § 1; 1967 ex.s. c 144 § 15; 1963 c 4 § 36.32.240. Prior: 1961 c 169 § 1; 1949 c 33 § 1; 1945 c 61 § 1; Rem. Supp. 1949 § 10322-15.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030.

**36.32.250 Competitive bids—Contract procedure—Contracts under forty thousand dollars—Small works roster process.** No contract for public works may be entered into by the county legislative authority or by any elected or appointed officer of the county until after bids have been submitted to the county upon specifications therefor. Such specifications shall be in writing and shall be filed with the clerk of the county legislative authority for public inspection. An advertisement shall be published in the county official newspaper stating the time and place where bids will be opened,

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the time after which bids will not be received, the character of the work to be done, the materials and equipment to be furnished, and that specifications therefor may be seen at the office of the clerk of the county legislative authority. An advertisement shall also be published in a legal newspaper of general circulation in or as near as possible to that part of the county in which such work is to be done. If the county official newspaper is a newspaper of general circulation covering at least forty percent of the residences in that part of the county in which such public works are to be done, then the publication of an advertisement of the applicable specifications in the county official newspaper shall be sufficient. Such advertisements shall be published at least once at least thirteen days prior to the last date upon which bids will be received. The bids shall be in writing, shall be filed with the clerk, shall be opened and read in public at the time and place named therefor in the advertisements, and after being opened, shall be filed for public inspection. No bid may be considered for public work unless it is accompanied by a bid deposit in the form of a surety bond, postal money order, cash, cashier's check, or certified check in an amount equal to five percent of the amount of the bid proposed. The contract for the public work shall be awarded to the lowest responsible bidder. Any or all bids may be rejected for good cause. The county legislative authority shall require from the successful bidder for such public work a contractor's bond in the amount and with the conditions imposed by law. If the bidder to whom the contract is awarded fails to enter into the contract and furnish the contractor's bond as required within ten days after notice of the award, exclusive of the day of notice, the amount of the bid deposit shall be forfeited to the county and the contract awarded to the next lowest and best bidder. 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. The bid deposit of all unsuccessful bidders shall be returned after the contract is awarded and the required contractor's bond given by the successful bidder is accepted by the county legislative authority. In the letting of any contract for public works involving less than forty thousand dollars, advertisement and competitive bidding may be dispensed with on order of the county legislative authority. Immediately after the award is made, the bid quotations obtained shall be recorded and open to public inspection and shall be available by telephone inquiry.

As an alternative to requirements under this section, a county may let contracts using the small works roster process under RCW 39.04.155.

This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(4), that are negotiated under chapter 39.35A RCW. [2009 c 229 § 8; 2000 c 138 § 207; 1996 c 18 § 3; 1993 c 198 § 8; 1991 c 363 § 58. Prior: 1989 c 431 § 57; 1989 c 244 § 6; prior: 1985 c 369 § 1; 1985 c 169 § 9; 1977 ex.s. c 267 § 1; 1975 1st ex.s. c 230 § 1; 1967 ex.s. c 144 § 16; 1967 c 97 § 1; 1965 c 113 § 1; 1963 c 4 § 36.32.250; prior: 1945 c 61 § 2; Rem. Supp. 1945 § 10322-16.]

**Purpose—Part headings not law—2000 c 138:** See notes following RCW 39.04.155.

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

**Severability—1989 c 431:** See RCW 70.95.901.

**Severability—1967 ex.s. c 144:** See note following RCW 36.900.030.

*Subcontractors to be identified by bidder, when: RCW 39.30.060.*

**36.32.310 Compensation for extra services.** Whenever a member of the board of county commissioners of any county has a claim for compensation for per diem and expenses for attendance upon any special session of the board or a claim for compensation for extra services or expenses incurred as such commissioners, including services performed as road commissioner, the claim shall be verified by him or her and after being approved by a majority of the board of county commissioners of the county shall be filed with the clerk of the superior court and be approved by a judge of the superior court of such county or any superior court judge holding court in such county. The judge may make such investigation as he or she deems necessary to determine the correctness of the claim and may, after such investigation, approve or reject any part of such claim. If the judge so approve the claim or any part thereof the same shall be certified by the clerk under the seal of his or her office and be returned to the county auditor who shall draw a warrant therefor. The court shall not be required oftener than once in each month to pass upon such claims and it may fix a time in each month by general order filed with the clerk of the board of county commissioners on or before which such claims must be filed with the clerk of the court. [2009 c 549 § 4067; 1963 c 4 § 36.32.310. Prior: 1921 c 100 § 1; 1911 c 66 § 1; RRS § 4053.]

**36.32.330 Appeals from board's action.** Any person may appeal to the superior court from any decision or order of the board of county commissioners. Such appeal shall be taken within twenty days after the decision or order, and the appellant shall within that time serve notice of appeal on the county commissioners. The notice shall be in writing and shall be delivered to at least one of the county commissioners personally, or left with the county auditor. The appellant shall, within ten days after service of the notice of appeal give a bond to the county with one or more sureties, to be approved by the county auditor, conditioned for the payment of all costs which shall be adjudged against him or her on such appeal in the superior court. The practice regulating appeals from and writs of certiorari to justice's courts shall, insofar as applicable, govern in matters of appeal from a decision or order of the board of county commissioners.

Nothing herein contained shall be construed to prevent a party having a claim against any county in this state from enforcing the collection thereof by civil action in any court of competent jurisdiction after the same has been presented to and filed as provided by law and disallowed in whole or in part by the board of county commissioners of the proper county. Such action must, however, be commenced within the time limitation provided in \*RCW 36.45.030. [2009 c 549 § 4068; 1963 c 4 § 36.32.330. Prior: 1957 c 224 § 5; 1893 c 121 § 1; Code 1881 § 2695; 1869 p 308 § 29; 1867 p 57 § 29; 1863 p 545 § 30; 1854 p 423 § 24; RRS § 4076. Cf. 1879 p 143 §§ 1, 2.]

\***Reviser's note:** RCW 36.45.030 was repealed by 1993 c 449 § 13.

## Chapter 36.33 RCW

### COUNTY FUNDS

#### Sections

- 36.33.070 Investment in warrants on tax refund fund.
- 36.33.080 Investment in warrants on tax refund fund—Procedure upon purchase—Interest on.
- 36.33.190 County lands assessment fund created—Disposal of bonds.

**36.33.070 Investment in warrants on tax refund fund.** Whenever the county treasurer deems it expedient and for the best interests of the county he or she may invest any moneys in the county current expense fund in outstanding warrants on the county tax refund fund in the following manner: When he or she has determined the amount of moneys in the county current expense fund available for investment, he or she shall call, in the order of their issuance, a sufficient number of warrants drawn on the county tax refund fund as nearly as possible equaling in amount but not exceeding the moneys to be invested, and upon presentation and surrender thereof he or she shall pay to the holders of such warrants the face amount thereof and the accrued interest thereon out of moneys in the county current expense fund. [2009 c 549 § 4069; 1963 c 4 § 36.33.070. Prior: 1943 c 61 § 1; Rem. Supp. 1943 § 5545-10.]

**36.33.080 Investment in warrants on tax refund fund—Procedure upon purchase—Interest on.** Upon receipt of any such warrant on the tax refund fund the county treasurer shall enter the principal amount thereof, and accrued interest thereon, as a suspense credit upon his or her records, and shall hold the warrant until it with interest, if any, is paid in due course out of the county tax refund fund, and upon such payment, the amount thereof shall be restored to the county current expense fund. The refund warrants held by the county treasurer shall continue to draw interest until the payment thereof out of the county tax refund fund, which interest accruing subsequent to acquisition of the warrants by the county treasurer shall be paid into the county current expense fund. [2009 c 549 § 4070; 1963 c 4 § 36.33.080. Prior: 1943 c 61 § 2; Rem. Supp. 1943 § 5545-11.]

**36.33.190 County lands assessment fund created—Disposal of bonds.** The county treasurer shall cash any United States bonds owned by the county as they mature or, with the approval of the state finance committee and of the county finance committee, he or she may at any time sell them. In either event he or she must return the proceeds into the treasury. [2009 c 549 § 4071; 1963 c 4 § 36.33.190. Prior: 1937 c 209 § 2; RRS § 5646-12.]

## Chapter 36.34 RCW

### COUNTY PROPERTY

#### Sections

- 36.34.070 Sales and purchases of equipment—Trade-ins.
- 36.34.150 Application to lease—Deposit.
- 36.34.200 Execution of lease agreement.
- 36.34.205 Lease of building space—Counties with a population of six hundred thousand or more.

**36.34.070 Sales and purchases of equipment—Trade-ins.** The board may advertise and sell used highway or other equipment belonging to the county or to any taxing division thereof subject to its jurisdiction in the manner prescribed for the sale of county property, or it may trade it in on the purchase of new equipment. If the board elects to trade in the used equipment it shall include in its call for bids on the new equipment a notice that the county has for sale or trade-in used equipment of a specified type and description which will be sold or traded in on the same day and hour that the bids on the new equipment are opened. Any bidder on the new equipment may include in his or her offer to sell, an offer to accept the used equipment as a part payment of the new equipment purchase price, setting forth the amount of such allowance.

In determining the lowest and best bid on the new equipment the board shall consider the net cost to the county of such new equipment after trade-in allowances have been deducted. The board may accept the new equipment bid of any bidder without trading in the used equipment but may not require any such bidder to purchase the used equipment without awarding the bidder the new equipment contract. Nothing in this section shall bar anyone from making an offer for the purchase of the used equipment independent of a bid on the new equipment and the board shall consider such offers in relation to the trade-in allowances offered to determine the net best sale and purchase combination for the county. [2009 c 549 § 4072; 1963 c 4 § 36.34.070. Prior: 1945 c 254 § 6; Rem. Supp. 1945 § 4014-6.]

**36.34.150 Application to lease—Deposit.** Any person desiring to lease county lands shall make application in writing to the board of county commissioners. Each application shall be accompanied by a deposit of not less than ten dollars or such other sum as the county commissioners may require, not to exceed twenty-five dollars. The deposit shall be in the form of a certified check or certificate of deposit on some bank in the county, or may be paid in cash. In case the lands applied for are leased at the time they are offered, the deposit shall be returned to the applicant, but if the party making application fails or refuses to comply with the terms of his or her application and to execute the lease, the deposit shall be forfeited to the county, and the board of county commissioners shall pay the deposit over to the county treasurer, who shall place it to the credit of the current expense fund. [2009 c 549 § 4073; 1963 c 4 § 36.34.150. Prior: 1901 c 87 § 2; RRS § 4020.]

**36.34.200 Execution of lease agreement.** Upon the decision of the board of county commissioners to lease the lands applied for, a lease shall be executed in duplicate to the lessee by the chair of the board and the county auditor, attested by his or her seal of office, which lease shall also be signed by the lessee. The lease shall refer to the order of the board directing the lease, with a description of the lands conveyed, the periods of payment, and the amounts to be paid for each period. [2009 c 549 § 4074; 1963 c 4 § 36.34.200. Prior: 1901 c 87 § 7; RRS § 4025.]

**36.34.205 Lease of building space—Counties with a population of six hundred thousand or more.** In accordance with RCW 35.42.010 through 35.42.220, a county with a population of six hundred thousand or more may lease space and provide for the leasing of such space through leases with an option to purchase and the acquisition of buildings erected upon land owned by the county upon the expiration of lease of such land. For the purposes of this section, "building," as defined in RCW 35.42.020 shall be construed to include any building or buildings used as part of, or in connection with, the operation of the county. The authority conferred by this section is in addition to and not in lieu of any other provision authorizing counties to lease property. [2009 c 153 § 1; 1998 c 278 § 10.]

**Chapter 36.35 RCW**  
**TAX TITLE LANDS**

Sections

36.35.180	Quieting title to tax-title property—Summons and notice.
36.35.190	Quieting title to tax-title property—Redemption before judgment.
36.35.220	Quieting title to tax-title property—Appearance fee—Tender of taxes.
36.35.230	Quieting title to tax-title property—Appellate review.
36.35.240	Quieting title to tax-title property—Effect of judgment.

**36.35.180 Quieting title to tax-title property—Summons and notice.** Upon filing a copy of the summons and notice in the office of the county clerk, service thereof as against every interest in and claim against any and every part of the property described in such summons and notice, and every person, firm, or corporation, except one who is in the actual, open and notorious possession of any of the properties, shall be had by publication in the official county newspaper for six consecutive weeks; and no affidavit for publication of such summons and notice shall be required. In case special assessments imposed by a city or town against any of the real property described in the summons and notice remain outstanding, a copy of the same shall be served on the treasurer of the city or town within which such real property is situated within five days after such summons and notice is filed.

The summons and notice in such action shall contain the title of the court; specify in general terms the years for which the taxes were levied and the amount of the taxes and the costs for which each tract of land was sold; give the legal description of each tract of land involved, and the tax record owner thereof during the years in which the taxes for which the property was sold were levied; state that the purpose of the action is to foreclose all adverse claims of every nature in and to the property described, and to have the title of existing liens and claims of every nature against the described real property, except that of the county, forever barred.

The summons and notice shall also summon all persons, firms and corporations claiming any right, title and interest in and to the described real property to appear within sixty days after the date of the first publication, specifying the day and year, and state in writing what right, title and interest they have or claim to have in and to the property described, and file the same with the clerk of the court above named; and shall notify them that in case of their failure so to do, judgment will be rendered determining that the title to the real property is in the county free from all existing adverse inter-

ests, rights or claims whatsoever: PROVIDED, That in case any of the lands involved is in the actual, open and notorious possession of anyone at the time the summons and notice is filed, as herein provided, a copy of the same modified as herein specified shall be served personally upon such person in the same manner as summons is served in civil actions generally. The summons shall be substantially in the form above outlined, except that in lieu of the statement relative to the date and day of publication it shall require the person served to appear within twenty days after the day of service, exclusive of the date of service, and that the day of service need not be specified therein, and except further that the recitals regarding the amount of the taxes and costs and the years the same were levied, the legal description of the land and the tax record owner thereof may be omitted except as to the land occupied by the persons served.

Every summons and notice provided for in RCW 36.35.160 through 36.35.270 shall be subscribed by the prosecuting attorney of the county, or by any successor or assign of the county or his or her attorney, as the case may be, followed by the post office address of the successor or assign. [2009 c 549 § 4075; 1998 c 106 § 17; 1961 c 15 § 84.64.350. Prior: 1931 c 83 § 3; 1925 ex.s. c 171 § 3; RRS § 11308-3. Formerly RCW 84.64.350.]

**36.35.190 Quieting title to tax-title property—Redemption before judgment.** Any person, firm or corporation who or which may have been entitled to redeem the property involved prior to the issuance of the treasurer's deed to the county, and his or her or its successor in interest, shall have the right, at any time after the commencement of, and prior to the judgment in the action authorized herein, to redeem such property by paying to the county treasurer the amount of the taxes for which the property was sold to the county, and the amount of any other general taxes which may have accrued prior to the issuance of said treasurer's deed, together with interest on all such taxes from the date of delinquency thereof, respectively, at the rate of twelve percent per annum, and by paying for the benefit of the assessment district concerned the amount of principal, penalty and interest of all special assessments, if any, which shall have been levied against such property and by paying such proportional part of the costs of the tax foreclosure proceedings and of the action herein authorized as the county treasurer shall determine.

Upon redemption of any property before judgment as herein provided, the county treasurer shall issue to the redemptioner a certificate specifying the amount of the taxes, special assessments, penalty, interest and costs charged describing the land and stating that the taxes, special assessments, penalty, interest and costs specified have been fully paid, and the lien thereof discharged. Such certificate shall clear the land described therein from any claim of the county based on the treasurer's deed previously issued in the tax foreclosure proceedings. [2009 c 549 § 4076; 1961 c 15 § 84.64.360. Prior: 1925 ex.s. c 171 § 4; RRS § 11308-4. Formerly RCW 84.64.360.]

**36.35.220 Quieting title to tax-title property—Appearance fee—Tender of taxes.** Any person filing a

statement in such action shall pay the clerk of the court an appearance fee in the amount required by the county for appearances in civil actions, and shall be required to tender the amount of all taxes, interest and costs charged against the real property to which he or she lays claim, and no further costs in such action shall be required or recovered. [2009 c 549 § 4077; 1961 c 15 § 84.64.390. Prior: 1925 ex.s. c 171 § 7; RRS § 11308-7. Formerly RCW 84.64.390.]

**36.35.230 Quieting title to tax-title property—Appellate review.** Any person aggrieved by the judgment rendered in such action may seek appellate review of the part of said judgment objectionable to him or her in the manner and within the time prescribed for appeals in RCW 84.64.120. [2009 c 549 § 4078; 1988 c 202 § 71; 1971 c 81 § 155; 1961 c 15 § 84.64.400. Prior: 1925 ex.s. c 171 § 8; 1925 ex.s. c 130 § 121; RRS § 11308-8; prior: 1903 c 59 § 4; 1897 c 71 § 104; 1893 c 124 § 106. Formerly RCW 84.64.400.]

**Severability—1988 c 202:** See note following RCW 2.24.050.

**36.35.240 Quieting title to tax-title property—Effect of judgment.** The judgment rendered in such action, unless appealed from within the time prescribed herein and upon final judgment on appeal, shall be conclusive, without the right of redemption upon and against every person who may or could claim any lien or any right, title or interest in or to any of the properties involved in said action, including minors, insane persons, those convicted of crime, as well as those free from disability, and against those who may have at any time attempted to pay any tax on any of the properties, and against those in actual open and notorious possession of any of said properties.

Such judgment shall be conclusive as to those who appeal therefrom, except as to the particular property to which such appellant laid claim in the action and concerning which he or she appealed, and shall be conclusive as to those in possession of any property and who were not served except as to the property which such person is in the actual, open and notorious possession of, and in any case where it is asserted that the judgment was not conclusive because of such possession, the burden of showing such actual, open and notorious possession shall be on the one asserting such possession. [2009 c 549 § 4079; 1961 c 15 § 84.64.410. Prior: 1925 ex.s. c 171 § 9; RRS § 11308-9. Formerly RCW 84.64.410.]

## Chapter 36.38 RCW ADMISSIONS TAX

### Sections

36.38.020 Optional provisions in ordinance.

**36.38.020 Optional provisions in ordinance.** In addition to the provisions levying and fixing the amount of tax, the ordinance may contain any or all of the following provisions:

- (1) A provision defining the words and terms used therein;
- (2) A provision requiring the price (exclusive of the tax to be paid by the person paying for admission) at which every admission ticket or card is sold to be conspicuously and

indelibly printed or written on the face or back of that part of the ticket which is to be taken up by the management of the place for which an admission charge is exacted, and making the violation of such provision a misdemeanor punishable by fine of not exceeding one hundred dollars;

(3) Provisions fixing reasonable exemptions from such tax;

(4) Provisions allowing as an offset against the tax, the amount of like taxes levied, fixed, and collected within their jurisdiction by incorporated cities and towns in the county;

(5) A provision requiring persons receiving payments for admissions taxed under said ordinance to collect the amount of the tax from the persons making such payments;

(6) A provision to the effect that the tax imposed by said ordinance shall be deemed to be held in trust by the person required to collect the same until paid to the county treasurer, and making it a misdemeanor for any person receiving payment of the tax and appropriating or converting the same to his or her own use or to any use other than the payment of the tax as provided in said ordinance to the extent that the amount of such tax is not available for payment on the due date for filing returns as provided in said ordinance;

(7) A provision that in case any person required by the ordinance to collect the tax imposed thereby fails to collect the same, or having collected the tax fails to pay the same to the county treasurer in the manner prescribed by the ordinance, whether such failure is the result of such person's own acts or the result of acts or conditions beyond such person's control, such person shall nevertheless be personally liable to the county for the amount of the tax;

(8) Provisions fixing the time when the taxes imposed by the ordinance shall be due and payable to the county treasurer; requiring persons receiving payments for admissions to make periodic returns to the county treasurer on such forms and setting forth such information as the county treasurer may specify; requiring such return to show the amount of tax upon admissions for which such person is liable for specified preceding periods, and requiring such person to sign and transmit the same to the county treasurer together with a remittance for the amount;

(9) A provision requiring taxpayers to file with the county treasurer verified annual returns setting forth such additional information as he or she may deem necessary to determine tax liability correctly;

(10) A provision to the effect that whenever a certificate of registration, if required by the ordinance, is obtained for operating or conducting temporary places of amusement by persons who are not the owners, lessees, or custodians of the building, lot or place where the amusement is to be conducted, or whenever the business is permitted to be conducted without the procurement of a certificate, the tax imposed shall be returned and paid as provided in the ordinance by such owner, lessee, or custodian, unless paid by the person conducting the place of amusement;

(11) A provision requiring the applicant for a temporary certificate of registration, if required by the ordinance, to furnish with the application therefor, the name and address of the owner, lessee, or custodian of the premises upon which the amusement is to be conducted, and requiring the county treasurer to notify such owner, lessee, or custodian of the

issuance of any such temporary certificate, and of the joint liability for such tax;

(12) A provision empowering the county treasurer to declare the tax upon temporary or itinerant places of amusement to be immediately due and payable and to collect the same, when he or she believes there is a possibility that the tax imposed under the ordinance will not be otherwise paid;

(13) Any or all of the applicable general administrative provisions contained in RCW 82.32.010 through 82.32.340 and 82.32.380, and the amendments thereto, except that unless otherwise indicated by the context of said sections, in all provisions so incorporated in such ordinance (a) the term "county treasurer" (of the county enacting said ordinance) shall be substituted for each reference made in said sections to the "department," the "department of revenue," "any employee of the department," or "director of the department of revenue"; (b) the name of the county enacting such ordinance shall be substituted for each reference made in said sections to the "state" or to the "state of Washington"; (c) the term "this ordinance" shall be substituted for each reference made in said sections to "this chapter"; (d) the name of the county enacting said ordinance shall be substituted for each reference made in said sections to "Thurston county"; and (e) the term "board of county commissioners" shall be substituted for each reference made in said sections to the "director of financial management." [2009 c 549 § 4080; 1979 c 151 § 38; 1975 1st ex.s. c 278 § 21; 1963 c 4 § 36.38.020. Prior: 1943 c 269 § 3; Rem. Supp. 1943 § 11241-12.]

**Construction—Severability—1975 1st ex.s. c 278:** See notes following RCW 11.08.160.

## Chapter 36.40 RCW BUDGET

### Sections

36.40.010	Estimates to be filed by county officials.
36.40.030	Forms of estimates—Penalty for delay.
36.40.040	Preliminary budget.
36.40.050	Revision by county commissioners.
36.40.130	Excess of expenditures, liability.
36.40.210	Monthly report.

### **36.40.010 Estimates to be filed by county officials.**

On or before the second Monday in July of each year, the county auditor or chief financial officer designated in a charter county shall notify in writing each county official, elective or appointive, in charge of an office, department, service, or institution of the county, to file with him or her on or before the second Monday in August thereafter detailed and itemized estimates, both of the probable revenues from sources other than taxation, and of all expenditures required by such office, department, service, or institution for the ensuing fiscal year. [2009 c 337 § 6; 1963 c 4 § 36.40.010. Prior: 1923 c 164 § 1, part; RRS § 3997-1, part.]

### **36.40.030 Forms of estimates—Penalty for delay.**

The estimates required in RCW 36.40.010 and 36.40.020 shall be submitted on forms provided by the county auditor or chief financial officer designated in a charter county and classified according to the classification established by the state auditor. The county auditor or chief financial officer designated in a charter county shall provide such forms. He or she

shall also prepare the estimates for interest and debt redemption requirements and any other estimates the preparation of which properly falls within the duties of his or her office.

Each such official shall file his or her estimates within the time and in the manner provided in the notice and form and the county auditor or chief financial officer designated in a charter county may deduct and withhold as a penalty from the salary of each official failing or refusing to file such estimates as herein provided, the sum of fifty dollars for each day of delay: PROVIDED, That the total penalty against any one official shall not exceed two hundred fifty dollars in any one year.

In the absence or disability of any official the duties required herein shall devolve upon the official or employee in charge of the office, department, service, or institution for the time being. The notice shall contain a copy of this penalty clause. [2009 c 337 § 7; 1995 c 301 § 62; 1963 c 4 § 36.40.030. Prior: 1923 c 164 § 1, part; RRS § 3997-1, part.]

**36.40.040 Preliminary budget.** Upon receipt of the estimates the county auditor or chief financial officer designated in a charter county shall prepare the county budget which shall set forth the complete financial program of the county for the ensuing fiscal year, showing the expenditure program and the sources of revenue by which it is to be financed.

The revenue section shall set forth the estimated receipts from sources other than taxation for each office, department, service, or institution for the ensuing fiscal year, the actual receipts for the first six months of the current fiscal year and the actual receipts for the last completed fiscal year, the estimated surplus at the close of the current fiscal year and the amount proposed to be raised by taxation.

The expenditure section shall set forth in comparative and tabular form by offices, departments, services, and institutions the estimated expenditures for the ensuing fiscal year, the appropriations for the current fiscal year, the actual expenditures for the first six months of the current fiscal year including all contracts or other obligations against current appropriations, and the actual expenditures for the last completed fiscal year.

All estimates of receipts and expenditures for the ensuing year shall be fully detailed in the annual budget and shall be classified and segregated according to a standard classification of accounts to be adopted and prescribed by the state auditor after consultation with the Washington state association of counties and the Washington state association of county officials.

The county auditor or chief financial officer designated in a charter county shall set forth separately in the annual budget to be submitted to the county legislative authority the total amount of emergency warrants issued during the preceding fiscal year, together with a statement showing the amount issued for each emergency, and the legislative authority shall include in the annual tax levy, a levy sufficient to raise an amount equal to the total of such warrants: PROVIDED, That the legislative authority may fund the warrants or any part thereof into bonds instead of including them in the budget levy. [2009 c 337 § 8. Prior: 1995 c 301 § 63; 1995 c 194 § 7; 1973 c 39 § 1; prior: 1971 ex.s. c 85 § 4; 1969 ex.s. c 252 § 1; 1963 c 4 § 36.40.040; prior: (i) 1923 c 164 § 2;

RRS § 3997-2. (ii) 1925 ex.s. c 143 § 2, part; 1923 c 164 § 6, part; RRS § 3997-6, part.]

**36.40.050 Revision by county commissioners.** The budget shall be submitted by the auditor or chief financial officer designated in a charter county to the board of county commissioners on or before the first Tuesday in September of each year. The board shall thereupon consider the same in detail, making any revisions or additions it deems advisable. [2009 c 337 § 9; 1963 c 4 § 36.40.050. Prior: 1923 c 164 § 3, part; RRS § 3997-3, part.]

**36.40.130 Excess of expenditures, liability.** Expenditures made, liabilities incurred, or warrants issued in excess of any of the detailed budget appropriations or as revised by transfer as in RCW 36.40.100 or 36.40.120 provided shall not be a liability of the county, but the official making or incurring such expenditure or issuing such warrant shall be liable therefor personally and upon his or her official bond. The county auditor shall issue no warrant and the county commissioners shall approve no claim for any expenditure in excess of the detailed budget appropriations or as revised under the provisions of RCW 36.40.100 through 36.40.130, except upon an order of a court of competent jurisdiction, or for emergencies as hereinafter provided. [2009 c 337 § 10; 1963 c 4 § 36.40.130. Prior: 1945 c 201 § 1, part; 1943 c 66 § 1, part; 1927 c 301 § 1, part; 1923 c 164 § 5, part; Rem. Supp. 1945 § 3997-5, part.]

**36.40.210 Monthly report.** On or before the twenty-fifth day of each month the auditor shall submit or make available to the board of county commissioners a report showing the expenditures and liabilities against each separate budget appropriation incurred during the preceding calendar month and like information for the whole of the current fiscal year to the first day of said month, together with the unexpended and unencumbered balance of each appropriation. He or she shall also set forth the receipts from taxes and from sources other than taxation for the same periods. [2009 c 337 § 11; 1963 c 4 § 36.40.210. Prior: 1923 c 164 § 7; RRS § 3997-7.]

**Chapter 36.48 RCW**

**DEPOSITARIES**

Sections

- 36.48.040 Depositories to be designated by treasurer—Deposited funds deemed in county treasury.
- 36.48.050 Depositories to be designated by treasurer—Treasurer’s liability and bond additional.

**36.48.040 Depositories to be designated by treasurer—Deposited funds deemed in county treasury.** The county treasurer shall deposit with any depository, which has fully complied with all requirements of RCW 36.48.010 through 36.48.060, any county money in his or her hands or under his or her official control, and for the purpose of making the quarterly settlement and counting funds in the hands of the treasurer any sums so on deposit shall be deemed to be in the county treasury. [2009 c 549 § 4084; 1963 c 4 § 36.48.040. Prior: 1907 c 51 § 4; RRS § 5565.]

**36.48.050 Depositories to be designated by treasurer—Treasurer's liability and bond additional.** The provisions of RCW 36.48.010 through 36.48.060 shall in no way relieve or release the county treasurer from any liability upon his or her official bond as such treasurer, or any surety upon such bond, and shall in no way affect the duty of the several county treasurers to give bond as required by law. [2009 c 549 § 4085; 1963 c 4 § 36.48.050. Prior: 1907 c 51 § 5; RRS § 5566.]

### Chapter 36.53 RCW

#### FERRIES—PRIVATELY OWNED

##### Sections

36.53.030	To whom license granted—Notice of intention if nonowner.
36.53.040	Notice of application to be posted.
36.53.060	Duties of licensee.
36.53.100	Rates to be posted.
36.53.120	Grant exclusive.
36.53.130	Revocation of license.

**36.53.030 To whom license granted—Notice of intention if nonowner.** No license shall be granted to any person other than the owner of the land embracing or adjoining the lake or stream where the ferry is proposed to be kept, unless the owner neglects to apply therefor. Whenever application for a license is made by any person other than the owner, the board of county commissioners shall not grant it, unless proof is made that the applicant caused notice, in writing, of his or her intention to make such application to be given to such owner, if residing in the county, at least ten days before the session of the board of county commissioners at which application is made. [2009 c 549 § 4086; 1963 c 4 § 36.53.030. Prior: Code 1881 § 3004; 1879 p 61 § 40; 1869 p 280 § 42; 1863 p 522 § 3; 1854 p 354 § 3; RRS § 5464.]

**36.53.040 Notice of application to be posted.** Every person intending to apply for a license to keep a ferry at any place shall give notice of his or her intention by posting up at least three notices in public places in the neighborhood where the ferry is proposed to be kept, twenty days prior to any regular session of the board of county commissioners at which the application is to be made. [2009 c 549 § 4087; 1963 c 4 § 36.53.040. Prior: Code 1881 § 3005; 1879 p 61 § 41; 1869 p 281 § 43; 1863 p 522 § 4; 1854 p 354 § 4; RRS § 5465.]

**36.53.060 Duties of licensee.** Every person obtaining a license to keep a ferry shall provide and keep in good and complete repair the necessary boat or boats for the safe conveyance of all persons and property, and furnish such boats at all times with suitable oars, setting poles, and other implements necessary for the service thereof, and shall keep a sufficient number of discreet and skillful men or women ferry workers to attend and manage the same; and he or she shall also at all times keep the place of embarking and landing in good order and repair, by cutting away the bank of the stream so that persons and property may be embarked and landed without danger or unnecessary delay. [2009 c 549 § 4088; 1963 c 4 § 36.53.060. Prior: Code 1881 § 3007; 1879 p 62 § 43; 1869 p 281 § 45; 1863 p 522 § 6; 1854 p 354 § 6; RRS § 5467.]

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**36.53.100 Rates to be posted.** Every person licensed to keep a ferry shall post up, in some conspicuous place near his or her ferry landing a list of the rates of ferriage which are chargeable by law at such ferry, which list of rates shall at all times be plain and legible and posted up so near the place where persons pass across the ferry that it may be easily read. If the keeper neglects or refuses to post and keep up such list, it shall not be lawful to charge or take any ferriage or compensation at the ferry, during the time of such delinquency. [2009 c 549 § 4089; 1963 c 4 § 36.53.100. Prior: Code 1881 § 3011; 1879 p 63 § 47; 1869 p 283 § 49; 1863 p 523 § 9; 1854 p 355 § 9; RRS § 5471.]

**36.53.120 Grant exclusive.** Every person licensed to keep a ferry under the provisions of RCW 36.53.010 through 36.53.140 shall have the exclusive privilege of transporting all persons and property over and across the stream where the ferry is established, and shall be entitled to all the fare arising by law therefrom: PROVIDED, That any person may cross such stream at the ferry location in his or her own boat, or take in and carry over his or her neighbor, when done without fee or charge, and not with intent to injure the person licensed to keep a ferry. [2009 c 549 § 4090; 1963 c 4 § 36.53.120. Prior: Code 1881 § 3013; 1879 p 63 § 49; 1869 p 283 § 51; 1863 p 524 § 11; 1854 p 356 § 11; RRS § 5473.]

**36.53.130 Revocation of license.** If any person licensed to keep a ferry fails to pay the taxes assessed thereon when due, or to provide and keep in good and complete repair the necessary boat or boats, with the oars, setting poles, and other necessary implements for the service thereof, or to employ a sufficient number of skilled and discreet ferry workers within three months from the time license is granted, or if the ferry is not at any time kept in good condition and repair, or if it is abandoned, disused, or unfrequented for the space of six months at any one time, the board of county commissioners, on complaint being made in writing, may summon the person licensed to keep such ferry, to show cause why his or her license should not be revoked. The board may revoke or not according to the testimony adduced and the laws of this state, the decision subject to review by the superior court: PROVIDED, That if disuse resulted because the stream is fordable at certain seasons of the year, or because travel by that route is subject to periodical fluctuations, it shall not work a forfeiture within the meaning of this section. [2009 c 549 § 4091; 1963 c 4 § 36.53.130. Prior: Code 1881 § 3014; 1879 p 64 § 50; 1869 p 283 § 52; 1863 p 524 § 12; 1854 p 356 § 12; RRS § 5474.]

### Chapter 36.54 RCW

#### FERRIES—COUNTY OWNED

##### Sections

36.54.040	Joint ferries over water boundary between two counties—Joint board of commissioners to administer—Records kept.
36.54.060	Joint ferries over water boundary between two counties—Audit and allowance of claims.
36.54.130	County ferry districts—Tax levy authorized—Uses.

**36.54.040 Joint ferries over water boundary between two counties—Joint board of commissioners to adminis-**



**ter—Records kept.** The boards of county commissioners of the two counties, participating in a joint ferry, shall meet in joint session at the county seat of one of the counties interested, and shall elect one of their members as chair of the joint board of commissioners, who shall act as such chair during the remainder of his or her term of office, and, at the expiration of his or her term of office, the two boards of county commissioners shall meet and elect a new chair, who shall act as such chair during his or her term of office as county commissioner, and they shall continue to elect a chair in like manner thereafter. The county auditors of the counties shall be clerks of such joint commission, and the county auditor of the county where each meeting is held shall act as clerk of the commission at all meetings held in his or her county. Each county auditor, as soon as the joint commission is organized, shall procure a record book and enter therein a complete record of the proceedings of the commission, and immediately after each adjournment the county auditor of the county in which the meeting is held shall forward a complete copy of the minutes of the proceedings of the commission to the auditor of the other county to be entered by him or her in his or her record. Each county shall keep a complete record of the proceedings of the commission. [2009 c 549 § 4092; 1963 c 4 § 36.54.040. Prior: 1917 c 158 § 2; RRS § 5480.]

**36.54.060 Joint ferries over water boundary between two counties—Audit and allowance of claims.** All claims and accounts for the construction, operation and maintenance of a joint county ferry shall be presented to and audited by the joint commission: PROVIDED, That items of expense connected with the operation of such ferry which do not exceed the sum of thirty dollars may be presented to the chair of the joint commission and allowed by him or her and when allowed shall be a joint charge against the road fund of each of the counties operating such ferry. [2009 c 549 § 4093; 1963 c 4 § 36.54.060. Prior: 1917 c 158 § 4; RRS § 5482.]

**36.54.130 County ferry districts—Tax levy authorized—Uses.** (1) To carry out the purposes for which ferry districts are created, the governing body of a ferry district may levy each year an ad valorem tax on all taxable property located in the district not to exceed seventy-five cents per thousand dollars of assessed value, except a ferry district in a county with a population of one million five hundred thousand or more may not levy at a rate that exceeds seven and one-half cents per thousand dollars of assessed value. The levy must be sufficient for the provision of ferry services as shown to be required by the budget prepared by the governing body of the ferry district.

(2) A tax imposed under this section may be used only for:

- (a) Providing ferry services, including the purchase, lease, or rental of ferry vessels and dock facilities;
- (b) The operation, maintenance, and improvement of ferry vessels and dock facilities;
- (c) Providing shuttle services between the ferry terminal and passenger parking facilities, and other landside improvements directly related to the provision of passenger-only ferry service; and

(d) Related personnel costs. [2009 c 551 § 4; 2007 c 223 § 6; 2006 c 332 § 9; 2003 c 83 § 303.]

**Effective date—2007 c 223:** See note following RCW 36.57A.220.

**Findings—Intent—Captions, part headings not law—Severability—Effective date—2003 c 83:** See notes following RCW 36.57A.200.

## Chapter 36.55 RCW

### FRANCHISES ON ROADS AND BRIDGES

#### Sections

36.55.050 Hearing—Order.

**36.55.050 Hearing—Order.** The hearing may be adjourned from time to time by the order of the board of county commissioners. If, after the hearing, the board deems it to be for the public interest to grant the franchise in whole or in part, it may make and enter a resolution to that effect and may require the applicant to place his or her utility and its appurtenances in such location on or along the county road as the board finds will cause the least interference with other uses of the road. [2009 c 549 § 4094; 1963 c 4 § 36.55.050. Prior: 1961 c 55 § 4; prior: 1937 c 187 § 38, part; RRS § 6450-38, part.]

## Chapter 36.57 RCW

### COUNTY PUBLIC TRANSPORTATION AUTHORITY

#### Sections

36.57.050 Chair—General manager.

36.57.090 Acquisition of existing transportation system—Assumption of labor contracts—Transfer of employees—Preservation of benefits—Collective bargaining.

**36.57.050 Chair—General manager.** The authority shall elect a chair, and appoint a general manager who shall be experienced in administration, and who shall act as executive secretary to, and administrative officer for the authority. He or she shall also be empowered to employ such technical and other personnel as approved by the authority. The general manager shall be paid such salary and allowed such expenses as shall be determined by the authority. The general manager shall hold office at the pleasure of the authority, and shall not be removed until after notice is given him or her, and an opportunity for a hearing before the authority as to the reason for his or her removal. [2009 c 549 § 4095; 1974 ex.s. c 167 § 5.]

**36.57.090 Acquisition of existing transportation system—Assumption of labor contracts—Transfer of employees—Preservation of benefits—Collective bargaining.** A county transportation authority may acquire any existing transportation system by conveyance, sale, or lease. In any purchase from a county or city, the authority shall receive credit from the county or city for any federal assistance and state matching assistance used by the county or city in acquiring any portion of such system. The authority shall assume and observe all existing labor contracts relating to such system and, to the extent necessary for operation of facilities, all of the employees of such acquired transportation system whose duties are necessary to operate efficiently the facilities acquired shall be appointed to comparable positions

to those which they held at the time of such transfer, and no employee or retired or pensioned employee of such systems shall be placed in any worse position with respect to pension seniority, wages, sick leave, vacation or other benefits that he or she enjoyed as an employee of such system prior to such acquisition. The authority shall engage in collective bargaining with the duly appointed representatives of any employee labor organization having existing contracts with the acquired transportation system and may enter into labor contracts with such employee labor organization. [2009 c 549 § 4096; 1974 ex.s. c 167 § 9.]

### Chapter 36.57A RCW

#### PUBLIC TRANSPORTATION BENEFIT AREAS

##### Sections

- 36.57A.050 Governing body—Selection, qualification, number of members—Travel expenses, compensation.  
 36.57A.120 Acquisition of existing system—Labor contracts, employee rights preserved—Collective bargaining.

**36.57A.050 Governing body—Selection, qualification, number of members—Travel expenses, compensation.** Within sixty days of the establishment of the boundaries of the public transportation benefit area the members of the county legislative authority and the elected representative of each city within the area shall provide for the selection of the governing body of such area, the public transportation benefit area authority, which shall consist of elected officials selected by and serving at the pleasure of the governing bodies of component cities within the area and the county legislative authority of each county within the area. If at the time a public transportation benefit area authority assumes the public transportation functions previously provided under the Interlocal Cooperation Act (chapter 39.34 RCW) there are citizen positions on the governing board of the transit system, those positions may be retained as positions on the governing board of the public transportation benefit area authority.

Within such sixty-day period, any city may by resolution of its legislative body withdraw from participation in the public transportation benefit area. The county legislative authority and each city remaining in the public transportation benefit area may disapprove and prevent the establishment of any governing body of a public transportation benefit area if the composition thereof does not meet its approval.

In no case shall the governing body of a single county public transportation benefit area be greater than nine members and in the case of a multicounty area, fifteen members. Those cities within the transportation benefit area and excluded from direct membership on the authority are hereby authorized to designate a member of the authority who shall be entitled to represent the interests of such city which is excluded from direct membership on the authority. The legislative body of such city shall notify the authority as to the determination of its authorized representative on the authority.

Each member of the authority is eligible to be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 and to receive compensation, as set by the authority, in an amount not to exceed forty-four dollars for each day during which the member attends official meet-

ings of the authority or performs prescribed duties approved by the chair of the authority. Except that the authority may, by resolution, increase the payment of per diem compensation to each member from forty-four dollars up to ninety dollars per day or portion of a day for actual attendance at board meetings or for performance of other official services or duties on behalf of the authority. In no event may a member be compensated in any year for more than seventy-five days, except the chair who may be paid compensation for not more than one hundred days: PROVIDED, That compensation shall not be paid to an elected official or employee of federal, state, or local government who is receiving regular full-time compensation from such government for attending meetings and performing prescribed duties of the authority.

The dollar thresholds established in this section must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2008, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, for Washington state, for wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. If the bureau of labor and statistics develops more than one consumer price index for areas within the state, the index covering the greatest number of people, covering areas exclusively within the boundaries of the state, and including all items shall be used for the adjustments for inflation in this section. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.

A person holding office as commissioner for two or more special purpose districts shall receive only that per diem compensation authorized for one of his or her commissioner positions as compensation for attending an official meeting or conducting official services or duties while representing more than one of his or her districts. However, such commissioner may receive additional per diem compensation if approved by resolution of all boards of the affected commissions. [2009 c 549 § 4097; 2007 c 469 § 14; 1998 c 121 § 15; 1983 c 65 § 3; 1977 ex.s. c 44 § 2; 1975 1st ex.s. c 270 § 15.]

**Severability—Effective date—1977 ex.s. c 44:** See notes following RCW 36.57A.030.

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

**36.57A.120 Acquisition of existing system—Labor contracts, employee rights preserved—Collective bargaining.** If a public transportation benefit area shall acquire any existing transportation system, it shall assume and observe all existing labor contracts relating to such system and, to the extent necessary for operation of facilities, all of the employees of such acquired transportation system whose duties are necessary to operate efficiently the facilities acquired shall be appointed to comparable positions to those which they held at the time of such transfer, and no employee or retired or pensioned employee of such systems shall be placed in any worse position with respect to pension seniority, wages, sick leave, vacation or other benefits that he or she enjoyed as an employee of such system prior to such acquisi-

tion. The public transportation benefit area authority shall engage in collective bargaining with the duly appointed representatives of any employee labor organization having existing contracts with the acquired transportation system and may enter into labor contracts with such employee labor organization. [2009 c 549 § 4098; 1975 1st ex.s. c 270 § 22.]

**Severability—Effective date—1975 1st ex.s. c 270:** See notes following RCW 35.58.272.

### Chapter 36.63 RCW JAILS

#### Sections

36.63.255 Transfer of convicted felon to state institution pending appeal.

**36.63.255 Transfer of convicted felon to state institution pending appeal.** Any person imprisoned in a county jail pending the appeal of his or her conviction of a felony and who has not obtained bail bond pending his or her appeal shall be transferred after thirty days but within forty days from the date judgment was entered against him or her to a state institution for felons designated by the secretary of corrections: PROVIDED, That when good cause is shown, a superior court judge may order the prisoner detained in the county jail beyond said forty days for an additional period not to exceed ten days. [2009 c 549 § 4099; 1981 c 136 § 60; 1969 ex.s. c 4 § 2; 1969 c 103 § 2.]

**Effective date—1981 c 136:** See RCW 72.09.900.

### Chapter 36.64 RCW JOINT GOVERNMENTAL ACTIVITIES

#### Sections

36.64.090 Conferences to study regional and governmental problems—Articles—Officers—Agents and employees.

**36.64.090 Conferences to study regional and governmental problems—Articles—Officers—Agents and employees.** The governing bodies of the counties and cities so associated in a conference shall adopt articles of association and bylaws, select a chair and such other officers as they may determine, and may employ and discharge such agents and employees as the officers deem convenient to carry out the purposes of the conference. [2009 c 549 § 4100; 1965 ex.s. c 84 § 2.]

### Chapter 36.67 RCW LIMITATION OF INDEBTEDNESS— COUNTY BONDS

#### Sections

36.67.530 Form—Terms—Interest—Execution and signatures.

**36.67.530 Form—Terms—Interest—Execution and signatures.** (1) When revenue bonds are issued for authorized purposes, said bonds shall be either registered as to principal only or as to principal and interest as provided in RCW 39.46.030, or shall be bearer bonds; shall be in such denominations, shall be numbered, shall bear such date, shall be payable at such time or times up to a maximum period of

not to exceed thirty years and payable at the office of the county treasurer, and such other places as determined by the county legislative authority of the county; shall bear interest payable and evidenced to maturity on bonds not registered as to interest by coupons attached to said bonds bearing a coupon interest rate or rates as authorized by the county legislative authority; shall be executed by the chair of the county legislative authority, and attested by the clerk of the legislative authority, and the seal of such legislative authority shall be affixed to each bond, but not to any coupon; and may have facsimile signatures of the chair and the clerk imprinted on each bond and any interest coupons in lieu of original signatures and the facsimile seal imprinted on each bond.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2009 c 549 § 4101; 1983 c 167 § 80; 1981 c 313 § 13; 1970 ex.s. c 56 § 50; 1969 ex.s. c 232 § 27; 1965 c 142 § 3.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**Severability—1981 c 313:** See note following RCW 36.94.020.

**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.

### Chapter 36.68 RCW PARKS AND RECREATIONAL FACILITIES

#### Sections

36.68.060 Park and recreation board—Powers and duties.

36.68.120 Community athletics programs—Sex discrimination prohibited.

**36.68.060 Park and recreation board—Powers and duties.** The county park and recreation board:

(1) Shall elect its officers, including a chair, vice chair and secretary, and such other officers as it may determine it requires.

(2) Shall hold regular public meetings at least monthly.

(3) Shall adopt rules for transaction of business and shall keep a written record of its meetings, resolutions, transactions, findings and determinations, which record shall be a public record.

(4) Shall initiate, direct, and administer county recreational activities, and shall select and employ a county park and recreation superintendent and such other properly qualified employees as it may deem desirable.

(5) Shall improve, operate, and maintain parks, playgrounds, and other recreational facilities, together with all structures and equipment useful in connection therewith, and may recommend to the board of county commissioners acquisition of real property.

(6) Shall promulgate and enforce reasonable rules and regulations deemed necessary in the operation of parks, playgrounds, and other recreational facilities, and may recommend to the board of county commissioners adoption of any rules or regulations requiring enforcement by legal process which relate to parks, playgrounds, or other recreational facilities.

(7) Shall each year submit to the board of county commissioners for approval a proposed budget for the following

year in the manner provided by law for the preparation and submission of budgets by elective or appointive county officials.

(8) May, subject to the approval of the board of county commissioners, enter into contracts with any other municipal corporation, governmental or private agency for the conduct of park and recreational programs. [2009 c 549 § 4102; 1963 c 4 § 36.68.060. Prior: 1949 c 94 § 6; Rem. Supp. 1949 § 3991-19.]

**36.68.120 Community athletics programs—Sex discrimination prohibited.** The antidiscrimination provisions of RCW 49.60.500 apply to community athletics programs and facilities operated, conducted, or administered by a park and recreation service area. [2009 c 467 § 8.]

**Findings—Declaration—2009 c 467:** See note following RCW 49.60.500.

### Chapter 36.69 RCW

#### PARK AND RECREATION DISTRICTS

##### Sections

36.69.120	Commissioners—Duties.
36.69.230	L.I.D.'s—Procedure when by petition—Publication of notice of intent by either resolution or petition.
36.69.370	Revenue bonds—Issuance, form, seal, etc.
36.69.500	Community athletics programs—Sex discrimination prohibited.

**36.69.120 Commissioners—Duties.** The park and recreation district board of commissioners shall:

- (1) Elect its officers including a chair, vice chair, secretary, and such other officers as it may determine it requires;
- (2) Hold regular public meetings at least monthly;
- (3) Adopt policies governing transaction of board business, keeping of records, resolutions, transactions, findings and determinations, which shall be of public record;
- (4) Initiate, direct and administer district park and recreation activities, and select and employ such properly qualified employees as it may deem necessary. [2009 c 549 § 4103; 1963 c 4 § 36.69.120. Prior: 1957 c 58 § 12.]

**36.69.230 L.I.D.'s—Procedure when by petition—Publication of notice of intent by either resolution or petition.** If such local improvement district is initiated by petition, such petition shall set forth the nature and territorial extent of the proposed improvement requested to be ordered and the fact that the signers thereof are the owners (according to the records of the county auditor) of at least fifty-one percent of the area of land within the limits of the local improvement district to be created. Upon the filing of such petition the board of park and recreation commissioners shall determine whether it is sufficient, and the board's determination thereof shall be conclusive upon all persons. No person shall withdraw his or her name from the petition after it has been filed with the board. If the board shall find the petition to be sufficient, it shall proceed to adopt a resolution declaring its intention to order the improvement petitioned for, setting forth the nature and territorial extent of said improvement, designating the number of the proposed local district and describing the boundaries thereof, stating the estimated cost and expense of the improvement and the proportionate

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amount thereof which will be borne by the property within the proposed local district, and fixing a date, time and place for a public hearing on the formation of the proposed local district.

The resolution of intention, whether adopted on the initiative of the board or pursuant to a petition of the property owners, shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed local district, the date of the first publication to be at least fifteen days prior to the date fixed by such resolution for hearing before the board. [2009 c 549 § 4104; 1963 c 4 § 36.69.230. Prior: 1957 c 58 § 24.]

**36.69.370 Revenue bonds—Issuance, form, seal, etc.**

(1) When revenue bonds are issued for authorized purposes, said bonds shall be either registered as to principal only or principal and interest as provided in RCW 39.46.030 or shall be bearer bonds; shall be in such denominations, shall be numbered, shall bear such date, shall be payable at such time or times up to a maximum period of not to exceed thirty years and payable as determined by the park and recreation commissioners of the district; shall bear interest payable semiannually; shall be executed by the chair of the board of park and recreation commissioners, and attested by the secretary of the board, and the seal of such board shall be affixed to each bond, but not to any coupon; and may have facsimile signatures of the chair and the secretary imprinted on any interest coupons in lieu of original signatures.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2009 c 549 § 4105; 1983 c 167 § 86; 1972 ex.s. c 94 § 5.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**36.69.500 Community athletics programs—Sex discrimination prohibited.** The antidiscrimination provisions of RCW 49.60.500 apply to community athletics programs and facilities operated, conducted, or administered by a park and recreation district. [2009 c 467 § 9.]

**Findings—Declarations—2009 c 467:** See note following RCW 49.60.500.

### Chapter 36.70 RCW

#### PLANNING ENABLING ACT

##### Sections

36.70.020	Definitions.
36.70.080	Commission—Appointment—County.
36.70.090	Commission—Membership—Terms—Existing commissions.
36.70.110	Commission—Removal.
36.70.120	Commission—Officers.
36.70.150	Planning agency—Joint meetings.
36.70.160	Director—Appointment.
36.70.170	Director—Employees.
36.70.180	Joint director.
36.70.250	Board of adjustment—Removal.
36.70.260	Board of adjustment—Organization.
36.70.400	Comprehensive plan—Approval—Required vote—Record.
36.70.600	Official controls—Recommendation to board—Required vote.
36.70.695	Development regulations—Jurisdictions specified—Electric vehicle infrastructure.
36.70.850	Board of adjustment—Appeal—Notice of time and place.
36.70.880	Zoning adjustor—Action final unless appealed.

**36.70.020 Definitions.** The following words or terms as used in this chapter shall have the following meaning unless a different meaning is clearly indicated by the context:

(1) "Approval by motion" is a means by which a board, through other than by ordinance, approves and records recognition of a comprehensive plan or amendments thereto.

(2) "Board" means the board of county commissioners.

(3) "Certification" means the affixing on any map or by adding to any document comprising all or any portion of a comprehensive plan a record of the dates of action thereon by the commission and by the board, together with the signatures of the officer or officers authorized by ordinance to so sign.

(4) "Commission" means a county or regional planning commission.

(5) "Commissioners" means members of a county or regional planning commission.

(6) "Comprehensive plan" means the policies and proposals approved and recommended by the planning agency or initiated by the board and approved by motion by the board (a) as a beginning step in planning for the physical development of the county; (b) as the means for coordinating county programs and services; (c) as a source of reference to aid in developing, correlating, and coordinating official regulations and controls; and (d) as a means for promoting the general welfare. Such plan shall consist of the required elements set forth in RCW 36.70.330 and may also include the optional elements set forth in RCW 36.70.350 which shall serve as a policy guide for the subsequent public and private development and official controls so as to present all proposed developments in a balanced and orderly relationship to existing physical features and governmental functions.

(7) "Conditional use" means a use listed among those classified in any given zone but permitted to locate only after review by the board of adjustment, or zoning adjustor if there be such, and the granting of a conditional use permit imposing such performance standards as will make the use compatible with other permitted uses in the same vicinity and zone and assure against imposing excessive demands upon public utilities, provided the county ordinances specify the standards and criteria that shall be applied.

(8) "Department" means a planning department organized and functioning as any other department in any county.

(9) "Element" means one of the various categories of subjects, each of which constitutes a component part of the comprehensive plan.

(10) "Ex officio member" means a member of the commission who serves by virtue of his or her official position as head of a department specified in the ordinance creating the commission.

(11) "Official controls" means legislatively defined and enacted policies, standards, precise detailed maps and other criteria, all of which control the physical development of a county or any part thereof or any detail thereof, and are the means of translating into regulations and ordinances all or any part of the general objectives of the comprehensive plan. Such official controls may include, but are not limited to, ordinances establishing zoning, subdivision control, platting, and adoption of detailed maps.

(12) "Ordinance" means a legislative enactment by a board; in this chapter the word, "ordinance", is synonymous

with the term "resolution", as representing a legislative enactment by a board of county commissioners.

(13) "Planning agency" means (a) a planning commission, together with its staff members, employees and consultants, or (b) a department organized and functioning as any other department in any county government together with its planning commission.

(14) "Variance." A variance is the means by which an adjustment is made in the application of the specific regulations of a zoning ordinance to a particular piece of property, which property, because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the same vicinity and zone and which adjustment remedies disparity in privileges. [2009 c 549 § 4106; 1963 c 4 § 36.70.020. Prior: 1959 c 201 § 2.]

**36.70.080 Commission—Appointment—County.**

The members of a commission shall be appointed by the chair of the board with the approval of a majority of the board: PROVIDED, That each member of the board shall submit to the chair a list of nominees residing in his or her commissioner district, and the chair shall make his or her appointments from such lists so that as nearly as mathematically possible, each commissioner district shall be equally represented on the commission. [2009 c 549 § 4107; 1963 c 4 § 36.70.080. Prior: 1959 c 201 § 8.]

**36.70.090 Commission—Membership—Terms—Existing commissions.**

When a commission is created after June 10, 1959, the first terms of the members of the commission consisting of five, seven, and nine members, respectively, other than ex officio members, shall be as follows:

(1) For a five-member commission—one, shall be appointed for one year; one, for two years; one, for three years; and two, for four years.

(2) For a seven-member commission—one, shall be appointed for one year; two, for two years; two, for three years; and two, for four years.

(3) For a nine-member commission—two, shall be appointed for one year; two, for two years; two, for three years; and three, for four years.

Thereafter, the successors to the first member shall be appointed for four year terms: PROVIDED, That where the commission includes one ex officio member, the number of appointive members first appointed for a four year term shall be reduced by one; if there are to be two ex officio members, the number of appointive members for the three year and four year terms shall each be reduced by one; if there are to be three ex officio members, the number of appointive members for the four year term, the three year term, and the two year term shall each be reduced by one. The term of an ex officio member shall correspond to his or her official tenure: PROVIDED FURTHER, That where a commission, on the effective date of this chapter, is operating with members appointed for longer than four year terms, such members shall serve out the full term for which they were appointed, but their successors, if any, shall be appointed for four year terms. [2009 c 549 § 4108; 1963 c 4 § 36.70.090. Prior: 1959 c 201 § 9.]

**36.70.110 Commission—Removal.** After public hearing, any appointee member of a commission may be removed by the chair of the board, with the approval of the board, for inefficiency, neglect of duty, or malfeasance in office. [2009 c 549 § 4109; 1963 c 4 § 36.70.110. Prior: 1959 c 201 § 11.]

**36.70.120 Commission—Officers.** Each commission shall elect its chair and vice chair from among the appointed members. The commission shall appoint a secretary who need not be a member of the commission. [2009 c 549 § 4110; 1963 c 4 § 36.70.120. Prior: 1959 c 201 § 12.]

**36.70.150 Planning agency—Joint meetings.** Two or more county planning agencies in any combination may hold joint meetings and by approval of their respective boards may have the same chair. [2009 c 549 § 4111; 1963 c 4 § 36.70.150. Prior: 1959 c 201 § 15.]

**36.70.160 Director—Appointment.** If a director of planning is provided for, he or she shall be appointed:

(1) By the commission when a commission is created under RCW 36.70.030;

(2) If a planning department is established as provided in RCW 36.70.040, then he or she shall be appointed by the board. [2009 c 549 § 4112; 1963 c 4 § 36.70.160. Prior: 1959 c 201 § 16.]

**36.70.170 Director—Employees.** The director of planning shall be authorized to appoint such employees as are necessary to perform the duties assigned to him or her within the budget allowed. [2009 c 549 § 4113; 1963 c 4 § 36.70.170. Prior: 1959 c 201 § 17.]

**36.70.180 Joint director.** The boards of two or more counties or the legislative bodies of other political subdivisions or special districts may jointly engage a single director of planning and may authorize him or her to employ such other personnel as may be necessary to carry out the joint planning program. [2009 c 549 § 4114; 1963 c 4 § 36.70.180. Prior: 1959 c 201 § 18.]

**36.70.250 Board of adjustment—Removal.** Any member of the board of adjustment may be removed by the chair of the board with the approval of the board for inefficiency, neglect of duty or malfeasance in office. [2009 c 549 § 4115; 1963 c 4 § 36.70.250. Prior: 1959 c 201 § 25.]

**36.70.260 Board of adjustment—Organization.** The board of adjustment shall elect a chair and vice chair from among its members. The board of adjustment shall appoint a secretary who need not be a member of the board. [2009 c 549 § 4116; 1963 c 4 § 36.70.260. Prior: 1959 c 201 § 26.]

**36.70.400 Comprehensive plan—Approval—Required vote—Record.** The approval of the comprehensive plan, or of any amendment, extension or addition thereto, shall be by the affirmative vote of not less than a majority of the total members of the commission. Such approval shall be by a recorded motion which shall incorporate the findings of fact of the commission and the reasons for

its action and the motion shall refer expressly to the maps, descriptive, and other matters intended by the commission to constitute the plan or amendment, addition or extension thereto. The indication of approval by the commission shall be recorded on the map and descriptive matter by the signatures of the chair and the secretary of the commission and of such others as the commission in its rules may designate. [2009 c 549 § 4117; 1963 c 4 § 36.70.400. Prior: 1961 c 232 § 2; 1959 c 201 § 40.]

**36.70.600 Official controls—Recommendation to board—Required vote.** The recommendation to the board of any official control or amendments thereto by the planning agency shall be by the affirmative vote of not less than a majority of the total members of the commission. Such approval shall be by a recorded motion which shall incorporate the findings of fact of the commission and the reasons for its action and the motion shall refer expressly to the maps, descriptive and other matters intended by the commission to constitute the plan, or amendment, addition or extension thereto. The indication of approval by the commission shall be recorded on the map and descriptive matter by the signatures of the chair and the secretary of the commission and of such others as the commission in its rules may designate. [2009 c 549 § 4118; 1963 c 4 § 36.70.600. Prior: 1961 c 232 § 3; 1959 c 201 § 60.]

**36.70.695 Development regulations—Jurisdictions specified—Electric vehicle infrastructure.** (1) By July 1, 2010, the development regulations of any jurisdiction with a population over six hundred thousand or with a state capitol within its borders planning under this chapter must allow electric vehicle infrastructure as a use in all areas within one mile of Interstate 5, Interstate 90, Interstate 405, or state route number 520, except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(2) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction planning under this chapter must allow electric vehicle infrastructure as a use in all areas within one mile of Interstate 5, Interstate 90, Interstate 405, or state route number 520, except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(3) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction planning under this chapter must allow battery charging stations as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(4) Counties are authorized to adopt incentive programs to encourage the retrofitting of existing structures with the

electrical outlets capable of charging electric vehicles. Incentives may include bonus height, site coverage, floor area ratio, and transferable development rights for use in urban growth areas.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(6) If federal funding for public investment in electric vehicles, electric vehicle infrastructure, or alternative fuel distribution infrastructure is not provided by February 1, 2010, subsection (1) of this section is null and void. [2009 c 459 § 11.]

**Finding—Purpose—2009 c 459:** See note following RCW 47.80.090.

*Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.*

**36.70.850 Board of adjustment—Appeal—Notice of time and place.** Upon the filing of an appeal from an administrative determination, or from the action of the zoning adjustor, the board of adjustment shall set the time and place at which the matter will be considered. At least a ten day notice of such time and place together with one copy of the written appeal, shall be given to the official whose decision is being appealed. At least ten days notice of the time and place shall also be given to the adverse parties of record in the case. The officer from whom the appeal is being taken shall forthwith transmit to the board of adjustment all of the records pertaining to the decision being appealed from, together with such additional written report as he or she deems pertinent. [2009 c 549 § 4119; 1963 c 4 § 36.70.850. Prior: 1959 c 201 § 85.]

**36.70.880 Zoning adjustor—Action final unless appealed.** The action by the zoning adjustor on all matters coming before him or her shall be final and conclusive unless within ten days after the zoning adjustor has made his or her order, requirement, decision or determination, an appeal in writing is filed with the board of adjustment. Such an appeal may be taken by the original applicant, or by opponents of

record in the case. [2009 c 549 § 4120; 1963 c 4 § 36.70.880. Prior: 1959 c 201 § 88.]

## Chapter 36.70A RCW

### GROWTH MANAGEMENT—PLANNING BY SELECTED COUNTIES AND CITIES

#### Sections

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36.70A.695	Development regulations—Jurisdictions specified—Electric vehicle infrastructure.

**36.70A.030 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adopt a comprehensive land use plan" means to enact a new comprehensive land use plan or to update an existing comprehensive land use plan.

(2) "Agricultural land" means land primarily devoted to the commercial production of horticultural, viticultural, floricultural, dairy, apiary, vegetable, or animal products or of berries, grain, hay, straw, turf, seed, Christmas trees not subject to the excise tax imposed by \*RCW 84.33.100 through 84.33.140, finfish in upland hatcheries, or livestock, and that has long-term commercial significance for agricultural production.

(3) "City" means any city or town, including a code city.

(4) "Comprehensive land use plan," "comprehensive plan," or "plan" means a generalized coordinated land use policy statement of the governing body of a county or city that is adopted pursuant to this chapter.

(5) "Critical areas" include the following areas and ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas.

(6) "Department" means the department of commerce.

(7) "Development regulations" or "regulation" means the controls placed on development or land use activities by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in a resolution or ordinance of the legislative body of the county or city.

(8) "Forest land" means land primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, including Christmas trees subject to the excise tax imposed under \*RCW 84.33.100 through 84.33.140, and that has long-term commercial significance. In determining

whether forest land is primarily devoted to growing trees for long-term commercial timber production on land that can be economically and practically managed for such production, the following factors shall be considered: (a) The proximity of the land to urban, suburban, and rural settlements; (b) surrounding parcel size and the compatibility and intensity of adjacent and nearby land uses; (c) long-term local economic conditions that affect the ability to manage for timber production; and (d) the availability of public facilities and services conducive to conversion of forest land to other uses.

(9) "Geologically hazardous areas" means areas that because of their susceptibility to erosion, sliding, earthquake, or other geological events, are not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns.

(10) "Long-term commercial significance" includes the growing capacity, productivity, and soil composition of the land for long-term commercial production, in consideration with the land's proximity to population areas, and the possibility of more intense uses of the land.

(11) "Minerals" include gravel, sand, and valuable metallic substances.

(12) "Public facilities" include streets, roads, highways, sidewalks, street and road lighting systems, traffic signals, domestic water systems, storm and sanitary sewer systems, parks and recreational facilities, and schools.

(13) "Public services" include fire protection and suppression, law enforcement, public health, education, recreation, environmental protection, and other governmental services.

(14) "Recreational land" means land so designated under \*\*RCW 36.70A.1701 and that, immediately prior to this designation, was designated as agricultural land of long-term commercial significance under RCW 36.70A.170. Recreational land must have playing fields and supporting facilities existing before July 1, 2004, for sports played on grass playing fields.

(15) "Rural character" refers to the patterns of land use and development established by a county in the rural element of its comprehensive plan:

(a) In which open space, the natural landscape, and vegetation predominate over the built environment;

(b) That foster traditional rural lifestyles, rural-based economies, and opportunities to both live and work in rural areas;

(c) That provide visual landscapes that are traditionally found in rural areas and communities;

(d) That are compatible with the use of the land by wildlife and for fish and wildlife habitat;

(e) That reduce the inappropriate conversion of undeveloped land into sprawling, low-density development;

(f) That generally do not require the extension of urban governmental services; and

(g) That are consistent with the protection of natural surface water flows and groundwater and surface water recharge and discharge areas.

(16) "Rural development" refers to development outside the urban growth area and outside agricultural, forest, and mineral resource lands designated pursuant to RCW 36.70A.170. Rural development can consist of a variety of uses and residential densities, including clustered residential

development, at levels that are consistent with the preservation of rural character and the requirements of the rural element. Rural development does not refer to agriculture or forestry activities that may be conducted in rural areas.

(17) "Rural governmental services" or "rural services" include those public services and public facilities historically and typically delivered at an intensity usually found in rural areas, and may include domestic water systems, fire and police protection services, transportation and public transit services, and other public utilities associated with rural development and normally not associated with urban areas. Rural services do not include storm or sanitary sewers, except as otherwise authorized by RCW 36.70A.110(4).

(18) "Urban governmental services" or "urban services" include those public services and public facilities at an intensity historically and typically provided in cities, specifically including storm and sanitary sewer systems, domestic water systems, street cleaning services, fire and police protection services, public transit services, and other public utilities associated with urban areas and normally not associated with rural areas.

(19) "Urban growth" refers to growth that makes intensive use of land for the location of buildings, structures, and impermeable surfaces to such a degree as to be incompatible with the primary use of land for the production of food, other agricultural products, or fiber, or the extraction of mineral resources, rural uses, rural development, and natural resource lands designated pursuant to RCW 36.70A.170. A pattern of more intensive rural development, as provided in RCW 36.70A.070(5)(d), is not urban growth. When allowed to spread over wide areas, urban growth typically requires urban governmental services. "Characterized by urban growth" refers to land having urban growth located on it, or to land located in relationship to an area with urban growth on it as to be appropriate for urban growth.

(20) "Urban growth areas" means those areas designated by a county pursuant to RCW 36.70A.110.

(21) "Wetland" or "wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas created to mitigate conversion of wetlands. [2009 c 565 § 22; 2005 c 423 § 2; 1997 c 429 § 3; 1995 c 382 § 9. Prior: 1994 c 307 § 2; 1994 c 257 § 5; 1990 1st ex.s. c 17 § 3.]

**Reviser's note:** \*(1) RCW 84.33.100 through 84.33.118 were repealed or decodified by 2001 c 249 §§ 15 and 16. RCW 84.33.120 was repealed by 2001 c 249 § 16 and by 2003 c 170 § 7.

\*\* (2) RCW 36.70A.1701 expired June 30, 2006.

(3) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).



**Intent—2005 c 423:** "The legislature recognizes the need for playing fields and supporting facilities for sports played on grass as well as the need to preserve agricultural land of long-term commercial significance. With thoughtful and deliberate planning, and adherence to the goals and requirements of the growth management act, both needs can be met.

The legislature acknowledges the state's interest in preserving the agricultural industry and family farms, and recognizes that the state's rich and productive lands enable agricultural production. Because of its unique qualities and limited quantities, designated agricultural land of long-term commercial significance is best suited for agricultural and farm uses, not recreational uses.

The legislature acknowledges also that certain local governments have either failed or neglected to properly plan for population growth and the sufficient number of playing fields and supporting facilities needed to accommodate this growth. The legislature recognizes that citizens responded to this lack of planning, fields, and supporting facilities by constructing non-conforming fields and facilities on agricultural lands of long-term commercial significance. It is the intent of the legislature to permit the continued existence and use of these fields and facilities in very limited circumstances if specific criteria are satisfied within a limited time frame. It is also the intent of the legislature to grant this authorization without diminishing the designation and preservation requirements of the growth management act pertaining to Washington's invaluable farmland." [2005 c 423 § 1.]

**Effective date—2005 c 423:** "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 12, 2005]." [2005 c 423 § 7.]

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Finding—Intent—1994 c 307:** "The legislature finds that it is in the public interest to identify and provide long-term conservation of those productive natural resource lands that are critical to and can be managed economically and practically for long-term commercial production of food, fiber, and minerals. Successful achievement of the natural resource industries' goal set forth in RCW 36.70A.020 requires the conservation of a land base sufficient in size and quality to maintain and enhance those industries and the development and use of land use techniques that discourage uses incompatible to the management of designated lands. The 1994 amendment to RCW 36.70A.030(8) (section 2(8), chapter 307, Laws of 1994) is intended to clarify legislative intent regarding the designation of forest lands and is not intended to require every county that has already complied with the interim forest land designation requirement of RCW 36.70A.170 to review its actions until the adoption of its comprehensive plans and development regulations as provided in RCW 36.70A.060(3)." [1994 c 307 § 1.]

**Effective date—1994 c 257 § 5:** "Section 5 of this act shall take effect July 1, 1994." [1994 c 257 § 25.]

**Severability—1994 c 257:** See note following RCW 36.70A.270.

### 36.70A.085 Comprehensive plans—Port elements.

(1) Comprehensive plans of cities that have a marine container port with annual operating revenues in excess of sixty million dollars within their jurisdiction must include a container port element.

(2) Comprehensive plans of cities that include all or part of a port district with annual operating revenues in excess of twenty million dollars may include a marine industrial port element. Prior to adopting a marine industrial port element under this subsection (2), the commission of the applicable port district must adopt a resolution in support of the proposed element.

(3) Port elements adopted under subsections (1) and (2) of this section must be developed collaboratively between the city and the applicable port, and must establish policies and programs that:

(a) Define and protect the core areas of port and port-related industrial uses within the city;

(b) Provide reasonably efficient access to the core area through freight corridors within the city limits; and

(c) Identify and resolve key land use conflicts along the edge of the core area, and minimize and mitigate, to the extent practicable, incompatible uses along the edge of the core area.

(4) Port elements adopted under subsections (1) and (2) of this section must be:

(a) Completed and approved by the city according to the schedule specified in RCW 36.70A.130; and

(b) Consistent with the economic development, transportation, and land use elements of the city's comprehensive plan, and consistent with the city's capital facilities plan.

(5) In adopting port elements under subsections (1) and (2) of this section, cities and ports must: Ensure that there is consistency between the port elements and the port comprehensive scheme required under chapters 53.20 and 53.25 RCW; and retain sufficient planning flexibility to secure emerging economic opportunities.

(6) In developing port elements under subsections (1) and (2) of this section, a city may utilize one or more of the following approaches:

(a) Creation of a port overlay district that protects container port uses;

(b) Use of industrial land banks;

(c) Use of buffers and transition zones between incompatible uses;

(d) Use of joint transportation funding agreements;

(e) Use of policies to encourage the retention of valuable warehouse and storage facilities;

(f) Use of limitations on the location or size, or both, of nonindustrial uses in the core area and surrounding areas; and

(g) Use of other approaches by agreement between the city and the port.

(7) The department of community, trade, and economic development must provide matching grant funds to cities meeting the requirements of subsection (1) of this section to support development of the required container port element.

(8) Any planned improvements identified in port elements adopted under subsections (1) and (2) of this section must be transmitted by the city to the transportation commission for consideration of inclusion in the statewide transportation plan required under RCW 47.01.071. [2009 c 514 § 2.]

**Findings—Intent—2009 c 514:** "(1) The legislature finds that Washington's marine container ports operate within a complex system of marine terminal operations, truck and train transportation corridors, and industrial services that together support a critical amount of our state and national economy, including key parts of our state's manufacturing and agricultural sectors, and directly create thousands of high-wage jobs throughout our region.

(2) The legislature further finds that the container port services are increasingly challenged by the conversion of industrial properties to nonindustrial uses, leading to competing and incompatible uses that can hinder port operations, restrict efficient movement of freight, and limit the opportunity for improvements to existing port-related facilities.

(3) It is the intent of the legislature to ensure that local land use decisions are made in consideration of the long-term and widespread economic contribution of our international container ports and related industrial lands and transportation systems, and to ensure that container ports continue to function effectively alongside vibrant city waterfronts." [2009 c 514 § 1.]

### 36.70A.110 Comprehensive plans—Urban growth areas.

(1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in

nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350.

(2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve. As part of this planning process, each city within the county must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. In the case of urban growth areas contained totally within a national historical reserve, the city may restrict densities, intensities, and forms of urban growth as determined to be necessary and appropriate to protect the physical, cultural, or historic integrity of the reserve. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area. Within sixty days of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall begin this consultation with each city located within its boundaries. The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services.

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either pub-

lic or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(4) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

(5) On or before October 1, 1993, each county that was initially required to plan under RCW 36.70A.040(1) shall adopt development regulations designating interim urban growth areas under this chapter. Within three years and three months of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall adopt development regulations designating interim urban growth areas under this chapter. Adoption of the interim urban growth areas may only occur after public notice; public hearing; and compliance with the state environmental policy act, chapter 43.21C RCW, and under this section. Such action may be appealed to the appropriate growth management hearings board under RCW 36.70A.280. Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.

(6) Each county shall include designations of urban growth areas in its comprehensive plan.

(7) An urban growth area designated in accordance with this section may include within its boundaries urban service areas or potential annexation areas designated for specific cities or towns within the county.

(8)(a) Except as provided in (b) of this subsection, the expansion of an urban growth area is prohibited into the one hundred year floodplain of any river or river segment that: (i) Is located west of the crest of the Cascade mountains; and (ii) has a mean annual flow of one thousand or more cubic feet per second as determined by the department of ecology.

(b) Subsection (8)(a) of this section does not apply to:

(i) Urban growth areas that are fully contained within a floodplain and lack adjacent buildable areas outside the floodplain;

(ii) Urban growth areas where expansions are precluded outside floodplains because:

(A) Urban governmental services cannot be physically provided to serve areas outside the floodplain; or

(B) Expansions outside the floodplain would require a river or estuary crossing to access the expansion; or

(iii) Urban growth area expansions where:

(A) Public facilities already exist within the floodplain and the expansion of an existing public facility is only possible on the land to be included in the urban growth area and located within the floodplain; or

(B) Urban development already exists within a floodplain as of July 26, 2009, and is adjacent to, but outside of, the urban growth area, and the expansion of the urban growth area is necessary to include such urban development within the urban growth area; or

(C) The land is owned by a jurisdiction planning under this chapter or the rights to the development of the land have been permanently extinguished, and the following criteria are met:

(I) The permissible use of the land is limited to one of the following: Outdoor recreation; environmentally beneficial projects, including but not limited to habitat enhancement or environmental restoration; storm water facilities; flood control facilities; or underground conveyances; and

(II) The development and use of such facilities or projects will not decrease flood storage, increase storm water runoff, discharge pollutants to fresh or salt waters during normal operations or floods, or increase hazards to people and property.

(c) For the purposes of this subsection (8), "one hundred year floodplain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009. [2009 c 342 § 1; 2009 c 121 § 1; 2004 c 206 § 1; 2003 c 299 § 5; 1997 c 429 § 24; 1995 c 400 § 2; 1994 c 249 § 27; 1993 sp.s. c 6 § 2; 1991 sp.s. c 32 § 29; 1990 1st ex.s. c 17 § 11.]

**Reviser's note:** This section was amended by 2009 c 121 § 1 and by 2009 c 342 § 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—1997 c 429:** See note following RCW 36.70A.3201.

**Construction—Application—1995 c 400:** See note following RCW 36.70A.070.

**Effective date—1995 c 400:** See note following RCW 36.70A.040.

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**Effective date—1993 sp.s. c 6:** See note following RCW 36.70A.040.

**36.70A.115 Comprehensive plans and development regulations must provide sufficient land capacity for development.** Counties and cities that are required or choose to plan under RCW 36.70A.040 shall ensure that, taken collectively, adoption of and amendments to their comprehensive plans and/or development regulations provide sufficient capacity of land suitable for development within their jurisdictions to accommodate their allocated housing and employment growth, including the accommodation of, as appropriate, the medical, governmental, educational, institutional, commercial, and industrial facilities related to such growth, as adopted in the applicable countywide planning policies and consistent with the twenty-year population forecast from the office of financial management. [2009 c 121 § 3; 2003 c 333 § 1.]

**36.70A.130 Comprehensive plans—Review procedures and schedules—Amendments.** (1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the time periods specified in subsection (4) of this section.

(b) Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review

and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the time periods specified in subsection (4) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.

(c) The review and evaluation required by this subsection may be combined with the review required by subsection (3) of this section. The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under RCW 36.70A.040, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the time periods specified in subsection (4) of this section or in accordance with the provisions of subsections (5) and (8) of this section. Amendments may be considered more frequently than once per year under the following circumstances:

(i) The initial adoption of a subarea plan that does not modify the comprehensive plan policies and designations applicable to the subarea;

(ii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iii) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget;

(iv) Until June 30, 2006, the designation of recreational lands under \*RCW 36.70A.1701. A county amending its comprehensive plan pursuant to this subsection (2)(a)(iv) may not do so more frequently than every eighteen months; and

(v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW 43.21C.031(2), provided that amendments are considered in accordance with the public participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public partic-

ipation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with a growth management hearings board or with the court.

(3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, at least every ten years, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.

(4) The department shall establish a schedule for counties and cities to take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter. Except as provided in subsections (5) and (8) of this section, the schedule established by the department shall provide for the reviews and evaluations to be completed as follows:

(a) On or before December 1, 2004, and every seven years thereafter, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(b) On or before December 1, 2005, and every seven years thereafter, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(c) On or before December 1, 2006, and every seven years thereafter, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before December 1, 2007, and every seven years thereafter, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(5)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the time limits established in subsection (4) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.

(b) A county that is subject to a schedule established by the department under subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the date established in the applicable schedule: The county has a population of less than fifty thousand and has had its population increase by no more than sev-

enteen percent in the ten years preceding the date established in the applicable schedule as of that date.

(c) A city that is subject to a schedule established by the department under subsection (4)(b) through (d) of this section and meets the following criteria may comply with the requirements of this section at any time within the thirty-six months following the date established in the applicable schedule: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the date established in the applicable schedule as of that date.

(d) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.

(6) A county or city subject to the time periods in subsection (4)(a) of this section that, pursuant to an ordinance adopted by the county or city establishing a schedule for periodic review of its comprehensive plan and development regulations, has conducted a review and evaluation of its comprehensive plan and development regulations and, on or after January 1, 2001, has taken action in response to that review and evaluation shall be deemed to have conducted the first review required by subsection (4)(a) of this section. Subsequent review and evaluation by the county or city of its comprehensive plan and development regulations shall be conducted in accordance with the time periods established under subsection (4)(a) of this section.

(7) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW 36.70A.040(1). Only those counties and cities: (a) Complying with the schedules in this section; (b) demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas; or (c) complying with the extension provisions of subsection (5)(b) or (c) of this section may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70.146 RCW. A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW 43.17.250.

(8) Except as provided in subsection (5)(b) and (c) of this section:

(a) Counties and cities required to satisfy the requirements of this section according to the schedule established by subsection (4)(b) through (d) of this section may comply with the requirements of this section for development regulations that protect critical areas one year after the dates established in subsection (4)(b) through (d) of this section;

(b) Counties and cities complying with the requirements of this section one year after the dates established in subsection (4)(b) through (d) of this section for development regulations that protect critical areas shall be deemed in compliance with the requirements of this section; and

(c) This subsection (8) applies only to the counties and cities specified in subsection (4)(b) through (d) of this section, and only to the requirements of this section for develop-

ment regulations that protect critical areas that must be satisfied by December 1, 2005, December 1, 2006, and December 1, 2007.

(9) Notwithstanding subsection (8) of this section and the substantial progress provisions of subsections (7) and (10) of this section, only those counties and cities complying with the schedule in subsection (4) of this section, or the extension provisions of subsection (5)(b) or (c) of this section, may receive preferences for grants, loans, pledges, or financial guarantees under chapter 43.155 or 70.146 RCW.

(10) Until December 1, 2005, and notwithstanding subsection (7) of this section, a county or city subject to the time periods in subsection (4)(a) of this section demonstrating substantial progress towards compliance with the schedules in this section for its comprehensive land use plan and development regulations may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70.146 RCW. A county or city that is fewer than twelve months out of compliance with the schedules in this section for its comprehensive land use plan and development regulations is deemed to be making substantial progress towards compliance. [2009 c 479 § 23; 2006 c 285 § 2. Prior: 2005 c 423 § 6; 2005 c 294 § 2; 2002 c 320 § 1; 1997 c 429 § 10; 1995 c 347 § 106; 1990 1st ex.s. c 17 § 13.]

\*Reviser's note: RCW 36.70A.1701 expired June 30, 2006.

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Intent—2006 c 285:** "There is a statewide interest in maintaining coordinated planning as called for in the legislative findings of the growth management act, RCW 36.70A.010. It is the intent of the legislature that smaller, slower-growing counties and cities be provided with flexibility in meeting the requirements to review local plans and development regulations in RCW 36.70A.130, while ensuring coordination and consistency with the plans of neighboring cities and counties." [2006 c 285 § 1.]

**Intent—Effective date—2005 c 423:** See notes following RCW 36.70A.030.

**Intent—2005 c 294:** "The legislature recognizes the importance of appropriate and meaningful land use measures and that such measures are critical to preserving and fostering the quality of life enjoyed by Washingtonians. The legislature recognizes also that the growth management act requires counties and cities to review and, if needed, revise their comprehensive plans and development regulations on a cyclical basis. These requirements, which often require significant compliance efforts by local governments are, in part, an acknowledgment of the continual changes that occur within the state, and the need to ensure that land use measures reflect the collective wishes of its citizenry.

The legislature acknowledges that only those jurisdictions in compliance with the review and revision schedules of the growth management act are eligible to receive funds from the public works assistance and water quality accounts in the state treasury. The legislature further recognizes that some jurisdictions that are not yet in compliance with these review and revision schedules have demonstrated substantial progress towards compliance.

The legislature, therefore, intends to grant jurisdictions that are not in compliance with requirements for development regulations that protect critical areas, but are demonstrating substantial progress towards compliance with these requirements, twelve months of additional eligibility to receive grants, loans, pledges, or financial guarantees from the public works assistance and water quality accounts in the state treasury. The legislature intends to specify, however, that only counties and cities in compliance with the review and revision schedules of the growth management act may receive preference for financial assistance from these accounts." [2005 c 294 § 1.]

**Effective date—2005 c 294:** "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, 2005]." [2005 c 294 § 3.]

**Prospective application—1997 c 429 §§ 1-21:** See note following RCW 36.70A.3201.

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

*RCW 36.70A.130(2) does not apply to master planned locations in industrial land banks: RCW 36.70A.367(2)(c).*

**36.70A.210 County-wide planning policies.** (1) The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental services within urban growth areas. For the purposes of this section, a "county-wide planning policy" is a written policy statement or statements used solely for establishing a county-wide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100. Nothing in this section shall be construed to alter the land-use powers of cities.

(2) The legislative authority of a county that plans under RCW 36.70A.040 shall adopt a county-wide planning policy in cooperation with the cities located in whole or in part within the county as follows:

(a) No later than sixty calendar days from July 16, 1991, the legislative authority of each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040 shall convene a meeting with representatives of each city located within the county for the purpose of establishing a collaborative process that will provide a framework for the adoption of a county-wide planning policy. In other counties that are required or choose to plan under RCW 36.70A.040, this meeting shall be convened no later than sixty days after the date the county adopts its resolution of intention or was certified by the office of financial management.

(b) The process and framework for adoption of a county-wide planning policy specified in (a) of this subsection shall determine the manner in which the county and the cities agree to all procedures and provisions including but not limited to desired planning policies, deadlines, ratification of final agreements and demonstration thereof, and financing, if any, of all activities associated therewith.

(c) If a county fails for any reason to convene a meeting with representatives of cities as required in (a) of this subsection, the governor may immediately impose any appropriate sanction or sanctions on the county from those specified under RCW 36.70A.340.

(d) If there is no agreement by October 1, 1991, in a county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or if there is no agreement within one hundred twenty days of the date the county adopted its resolution of intention or was certified by the office of financial management in any other county that is required or chooses to plan under RCW 36.70A.040, the governor shall first inquire of the jurisdictions as to the reason or reasons for failure to reach an agreement. If the governor deems it appropriate, the governor may immediately request the assistance of the department of community, trade, and economic development to mediate any disputes that preclude agreement. If mediation is unsuccessful in resolving all disputes that will lead to agreement, the governor may impose appropriate sanctions from those specified under RCW 36.70A.340 on the county, city, or cities for failure to reach an agreement as provided in this section. The governor shall

specify the reason or reasons for the imposition of any sanction.

(e) No later than July 1, 1992, the legislative authority of each county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or no later than fourteen months after the date the county adopted its resolution of intention or was certified by the office of financial management the county legislative authority of any other county that is required or chooses to plan under RCW 36.70A.040, shall adopt a county-wide planning policy according to the process provided under this section and that is consistent with the agreement pursuant to (b) of this subsection, and after holding a public hearing or hearings on the proposed county-wide planning policy.

(3) A county-wide planning policy shall at a minimum, address the following:

(a) Policies to implement RCW 36.70A.110;

(b) Policies for promotion of contiguous and orderly development and provision of urban services to such development;

(c) Policies for siting public capital facilities of a county-wide or statewide nature, including transportation facilities of statewide significance as defined in RCW 47.06.140;

(d) Policies for county-wide transportation facilities and strategies;

(e) Policies that consider the need for affordable housing, such as housing for all economic segments of the population and parameters for its distribution;

(f) Policies for joint county and city planning within urban growth areas;

(g) Policies for county-wide economic development and employment, which must include consideration of the future development of commercial and industrial facilities; and

(h) An analysis of the fiscal impact.

(4) Federal agencies and Indian tribes may participate in and cooperate with the county-wide planning policy adoption process. Adopted county-wide planning policies shall be adhered to by state agencies.

(5) Failure to adopt a county-wide planning policy that meets the requirements of this section may result in the imposition of a sanction or sanctions on a county or city within the county, as specified in RCW 36.70A.340. In imposing a sanction or sanctions, the governor shall specify the reasons for failure to adopt a county-wide planning policy in order that any imposed sanction or sanctions are fairly and equitably related to the failure to adopt a county-wide planning policy.

(6) Cities and the governor may appeal an adopted county-wide planning policy to the growth management hearings board within sixty days of the adoption of the county-wide planning policy.

(7) Multicounty planning policies shall be adopted by two or more counties, each with a population of four hundred fifty thousand or more, with contiguous urban areas and may be adopted by other counties, according to the process established under this section or other processes agreed to among the counties and cities within the affected counties throughout the multicounty region. [2009 c 121 § 2; 1998 c 171 § 4; 1994 c 249 § 28; 1993 sp.s. c 6 § 4; 1991 sp.s. c 32 § 2.]

**Severability—Application—1994 c 249:** See notes following RCW 34.05.310.

**Effective date—1993 sp.s. c 6:** See note following RCW 36.70A.040.

**36.70A.540 Affordable housing incentive programs—Low-income housing units.** (1)(a) Any city or county planning under RCW 36.70A.040 may enact or expand affordable housing incentive programs providing for the development of low-income housing units through development regulations or conditions on rezoning or permit decisions, or both, on one or more of the following types of development: Residential; commercial; industrial; or mixed-use. An affordable housing incentive program may include, but is not limited to, one or more of the following:

(i) Density bonuses within the urban growth area;

(ii) Height and bulk bonuses;

(iii) Fee waivers or exemptions;

(iv) Parking reductions; or

(v) Expedited permitting.

(b) The city or county may enact or expand such programs whether or not the programs may impose a tax, fee, or charge on the development or construction of property.

(c) If a developer chooses not to participate in an optional affordable housing incentive program adopted and authorized under this section, a city, county, or town may not condition, deny, or delay the issuance of a permit or development approval that is consistent with zoning and development standards on the subject property absent incentive provisions of this program.

(2) Affordable housing incentive programs enacted or expanded under this section shall comply with the following:

(a) The incentives or bonuses shall provide for the development of low-income housing units;

(b) Jurisdictions shall establish standards for low-income renter or owner occupancy housing, including income guidelines consistent with local housing needs, to assist low-income households that cannot afford market-rate housing. Low-income households are defined for renter and owner occupancy program purposes as follows:

(i) Rental housing units to be developed shall be affordable to and occupied by households with an income of fifty percent or less of the county median family income, adjusted for family size;

(ii) Owner occupancy housing units shall be affordable to and occupied by households with an income of eighty percent or less of the county median family income, adjusted for family size. The legislative authority of a jurisdiction, after holding a public hearing, may establish lower income levels; and

(iii) The legislative authority of a jurisdiction, after holding a public hearing, may also establish higher income levels for rental housing or for owner occupancy housing upon finding that higher income levels are needed to address local housing market conditions. The higher income level for rental housing may not exceed eighty percent of the county area median family income. The higher income level for owner occupancy housing may not exceed one hundred percent of the county area median family income. These established higher income levels are considered "low-income" for the purposes of this section;

(c) The jurisdiction shall establish a maximum rent level or sales price for each low-income housing unit developed under the terms of a program and may adjust these levels or

prices based on the average size of the household expected to occupy the unit. For renter-occupied housing units, the total housing costs, including basic utilities as determined by the jurisdiction, may not exceed thirty percent of the income limit for the low-income housing unit;

(d) Where a developer is utilizing a housing incentive program authorized under this section to develop market rate housing, and is developing low-income housing to satisfy the requirements of the housing incentive program, the low-income housing units shall be provided in a range of sizes comparable to those units that are available to other residents. To the extent practicable, the number of bedrooms in low-income units must be in the same proportion as the number of bedrooms in units within the entire development. The low-income units shall generally be distributed throughout the development and have substantially the same functionality as the other units in the development;

(e) Low-income housing units developed under an affordable housing incentive program shall be committed to continuing affordability for at least fifty years. A local government, however, may accept payments in lieu of continuing affordability. The program shall include measures to enforce continuing affordability and income standards applicable to low-income units constructed under this section that may include, but are not limited to, covenants, options, or other agreements to be executed and recorded by owners and developers;

(f) Programs authorized under subsection (1) of this section may apply to part or all of a jurisdiction and different standards may be applied to different areas within a jurisdiction or to different types of development. Programs authorized under this section may be modified to meet local needs and may include provisions not expressly provided in this section or RCW 82.02.020;

(g) Low-income housing units developed under an affordable housing incentive program are encouraged to be provided within developments for which a bonus or incentive is provided. However, programs may allow units to be provided in a building located in the general area of the development for which a bonus or incentive is provided; and

(h) Affordable housing incentive programs may allow a payment of money or property in lieu of low-income housing units if the jurisdiction determines that the payment achieves a result equal to or better than providing the affordable housing on-site, as long as the payment does not exceed the approximate cost of developing the same number and quality of housing units that would otherwise be developed. Any city or county shall use these funds or property to support the development of low-income housing, including support provided through loans or grants to public or private owners or developers of housing.

(3) Affordable housing incentive programs enacted or expanded under this section may be applied within the jurisdiction to address the need for increased residential development, consistent with local growth management and housing policies, as follows:

(a) The jurisdiction shall identify certain land use designations within a geographic area where increased residential development will assist in achieving local growth management and housing policies;

(b) The jurisdiction shall provide increased residential development capacity through zoning changes, bonus densities, height and bulk increases, parking reductions, or other regulatory changes or other incentives;

(c) The jurisdiction shall determine that increased residential development capacity or other incentives can be achieved within the identified area, subject to consideration of other regulatory controls on development; and

(d) The jurisdiction may establish a minimum amount of affordable housing that must be provided by all residential developments being built under the revised regulations, consistent with the requirements of this section. [2009 c 80 § 1; 2006 c 149 § 2.]

**Findings—2006 c 149:** "The legislature finds that as new market-rate housing developments are constructed and housing costs rise, there is a significant and growing number of low-income households that cannot afford market-rate housing in Washington state. The legislature finds that assistance to low-income households that cannot afford market-rate housing requires a broad variety of tools to address this serious, statewide problem. The legislature further finds that absent any incentives to provide low-income housing, market conditions will result in housing developments in many areas that lack units affordable to low-income households, circumstances that can cause adverse socioeconomic effects.

The legislature encourages cities, towns, and counties to enact or expand affordable housing incentive programs, including density bonuses and other incentives, to increase the availability of low-income housing for renter and owner occupancy that is located in largely market-rate housing developments throughout the community, consistent with local needs and adopted comprehensive plans. While this act establishes minimum standards for those cities, towns, and counties choosing to implement or expand upon an affordable housing incentive program, cities, towns, and counties are encouraged to enact programs that address local circumstances and conditions while simultaneously contributing to the statewide need for additional low-income housing." [2006 c 149 § 1.]

**Construction—2006 c 149:** "The powers granted in this act are supplemental and additional to the powers otherwise held by local governments, and nothing in this act shall be construed as a limit on such powers. The authority granted in this act shall extend to any affordable housing incentive program enacted or expanded prior to June 7, 2006, if the extension is adopted by the applicable local government in an ordinance or resolution." [2006 c 149 § 4.]

**36.70A.695 Development regulations—Jurisdictions specified—Electric vehicle infrastructure.** (1) By July 1, 2010, the development regulations of any jurisdiction:

(a) Adjacent to Interstate 5, Interstate 90, Interstate 405, or state route number 520, with a population over twenty thousand, and located in a county with a population over one million five hundred thousand; or

(b) Adjacent to Interstate 5 and located in a county with a population greater than six hundred thousand; or

(c) Adjacent to Interstate 5 and located in a county with a state capitol within its borders;

planning under this chapter must allow electric vehicle infrastructure as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(2) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction adjacent to Interstate 5, Interstate 90, Interstate 405, or state route number 520 planning under this chapter must allow electric vehicle infrastructure as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction

may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(3) By July 1, 2011, or six months after the distribution required under RCW 43.31.970 occurs, whichever is later, the development regulations of any jurisdiction planning under this chapter must allow battery charging stations as a use in all areas except those zoned for residential or resource use or critical areas. A jurisdiction may adopt and apply other development regulations that do not have the effect of precluding the siting of electric vehicle infrastructure in areas where that use is allowed.

(4) Cities are authorized to adopt incentive programs to encourage the retrofitting of existing structures with the electrical outlets capable of charging electric vehicles. Incentives may include bonus height, site coverage, floor area ratio, and transferable development rights for use in urban growth areas.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support an electric vehicle, including battery charging stations, rapid charging stations, and battery exchange stations.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(6) If federal funding for public investment in electric vehicles, electric vehicle infrastructure, or alternative fuel distribution infrastructure is not provided by February 1, 2010, subsection (1) of this section is null and void. [2009 c 459 § 12.]

**Finding—Purpose—2009 c 459:** See note following RCW 47.80.090.

*Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.*

## Chapter 36.70C RCW

### JUDICIAL REVIEW OF LAND USE DECISIONS

#### Sections

- 36.70C.020 Definitions.  
36.70C.130 Standards for granting relief—Renewable resource projects within energy overlay zones.

**36.70C.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Energy overlay zone" means a formal plan enacted by the county legislative authority that establishes suitable areas for siting renewable resource projects based on currently available resources and existing infrastructure with sensitivity to adverse environmental impact.

(2) "Land use decision" means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination, including those with authority to hear appeals, on:

(a) An application for a project permit or other governmental approval required by law before real property may be improved, developed, modified, sold, transferred, or used, but excluding applications for permits or approvals to use, vacate, or transfer streets, parks, and similar types of public property; excluding applications for legislative approvals such as area-wide rezones and annexations; and excluding applications for business licenses;

(b) An interpretative or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of real property; and

(c) The enforcement by a local jurisdiction of ordinances regulating the improvement, development, modification, maintenance, or use of real property. However, when a local jurisdiction is required by law to enforce the ordinances in a court of limited jurisdiction, a petition may not be brought under this chapter.

(3) "Local jurisdiction" means a county, city, or incorporated town.

(4) "Person" means an individual, partnership, corporation, association, public or private organization, or governmental entity or agency.

(5) "Renewable resources" has the same meaning provided in RCW 19.280.020. [2009 c 419 § 1; 1995 c 347 § 703.]

### 36.70C.130 Standards for granting relief—Renewable resource projects within energy overlay zones.

(1) The superior court, acting without a jury, shall review the record and such supplemental evidence as is permitted under RCW 36.70C.120. The court may grant relief only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met. The standards are:

(a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts;

(e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or



(f) The land use decision violates the constitutional rights of the party seeking relief.

(2) In order to grant relief under this chapter, it is not necessary for the court to find that the local jurisdiction engaged in arbitrary and capricious conduct. A grant of relief by itself may not be deemed to establish liability for monetary damages or compensation.

(3) Land use decisions made by a local jurisdiction concerning renewable resource projects within a county energy overlay zone are presumed to be reasonable if they are in compliance with the requirements and standards established by local ordinance for that zone. However, for land use decisions concerning wind power generation projects, either:

(a) The local ordinance for that zone is consistent with the department of fish and wildlife's wind power guidelines; or

(b) The local jurisdiction prepared an environmental impact statement under chapter 43.21C RCW on the energy overlay zone; and

(i) The local ordinance for that zone requires project mitigation, as addressed in the environmental impact statement and consistent with local, state, and federal law;

(ii) The local ordinance for that zone requires site specific fish and wildlife and cultural resources analysis; and

(iii) The local jurisdiction has adopted an ordinance that addresses critical areas under chapter 36.70A RCW.

(4) If a local jurisdiction has taken action and adopted local ordinances consistent with subsection (3)(b) of this section, then wind power generation projects permitted consistently with the energy overlay zone are deemed to have adequately addressed their environmental impacts as required under chapter 43.21C RCW. [2009 c 419 § 2; 1995 c 347 § 714.]

## Chapter 36.71 RCW

### PEDDLERS' AND HAWKERS' LICENSES

#### Sections

36.71.020	Peddler's license—Application for and issuance of license.
36.71.040	Peddler's license—Cancellation of license.
36.71.050	Peddler's license—Liability of deposit—Lien on.
36.71.070	Hawkers, auctioneers, and barterers must procure license—Exceptions.

**36.71.020 Peddler's license—Application for and issuance of license.** Every peddler, before commencing business in any county of the state, shall apply in writing and under oath to the appropriate county official of the county in which he or she proposes to operate for a county license. The application must state the names and residences of the owners or parties in whose interest the business is to be conducted. The applicant at the same time shall file a true statement under oath of the quantity and value of the stock of goods, wares, and merchandise that is in the county for sale or to be kept or exposed for sale in the county, make a special deposit of five hundred dollars, and pay the county license fee as may be fixed under the authority of RCW 36.32.120(3).

The appropriate county official shall thereupon issue to the applicant a peddler's license, authorizing him or her to do business in the county for the term of one year from the date

thereof. Every county license shall contain a copy of the application therefor, shall not be transferable, and shall not authorize more than one person to sell goods as a peddler, either by agent or clerk, or in any other way than his or her own proper person. [2009 c 549 § 4121; 1985 c 91 § 3; 1963 c 4 § 36.71.020. Prior: 1927 c 89 § 1; 1909 c 214 § 3; RRS § 8355.]

#### **36.71.040 Peddler's license—Cancellation of license.**

Upon the expiration and return of a county license, the appropriate county official shall cancel it, indorse thereon the cancellation, and place it on file. After holding the special deposit of the licensee for a period of ninety days from the date of cancellation, he or she shall return the deposit or such portion as may remain in his or her hands after satisfying the claims made against it. [2009 c 549 § 4122; 1985 c 91 § 5; 1963 c 4 § 36.71.040. Prior: 1909 c 214 § 5; RRS § 8357.]

#### **36.71.050 Peddler's license—Liability of deposit—**

**Lien on.** Each deposit made with the county shall be subject to all taxes legally chargeable thereto, to attachment and execution on behalf of the creditors of the licensee whose claims arise in connection with the business done under his or her license, and the county may be held to answer as trustee in any civil action in contract or tort brought against any licensee, and shall pay over, under order of the court or upon execution, such amount of money as the licensee may be chargeable with upon the final determination of the case. Such deposit shall also be subject to the payment of any and all fines and penalties incurred by the licensee through violations of the provisions of RCW 36.71.010, 36.71.020, 36.71.030, 36.71.040 and 36.71.060, which shall be a lien upon the deposit and shall be collected in the manner provided by law. [2009 c 549 § 4123; 1985 c 91 § 6; 1963 c 4 § 36.71.050. Prior: 1909 c 214 § 6; RRS § 8358.]

#### **36.71.070 Hawkets, auctioneers, and barterers must procure license—Exceptions.**

(1) If any person sells any goods, wares, or merchandise, at auction or public outcry, or barter goods, wares or merchandise from traveling boats, wagons, carts or vehicles of any kind, or from any pack, basket or other package carried on foot without first having obtained a license therefor from the board of county commissioners of the county in which such goods are sold or bartered, he or she shall be guilty of a misdemeanor, and upon conviction shall be fined not less than five nor more than fifty dollars, and shall stand committed to the county jail of the county in which the conviction is had until such fine and cost of prosecution are paid, or discharged by due course of law: PROVIDED, That this section shall not be construed as to apply to any seagoing craft or to administrators or executors selling property of deceased persons, or to private individuals selling their household property, or furniture, or farming tools, implements, or livestock, or any produce grown or raised by them, either at public auction or private sale.

(2) Notwithstanding subsection (1) of this section, counties shall not license auctioneers that are licensed by the state under chapter 18.11 RCW. [2009 c 549 § 4124; 1984 c 189 § 6; 1963 c 4 § 36.71.070. Prior: 1879 p 130 § 1; 1873 p 437 § 1; RRS § 8341.]

## Chapter 36.73 RCW

## TRANSPORTATION BENEFIT DISTRICTS

## Sections

36.73.020 Establishment of district by county or city—Participation by other jurisdictions.

**36.73.020 Establishment of district by county or city—Participation by other jurisdictions.** (1) The legislative authority of a county or city may establish a transportation benefit district within the county or city area or within the area specified in subsection (2) of this section, for the purpose of acquiring, constructing, improving, providing, and funding a transportation improvement within the district that is consistent with any existing state, regional, and local transportation plans and necessitated by existing or reasonably foreseeable congestion levels. The transportation improvements shall be owned by the county of jurisdiction if located in an unincorporated area, by the city of jurisdiction if located in an incorporated area, or by the state in cases where the transportation improvement is or becomes a state highway. However, if deemed appropriate by the governing body of the transportation benefit district, a transportation improvement may be owned by a participating port district or transit district, unless otherwise prohibited by law. Transportation improvements shall be administered and maintained as other public streets, roads, highways, and transportation improvements. To the extent practicable, the district shall consider the following criteria when selecting transportation improvements:

- (a) Reduced risk of transportation facility failure and improved safety;
- (b) Improved travel time;
- (c) Improved air quality;
- (d) Increases in daily and peak period trip capacity;
- (e) Improved modal connectivity;
- (f) Improved freight mobility;
- (g) Cost-effectiveness of the investment;
- (h) Optimal performance of the system through time;
- (i) Improved accessibility for, or other benefits to, persons with special transportation needs as defined in RCW 47.06B.012; and
- (j) Other criteria, as adopted by the governing body.

(2) Subject to subsection (6) of this section, the district may include area within more than one county, city, port district, county transportation authority, or public transportation benefit area, if the legislative authority of each participating jurisdiction has agreed to the inclusion as provided in an interlocal agreement adopted pursuant to chapter 39.34 RCW. However, the boundaries of the district need not include all territory within the boundaries of the participating jurisdictions comprising the district.

(3) The members of the legislative authority proposing to establish the district, acting ex officio and independently, shall constitute the governing body of the district: PROVIDED, That where a district includes area within more than one jurisdiction under subsection (2) of this section, the district shall be governed under an interlocal agreement adopted pursuant to chapter 39.34 RCW. However, the governing body shall be composed of at least five members including at

least one elected official from the legislative authority of each participating jurisdiction.

(4) The treasurer of the jurisdiction proposing to establish the district shall act as the ex officio treasurer of the district, unless an interlocal agreement states otherwise.

(5) The electors of the district shall all be registered voters residing within the district.

(6) Prior to December 1, 2007, the authority under this section, regarding the establishment of or the participation in a district, shall not apply to:

(a) Counties with a population greater than one million five hundred thousand persons and any adjoining counties with a population greater than five hundred thousand persons;

(b) Cities with any area within the counties under (a) of this subsection; and

(c) Other jurisdictions with any area within the counties under (a) of this subsection. [2009 c 515 § 14; 2006 c 311 § 25; 2005 c 336 § 3; 1989 c 53 § 1; 1987 c 327 § 2.]

**Findings—2006 c 311:** See note following RCW 36.120.020.

**Effective date—2005 c 336:** See note following RCW 36.73.015.

**Severability—1989 c 53:** "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 53 § 5.]

*Transportation benefit district tax authority: RCW 82.47.020.*

## Chapter 36.76 RCW

## ROADS AND BRIDGES—BONDS

## Sections

36.76.120 Payment of principal and interest.

**36.76.120 Payment of principal and interest.** The county legislative authority must ascertain and levy annually a tax sufficient to pay the interest on all such bonds whenever it becomes due and to meet the annual maturities of principal. The county treasurer must pay out of any money accumulated from the taxes levied to pay the interest as aforesaid, the interest upon all such bonds when it becomes due as provided on the bond or, if coupons are attached to a bond, upon presentation at the place of payment of the proper coupon. Any interest payments or coupons so paid must be reported to the county legislative authority at its first meeting thereafter. Whenever interest is payable at any place other than the city in which the county treasurer keeps his or her office, the county treasurer shall seasonably remit to the state fiscal agent the amount of money required for the payment of any interest which is about to fall due. When any such bonds or any interest is paid, the county treasurer shall suitably and indelibly cancel them. [2009 c 549 § 4125; 1984 c 186 § 33; 1983 c 167 § 92; 1963 c 4 § 36.76.120. Prior: 1913 c 25 § 3; RRS § 5594.]

**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.

## Chapter 36.77 RCW

## ROADS AND BRIDGES—CONSTRUCTION

## Sections

- 36.77.065 County forces construction projects or programs—Amounts—Violations.  
 36.77.070 Publication of information on county forces projects—Penalty—Prosecution.

**36.77.065 County forces construction projects or programs—Amounts—Violations.** The board may cause any county road to be constructed or improved by use of county forces as provided in this section.

(1) As used in this section:

(a) "County forces" means regular employees of a county; and

(b) "Road construction project costs" means the aggregate total of those costs as defined by the budgeting, accounting, and reporting system for counties and cities and other local governments authorized under RCW 43.09.200 and 43.09.230 as prescribed in the state auditor's budget, accounting, and reporting manual's (BARS) road and street construction accounts: PROVIDED, That such costs shall not include those costs assigned to the right-of-way account, ancillary operations account, preliminary engineering account, and construction engineering account in the budget, accounting, and reporting manual.

(2) For counties with a population that equals or exceeds four hundred thousand people, the total amount of road construction project costs one county may perform annually with county forces shall be no more than the total of the following amounts:

(a) Three million two hundred fifty thousand dollars; and

(b) The previous year's county motor vehicle fuel tax distribution factor, as provided for in RCW 46.68.124(5), multiplied by the amount listed in (a) of this subsection.

(3) For counties with a population that equals or exceeds one hundred fifty thousand, but is less than four hundred thousand people, the total amount of road construction project costs one county may perform annually with county forces shall be no more than the total of the following amounts:

(a) One million seven hundred fifty thousand dollars; and

(b) The previous year's county motor vehicle fuel tax distribution factor, as provided for in RCW 46.68.124(5), multiplied by the amount listed in (a) of this subsection.

(4) For counties with a population that equals or exceeds thirty thousand, but is less than one hundred fifty thousand people, the total amount of road construction project costs one county may perform annually with county forces shall be no more than the total of the following amounts:

(a) One million one hundred fifty thousand dollars; this amount shall increase to one million two hundred fifty thousand dollars effective January 1, 2012; and

(b) The previous year's county motor vehicle fuel tax distribution factor, as provided for in RCW 46.68.124(5), multiplied by the amount listed in (a) of this subsection.

(5) For counties with a population that is less than thirty thousand people, the total amount of road construction project costs one county may perform annually with county

forces shall be no more than the total of the following amounts:

(a) Seven hundred thousand dollars; this amount shall increase to eight hundred thousand dollars effective January 1, 2012; and

(b) The previous year's county motor vehicle fuel tax distribution factor, as provided for in RCW 46.68.124(5), multiplied by the amount listed in (a) of this subsection.

(6) Any county whose expenditure for county forces for road construction projects exceeds the limits specified in this section, is in violation of the county road administration board's standards of good practice under RCW 36.78.020 and is in violation of this section.

(7) Notwithstanding any other provision in this section, whenever the construction work or improvement is the installation of electrical traffic control devices, highway illumination equipment, electrical equipment, wires, or equipment to convey electrical current, in an amount exceeding ten thousand dollars for any one project including labor, equipment, and materials, such work shall be performed by contract as in this chapter provided. This section means a complete project and does not permit the construction of any project by county forces by division of the project into units of work or classes of work. [2009 c 29 § 1; 2005 c 162 § 1; 2001 c 108 § 1; 1980 c 40 § 1.]

**Effective date—1980 c 40:** "This act shall take effect on January 1, 1981." [1980 c 40 § 3.]

**36.77.070 Publication of information on county forces projects—Penalty—Prosecution.** If the board determines that any construction should be performed by county forces, and the estimated cost of the work exceeds ten thousand dollars, it shall cause to be published in one issue of a newspaper of general circulation in the county, a brief description of the work to be done and the county road engineer's estimate of the cost thereof. At the completion of such construction, the board shall cause to be published in one issue of such a newspaper a similar brief description of the work together with an accurate statement of the true and complete cost of performing such construction by county forces.

Failure to make the required publication shall subject each county commissioner to a fine of one hundred dollars for which he or she shall be liable individually and upon his or her official bond and the prosecuting attorney shall prosecute for violation of the provisions of this section and RCW 36.77.065. [2009 c 549 § 4126; 2009 c 29 § 2; 1983 c 3 § 81; 1963 c 4 § 36.77.070. Prior: 1949 c 156 § 9, part; 1943 c 82 § 4, part; 1937 c 187 § 34, part; Rem. Supp. 1949 § 6450-34, part.]

**Reviser's note:** This section was amended by 2009 c 29 § 2 and by 2009 c 549 § 4126, 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).

## Chapter 36.78 RCW

ROADS AND BRIDGES—  
COUNTY ROAD ADMINISTRATION BOARD

## Sections

- 36.78.090 Certificates of good practice—Withholding of motor vehicle tax distribution.

36.78.110 Expenses to be paid from motor vehicle fund—Disbursement procedure.

**36.78.090 Certificates of good practice—Withholding of motor vehicle tax distribution.** (1) Before May 1st of each year the board shall transmit to the state treasurer certificates of good practice on behalf of the counties which during the preceding calendar year:

(a) Have submitted to the state department of transportation or to the board all reports required by law or regulation of the board; and

(b) Have reasonably complied with provisions of law relating to county road administration and with the standards of good practice as formulated and adopted by the board.

(2) The board shall not transmit to the state treasurer a certificate of good practice on behalf of any county failing to meet the requirements of subsection (1) of this section, but the board shall in such case and before May 1st, notify the county and the state treasurer of its reasons for withholding the certificate.

(3) The state treasurer, upon receiving a notice that a certificate of good practice will not be issued on behalf of a county, or that a previously issued certificate of good practice has been revoked, shall, effective the first day of the month after that in which notice is received, withhold from such county its share of motor vehicle fuel taxes distributable pursuant to RCW 46.68.120 until the board thereafter issues on behalf of such county a certificate of good practice or a conditional certificate. After withholding or revoking a certificate of good practice with respect to any county, the board may thereafter at any time issue such a certificate or a conditional certificate when the board is satisfied that the county has complied or is diligently attempting to comply with the requirements of subsection (1) of this section.

(4) The board may, upon notice and a hearing, revoke a previously issued certificate of good practice or substitute a conditional certificate therefor when, after issuance of a certificate of good practice, any county fails to meet the requirements of subsection (1) (a) and (b) of this section, but the board shall in such case notify the county and the state treasurer of its reasons for the revocation or substitution.

(5) Motor vehicle fuel taxes withheld from any county pursuant to this section shall not be distributed to any other county, but shall be retained in the motor vehicle fund to the credit of the county originally entitled thereto. Whenever the state treasurer receives from the board a certificate of good practice issued on behalf of such county he or she shall distribute to such county all of the funds theretofore retained in the motor vehicle fund to the credit of such county. [2009 c 549 § 4127; 1984 c 7 § 33; 1977 ex.s. c 257 § 1; 1965 ex.s. c 120 § 9.]

**Severability—1984 c 7:** See note following RCW 47.01.141.

**36.78.110 Expenses to be paid from motor vehicle fund—Disbursement procedure.** All expenses incurred by the board including salaries of employees shall be paid upon voucher forms provided by the office of financial management or pursuant to a regular payroll signed by the chair and the executive director of the board. All expenses of the board shall be paid out of that portion of the motor vehicle fund allocated to the counties and withheld for use by the depart-

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ment of transportation and the county road administration board under the provisions of RCW 46.68.120(1), as now or hereafter amended. [2009 c 549 § 4128; 1990 c 266 § 3; 1979 c 151 § 42; 1965 ex.s. c 120 § 11.]

### Chapter 36.79 RCW

#### ROADS AND BRIDGES— RURAL ARTERIAL PROGRAM

##### Sections

- 36.79.160 Payment of rural arterial trust account funds.  
36.79.170 County may appeal decision of board—Hearing.

**36.79.160 Payment of rural arterial trust account funds.** (1) Upon completion of a preliminary proposal, the county submitting the proposal shall submit to the board its voucher for payment of the trust account share of the cost. Upon the completion of an approved rural arterial construction project, the county constructing the project shall submit to the board its voucher for the payment of the trust account share of the cost. The chair of the board or his or her designated agent shall approve such voucher when proper to do so, for payment from the rural arterial trust account to the county submitting the voucher.

(2) The board may adopt rules providing for the approval of payments of funds in the rural arterial trust account to a county for costs of preliminary proposal, and costs of construction of an approved project from time to time as work progresses. These payments shall at no time exceed the rural arterial trust account share of the costs of construction incurred to the date of the voucher covering the payment. [2009 c 549 § 4129; 1983 1st ex.s. c 49 § 17.]

**36.79.170 County may appeal decision of board—Hearing.** The legislative body of any county feeling aggrieved by any action or decision of the board with respect to this chapter may appeal to the secretary of transportation by filing a notice of appeal within ninety days after the action or decision of the board. The notice shall specify the action or decision of which complaint is made. The secretary shall fix a time for a hearing on the appeal at the earliest convenient time and shall notify the county auditor and the chair of the board by certified mail at least twenty days before the date of the hearing. At the hearing the secretary shall receive evidence from the county filing the appeal and from the board. After the hearing the secretary shall make such order as in the secretary's judgment is just and proper. [2009 c 549 § 4130; 1983 1st ex.s. c 49 § 18.]

### Chapter 36.80 RCW

#### ROADS AND BRIDGES—ENGINEER

##### Sections

- 36.80.015 Office at county seat.  
36.80.020 Qualifications—Bond.  
36.80.030 Duties of engineer.  
36.80.050 Highway plat book.  
36.80.060 Engineer to maintain records of expenditures for equipment, etc.—Inventory.

**36.80.015 Office at county seat.** The county road engineer shall keep an office at the county seat in such room or rooms as are provided by the county, and he or she shall be furnished with all necessary cases and other suitable articles, and also with all blank books and blanks necessary to the proper discharge of his or her official duties. The records and books in the county road engineer's office shall be public records, and shall at all proper times be open to the inspection and examination of the public. [2009 c 105 § 5; 1963 c 4 § 36.80.015. Prior: 1955 c 9 § 1; prior: 1895 c 77 § 10; RRS § 4148.]

**36.80.020 Qualifications—Bond.** He or she shall be a registered and licensed professional civil engineer under the laws of this state, duly qualified and experienced in highway and road engineering and construction. He or she shall serve at the pleasure of the board.

Before entering upon his or her employment, every county road engineer shall give an official bond to the county in such amount as the board shall determine, conditioned upon the fact that he or she will faithfully perform all the duties of his or her employment and account for all property of the county entrusted to his or her care. [2009 c 549 § 4132; 1969 ex.s. c 182 § 7; 1963 c 4 § 36.80.020. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4, part.]

**36.80.030 Duties of engineer.** The county road engineer shall examine and certify to the board all estimates and all bills for labor, materials, provisions, and supplies with respect to county roads, prepare standards of construction of roads and bridges, and perform such other duties as may be required by order of the board.

He or she shall have supervision, under the direction of the board, of establishing, laying out, constructing, altering, improving, repairing, and maintaining all county roads of the county. [2009 c 549 § 4133; 1969 ex.s. c 182 § 8; 1963 c 4 § 36.80.030. Prior: 1943 c 73 § 1, part; 1937 c 187 § 4, part; Rem. Supp. 1943 § 6450-4, part.]

**36.80.050 Highway plat book.** He or she shall keep a highway plat book in his or her office in which he or she shall have accurately platted all public roads and highways established by the board. [2009 c 549 § 4134; 1963 c 4 § 36.80.050. Prior: 1907 c 160 § 2; RRS § 4149.]

**36.80.060 Engineer to maintain records of expenditures for equipment, etc.—Inventory.** The county road engineer shall maintain in his or her office complete and accurate records of all expenditures for (1) administration, (2) bond and warrant retirement, (3) maintenance, (4) construction, (5) purchase and operation of road equipment, and (6) purchase or manufacture of materials and supplies, and shall maintain a true and complete inventory of all road equipment. The state auditor, with the advice and assistance of the county road administration board, shall prescribe forms and types of records to be maintained by the county road engineers. [2009 c 549 § 4135; 1969 ex.s. c 182 § 10; 1963 c 4 § 36.80.060. Prior: 1949 c 156 § 2; Rem. Supp. 1949 § 6450-8b.]

## Chapter 36.81 RCW

### ROADS AND BRIDGES—ESTABLISHMENT

#### Sections

- 36.81.050 Engineer's report.  
36.81.060 Survey map, field notes and profiles.

**36.81.050 Engineer's report.** Whenever directed by the board to report upon the establishment of a county road the engineer shall make an examination of the road and if necessary a survey thereof. After examination, if the engineer deems the road to be impracticable, he or she shall so report to the board without making any survey, or he or she may examine or examine and survey any other practicable route which would serve such purpose. Whenever he or she considers any road as proposed or modified as practicable, he or she shall report thereon in writing to the board giving his or her opinion: (1) As to the necessity of the road; (2) as to the proper terminal points, general course and length thereof; (3) as to the proper width of right-of-way therefor; (4) as to the estimated cost of construction, including all necessary bridges, culverts, clearing, grubbing, drainage, and grading; (5) and such other facts as he or she may deem of importance to be considered by the board. [2009 c 549 § 4136; 1963 c 4 § 36.81.050. Prior: 1937 c 187 § 21, part; RRS § 6450-21, part.]

**36.81.060 Survey map, field notes and profiles.** The county road engineer shall file with his or her report a correctly prepared map of the road as surveyed, which map must show the tracts of land over which the road passes, with the names, if known, of the several owners thereof, and he or she shall file therewith his or her field notes and profiles of such survey. [2009 c 549 § 4137; 1963 c 4 § 36.81.060. Prior: 1937 c 187 § 21, part; RRS § 6450-21, part.]

## Chapter 36.82 RCW

### ROADS AND BRIDGES—FUNDS—BUDGET

#### Sections

- 36.82.100 Purchases of road material extraction equipment—Sale of surplus materials.

**36.82.100 Purchases of road material extraction equipment—Sale of surplus materials.** The boards of the several counties may purchase and operate, out of the county road fund, rock crushing, gravel, or other road building material extraction equipment.

Any crushed rock, gravel, or other road building material extracted and not directly used or needed by the county in the construction, alteration, repair, improvement, or maintenance of its roads may be sold at actual cost of production by the board to the state or any other county, city, town, or other political subdivision to be used in the construction, alteration, repair, improvement, or maintenance of any state, county, city, town or other proper highway, road or street purpose: PROVIDED, That in counties of less than twelve thousand five hundred population as determined by the 1950 federal census, the boards of commissioners, during such times as the crushing, loading or mixing equipment is actually in operation, or from stockpiles, may sell at actual cost of production

such surplus crushed rock, gravel, or other road building material to any other person for private use where the place of contemplated use of such crushed rock, gravel or other road building material is more than fifteen miles distant from the nearest private source of such materials within the county, distance being computed by the closest traveled route: AND PROVIDED FURTHER, That the purchaser presents, at or before the time of delivery to him or her, a treasurer's receipt for payment for such surplus crushed rock, gravel, or any other road building material. [2009 c 549 § 4138; 1963 c 4 § 36.82.100. Prior: 1953 c 172 § 1; 1937 c 187 § 44, part; RRS § 6450-44, part.]

### Chapter 36.87 RCW ROADS AND BRIDGES—VACATION

#### Sections

36.87.040 Engineer's report.

**36.87.040 Engineer's report.** When directed by the board the county road engineer shall examine any county road or portion thereof proposed to be vacated and abandoned and report his or her opinion as to whether the county road should be vacated and abandoned, whether the same is in use or has been in use, the condition of the road, whether it will be advisable to preserve it for the county road system in the future, whether the public will be benefited by the vacation and abandonment, and all other facts, matters, and things which will be of importance to the board, and also file his or her cost bill. [2009 c 549 § 4139; 1963 c 4 § 36.87.040. Prior: 1937 c 187 § 50; RRS § 6450-50.]

### Chapter 36.88 RCW COUNTY ROAD IMPROVEMENT DISTRICTS

#### Sections

36.88.040 Formation of district—By resolution of intention—Election—Rules.  
 36.88.130 County treasurer—Duties.  
 36.88.150 Payment of assessment—Record of.  
 36.88.200 Improvement bonds—Form, contents, execution.  
 36.88.250 Improvement bonds—Remedies of bond owners—Enforcement.  
 36.88.270 Assessment where bonds issued—Payment in cash—Notice of assessment.  
 36.88.300 District costs and expenses—What to include.  
 36.88.330 Warrants—Issuance—Priority—Acceptance.  
 36.88.450 Underground electric and communication facilities, installation or conversion to—Notice to owners to convert service lines to underground—Objections—Hearing—Time limitation for conversion.  
 36.88.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**36.88.040 Formation of district—By resolution of intention—Election—Rules.** The election provided herein for cases where the improvement is initiated by resolution shall be governed by the following rules: (1) All ballots must be signed by the owner or reputed owner of property within the proposed district according to the records of the county auditor; (2) each ballot must be returned to the clerk of the board not later than one week after the public hearing; (3) each property owner shall have one vote for each full dollar

of estimated assessment against his or her property as determined by the preliminary estimates and assessment roll; (4) the valid ballots shall be tabulated and a majority of the votes cast shall determine whether the formation of the district shall be approved or rejected. [2009 c 549 § 4140; 1963 c 4 § 36.88.040. Prior: 1951 c 192 § 4.]

**36.88.130 County treasurer—Duties.** The county treasurer is hereby designated as the treasurer of all county road improvement districts created hereunder, and shall collect all road improvement district assessments, and the duties and responsibilities herein imposed upon him or her shall be among the duties and responsibilities of his or her office for which his or her bond is given as county treasurer. [2009 c 549 § 4141; 1963 c 4 § 36.88.130. Prior: 1951 c 192 § 13.]

**36.88.150 Payment of assessment—Record of.** Whenever before the sale of any property the amount of any assessment thereon, with interest, penalty, costs and charges accrued thereon, shall be paid to the treasurer, he or she shall thereon mark the same paid with the date of payment thereof on the assessment roll. [2009 c 549 § 4142; 1963 c 4 § 36.88.150. Prior: 1951 c 192 § 15.]

**36.88.200 Improvement bonds—Form, contents, execution.** (1) Such bonds shall be numbered from one upwards consecutively, shall be in such denominations as may be provided by the county legislative authority in the resolution authorizing their issuance, shall mature on or before a date not to exceed twenty-two years from and after their date, shall bear interest at such rate or rates as authorized by the legislative authority payable annually or semiannually as may be provided by the legislative authority, shall be signed by the chair of the legislative authority and attested by the county auditor, shall have the seal of the county affixed thereto, and shall be payable at the office of the county treasurer or elsewhere as may be designated by the legislative authority. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030. In lieu of any signatures required in this section, the bonds and any coupons may bear the printed or engraved facsimile signatures of said officials.

Such bonds shall refer to the improvement for which they are issued and to the resolution creating the road improvement district therefor.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [2009 c 549 § 4143; 1983 c 167 § 94; 1980 c 100 § 5; 1970 ex.s. c 56 § 55; 1969 ex.s. c 232 § 73; 1963 c 4 § 36.88.200. Prior: 1951 c 192 § 20.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

**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.

**36.88.250 Improvement bonds—Remedies of bond owners—Enforcement.** If the board fails to cause any bonds to be paid when due or to promptly collect any assessments when due, the owner of any of the bonds may proceed

in his or her own name to collect the assessments and foreclose the lien thereof in any court of competent jurisdiction and shall recover in addition to the amount of the bonds outstanding in his or her name, interest thereon at five percent per annum, together with the costs of suit, including a reasonable attorney's fee to be fixed by the court. Any number of owners of bonds for any single project may join as plaintiffs and any number of the owners of property upon which the assessments are liens may be joined as defendants in the same suit. [2009 c 549 § 4144; 1963 c 4 § 36.88.250. Prior: 1951 c 192 § 25.]

**36.88.270 Assessment where bonds issued—Payment in cash—Notice of assessment.** The owner of any lot, tract, or parcel of land, or other property charged with any such assessments may redeem the same from all or any portion of the liability for the cost and expense of such improvement by paying the entire assessment or any portion thereof charged against such lot, tract, or parcel of land without interest within thirty days after notice to him or her of such assessment, which notice shall be given as follows: The county treasurer shall, as soon as the assessment roll has been placed in his or her hands for collection, publish a notice for two consecutive daily or weekly issues in the official newspaper of the county in which the district is located, which notice shall state that the assessment roll is in his or her hands for collection and that any assessment thereon or any portion of such assessment may be paid at any time within thirty days from the date of the first publication of said notice without penalty interest or costs. [2009 c 549 § 4145; 1963 c 4 § 36.88.270. Prior: 1951 c 192 § 27.]

**36.88.300 District costs and expenses—What to include.** Whenever any district is organized hereunder, there shall be included in the cost and expense thereof: (1) The cost of all of the construction or improvement authorized in the district, including that portion of the construction or improvement within the limits of any street or road intersection, space or spaces; (2) the estimated costs and expenses of all engineering and surveying necessary to be done by the county engineer or under his or her direction or by such other engineer as may be employed by the county commissioners; (3) the cost of all advertising, mailing, and publishing of all notices; (4) the cost of legal services and any other expenses incurred by the county for the district or in the formation thereof, or by the district in connection with such construction or improvement and in the financing thereof, including the issuance of any bonds. [2009 c 549 § 4146; 1963 c 4 § 36.88.300. Prior: 1951 c 192 § 30.]

**36.88.330 Warrants—Issuance—Priority—Acceptance.** The board may provide by resolution for the issuance of warrants in payment of the costs and expenses of any project, payable out of the county road improvement fund. The warrants shall be redeemed either in cash or by bonds for the same project authorized by the resolution.

All warrants issued against any such improvement fund shall be claims and liens against said fund prior and superior to any right, lien or claim of any surety upon the bond given to the county by or for the contract to secure the performance

of his or her contract or to secure the payment of persons who have performed work thereon, furnished materials therefor, or furnished provisions and supplies for the carrying on of the work.

The county treasurer may accept warrants against any county road improvement fund upon such conditions as the board may prescribe in payment of: (1) Assessments levied to supply that fund in due order of priority; (2) judgments rendered against property owners who have become delinquent in the payment of assessments to that fund; and (3) certificates of purchase in cases where property of delinquents has been sold under execution or at tax sale for failure to pay assessments levied to supply that fund. [2009 c 549 § 4147; 1980 c 100 § 6; 1963 c 4 § 36.88.330. Prior: 1951 c 192 § 33.]

**36.88.450 Underground electric and communication facilities, installation or conversion to—Notice to owners to convert service lines to underground—Objections—Hearing—Time limitation for conversion.** When service from the underground electric and communication facilities is available in all or part of a conversion area, the county shall mail a notice to the owners of all structures or improvements served from the existing overhead facilities in the area, which notice shall state that:

- (1) Service from the underground facilities is available;
- (2) All electric and communication service lines from the existing overhead facilities within the area to any structure or improvement must be disconnected and removed within one hundred twenty days after the date of the mailing of the notice;
- (3) Should such owner fail to convert such service lines from overhead to underground within one hundred twenty days after the date of the mailing of the notice, the county will order the electric and communication utilities to disconnect and remove the service lines;
- (4) Should the owner object to the disconnection and removal of the service lines he or she may file his or her written objections thereto with the secretary of the board of county commissioners within one hundred twenty days after the date of the mailing of the notice and failure to so object within such time will constitute a waiver of his or her right thereafter to object to such disconnection and removal.

If the owner of any structure or improvement served from the existing overhead electric and communication facilities within a conversion area shall fail to convert to underground the service lines from such overhead facilities to such structure or improvement within one hundred twenty days after the mailing to him or her of the notice, the county shall order the electric and communication utilities to disconnect and remove all such service lines: PROVIDED, That if the owner has filed his or her written objections to such disconnection and removal with the secretary of the board of county commissioners within one hundred twenty days after the mailing of said notice then the county shall not order such disconnection and removal until after the hearing on such objections.

Upon the timely filing by the owner of objections to the disconnection and removal of the service lines, the board of county commissioners shall conduct a hearing to determine whether the removal of all or any part of the service lines is in

the public benefit. The hearing shall be held at such time as the board of county commissioners may establish for hearings on such objections and shall be held in accordance with the regularly established procedure set by the board. The determination reached by the board of county commissioners shall be final in the absence of an abuse of discretion. [2009 c 549 § 4148; 1967 c 194 § 5.]

**36.88.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 82.]

### Chapter 36.90 RCW

#### SOUTHWEST WASHINGTON FAIR

##### Sections

36.90.030 Administration of fair—Appointment of designee or commission—Organization of commission—Funds.

**36.90.030 Administration of fair—Appointment of designee or commission—Organization of commission—Funds.** The board of county commissioners in the county of Lewis as administrators of all property relating to the southwest Washington fair may elect to appoint either (1) a designee, whose operation and funds the board may control and oversee, to carry out the board's duties and obligations as set forth in RCW 36.90.020, or (2) a commission of citizens to advise and assist in carrying out such fair. The chair of the board of county commissioners of Lewis county may elect to serve as chair of any such commission. Such commission may elect a president and secretary and define their duties and fix their compensation, and provide for the keeping of its records. The commission may also designate the treasurer of Lewis county as fair treasurer. The funds relating to fair activities shall be kept separate and apart from the funds of Lewis county, but shall be deposited in the regular depositories of Lewis county and all interest earned thereby shall be added to and become a part of the funds. Fair funds shall be audited as are other county funds. [2009 c 549 § 4149; 1998 c 107 § 2; 1973 1st ex.s. c 97 § 3; 1963 c 4 § 36.90.030. Prior: 1913 c 47 § 4; RRS § 2748.]

**Severability—1973 1st ex.s. c 97:** See note following RCW 36.90.010.

### Chapter 36.92 RCW

#### COUNTY CENTRAL SERVICES DEPARTMENT

##### Sections

36.92.030 County central services department—Created—Supervisor.

**36.92.030 County central services department—Created—Supervisor.** By resolution, the board of county commissioners may create a county central services department which shall be organized and function as any other department of the county. When a board creates a central services department, it shall also provide for the appointment of a supervisor to be the administrative head of such department, subject to the supervision and control of the board, and to serve at the pleasure of the board. The supervisor shall receive such salary as may be prescribed by the board. In addition, the supervisor shall be reimbursed for traveling and other actual and necessary expenses incurred by him or her in the performance of his or her official duties. [2009 c 549 § 4150; 1967 ex.s. c 103 § 4.]

### Chapter 36.93 RCW

#### LOCAL GOVERNMENTAL ORGANIZATION—BOUNDARIES—REVIEW BOARDS

##### Sections

36.93.070 Chair, vice chair, chief clerk—Powers and duties of board and chief clerk—Meetings—Hearings—Counsel—Compensation.

36.93.110 When review not necessary.

36.93.160 Hearings—Notice—Record—Subpoenas—Decision of board—Appellate review.

**36.93.070 Chair, vice chair, chief clerk—Powers and duties of board and chief clerk—Meetings—Hearings—Counsel—Compensation.** The members of each boundary review board shall elect from its members a chair, vice chair, and shall employ a nonmember as chief clerk, who shall be the secretary of the board. The board shall determine its own rules and order of business and shall provide by resolution for the time and manner of holding all regular or special meetings: PROVIDED, That all meetings shall be subject to chapter 42.30 RCW. The board shall keep a journal of its proceedings which shall be a public record. A majority of all the members shall constitute a quorum for the transaction of business.

The chief clerk of the board shall have the power to administer oaths and affirmations, certify to all official acts, issue subpoenas to any public officer or employee ordering him or her to testify before the board and produce public records, papers, books or documents. The chief clerk may invoke the aid of any court of competent jurisdiction to carry out such powers.

The board by rule may provide for hearings by panels of members consisting of not less than five board members, the number of hearing panels and members thereof, and for the impartial selection of panel members. A majority of a panel shall constitute a quorum thereof.

At the request of the board, the state attorney general, or at the board's option, the county prosecuting attorney, shall provide counsel for the board.



The planning departments of the county, other counties, and any city, and any state or regional planning agency shall furnish such information to the board at its request as may be reasonably necessary for the performance of its duties.

Each member of the board shall be compensated from the county current expense fund at the rate of fifty dollars per day, or a major portion thereof, for time actually devoted to the work of the boundary review board. Each board of county commissioners shall provide such funds as shall be necessary to pay the salaries of the members and staff, and such other expenses as shall be reasonably necessary. [2009 c 549 § 4151; 1997 c 77 § 1; 1987 c 477 § 1; 1967 c 189 § 7.]

**36.93.110 When review not necessary.** Where an area proposed for annexation is less than ten acres and less than two million dollars in assessed valuation, the chair of the review board may by written statement declare that review by the board is not necessary for the protection of the interest of the various parties, in which case the board shall not review such annexation. [2009 c 549 § 4152; 1987 c 477 § 4; 1973 1st ex.s. c 195 § 42; 1967 c 189 § 11.]

**Severability—Effective dates—Construction—1973 1st ex.s. c 195:** See notes following RCW 84.52.043.

**36.93.160 Hearings—Notice—Record—Subpoenas—Decision of board—Appellate review.** (1) When the jurisdiction of the boundary review board has been invoked, the board shall set the date, time and place for a public hearing on the proposal. The board shall give at least thirty days' advance written notice of the date, time and place of the hearing to the governing body of each governmental unit having jurisdiction within the boundaries of the territory proposed to be annexed, formed, incorporated, disincorporated, dissolved or consolidated, or within the boundaries of a special district whose assets and facilities are proposed to be assumed by a city or town, and to the governing body of each city within three miles of the exterior boundaries of the area and to the proponent of the change. Notice shall also be given by publication in any newspaper of general circulation in the area of the proposed boundary change at least three times, the last publication of which shall be not less than five days prior to the date set for the public hearing. Notice shall also be posted in ten public places in the area affected for five days when the area is ten acres or more. When the area affected is less than ten acres, five notices shall be posted in five public places for five days. Notice as provided in this subsection shall include any territory which the board has determined to consider adding in accordance with RCW 36.93.150(2).

(2) A verbatim record shall be made of all testimony presented at the hearing and upon request and payment of the reasonable costs thereof, a copy of the transcript of the testimony shall be provided to any person or governmental unit.

(3) The chair upon majority vote of the board or a panel may direct the chief clerk of the boundary review board to issue subpoenas to any public officer to testify, and to compel the production by him or her of any records, books, documents, public records or public papers.

(4) Within forty days after the conclusion of the final hearing on the proposal, the board shall file its written decision, setting forth the reasons therefor, with the board of county commissioners and the clerk of each governmental

unit directly affected. The written decision shall indicate whether the proposed change is approved, rejected or modified and, if modified, the terms of the modification. The written decision need not include specific data on every factor required to be considered by the board, but shall indicate that all standards were given consideration. Dissenting members of the board shall have the right to have their written dissents included as part of the decision.

(5) Unanimous decisions of the hearing panel or a decision of a majority of the members of the board shall constitute the decision of the board and shall not be appealable to the whole board. Any other decision shall be appealable to the entire board within ten days. Appeals shall be on the record, which shall be furnished by the appellant, but the board may, in its sole discretion, permit the introduction of additional evidence and argument. Decisions shall be final and conclusive unless within thirty days from the date of the action a governmental unit affected by the decision or any person owning real property or residing in the area affected by the decision files in the superior court a notice of appeal.

The filing of the notice of appeal within the time limit shall stay the effective date of the decision of the board until such time as the appeal shall have been adjudicated or withdrawn. On appeal the superior court shall not take any evidence other than that contained in the record of the hearing before the board.

(6) The superior court may affirm the decision of the board or remand the case for further proceedings; or it may reverse the decision if any substantial rights may have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions, or
- (b) In excess of the statutory authority or jurisdiction of the board, or
- (c) Made upon unlawful procedure, or
- (d) Affected by other error of law, or
- (e) Unsupported by material and substantial evidence in view of the entire record as submitted, or
- (f) Clearly erroneous.

An aggrieved party may seek appellate review of any final judgment of the superior court in the manner provided by law as in other civil cases. [2009 c 549 § 4153; 1994 c 216 § 16; 1988 c 202 § 40; 1987 c 477 § 8; 1971 c 81 § 97; 1969 ex.s. c 111 § 9; 1967 c 189 § 16.]

**Effective date—1994 c 216:** See note following RCW 35.02.015.

**Severability—1988 c 202:** See note following RCW 2.24.050.

*General corporate powers—Towns, restrictions as to area:* RCW 35.21.010.

## Chapter 36.94 RCW

### SEWERAGE, WATER, AND DRAINAGE SYSTEMS

#### Sections

- 36.94.060 Review committee—Chair, secretary—Rules—Quorum—Compensation of members.
- 36.94.290 Local improvement districts and utility local improvement districts—Appellate review.
- 36.94.340 Transfer of system from municipal corporation to county—Petition for court approval of transfer—Hearing—Decree.

**36.94.060 Review committee—Chair, secretary—Rules—Quorum—Compensation of members.** The mem-

bers of each review committee shall elect from its members a chair and a secretary. The committee shall determine its own rules and order of business and shall provide by resolution for the time and manner of its proceedings which shall be a public record. A majority of all the members shall constitute a quorum for the transaction of business.

Each member of the committee shall be compensated from the county current expense fund at the rate of twenty-five dollars per day, or a major portion thereof, for time actually devoted to the work of the committee in reviewing any proposed sewerage and/or water general plan or amendments to a plan. Each board of county commissioners shall provide such funds as shall be necessary to pay the compensation of the members and such other expenses as shall be reasonably necessary. Such payments shall be reimbursed to the counties advancing the funds from moneys acquired from the construction or operation of a sewerage and/or water system. [2009 c 549 § 4154; 1971 ex.s. c 96 § 3; 1967 c 72 § 6.]

**Construction—Severability—1971 ex.s. c 96:** See notes following RCW 36.94.010.

**36.94.290 Local improvement districts and utility local improvement districts—Appellate review.** The decision of the board of county commissioners upon any objections made within the time and in the manner herein prescribed, may be reviewed by the superior court upon an appeal thereto taken in the following manner. Such appeal shall be made by filing written notice of appeal with the clerk of the board of county commissioners and with the clerk of the superior court within ten days after the resolution confirming such assessment roll shall have become published, and such notice shall describe the property and set forth the objections of such appellant to such assessment. Within the ten days from the filing of such notice of appeal with the clerk of the superior court, the appellant shall file with the clerk of said court, a transcript consisting of the assessment roll and his or her objections thereto, together with the resolution confirming such assessment roll and the record of the board of county commissioners with reference to said assessment, which transcript, upon payment of the necessary fees therefor, shall be furnished by such clerk of the board of county commissioners and by him or her certified to contain full, true and correct copies of all matters and proceedings required to be included in such transcript. Such fees shall be the same as the fees payable to the county clerk for the preparation and certification of transcripts on appeal to the supreme court or the court of appeals in civil actions. At the time of the filing of the notice of appeal with the clerk of the superior court a sufficient bond in the penal sum of two hundred dollars, with sureties thereon as provided by law for appeals in civil cases, shall be filed conditioned to prosecute such appeal without delay, and if unsuccessful, to pay all costs to which the county is put by reason of such appeal. The court may order the appellant upon application therefor, to execute and file such additional bond or bonds as the necessity of the case may require. Within three days after such transcript is filed in the superior court, as aforesaid, the appellant shall give written notice to the clerk of the board of county commissioners that such transcript is filed. Said notice shall state a time, not less than three days from the service thereof, when the appellant will call up the said cause for

hearing. The superior court shall, at said time or at such further time as may be fixed by order of the court, hear and determine such appeal without a jury, and such cause shall have preference over all civil causes pending in said court, except proceedings under an act relating to eminent domain in such county and actions of forcible entry and detainer. The judgment of the court shall confirm, correct, modify or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the decision of the court shall be filed with the officer who shall have the custody of the assessment roll, and he or she shall modify and correct such assessment roll in accordance with such decision. Appellate review of the judgment of the superior court may be sought as in other cases. However, review must be sought within fifteen days after the date of the entry of the judgment of such superior court. The supreme court or the court of appeals on such appeal may correct, change, modify, confirm or annul the assessment insofar as the same affects the property of the appellant. A certified copy of the order of the supreme court or the court of appeals upon such appeal shall be filed with the officer having custody of such assessment roll, who shall thereupon modify and correct such assessment roll in accordance with such decision. [2009 c 549 § 4155; 1988 c 202 § 41; 1971 c 81 § 98; 1967 c 72 § 29.]

**Rules of court:** *Cf. RAP 18.22.*

**Severability—1988 c 202:** See note following RCW 2.24.050.

**36.94.340 Transfer of system from municipal corporation to county—Petition for court approval of transfer—Hearing—Decree.** When a municipal corporation and a county have entered into a written agreement providing for the transfer to such county of all or part of the property of such municipal corporation, proceedings may be initiated in the superior court for that county by the filing of a petition to which there shall be attached copies of the agreement of the parties and of the resolutions of the governing body of the municipal corporation and the legislative authority of the county authorizing its execution. Such petition shall ask that the court approve and direct the proposed transfer of property, and any assumption of indebtedness agreed to in consideration thereof by the county, after finding such transfer and acquisition of property to be in the public interest and conducive to the public health, safety, welfare, or convenience. Such petition shall be signed by the members of the legislative authority of the county or chief administrative officer of the municipal corporation and the chair of the legislative authority of the county, respectively, upon authorization by the governing body of the municipal corporation and the legislative authority of the county.

Within thirty days after the filing of the petition of the parties with copies of their agreement and the resolutions authorizing its execution attached thereto, the court shall by order fix a date for a hearing on the petition not less than twenty nor more than ninety days after the entry of such order which also shall prescribe the form and manner of notice of such hearing to be given. After considering the petition and such evidence as may be presented at the hearing thereon, the court may determine by decree that the proposed transfer of property is in the public interest and conducive to the public health, safety, welfare, or convenience, approve the agree-

ment of the parties and direct that such transfer be accomplished in accordance with that agreement at the time and in the manner prescribed by the court decree. [2009 c 549 § 4156; 1975 1st ex.s. c 188 § 10.]

**Severability—1975 1st ex.s. c 188:** See RCW 36.94.921.

**Chapter 36.95 RCW**  
**TELEVISION RECEPTION**  
**IMPROVEMENT DISTRICTS**

Sections

36.95.060	District board—Duties—How constituted—Quorum—Officers—Filling vacancies.
36.95.100	Tax levied—Maximum—Exemptions.
36.95.110	Liability for delinquent tax and costs.
36.95.150	Claims against district board—Procedure upon allowance.
36.95.160	District treasurer—Duties—District warrants.

**36.95.060 District board—Duties—How constituted—Quorum—Officers—Filling vacancies.** The business of the district shall be conducted by the board of the television reception improvement district, hereinafter referred to as the "board". The board shall be constituted as provided under either subsection (1) or (2) of this section.

(1) The board of a district having boundaries different from the county's shall have either three, five, seven, or nine members, as determined by the board of county commissioners at the time the district is created. Each member shall reside within the boundaries of the district and shall be appointed by the board of county commissioners for a term of three years, or until his or her successor has qualified, except that the board of county commissioners shall appoint one of the members of the first board to a one-year term and two to two-year terms. There is no limit upon the number of terms to which a member may be reappointed after his or her first appointment. A majority of the members of the board shall constitute a quorum for the transaction of business, but the majority vote of the board members shall be necessary for any action taken by the board. The board shall elect from among its members a chair and such other officers as may be necessary. In the event a seat on the board is vacated prior to the expiration of the term of the member appointed to such seat, the board of county commissioners shall appoint a person to complete the unexpired term.

(2) Upon the creation of a district having boundaries identical to those of the county (a countywide district), the county commissioners shall be the members of the board of the district and shall have all the powers and duties of the board as provided under the other sections of this chapter. The county commissioners shall be reimbursed pursuant to the provisions of RCW 36.95.070, and shall conduct the business of the district according to the regular rules and procedures applicable to meetings of the board of county commissioners. [2009 c 549 § 4157; 1992 c 150 § 1; 1971 ex.s. c 155 § 6.]

**36.95.100 Tax levied—Maximum—Exemptions.** The tax provided for in RCW 36.95.090 and this section shall not exceed sixty dollars per year per television set, and no person shall be taxed for more than one television set, except that a motel or hotel or any person owning in excess of five television sets shall pay at a rate of one-fifth of the annual tax rate

imposed for each of the first five television sets and one-tenth of such rate for each additional set thereafter. An owner of a television set within the district shall be exempt from paying any tax on such set under this chapter: (1) If either (a) his or her television set does not receive at least a class grade B contour signal retransmitted by the television translator station or other similar device operated by the district, as such class is defined under regulations of the Federal Communications Commission as of August 9, 1971, or (b) he or she is currently subscribing to and receiving the services of a community antenna system (CATV) to which his or her television set is connected; and (2) if he or she filed a statement with the board claiming his or her grounds for exemption. Space for such statement shall be provided for in the tax notice which the treasurer shall send to taxpayers in behalf of the district. [2009 c 549 § 4158; 1981 c 52 § 2; 1975 c 11 § 1; 1971 ex.s. c 155 § 10.]

**36.95.110 Liability for delinquent tax and costs.** Any person owing the excise tax provided for under this chapter and who fails to pay the same within sixty days after the board or the county treasurer has sent the tax bill to him or her, shall be deemed to be delinquent. Such person shall be liable for all costs to the county or district attributable to collecting the tax but no such excise tax or costs, nor any judgment based thereon, shall be deemed to create a lien against real property. [2009 c 549 § 4159; 1981 c 52 § 3; 1971 ex.s. c 155 § 11.]

**36.95.150 Claims against district board—Procedure upon allowance.** Any claim against the district shall be presented to the board. Upon allowance of the claim, the board shall submit a voucher, signed by the chair and one other member of the board, to the county auditor for the issuance of a warrant in payment of said claim. This procedure for payment of claims shall apply to the reimbursement of board members for their actual and necessary expenses incurred by them in the performance of their official duties. [2009 c 549 § 4160; 1971 ex.s. c 155 § 15.]

**36.95.160 District treasurer—Duties—District warrants.** The treasurer of the county in which a district is located shall be ex officio treasurer of the district. The treasurer shall collect the excise tax provided for under this chapter and shall send notice of payment due to persons owing the tax: PROVIDED, That districts with fewer than twelve hundred persons subject to the excise tax and levying an excise tax of forty dollars or more per television set per year shall have the option of having the district (1) send the tax notices bimonthly, and (2) collect the excise taxes which shall then be forwarded to the county treasurer for deposit in the district account. There shall be deposited with him or her all funds of the district. All district payments shall be made by him or her from such funds upon warrants issued by the county auditor, except the sums to be paid out of any bond fund for principal and interest payments on bonds. All warrants shall be paid in the order of issuance. The treasurer shall report monthly to the board, in writing, the amount in the district fund or funds. [2009 c 549 § 4161; 1983 c 167 § 103; 1981 c 52 § 4; 1971 ex.s. c 155 § 16.]

**Liberal construction—Severability—1983 c 167:** See RCW 39.46.010 and note following.

### Chapter 36.96 RCW

#### DISSOLUTION OF INACTIVE SPECIAL PURPOSE DISTRICTS

##### Sections

- 36.96.020 Notice of inactive special purpose districts by county auditor.  
36.96.090 New special purpose districts—Duties of county auditor.

**36.96.020 Notice of inactive special purpose districts by county auditor.** On or before June 1st of 1980, and on or before June 1st of every year thereafter, each county auditor shall search available records and notify the county legislative authority if any special purpose districts located wholly or partially within the county appear to be inactive. If the territory of any special purpose district is located within more than one county, the legislative authorities of all other counties within whose boundaries such a special purpose district lies shall also be notified by the county auditor. However, the authority to dissolve such a special purpose district as provided by this chapter shall rest solely with the legislative authority of the county which contains the greatest geographic portion of such special purpose district. [2009 c 337 § 12; 1979 ex.s. c 5 § 2.]

**36.96.090 New special purpose districts—Duties of county auditor.** For every newly created special purpose district, the auditor of each county in which the special purpose district is located shall provide the state auditor with the following information:

- (1) The name of the special purpose district and a general description of its location;
- (2) The name, address, and telephone number of each member of its governing authority; and
- (3) The functions that the special purpose district is then presently performing and the purposes for which it was created. [2009 c 337 § 13; 1979 ex.s. c 5 § 9.]

### Chapter 36.100 RCW

#### PUBLIC FACILITIES DISTRICTS

##### Sections

- 36.100.160 Expenditure of funds—Purposes.  
36.100.180 Service provider agreements—Competitive solicitation process for personal service contracts of one hundred fifty thousand dollars or more—Exceptions.

**36.100.160 Expenditure of funds—Purposes.** (1) The board of directors of the public facilities district shall have authority to authorize the expenditure of funds for the public purposes of preparing and distributing information to the general public and promoting, advertising, improving, developing, operating, and maintaining facilities of the district. For promotional activities the district board must: (a) Identify the proposed expenditure in its annual budget; and (b) adopt written rules governing promotional hosting by employees, agents, and the board, including requirements for identifying and evaluating the public benefits to be derived and documenting the public benefits realized.

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(2) Nothing contained in this section may be construed to authorize preparation and distribution of information to the general public for the purpose of influencing the outcome of a district election. [2009 c 167 § 1; 1995 c 396 § 13.]

**Severability—1995 c 396:** See note following RCW 36.100.010.

#### **36.100.180 Service provider agreements—Competitive solicitation process for personal service contracts of one hundred fifty thousand dollars or more—Exceptions.**

(1) The public facilities district may secure services by means of an agreement with a service provider. The public facilities district shall publish notice, establish criteria, receive and evaluate proposals, and negotiate with respondents under requirements set forth by district resolution.

(2) For personal service contracts of one hundred fifty thousand dollars or greater not otherwise governed by chapter 39.80 RCW, contracts for architectural and engineering services, a competitive solicitation process is required. The district shall establish the process by resolution, which must at a minimum include the following:

(a) Notice. A notice inviting statements of either qualifications or proposals, or both, from interested parties must be published in a newspaper of general circulation throughout the county in which the district is located at least ten days before the date for submitting the statements of qualifications or proposals.

(b) Description of services required. The request for statements of either qualifications or proposals, or both published or provided to interested parties must describe the services required and list the types of information and data required of each proposal. It may also describe the evaluation criteria and state the relative importance of the criteria if then available.

(c) Review and evaluation. The district shall establish a process to review and evaluate statements of either qualifications or proposals, or both. That process may include a selection board identified by the district or some other panel of evaluators. If appropriate, the reviewers may hear oral presentations by proposers.

(d) Selection. The evaluators shall select and rank the most qualified proposers. In selecting and ranking such proposers, the selection board shall consider the evaluation criteria established by the district and may consider such other information as may be secured during the evaluation process related to a proposer's qualifications and experience.

(e) Negotiations. The district shall enter into contract negotiations with the top-ranked proposer or proposers identified in the selection process. Negotiations may be conducted concurrently or sequentially as may be allowed by law.

(f) Approval. When negotiations are complete, the proposed contract will be presented to the district's governing body at its next regularly scheduled meeting for approval or ratification.

(3) Exceptions. The requirements of this section need not be met in the following circumstances:

(a) Emergency. When the contracting authority makes a finding that an emergency requires the immediate execution of the work involved. As used in this subsection, "emer-

agency" has the same meaning as provided in RCW 39.29.006;

(b) Contract amendment. Amendments to existing service contracts are exempt from these requirements; and

(c) Sole source. In the event that the services being sought can only be obtained from a single source, then the district shall make a formal written finding stating the factual basis for the exception and the solicitation requirements of this section do not apply. As used in this subsection, "sole source" has the same meaning as provided in RCW 39.29.006.

(4) Prospective application. Nothing in this section affects the validity or effect of any district contract executed prior to July 26, 2009. [2009 c 533 § 4; 1995 c 396 § 15.]

**Severability—1995 c 396:** See note following RCW 36.100.010.

## Chapter 36.135 RCW

### LOCAL PUBLIC WORKS ASSISTANCE FUNDS

#### Sections

36.135.010	Definitions.
36.135.020	Use—Distribution.
36.135.030	Public works projects—Financial assistance for local governments.
36.135.040	Public works projects—Prioritization process.
36.135.050	Records of accounts—Audit.

**36.135.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Capital facilities plan" means a capital facilities plan required under chapter 36.70A RCW.

(2) "Local government" means cities, towns, counties, special purpose districts, and any other municipal corporations or quasi-municipal corporations in the state, excluding school districts and port districts.

(3) "Public works project" means a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets and roads, bridges, water systems, or storm and sanitary sewage systems and solid waste facilities, including recycling facilities. [2009 c 45 § 1.]

**36.135.020 Use—Distribution.** (1) County legislative authorities may establish local public works assistance funds for the purpose of funding public works projects located wholly or partially within the county. Moneys may be deposited in local public works assistance funds from existing revenue sources of the county.

(2) Moneys deposited in local public works assistance funds, and interest earned on balances from the funds, may only be used:

(a) To make loans to the county and to other local governments for funding public works projects as provided in this chapter; and

(b) For costs incurred in the administration of funds.

(3) No more than fifty percent of the moneys loaned from a fund in a calendar year may be loaned to the county providing local public works assistance funds. At least twenty-five percent of the moneys anticipated to be loaned

from a fund in a calendar year must be made available for funding public works projects in cities or towns.

(4) No more than one percent of the average annual balance of a county's fund, including interest earned on balances from the fund, may be used annually for administrative costs. [2009 c 45 § 2.]

**36.135.030 Public works projects—Financial assistance for local governments.** (1) Counties, in consultation with cities and towns within the county, may make loans to local governments from funds established under RCW 36.135.020 for the purpose of assisting local governments in funding public works projects. Counties may require terms and conditions and may charge rates of interest on its loans as they deem necessary or convenient to carry out the purposes of this chapter. Counties may not pledge any amount greater than the sum of money in their local public works assistance fund plus money to be received from the payment of the debt service on loans made from that fund. Money received from local governments in repayment of loans made under this chapter must be paid into the fund of the lending county for uses consistent with this chapter.

(2) Prior to receiving moneys from a fund established under RCW 36.135.020, a local government applying for financial assistance under this chapter must demonstrate to the lending county:

(a) Utilization of all local revenue sources that are reasonably available for funding public works projects;

(b) Compliance with applicable requirements of chapter 36.70A RCW; and

(c) Consistency between the proposed project and applicable capital facilities plans.

(3) Counties may not make loans under this chapter prior to completing the initial collaboration and prioritization requirements of RCW 36.135.040(1). [2009 c 45 § 3.]

**36.135.040 Public works projects—Prioritization process.** (1) County legislative authorities utilizing or providing money under this chapter must develop a prioritization process for funding public works projects that gives priority to projects necessary to address public health needs, substantial environmental degradation, or increases existing capacity necessary to accommodate projected population and employment growth. This prioritization process must be:

(a) Completed collaboratively with public works directors of local governments within the county;

(b) Documented in the form of written findings produced by the county; and

(c) Revised periodically according to a schedule developed by the county and the public works directors.

(2) In addition to the requirements under subsection (1) of this section, legislative authorities providing funding to other local governments under this chapter must consider, through a competitive application process, the following factors in assigning a priority to and funding a project:

(a) Whether the local government applying for assistance has experienced severe fiscal distress resulting from natural disaster or emergency public works needs;

(b) Whether the project is critical in nature and would affect the health and safety of a great number of citizens;

(c) The cost of the project compared to the size of the local government and amount of loan money available;

(d) The number of communities served by or funding the project;

(e) Whether the project is the acquisition, expansion, improvement, or renovation by a local government of a public water system that is in violation of health and safety standards;

(f) The number of additional housing units estimated to be achieved by funding the project;

(g) The additional jobs estimated to be achieved by funding the project; and

(h) Other criteria the county legislative authority deems appropriate. [2009 c 45 § 4.]

**36.135.050 Records of accounts—Audit.** County legislative authorities providing funding for public works projects under this chapter must keep proper records of accounts and are subject to audit by the state auditor. [2009 c 45 § 5.]

### Chapter 36.140 RCW

#### ELECTRICITY GENERATION FROM BIOMASS ENERGY

##### Sections

36.140.010 Generation of electricity from biomass energy.

**36.140.010 Generation of electricity from biomass energy.** (1) Any county legislative authority of a county where a public utility district owns and operates a plant or system for the generation, transmission, and distribution of electric energy for sale within the county may construct, purchase, acquire, operate, and maintain a facility to generate electricity from biomass energy that is a renewable resource under RCW 19.285.030 or from biomass energy that is produced from lignin in spent pulping liquors or liquors derived from algae and other sources. The county legislative authority has the authority to regulate and control the use, distribution, sale, and price of the electricity produced from the biomass facility authorized under this section.

(2) For the purposes of this section:

(a) "County legislative authority" means the board of county commissioners or the county council; and

(b) "Public utility district" means a municipal corporation formed under chapter 54.08 RCW. [2009 c 281 § 1.]

## Title 38

### MILITIA AND MILITARY AFFAIRS

#### Chapters

**38.04** General provisions.

**38.12** Militia officers and advisory council.

**38.16** Enlistments and reserves.

**38.20** Armories and rifle ranges.

**38.32** Offenses—Punishment.

**38.38** Washington code of military justice.

**38.42** Service members' civil relief.

**38.52** Emergency management.

### Chapter 38.04 RCW GENERAL PROVISIONS

#### Sections

38.04.020 "Officer," "enlisted persons" defined—Convictions and punishments.

**38.04.020 "Officer," "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 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. [2009 c 549 § 1011; 1989 c 19 § 2; 1943 c 130 § 80; Rem. Supp. 1943 § 8603-80. Prior: 1917 c 107 § 60.]

### Chapter 38.12 RCW

#### MILITIA OFFICERS AND ADVISORY COUNCIL

##### Sections

38.12.020 Powers and duties.

**38.12.020 Powers and duties.** The adjutant general shall:

(1) Subject to the orders of the commander-in-chief, command the Washington national guard and recruit, train, maintain, and administer the organized militia of the state of Washington.

(2) Supervise the preparation and submission of any records required by the federal government, the governor, or as otherwise required by law.

(3) Maintain records of the organized militia and state military department as required by law. The adjutant general shall deposit records with the state archivist for historical purposes.

(4) Cause to be published and distributed to the organized militia at state expense necessary documents or publications, to include the Washington code of military justice.

(5) Keep just and true accounts of all moneys received and disbursed by the military department.

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

(7) Be the custodian of the seal of the office of adjutant general and deliver the same to his or her successor. All orders issued from the office of the adjutant general shall be authenticated with the seal. Orders or records under the seal shall be prima facie proof of certification or authenticity.

(8) Promulgate in orders such regulations pertaining to the operation and function of the state military department and organized militia, as in his or her opinion the conditions demand.

(9) Attend to the care, preservation, safekeeping, and repairing of all military property belonging to the state, or issued to the state by the United States for military purposes. Any property of the state military department which, after proper inspection, is found unsuitable or no longer needed for use of the organized militia 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.

(10) Issue the military property as the necessity of service requires and make purchases for that purpose.

(11) Be the custodian of all military relics, trophies, colors, and histories now in possession of, or which may be acquired by, the state.

(12) 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. [2009 c 21 § 1; 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.]

### Chapter 38.16 RCW

#### ENLISTMENTS AND RESERVES

##### Sections

38.16.030 Inactive national guard.

**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 persons 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. [2009 c 549 § 1012; 1991 c 43 § 3; 1989 c 19 § 32; 1943 c 130 § 34; Rem. Supp. 1943 § 8603-34. Prior: 1917 c 107 § 29.]

### Chapter 38.20 RCW

#### ARMORIES AND RIFLE RANGES

##### Sections

38.20.010 Regulations governing armories.

**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 public and private use upon payment of 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 military department rental and lease account under RCW 38.40.210. [2009 c 34 § 1; 2005 c 252 § 3; 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.

### Chapter 38.32 RCW

#### OFFENSES—PUNISHMENT

##### Sections

38.32.010 Nonmilitary offenses by members on duty status.

38.32.020 Military offenses.

**38.32.010 Nonmilitary offenses by members on duty status.** Any member of the organized militia committing

nonmilitary offenses under chapter 38.38 RCW while on duty status or within state armories 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. [2009 c 378 § 1; 1989 c 19 § 39; 1963 c 220 § 134; 1943 c 130 § 82; Rem. Supp. 1943 § 8603-82.]

**38.32.020 Military offenses.** (1) Military offenses under chapter 38.38 RCW committed by members of the organized militia may be tried and punished as provided under chapter 38.38 RCW.

(2) Primary jurisdiction over military offenses enumerated in chapter 38.38 RCW is with military authorities. Primary jurisdiction over nonmilitary offenses is with civilian authorities. If an offense may be both military and nonmilitary, the military authorities may proceed only after the civilian authorities have declined to prosecute or dismissed the charge, provided jeopardy has not attached. Jurisdiction over attempted crimes, conspiracy crimes, solicitation, and accessory crimes must be determined by whether the underlying offense is a military or nonmilitary offense.

(3) Any member of the organized militia committing any offense under chapter 38.38 RCW may, if such offense is committed on a military reservation of the United States within this state, be turned over to the civil authorities for trial as provided by federal law. [2009 c 378 § 2; 1989 c 19 § 40; 1963 c 220 § 135; 1943 c 130 § 81; Rem. Supp. 1943 § 8603-81.]

### Chapter 38.38 RCW

#### WASHINGTON CODE OF MILITARY JUSTICE

##### Sections

38.38.004	Definitions—Construction.
38.38.008	Persons subject to this code.
38.38.024	Judge advocates and legal officers.
38.38.080	Confinement in jails.
38.38.092	Delivery of offenders to civil authorities.
38.38.132	Commanding officer's nonjudicial punishment—Suspension—Appeal.
38.38.180	Jurisdiction of general courts-martial.
38.38.188	Jurisdiction of summary courts-martial.
38.38.240	Who may convene general courts-martial.
38.38.244	Special courts-martial of organized militia not in federal service—Who may convene.
38.38.248	Summary courts-martial of organized militia not in federal service—Who may convene.
38.38.258	Military judges—Qualifications.
38.38.312	Compulsory self-incrimination prohibited.
38.38.316	Investigation.
38.38.376	Duties of trial counsel and defense counsel.
38.38.388	Challenges.
38.38.396	Statute of limitations.
38.38.408	Opportunity to obtain witnesses and other evidence.
38.38.412	Refusal to appear or testify—Penalty.
38.38.624	Persons to be tried or punished.
38.38.752	Property other than military property—Waste, spoilage, or destruction.
38.38.760	Reckless or impaired operation of a vehicle, aircraft, or vessel.
38.38.762	Use, possession, or distribution of controlled substances.
38.38.782	Assault upon another member of the organized militia.
38.38.800	General article.
38.38.840	Courts of inquiry.
38.38.844	Authority to administer oaths.
38.38.848	Sections to be explained.

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

[2009 RCW Supp—page 648]

(1) "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.

(2) "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.

(3) "Code" means this chapter.

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

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

(6) "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.

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

(8) "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.

(9) "Judge advocate" means an officer of the army or air national guard designated as a judge advocate by the judge advocate general of the army or the judge advocate general of the air force.

(10) "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.

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

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

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

(14) "Military offense" means those offenses listed in RCW 38.38.644 through 38.38.800, 38.38.762, and 38.38.782.

(15) "Nonmilitary offense" means any offense other than those listed in Title 38 RCW.

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

(17) "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.

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

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

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

(21) "Superior commissioned officer" means a commissioned officer superior in rank or command. [2009 c 378 § 3; 1989 c 48 § 1; 1963 c 220 § 1.]

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

**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 pursuant to Title 10 U.S.C. [2009 c 378 § 4; 1989 c 48 § 2; 1963 c 220 § 2.]

**38.38.024 [Art. 6] Judge advocates and legal officers.**

(1) The governor, on the recommendation of the adjutant general, shall appoint a judge advocate officer of the army or air national guard 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.

(6) No judge advocate may be assigned nonlegal duties unless authorized by the state judge advocate. [2009 c 378 § 5; 1989 c 48 § 6; 1963 c 220 § 6.]

**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 the adjutant general. [2009 c 378 § 7; 1989 c 48 § 11; 1963 c 220 § 11.]

**38.38.092 [Art. 14] Delivery of offenders to civil authorities.** (1) Under such regulations as may be prescribed by the adjutant general, a person subject to this code 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. [2009 c 378 § 8; 1989 c 48 § 14; 1963 c 220 § 14.]

**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 a commanding 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. [2009 c 378 § 9; 1991 c 43 § 5; 1989 c 48 § 15; 1963 c 220 § 15.]

**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 three 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. [2009 c 378 § 10; 1963 c 220 § 18.]

**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 not more than one-half month's pay for two months, to reduction in rank of enlisted soldiers, and to reduction of a noncommissioned officer to the ranks. [2009 c 378 § 11; 1989 c 48 § 19; 1963 c 220 § 20.]

**38.38.240 [Art. 22] Who may convene general courts-martial.** In the organized militia not in federal service pursuant to Title 10 U.S.C., general courts-martial may be convened by the president or by the governor, or by the adjutant general. [2009 c 378 § 12; 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 pursuant to Title 10 U.S.C., anyone authorized to convene a general court-martial, 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. [2009 c 378 § 13; 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 pursuant to Title 10 U.S.C., anyone authorized to convene a special court-martial, 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. [2009 c 378 § 14; 1989 c 48 § 24; 1963 c 220 § 26.]

**38.38.258 [Art. 26a] Military judges—Qualifications.**

A military judge must be a judge advocate. The adjutant general shall prescribe procedures for certifying, appointing, detailing, and removing military judges. [2009 c 378 § 6.]

**38.38.312 [Art. 31] Compulsory self-incrimination prohibited.**

(1) No person subject to this code may compel a person to incriminate himself or herself or to answer any question the answer to which may tend to incriminate himself or herself.

(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. [2009 c 378 § 15; 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) of this section, 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) If evidence adduced in an investigation under this chapter indicates that the accused committed an uncharged offense, the investigating officer may investigate the subject matter of that offense without the accused having first been charged with the offense if the accused:

(a) Is present at the investigation;

(b) Is informed of the nature of each uncharged offense investigated; and

(c) Is afforded the opportunities for representation, cross-examination, and presentation prescribed in subsection (2) of this section.

(5) 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. [2009 c 378 § 16; 1989 c 48 § 31; 1963 c 220 § 34.]

**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 or at an

investigation under RCW 38.38.316 as provided in this subsection.

(a) The accused may be represented by civilian counsel if provided at his or her own expense.

(b) The accused may be represented by:

(i) Military counsel detailed under RCW 38.38.260; or

(ii) Military counsel of his or her own selection if that counsel is reasonably available, as determined under regulations prescribed under subsection (3) of this section.

(c) If the accused is represented by civilian counsel, military counsel detailed or selected under (b) of this subsection shall act as associate counsel unless excused at the request of the accused.

(d) Except as provided under (e) of this subsection, if the accused is represented by military counsel of his or her own selection under (b)(ii) of this subsection, any military counsel detailed under (b)(i) of this subsection shall be excused.

(e) The accused is not entitled to be represented by more than one military counsel. However, the person authorized under regulations prescribed under RCW 38.38.260 to detail counsel in his or her sole discretion:

(i) May detail additional military counsel as assistant defense counsel; and

(ii) If the accused is represented by military counsel of his or her own selection under (b)(ii) of this subsection, may approve a request from the accused that military counsel detailed under (b)(i) of this subsection act as associate defense counsel.

(3) The state judge advocate shall, by regulation, define "reasonably available" for the purpose of subsection (2) of this section and establish procedures for determining whether the military counsel selected by an accused under subsection (2) of this section is reasonably available.

(4) In any court-martial proceeding resulting in a conviction, the defense counsel:

(a) May forward for attachment to the record of proceedings a brief of such matters as he or she determines 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;

(b) Shall assist the accused in the submission of any matter under RCW 38.38.536; and

(c) May take other action authorized by this chapter.

(5) 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.

(6) 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. [2009 c 378 § 17; 1989 c 48 § 37; 1963 c 220 § 40.]

**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) If exercise of a challenge for cause reduces the court below the minimum number of members required by RCW 38.38.172, all parties shall, notwithstanding RCW 38.38.268, either exercise or waive any challenge for cause then apparent against the remaining members of the court before additional members are detailed to the court. However, peremptory challenges shall not be exercised at that time.

(3) Each accused and the trial counsel is entitled to one peremptory challenge, but the military judge may not be challenged except for cause.

(4) If exercise of a peremptory challenge reduces the court below the minimum number of members required by RCW 38.38.172, the parties shall, notwithstanding RCW 38.38.268, either exercise or waive any remaining peremptory challenge, that has not been previously waived, against the remaining members of the court before additional members are detailed to the court.

(5) Whenever additional members are detailed to the court, and after any challenges for cause against such additional members are presented and decided, each accused and the trial counsel are entitled to one peremptory challenge against members not previously subject to peremptory challenge. [2009 c 378 § 18; 1989 c 48 § 40; 1963 c 220 § 43.]

**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.

(5) If charges or specifications are dismissed as defective or insufficient for any cause and the period prescribed by the applicable statute of limitations:

(a) Has expired; or

(b) Will expire within one hundred eighty days after the date of dismissal of the charges and specifications[,] [then] trial and punishment under new charges and specifications are not barred by the statute of limitations if the conditions specified in subsection (6) of this section are met.

(6) The conditions referred to in subsection (5) of this section are that the new charges and specifications must:

(a) Be received by an officer exercising summary court-martial jurisdiction over the command within one hundred eighty days after the dismissal of the charges or specifications; and

(b) Allege the same acts or omissions that were alleged in the dismissed charges or specifications or allege acts or omissions that were included in the dismissed charges or specifications. [2009 c 378 § 19; 1989 c 48 § 42; 1963 c 220 § 45.]

**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, military magistrate, 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. [2009 c 378 § 20; 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, commission, or board;

(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) Willfully 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 violat-

ing this section. [2009 c 378 § 21; 1989 c 48 § 46; 1963 c 220 § 49.]

**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 he or she was a member of the organized militia at the time of the offense. [2009 c 378 § 22; 1963 c 220 § 75.]

**38.38.752 [Art. 104] Property other than military property—Waste, spoilage, or destruction.** Any person subject to this code who willfully or recklessly wastes, spoils, or otherwise willfully 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. [2009 c 378 § 23; 1963 c 220 § 107.]

**38.38.760 [Art. 106] Reckless or impaired operation of a vehicle, aircraft, or vessel.** (1) Any person subject to this code who:

(a) Operates or physically controls any vehicle, aircraft, or vessel in a reckless or wanton manner or while impaired by a substance described in RCW 38.38.762; or

(b) Operates or is in actual physical control of any vehicle, aircraft, or vessel while drunk or when the alcohol concentration in the person's blood or breath is equal to or exceeds the applicable limit under subsection (2) of this section; or

(c) Operates or is in actual physical control of any vehicle, aircraft, or vessel in a reckless or wanton manner shall be punished as a court-martial may direct.

(2) For purposes of subsection (1) of this section, the blood alcohol content limit with respect to alcohol concentration in a person's blood is 0.08 grams of alcohol per one hundred milliliters of blood and with respect to alcohol concentration in a person's breath is 0.08 grams of alcohol per two hundred ten liters of breath, as shown by chemical analysis.

(3) For purposes of this section, "blood alcohol content limit" means the amount of alcohol concentration in a person's blood or breath at which operation or control of a vehicle, aircraft, or vessel is prohibited. [2009 c 378 § 24; 1963 c 220 § 109.]

**38.38.762 [Art. 112a] Use, possession, or distribution of controlled substances.** (1) Any person subject to this code who wrongfully uses, possesses, distributes, or introduces into an installation, vessel, vehicle, or aircraft used by or under the control of the armed forces or organized militia a substance described in subsection (2) of this section shall be punished as a court-martial may direct.

(2) The substances referred to in subsection (1) of this section are the following:

(a) Opium, heroin, cocaine, amphetamine, lysergic acid diethylamide, methamphetamine, phencyclidine, barbituric acid, and marijuana and any compound or derivative of any such substance;

(b) Any substance not specified in (a) of this subsection that is listed on a schedule of controlled substances prohibited by the United States army; or

(c) Any other substance not specified in this subsection that is listed in Schedules I through V of section 202 of the federal controlled substances act, 21 U.S.C. Sec. 812, as amended. [2009 c 378 § 25.]

**38.38.782 [Art. 128] Assault upon another member of the organized militia.** Any person subject to this code who attempts or offers with unlawful force or violence to do bodily harm to another member of the organized militia, whether or not the attempt or offer is consummated, is guilty of assault and shall be punished as a court-martial may direct. [2009 c 378 § 26.]

**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 in the first degree, burglary, or housebreaking, jurisdiction of which is reserved to civil courts. [2009 c 378 § 27; 1989 c 48 § 71; 1963 c 220 § 119.]

**38.38.840 [Art. 117] Courts of inquiry.** (1) Courts of inquiry to investigate any matter may be convened by the governor, the adjutant general, 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. [2009 c 378 § 28; 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 or paralegals;

(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 commanding officers of units of the organized militia;

(i) All officers of the organized militia designated as recruiting officers;

(j) All persons detailed to conduct an investigation; and

(k) All other persons designated by regulations of the adjutant general.

(2) 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. [2009 c 378 § 29; 1989 c 48 § 73; 1963 c 220 § 121.]

**38.38.848 [Art. 119] Sections to be explained.** (1) 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:

(a) At the time of the member's enlistment or transfer or induction;

(b) At the time of the member's order to duty in or with any of the organized militia; or

(c) Within forty days thereafter.

(2) These sections shall also be explained again to each member of the organized militia each time a member of the organized militia reenlists or extends his or her enlistment.

(3) 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. [2009 c 378 § 30; 1989 c 48 § 74; 1963 c 220 § 122.]

## Chapter 38.42 RCW

### SERVICE MEMBERS' CIVIL RELIEF

#### Sections

38.42.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**38.42.904 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 83.]

### Chapter 38.52 RCW

#### EMERGENCY MANAGEMENT

##### Sections

- 38.52.106 Nisqually earthquake account.  
 38.52.940 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**38.52.106 Nisqually earthquake account.** The Nisqually earthquake account is created in the state treasury. Moneys may be placed in the account from tax revenues, budget transfers or appropriations, federal appropriations, gifts, or any other lawful source. Moneys in the account may be spent only after appropriation. Moneys in the account shall be used only to support state and local government disaster response and recovery efforts associated with the Nisqually earthquake. During the 2003-2005 fiscal biennium, the legislature may transfer moneys from the Nisqually earthquake account to the disaster response account for fire suppression and mobilization costs. During the 2007-2009 fiscal biennium, moneys in the account may also be used to support disaster response and recovery efforts associated with flood and storm damage. During the 2009-2011 fiscal biennium, the legislature may transfer moneys from the Nisqually earthquake account to the disaster response account for disaster response and recovery efforts associated with flood and storm damage. [2009 c 564 § 922; 2008 c 329 § 909; 2003 1st sp.s. c 25 § 913; 2002 c 371 § 904; 2001 c 5 § 2.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Severability—Effective date—2008 c 329:** See notes following RCW 28B.105.110.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—2002 c 371:** See notes following RCW 9.46.100.

**Nisqually earthquake emergency declaration—2001 c 5:** "The legislature declares an emergency caused by a natural disaster, known as the Nisqually earthquake, which occurred on February 28, 2001, as proclaimed by the governor and the president of the United States." [2001 c 5 § 1.]

**Effective date—2001 c 5:** "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 12, 2001]." [2001 c 5 § 6.]

**38.52.940 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 84.]

### Title 39

#### PUBLIC CONTRACTS AND INDEBTEDNESS

##### Chapters

- 39.04 Public works.**  
**39.08 Contractor's bond.**  
**39.10 Alternative public works contracting procedures.**  
**39.12 Prevailing wages on public works.**  
**39.19 Office of minority and women's business enterprises.**  
**39.29 Personal service contracts.**  
**39.34 Interlocal cooperation act.**  
**39.35D High-performance public buildings.**  
**39.42 State bonds, notes, and other evidences of indebtedness.**  
**39.58 Public funds—Deposits and investments—Public depositories.**  
**39.76 Interest on unpaid public contracts.**  
**39.86 Private activity bond allocation.**  
**39.94 Financing contracts.**  
**39.102 Local infrastructure financing tool program.**  
**39.104 Local revitalization financing.**

### Chapter 39.04 RCW

#### PUBLIC WORKS

##### Sections

- 39.04.140 Repealed.  
 39.04.155 Small works roster contract procedures—Limited public works process—Definition.  
 39.04.320 Apprenticeship training programs—Public works contracts—Adjustment of specific projects—Report and collection of agency data—Apprenticeship utilization advisory committee created.  
 39.04.350 Bidder responsibility criteria—Supplemental criteria.  
 39.04.360 Payment of undisputed claims.  
 39.04.901 Application—1992 c 223.

**39.04.140 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**39.04.155 Small works roster contract procedures—Limited public works process—Definition.** (1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of three hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. 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. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government 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. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter 43.19 RCW. An inter-local contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on

the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010. 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 subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred fifty thousand dollars to three hundred thousand dollars, a state agency or local government that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local



government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialpersons, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5)(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

(6) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities. [2009 c 74 § 1; 2008 c 130 § 17. Prior: 2007 c 218 § 87; 2007 c 210 § 1; 2007 c 133 § 4; 2001 c 284 § 1; 2000 c 138 § 101; 1998 c 278 § 12; 1993 c 198 § 1; 1991 c 363 § 109.]

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

**Purpose—2000 c 138:** "The purpose of this act is to establish a common small works roster procedure that state agencies and local governments may use to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property." [2000 c 138 § 1.]

**Part headings not law—2000 c 138:** "Part headings used in this act are not any part of the law." [2000 c 138 § 302.]

**Purpose—Captions not law—1991 c 363:** See notes following RCW 2.32.180.

*Competitive bids—Contract procedure:* RCW 36.32.250.

**39.04.320 Apprenticeship training programs—Public works contracts—Adjustment of specific projects—Report and collection of agency data—Apprenticeship utilization advisory committee created.** (1)(a) Except as

provided in (b) through (d) of this subsection, from January 1, 2005, and thereafter, for all public works estimated to cost one million dollars or more, all specifications shall require that no less than fifteen percent of the labor hours be performed by apprentices.

(b)(i) This section does not apply to contracts advertised for bid before July 1, 2007, for any public works by the department of transportation.

(ii) For contracts advertised for bid on or after July 1, 2007, and before July 1, 2008, for all public works by the department of transportation estimated to cost five million dollars or more, all specifications shall require that no less than ten percent of the labor hours be performed by apprentices.

(iii) For contracts advertised for bid on or after July 1, 2008, and before July 1, 2009, for all public works by the department of transportation estimated to cost three million dollars or more, all specifications shall require that no less than twelve percent of the labor hours be performed by apprentices.

(iv) For contracts advertised for bid on or after July 1, 2009, for all public works by the department of transportation estimated to cost two million dollars or more, all specifications shall require that no less than fifteen percent of the labor hours be performed by apprentices.

(c)(i) This section does not apply to contracts advertised for bid before January 1, 2008, for any public works by a school district, or to any project funded in whole or in part by bond issues approved before July 1, 2007.

(ii) For contracts advertised for bid on or after January 1, 2008, for all public works by a school district estimated to cost three million dollars or more, all specifications shall require that no less than ten percent of the labor hours be performed by apprentices.

(iii) For contracts advertised for bid on or after January 1, 2009, for all public works by a school district estimated to cost two million dollars or more, all specifications shall require that no less than twelve percent of the labor hours be performed by apprentices.

(iv) For contracts advertised for bid on or after January 1, 2010, for all public works by a school district estimated to cost one million dollars or more, all specifications shall require that no less than fifteen percent of the labor hours be performed by apprentices.

(d)(i) For contracts advertised for bid on or after January 1, 2010, for all public works by a four-year institution of higher education estimated to cost three million dollars or more, all specifications must require that no less than ten percent of the labor hours be performed by apprentices.

(ii) For contracts advertised for bid on or after January 1, 2011, for all public works by a four-year institution of higher education estimated to cost two million dollars or more, all specifications must require that no less than twelve percent of the labor hours be performed by apprentices.

(iii) For contracts advertised for bid on or after January 1, 2012, for all public works by a four-year institution of higher education estimated to cost one million dollars or more, all specifications must require that no less than fifteen percent of the labor hours be performed by apprentices.

(2) Awarding entities may adjust the requirements of this section for a specific project for the following reasons:

(a) The demonstrated lack of availability of apprentices in specific geographic areas;

(b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation;

(c) Participating contractors have demonstrated a good faith effort to comply with the requirements of RCW 39.04.300 and 39.04.310 and this section; or

(d) Other criteria the awarding entity deems appropriate, which are subject to review by the office of the governor.

(3) The secretary of the department of transportation shall adjust the requirements of this section for a specific project for the following reasons:

(a) The demonstrated lack of availability of apprentices in specific geographic areas; or

(b) A disproportionately high ratio of material costs to labor hours, which does not make feasible the required minimum levels of apprentice participation.

(4) This section applies to public works contracts awarded by the state, to public works contracts awarded by school districts, and to public works contracts awarded by state four-year institutions of higher education. However, this section does not apply to contracts awarded by state agencies headed by a separately elected public official.

(5)(a) The department of general administration must provide information and technical assistance to affected agencies and collect the following data from affected agencies for each project covered by this section:

(i) The name of each apprentice and apprentice registration number;

(ii) The name of each project;

(iii) The dollar value of each project;

(iv) The date of the contractor's notice to proceed;

(v) The number of apprentices and labor hours worked by them, categorized by trade or craft;

(vi) The number of journey level workers and labor hours worked by them, categorized by trade or craft; and

(vii) The number, type, and rationale for the exceptions granted under subsection (2) of this section.

(b) The department of labor and industries shall assist the department of general administration in providing information and technical assistance.

(6) The secretary of transportation shall establish an apprenticeship utilization advisory committee, which shall include statewide geographic representation and consist of equal numbers of representatives of contractors and labor. The committee must include at least one member representing contractor businesses with less than thirty-five employees. The advisory committee shall meet regularly with the secretary of transportation to discuss implementation of this section by the department of transportation, including development of the process to be used to adjust the requirements of this section for a specific project. The committee shall provide a report to the legislature by January 1, 2008, on the effects of the apprentice labor requirement on transportation projects and on the availability of apprentice labor and programs statewide.

(7) At the request of the senate labor, commerce, research and development committee, the house of representatives commerce and labor committee, or their successor committees, and the governor, the department of general

administration and the department of labor and industries shall compile and summarize the agency data and provide a joint report to both committees. The report shall include recommendations on modifications or improvements to the apprentice utilization program and information on skill shortages in each trade or craft. [2009 c 197 § 1; 2007 c 437 § 2; 2006 c 321 § 2; 2005 c 3 § 3.]

**Rules—Implementation—2009 c 197:** "The Washington state apprenticeship and training council shall adopt rules necessary to implement sections 2 and 3 of this act. Rules shall address due process protections for all parties and shall strengthen the accountability for apprenticeship committees approved under chapter 49.04 RCW in enforcing the apprenticeship program standards adopted by the council." [2009 c 197 § 4.]

**Effective date—2005 c 3:** See note following RCW 39.04.300.

**39.04.350 Bidder responsibility criteria—Supplemental criteria.** (1) Before award of a public works contract, a bidder must meet the following responsibility criteria to be considered a responsible bidder and qualified to be awarded a public works project. The bidder must:

(a) At the time of bid submittal, have a certificate of registration in compliance with chapter 18.27 RCW;

(b) Have a current state unified business identifier number;

(c) If applicable, have industrial insurance coverage for the bidder's employees working in Washington as required in Title 51 RCW; an employment security department number as required in Title 50 RCW; and a state excise tax registration number as required in Title 82 RCW;

(d) Not be disqualified from bidding on any public works contract under RCW 39.06.010 or 39.12.065(3); and

(e) If bidding on a public works project subject to the apprenticeship utilization requirements in RCW 39.04.320, not have been found out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW for the one-year period immediately preceding the date of the bid solicitation.

(2) In addition to the bidder responsibility criteria in subsection (1) of this section, the state or municipality may adopt relevant supplemental criteria for determining bidder responsibility applicable to a particular project which the bidder must meet.

(a) Supplemental criteria for determining bidder responsibility, including the basis for evaluation and the deadline for appealing a determination that a bidder is not responsible, must be provided in the invitation to bid or bidding documents.

(b) In a timely manner before the bid submittal deadline, a potential bidder may request that the state or municipality modify the supplemental criteria. The state or municipality must evaluate the information submitted by the potential bidder and respond before the bid submittal deadline. If the evaluation results in a change of the criteria, the state or municipality must issue an addendum to the bidding documents identifying the new criteria.

(c) If the bidder fails to supply information requested concerning responsibility within the time and manner specified in the bid documents, the state or municipality may base its determination of responsibility upon any available infor-

mation related to the supplemental criteria or may find the bidder not responsible.

(d) If the state or municipality determines a bidder to be not responsible, the state or municipality must provide, in writing, the reasons for the determination. The bidder may appeal the determination within the time period specified in the bidding documents by presenting additional information to the state or municipality. The state or municipality must consider the additional information before issuing its final determination. If the final determination affirms that the bidder is not responsible, the state or municipality may not execute a contract with any other bidder until two business days after the bidder determined to be not responsible has received the final determination.

(3) The capital projects advisory review board created in RCW 39.10.220 shall develop suggested guidelines to assist the state and municipalities in developing supplemental bidder responsibility criteria. The guidelines must be posted on the board's web site. [2009 c 197 § 2; 2007 c 133 § 2.]

**Rules—Implementation—2009 c 197:** See note following RCW 39.04.320.

**39.04.360 Payment of undisputed claims.** No later than thirty days after satisfactory completion of any additional work or portion of any additional work by a contractor on a public works project, the state or municipality shall issue a change order to the contract for the full dollar amount of the work not in dispute between the state or municipality and the contractor. If the state or municipality does not issue such a change order within the thirty days, interest must accrue on the dollar amount of the additional work satisfactorily completed and not in dispute until a change order is issued. The state or municipality shall pay this interest at a rate of one percent per month. For the purposes of this section, additional work is work beyond the scope defined in the contract between the contractor and the state or municipality. [2009 c 193 § 1.]

**39.04.901 Application—1992 c 223.** 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. [2009 c 219 § 1; 1992 c 223 § 7.]

**Effective date—1992 c 223:** See note following RCW 39.76.011.

**Chapter 39.08 RCW  
CONTRACTOR'S BOND**

Sections

39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorney's fees. (*Effective until June 30, 2016.*)

**39.08.030 Conditions of bond—Notice of claim—Action on bond—Attorney's fees. (*Effective until June 30, 2016.*)** (1) 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, except under subsections (2) and (3) of this section, 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 material supplier, 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 material supplier, 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.

(2) Under the job order contracting procedure described in RCW 39.10.420, bonds will be in an amount not less than the dollar value of all open work orders.

(3)(a) On highway construction contracts administered by the department of transportation with an estimated contract price of two hundred fifty million dollars or more, the department may authorize bonds in an amount less than the full contract price of the project. If a bond less than the full contract price is authorized by the department, the bond must be in the form of a performance bond and a separate payment bond. The department shall fix the amount of the performance bond on a contract-by-contract basis to adequately protect one hundred percent of the state's exposure to loss. The amount of the performance bond must not be less than two hundred fifty million dollars. The payment bond must be in an amount fixed by the department but must not be less than the amount of the performance bond. The secretary of transportation must approve each performance bond and payment bond authorized to be less than the full contract price of a project. Before the secretary may approve any bond authorized to be less than the full contract price of a project, the office of financial management shall review and approve the analysis supporting the amount of the bond set by the department to ensure that one hundred percent of the state's exposure to loss is adequately protected. All the requirements of this chapter apply respectively to the individual performance and payment bonds. The performance bond is solely for the protection of the department. The payment bond is solely for the protection of laborers, mechanics, subcontractors, and suppliers mentioned in RCW 39.08.010.

(b) The department shall develop risk assessment guidelines and gain approval of these guidelines from the office of financial management before implementing (a) of this subsection. The guidelines must include a clear process for how the department measures the state's exposure to loss and how the performance bond amount, determined under (a) of this subsection, adequately protects one hundred percent of the state's exposure to loss.

(c) The department shall report to the house of representatives and senate transportation committees by December 1, 2012: Each project where the department authorized bonds that were less than the full contract price; the difference between the project amount and the bond requirements; the number of bidders on the project; and other information that documents the effects of the reduced bond amounts on the project. [2009 c 473 § 1; 2007 c 218 § 89; 2003 c 301 § 4; 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.]

**Expiration date—2009 c 473:** "This act expires June 30, 2016." [2009 c 473 § 3.]

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

**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.]

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## Chapter 39.10 RCW

### ALTERNATIVE PUBLIC WORKS CONTRACTING PROCEDURES

#### Sections

39.10.230	Board—Powers and duties.
39.10.250	Project review committee—Duties.
39.10.270	Project review committee—Certification of public bodies.
39.10.300	Design-build procedure—Uses.
39.10.310	Repealed.
39.10.330	Design-build contract award process.
39.10.360	General contractor/construction manager procedure—Contract award process.
39.10.420	Job order procedure—Which public bodies may use—Authorized use.

**39.10.230 Board—Powers and duties.** The board has the following powers and duties:

(1) Develop and recommend to the legislature policies to further enhance the quality, efficiency, and accountability of capital construction projects through the use of traditional and alternative delivery methods in Washington, and make recommendations regarding expansion, continuation, elimination, or modification of the alternative public works contracting methods;

(2) Evaluate the use of existing contracting procedures and potential future use of other alternative contracting procedures including competitive negotiation contracts;

(3) Develop guidelines to be used by the committee for the review and approval of design-build demonstration projects that procure operations and maintenance services;

(4) Appoint members of the committee; and

(5) Develop and administer questionnaires designed to provide quantitative and qualitative data on alternative public works contracting procedures on which evaluations are based. [2009 c 75 § 1; 2007 c 494 § 103; 2005 c 377 § 2. Formerly RCW 39.10.810.]

**Sunset Act application:** See note following chapter digest.

**39.10.250 Project review committee—Duties.** The committee shall:

(1) Certify, or recertify, public bodies for a period of three years to use the design-build or general contractor/construction manager, or both, contracting procedures for projects with a total project cost of ten million dollars or more;

(2) Review and approve the use of the design-build or general contractor/construction manager contracting procedures on a project by project basis for public bodies that are not certified under RCW 39.10.270;

(3) Review and approve the use of the general contractor/construction manager contracting procedure by certified public bodies for projects with a total project cost under ten million dollars;

(4) Review and approve not more than ten projects using the design-build contracting procedure by certified and non-certified public bodies for projects that have a total project cost between two million and ten million dollars. Projects must meet the criteria in RCW 39.10.300(1). Where possible, the committee shall approve projects among multiple public bodies. In June 2010, the committee shall report to the board regarding the committee's review procedure of these projects and its recommendations for further use; and

(5) Review and approve not more than two design-build demonstration projects that include procurement of operations and maintenance services for a period longer than three years. [2009 c 75 § 2; 2007 c 494 § 105.]

**Sunset Act application:** See note following chapter digest.

**39.10.270 Project review committee—Certification of public bodies.** (1) A public body may apply for certification to use the design-build or general contractor/construction manager contracting procedure, or both. Once certified, a public body may use the contracting procedure for which it is certified on individual projects with a total project cost over ten million dollars without seeking committee approval. The certification period is three years. A public body seeking certification must submit to the committee an application in a format and manner as prescribed by the committee. The application must include a description of the public body's qualifications, its capital plan during the certification period, and its intended use of alternative contracting procedures.

(2) A public body seeking certification for the design-build procedure must demonstrate successful management of at least one design-build project within the previous five years. A public body seeking certification for the general contractor/construction manager procedure must demonstrate successful management of at least one general contractor/construction manager project within the previous five years.

(3) To certify a public body, the committee shall determine that the public body:

(a) Has the necessary experience and qualifications to determine which projects are appropriate for using alternative contracting procedures;

(b) Has the necessary experience and qualifications to carry out the alternative contracting procedure including, but not limited to: (i) Project delivery knowledge and experience; (ii) personnel with appropriate construction experience; (iii) a management plan and rationale for its alternative public works projects; (iv) demonstrated success in managing public works projects; (v) the ability to properly manage its capital facilities plan including, but not limited to, appropriate project planning and budgeting experience; and (vi) the ability to meet requirements of this chapter; and

(c) Has resolved any audit findings on previous public works projects in a manner satisfactory to the committee.

(4) The committee shall, if practicable, make its determination at the public meeting during which an application for certification is reviewed. Public comments must be considered before a determination is made. Within ten business days of the public meeting, the committee shall provide a written determination to the public body, and make its determination available to the public on the committee's web site.

(5) The committee may revoke any public body's certification upon a finding, after a public hearing, that its use of design-build or general contractor/construction manager contracting procedures no longer serves the public interest.

(6) The committee may renew the certification of a public body for one additional three-year period. The public body must submit an application for recertification at least three months before the initial certification expires. The application shall include updated information on the public

body's capital plan for the next three years, its intended use of the procedures, and any other information requested by the committee. The committee must review the application for recertification at a meeting held before expiration of the applicant's initial certification period. A public body must reapply for certification under the process described in subsection (1) of this section once the period of recertification expires.

(7) Certified public bodies must submit project data information as required in RCW 39.10.320 and 39.10.350. [2009 c 75 § 3; 2007 c 494 § 107.]

**Sunset Act application:** See note following chapter digest.

**39.10.300 Design-build procedure—Uses.** (1) Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may utilize the design-build procedure for public works projects in which the total project cost is over ten million dollars and where:

(a) The design and construction activities, technologies, or schedule to be used are highly specialized and a design-build approach is critical in developing the construction methodology or implementing the proposed technology; or

(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.

(2) Subject to the process in RCW 39.10.270 or 39.10.280, public bodies may use the design-build procedure for parking garages, regardless of cost.

(3) The design-build procedure may be used for the construction or erection of preengineered metal buildings or prefabricated modular buildings, regardless of cost and is not subject to approval by the committee.

(4) Except for utility projects and approved demonstration projects, the design-build procedure may not be used to procure operations and maintenance services for a period longer than three years. State agency projects that propose to use the design-build-operate-maintain procedure shall submit cost estimates for the construction portion of the project consistent with the office of financial management's capital budget requirements. Operations and maintenance costs must be shown separately and must not be included as part of the capital budget request.

(5) Subject to the process in RCW 39.10.280, public bodies may use the design-build procedure for public works projects in which the total project cost is between two million and ten million dollars and that meet one of the criteria in subsection (1)(a), (b), or (c) of this section.

(6) Subject to the process in RCW 39.10.280, a public body may seek committee approval for a design-build demonstration project that includes procurement of operations and maintenance services for a period longer than three years. [2009 c 75 § 4; 2007 c 494 § 201. Prior: 2003 c 352 § 2; 2003 c 300 § 4; 2002 c 46 § 1; 2001 c 328 § 2. Formerly RCW 39.10.051.]

**Sunset Act application:** See note following chapter digest.

**Effective date—2002 c 46:** "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 14, 2002]." [2002 c 46 § 5.]

**Effective date—2001 c 328:** See note following RCW 39.10.210.

**39.10.310 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**39.10.330 Design-build contract award process.** (1) Contracts for design-build services shall be awarded through a competitive process using 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 qualifications from proposers for design-build services, and the availability and location of the request for proposal documents. The request for qualifications documents shall include:

(a) A general description of the project that provides sufficient information for proposers to submit qualifications;

(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 finalists' proposals, including evaluation factors and the relative weight of factors and any specific forms to be used by the proposers;

(i) Evaluation factors for request for qualifications shall include, but not be limited to, technical qualifications, such as specialized experience and technical competence; capability to perform; past performance of the proposers' team, including the architect-engineer and construction members; and other appropriate factors. Cost or price-related factors are not permitted in the request for qualifications phase;

(ii) Evaluation factors for finalists' proposals shall include, but not be limited to, the factors listed in (d)(i) of this subsection, as well as technical approach design concept; 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 workloads of the firm; and location. Alternatively, if the public body determines that all finalists will be capable of producing a design that adequately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price;

(e) The form of the contract to be awarded;

(f) The amount to be paid to finalists submitting responsive proposals and who are not awarded a design-build contract;

(g) The schedule for the procurement process and the project; and

(h) Other information relevant to the project.

(2) The public body shall establish an evaluation committee to evaluate the responses to the request for qualifications based on the factors, weighting, and process identified in the request for qualifications. Based on the evaluation committee's findings, the public body shall select not more than five responsive and responsible finalists to submit proposals. The public body may, in its sole discretion, reject all proposals and shall provide its reasons for rejection in writing to all proposers.

(3) Upon selection of the finalists, the public body shall issue a request for proposals to the finalists, which shall provide the following information:

(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; and

(b) The target budget for the design-build portion of the project.

(4) The public body shall establish an evaluation committee to evaluate the proposals submitted by the finalists. Design-build contracts shall be awarded using the procedures in (a) or (b) of this subsection. The public body must identify in the request for qualifications which procedure will be used.

(a) The finalists' proposals shall be evaluated and scored based on the factors, weighting, and process identified in the initial request for qualifications and in any addenda published by the public body. Public bodies may request best and final proposals from finalists. The public body shall initiate negotiations with the firm submitting the highest scored proposal. If the public body is unable to execute a contract with the firm submitting the highest scored 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 a design that adequately meets project requirements, the public body may award the contract to the firm that submits the responsive proposal with the lowest price.

(5) 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 responsive proposals that are not awarded a design-build contract. Honorarium payments shall be sufficient to generate meaningful competition among potential proposers on design-build projects. In determining the amount of the honorarium, the public body shall consider the level of effort required to meet the selection criteria. [2009 c 75 § 5; 2007 c 494 § 204.]

**Sunset Act application:** See note following chapter digest.

**39.10.360 General contractor/construction manager procedure—Contract award process.** (1) 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.

(2) 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) A description of the project, including programmatic, performance, and technical requirements and specifications when available;

(b) The reasons for using the general contractor/construction manager procedure;

(c) A description of the qualifications to be required of the firm, including submission of the firm’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;

(e) The form of the contract, including any contract for preconstruction services, to be awarded;

(f) The estimated maximum allowable construction cost; and

(g) The bid instructions to be used by the general contractor/ construction manager finalists.

(3) Evaluation factors for selection of the general contractor/construction manager shall include, but not be limited to:

(a) Ability of the firm’s professional personnel;

(b) The firm’s past performance in negotiated and complex projects;

(c) The firm’s ability to meet time and budget requirements;

(d) The scope of work the firm proposes to self-perform and its ability to perform that work;

(e) The firm’s proximity to the project location;

(f) Recent, current, and projected workloads of the firm; and

(g) The firm’s approach to executing the project.

(4) A public body shall establish a committee to evaluate the proposals. After the committee has selected the most qualified finalists, at the time specified by the public body, these finalists shall submit final proposals, including sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. The public body shall establish a time and place for the opening of sealed bids for the percent fee on the estimated maximum allowable construction cost and the fixed amount for the general conditions work specified in the request for proposal. At the time and place named, these bids must be publicly opened and read and the public body shall make all previous scoring available to the public. 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. A public body shall not evaluate or disqualify a proposal based on the terms of a collective bargaining agreement.

(5) Public bodies may contract with the selected firm 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. [2009 c 75 § 6; 2007 c 494 § 303.]

**Sunset Act application:** See note following chapter digest.

**39.10.420 Job order procedure—Which public bodies may use—Authorized use.** (1) The following public

bodies are authorized to use the job order contracting procedure:

(a) The department of general administration;

(b) The University of Washington;

(c) Washington State University;

(d) Every city with a population greater than seventy thousand and any public authority chartered by such city under RCW 35.21.730 through 35.21.755;

(e) Every county with a population greater than four hundred fifty thousand;

(f) Every port district with total revenues greater than fifteen million dollars per year;

(g) Every public utility district with revenues from energy sales greater than twenty-three million dollars per year;

(h) Every school district; and

(i) The state ferry system.

(2)(a) The department of general administration may issue job order contract work orders for Washington state parks department projects.

(b) The department of general administration, the University of Washington, and Washington State University may issue job order contract work orders for the state regional universities and The Evergreen State College.

(3) Public bodies may use a job order contract for public works projects when a determination is made that the use of job order contracts will benefit the public by providing an effective means of reducing the total lead-time and cost for the construction of public works projects for repair and renovation required at public facilities through the use of unit price books and work orders by eliminating time-consuming, costly aspects of the traditional public works process, which require separate contracting actions for each small project. [2009 c 75 § 7; 2007 c 494 § 401; 2003 c 301 § 1. Formerly RCW 39.10.130.]

**Sunset Act application:** See note following chapter digest.

**Chapter 39.12 RCW**

**PREVAILING WAGES ON PUBLIC WORKS**

Sections

39.12.030	Contract specifications must state minimum hourly rate—Stipulation for payment—Residential and commercial construction work.
39.12.040	Statement of intent to pay prevailing wages, affidavit of wages paid—Alternative procedure.
39.12.050	False statement or failure to file—Penalty—Unpaid wages lien against bond and retainage—Prohibitions on bidding on future contracts—Hearing.
39.12.055	Prohibitions on bidding on future contracts.
39.12.065	Investigation of complaints—Hearing—Remedies—Penalties.
39.12.100	Independent contractors—Criteria.

**39.12.030 Contract specifications must state minimum hourly rate—Stipulation for payment—Residential and commercial construction work.** (1) 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. If the awarding agency determines that the work contracted for meets the definition of residential construction, the contract must include that information.

(2) If the hourly minimum rate of wage stated in the contract specifies residential construction rates and it is later determined that the work performed is commercial and subject to commercial construction rates, the state, county, municipality, or political subdivision that entered into the contract must pay the difference between the residential rate stated and the actual commercial rate to the contractor, subcontractor, or other person doing or contracting to do the whole or any part of the work under the contract. [2009 c 62 § 1; 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—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 60.28.011 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 and for projects where

the limited public works process under RCW 39.04.155(3) is followed:

(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 60.28.011. 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). [2009 c 219 § 2; 2007 c 210 § 4; 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.]

**39.12.050 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. Civil penalties shall be deposited in the public works administration account.

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, 19.28.041, 39.08.010, and 60.28.011.

(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. [2009 c 219 § 3; 2001 c 219 § 1; 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.

**39.12.055 Prohibitions on bidding on future contracts.** A contractor shall not be allowed to bid on any public works contract for one year from the date of a final determination that the contractor has committed any combination of two of the following violations or infractions within a five-year period:

(1) Violated RCW 51.48.020(1) or 51.48.103;

(2) Committed an infraction or violation under chapter 18.27 RCW for performing work as an unregistered contractor; or

(3) Determined to be out of compliance by the Washington state apprenticeship and training council for working apprentices out of ratio, without appropriate supervision, or outside their approved work processes as outlined in their standards of apprenticeship under chapter 49.04 RCW. [2009 c 197 § 3; 2008 c 120 § 3.]

**Rules—Implementation—2009 c 197:** See note following RCW 39.04.320.

**Conflict with federal requirements—Severability—2008 c 120:** See notes following RCW 18.27.030.

**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 pri-

vate 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 60.28.011;

(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 19.28.041;

(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. Civil penalties shall be deposited in the public works administration account. 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 determina-

tion 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, 19.28.041, 39.08.010, and 60.28.011. [2009 c 219 § 4; 2001 c 219 § 2; 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.]

**39.12.100 Independent contractors—Criteria.** For the purposes of this chapter, an individual employed on a public works project is not considered to be a laborer, worker, or mechanic when:

(1) The individual has been and is free from control or direction over the performance of the service, both under the contract of service and in fact;

(2) The service is either outside the usual course of business for the contractor or contractors for whom the individual performs services, or the service is performed outside all of the places of business of the enterprise for which the individual performs services, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(3) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes other than that furnished by the employer for which the business has contracted to furnish services;

(4) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(5) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract of service, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

(6) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; and

(7) On the effective date of the contract of service, if the nature of the work performed requires registration under chapter 18.27 RCW or licensure under chapter 19.28 RCW, the individual has a valid contractor registration pursuant to chapter 18.27 RCW or an electrical contractor license pursuant to chapter 19.28 RCW. [2009 c 63 § 1.]

## Chapter 39.19 RCW

### OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES

#### Sections

39.19.250 Participation in contracts by qualified minority and women-owned and controlled businesses—Data—Contact people—Reports.

**39.19.250 Participation in contracts by qualified minority and women-owned and controlled businesses—Data—Contact people—Reports.** (1) For the purpose of annual reporting on progress required by \*section 1 of this act, each state agency and educational institution shall submit data to the office and the office of minority and women's business enterprises on the participation by qualified minority and women-owned and controlled businesses in the agency's or institution's contracts and other related information requested by the director. The director of the office of minority and women's business enterprises shall determine the content and format of the data and the reporting schedule, which must be at least annually.

(2) The office must develop and maintain a list of contact people at each state agency and educational institution that is able to present to hearings of the appropriate committees of the legislature its progress in carrying out the purposes of chapter 39.19 RCW.

(3) The office must submit a report aggregating the data received from each state agency and educational institution to the legislature and the governor. [2009 c 348 § 2.]

**Reviser's note:** \*(1) "Section 1 of this act" was vetoed.

(2) 2009 c 348 directed that this section be added to chapter 43.41 RCW, but codification in chapter 39.19 RCW appears to be more appropriate.

## Chapter 39.29 RCW

### PERSONAL SERVICE CONTRACTS

#### Sections

39.29.006 Definitions.  
39.29.011 Competitive solicitation required—Exceptions.  
39.29.018 Sole source contracts.  
39.29.065 Office of financial management to establish policies and procedures—Adjustment of dollar thresholds.

**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) "Common vendor registration and bid notification system" means the internet-based vendor registration and bid notification system maintained by and housed within the department of general administration. The requirements contained in chapter 486, Laws of 2009 shall continue to apply to this system, regardless of future changes to its name or management structure.

(4) "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. "Competitive solicitation" includes posting of the contract opportunity on the state's common vendor registration and bid notification system.

(5) "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.

(6) "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.

(7) "Evidence of competition" means documentation demonstrating that the agency has solicited responses from multiple firms in selecting a consultant. "Evidence of competition" includes documentation that the agency has posted the contract opportunity on the state's common vendor registration and bid notification system.

(8) "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 (10) of this section. This term does include client services.

(9) "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 41.06.142.

(10) "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.

(11) "Small business" means an in-state business, including a sole proprietorship, corporation, partnership, or other legal entity that is owned and operated independently from all other businesses and has either (a) fifty or fewer employees, or (b) a gross revenue of less than seven million dollars annually as reported on its federal income tax return or its return filed with the department of revenue over the previous three consecutive years. As used in this definition, "in-state business" means a business that has its principal office located in Washington and its officers domiciled in Washington.

(12) "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. [2009 c 486 § 6; 2002 c 354 § 235; 1998 c 101 § 2; 1993 c 433 § 2; 1987 c 414 § 2; 1981 c 263 § 1; 1979 ex.s. c 61 § 2.]

**Intent—2009 c 486:** "In addition to providing integrated, tailored management and technical assistance services to Washington small businesses, the legislature intends that the state shall further support them by developing procurement policies, procedures, and materials that encourage and facilitate state agency purchase of products and services from Washington small businesses." [2009 c 486 § 5.]

**Conflict with federal requirements—2009 c 486:** See note following RCW 28B.30.530.

**Short title—Headings, captions not law—Severability—Effective dates—2002 c 354:** See RCW 41.80.907 through 41.80.910.

**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, which must include agency posting of the contract opportunity on the state's common vendor registration and bid notification system. 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. [2009 c 486 § 7; 1998 c 101 § 3; 1987 c 414 § 3.]

**Intent—2009 c 486:** See note following RCW 39.29.006.

**Conflict with federal requirements—2009 c 486:** See note following RCW 28B.30.530.

**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, and must include evidence that the agency posted the contract opportunity on the state's common vendor registration and bid notification system. For sole source contracts of twenty thousand dollars or more, documented justification shall also include evidence that the agency attempted to identify potential consultants by advertising through statewide 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 rea-

sonable. [2009 c 486 § 8; 1998 c 101 § 5; 1996 c 288 § 30; 1993 c 433 § 5; 1987 c 414 § 5.]

**Intent—2009 c 486:** See note following RCW 39.29.006.

**Conflict with federal requirements—2009 c 486:** See note following RCW 28B.30.530.

**39.29.065 Office of financial management to establish policies and 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. The director shall develop procurement policies and procedures, such as unbundled contracting and subcontracting, that encourage and facilitate the purchase of products and services by state agencies and institutions from Washington small businesses to the maximum extent practicable and consistent with international trade agreement commitments. 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, and 39.29.040 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. [2009 c 486 § 9; 1998 c 101 § 9; 1987 c 414 § 8.]

**Intent—2009 c 486:** See note following RCW 39.29.006.

**Conflict with federal requirements—2009 c 486:** See note following RCW 28B.30.530.

## Chapter 39.34 RCW

### INTERLOCAL COOPERATION ACT

#### Sections

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|-----------|--|
| 39.34.030 | Joint powers—Agreements for joint or cooperative action, requisites, effect on responsibilities of component agencies—Financing of joint projects. |
| 39.34.215 | Watershed management partnerships—Eminent domain authority.  |

**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, except 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 non-profit 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 or 25.05 RCW whose partners are limited solely to participating public agencies, or a limited liability company organized under chapter 25.15 RCW whose membership is limited solely to participating public agencies, and the funds of any such corporation, partnership, or limited liability company 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; and

(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 contain, in addition to provisions specified in subsection (3)(a), (c), (d), (e), and (f) of this section, 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 that are party to the agreement shall be represented; and

(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 relieves any public agency of any obligation or responsibility imposed upon it by law except that:

(a) To the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made pursuant to this chapter, the performance may be offered in satisfaction of the obligation or responsibility; and

(b) With respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal, or contract awarded by another public agency or by a group of public agencies, any statutory obligation to provide notice for bids or proposals that applies to the public agencies involved is satisfied if the public agency or group of public agencies that awarded the bid, proposal, or contract complied with its

own statutory requirements and either (i) posted the bid or solicitation notice on a web site established and maintained by a public agency, purchasing cooperative, or similar service provider, for purposes of posting public notice of bid or proposal solicitations, or (ii) provided an access link on the state's web portal to the notice.

(6) Financing of joint projects by agreement shall be as provided by law. [2009 c 202 § 6. Prior: 2008 c 198 § 2; 2004 c 190 § 1; 1992 c 161 § 4; 1990 c 33 § 568; 1981 c 308 § 2; 1972 ex.s. c 81 § 1; 1967 c 239 § 4.]

**Finding—2008 c 198:** "The legislature finds that it is in the public interest for public utility districts to develop renewable energy projects to meet requirements enacted by the people in Initiative Measure No. 937 and goals of diversifying energy resource portfolios. By developing more efficient and cost-effective renewable energy projects, public utility districts will keep power costs as low as possible for their customers. Consolidating and clarifying statutory provisions governing various aspects of public utility district renewable energy project development will reduce planning time and expense to meet these objectives." [2008 c 198 § 1.]

**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.*

**39.34.215 Watershed management partnerships—Eminent domain authority.** (1) As limited in subsection (3) of this section, a watershed management partnership formed or qualified under the authority of RCW 39.34.200 and 39.34.210, including the separate legal entity established by such a partnership under RCW 39.34.030(3)(b) to conduct the cooperative undertaking of the partnership under the same statutory authority, may exercise the power of eminent domain as provided in chapter 8.12 RCW.

(2) The eminent domain authority granted under subsection (1) of this section may be exercised only for those utility purposes for which the watershed partnership was formed and is limited solely to providing water services to its customers.

(3) Subsection (1) of this section applies only to a watershed management partnership that:

(a) Was formed or qualified before July 1, 2006, under the authority of RCW 39.34.200 and 39.34.210;

(b) Is not engaged in planning or in implementing a plan for a water resource inventory area under the terms of chapter 90.82 RCW;

(c) Is composed entirely of cities and water-sewer districts authorized to exercise the power of eminent domain in the manner provided by chapter 8.12 RCW; and

(d) Is governed by a board of directors consisting entirely of elected officials from the cities and water-sewer districts that constitute the watershed management partnership.

(4) A watershed management partnership exercising authority under this section shall:

(a) Comply with the notice requirements of RCW 8.25.290;

(b) Provide notice to the city, town, or county with jurisdiction over the subject property by certified mail thirty days prior to the partnership board authorizing condemnation; and

(c) With any city that is not a member of the watershed management partnership and that has water or sewer service areas within one-half mile of Lake Tapps or water or sewer service areas within five miles upstream from Lake Tapps along the White river, enter into an interlocal agreement to allow eminent domain within that city prior to exercising eminent domain authority under this section.

(5) The legislature is currently unaware of any information suggesting that the expected use by the watershed management partnership of the Lake Tapps water supply will have a significantly adverse effect on surrounding communities. However, if the watershed management partnership's Lake Tapps water supply operations result in a negative impact to the water supplies of a city that is not a member of the watershed management partnership and the city has water or sewer service areas within one-half mile of Lake Tapps or water or sewer service areas within five miles upstream from Lake Tapps along the White river, the city claiming a negative impact under this subsection must notify the watershed management partnership of their claim and give the partnership at least sixty days to resolve the claimed impact. If the watershed management partnership fails to resolve the claimed negative impact or disputes that the negative impact exists, the city claiming the negative impact under this subsection may pursue existing legal remedies in accordance with state and federal law. If a court determines that a negative impact has occurred as provided under this subsection, the watershed management partnership shall implement a remedy acceptable to the claiming city. If the affected city or cities and the watershed management partnership cannot agree on the terms required under this subsection, the court shall establish the terms for the remedy required under this subsection. [2009 c 504 § 1.]

## Chapter 39.35D RCW

### HIGH-PERFORMANCE PUBLIC BUILDINGS

#### Sections

39.35D.010 Finding—Intent.

**39.35D.010 Finding—Intent.** (1) The legislature finds that public buildings can be built and renovated using high-performance methods that save money, improve school performance, and make workers more productive. High-performance public buildings are proven to increase student test scores, reduce worker absenteeism, and cut energy and utility costs.

(2) It is the intent of the legislature that state-owned buildings and schools be improved by adopting recognized standards for high-performance public buildings, reducing energy consumption, and allowing flexible methods and choices in how to achieve those standards and reductions. The legislature also intends that public agencies and public school districts shall document costs and savings to monitor this program and ensure that economic, community, and environmental goals are achieved each year, and that an independent performance review be conducted to evaluate this program and determine the extent to which the results intended by this chapter are being met.

(3) The legislature further finds that state agency leadership is needed in the development of preparation and adaptation actions for climate change to ensure the economic health, safety, and environmental well-being of the state and its citizens. [2009 c 519 § 8; 2005 c 12 § 1.]

**Findings—2009 c 519:** See RCW 43.21M.900.

### Chapter 39.42 RCW

#### STATE BONDS, NOTES, AND OTHER EVIDENCES OF INDEBTEDNESS

##### Sections

39.42.060	Repealed.
39.42.070	Computation of general state revenues—Filing of certificate—Estimate of debt capacity.
39.42.130	Aggregate state debt not to exceed debt limitation—State finance committee duties.

**39.42.060 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**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 or she 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 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. [2009 c 500 § 1; 2009 c 479 § 24; 2007 c 215 § 2; 2003 1st sp.s. c 9 § 1; 2002 c 240 § 8; 1971 ex.s. c 184 § 7.]

**Reviser's note:** \*(1) For "the effective date of this act," see RCW 39.42.900.

(2) This section was amended by 2009 c 479 § 24 and by 2009 c 500 § 1, each without reference to the other. Both amendments are incorporated in

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the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

**Effective date—2009 c 500:** "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, 2009." [2009 c 500 § 14.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Finding—Intent—2007 c 215:** "The legislature finds that after passage of a constitutional amendment (\*House Joint Resolution No. 4215 or Senate Joint Resolution No. 8220), the state investment board will be permitted in accordance with RCW 43.33A.140 to invest a portion of the higher education permanent funds in equities. The legislature further recognizes that by investing in equities, the value of the higher education permanent funds may fluctuate over time due to market changes even if no disposition of the fund principal is made. The removal of the word "irreducible" in this act, describing the higher education permanent funds, is needed to clarify that the mere reduction in market value of a permanent fund due to such fluctuations would not violate the mandate of the statute. It is the intent of the legislature to clarify state law to permit equity investment of higher education permanent funds even if there is a decline in the value of a permanent fund due to market changes. It is not the intent of the legislature to change the requirement that unless otherwise allowed by law the principal amounts in the higher education permanent funds are to be held in perpetuity for the benefit of the designated institutions and future generations, and that only the earnings from a higher education permanent fund may be appropriated to support the benefited institution." [2007 c 215 § 1.]

**\*Reviser's note:** House Joint Resolution No. 4215 passed the legislature on April 11, 2007.

**Contingent effective date—2007 c 215:** "This act takes effect if the proposed amendment to Article XVI of the state Constitution regarding investment of certain state moneys is validly submitted to and is approved and ratified by the voters at the next general election. If the proposed amendment is not approved and ratified, this act is void in its entirety." [2007 c 215 § 10.] The proposed amendment to Article XVI of the state Constitution (Substitute House Joint Resolution No. 4215) was approved by the people at the November 6, 2007, general election.

**Severability—Effective date—2002 c 240:** See RCW 43.99G.902 and 43.99G.903.

**39.42.130 Aggregate state debt not to exceed debt limitation—State finance committee duties.** (1) The state shall not contract any bonds, notes, or other evidences of indebtedness for borrowed money that would cause the aggregate state debt to exceed the debt limitation, as specified in Article VIII, section 1(b) of the state Constitution.

(2) 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.

(3) To the extent necessary because of the state constitutional 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. [2009 c 500 § 2.]

**Effective date—2009 c 500:** See note following RCW 39.42.070.

### Chapter 39.58 RCW

#### PUBLIC FUNDS—DEPOSITS AND INVESTMENTS—PUBLIC DEPOSITARIES

##### Sections

39.58.010	Definitions.
39.58.040	General powers of commission.
39.58.050	Collateral for deposits—Segregation—Eligible securities.
39.58.060	Loss in a public depository—Procedure for payment.
39.58.065	Repealed.
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.
39.58.130	Investment deposits—Net worth of public depository.
39.58.135	Limitations on deposits.
39.58.140	Liability of treasurers and state treasurer.
39.58.200	Public depository pool—Uniform treatment by commission.
39.58.210	Failure to furnish information—Failure to comply with chapter—Revocation of authority—Costs for noncompliance.
39.58.220	Commission—Delegation of authority—Exception.
39.58.230	Liability after merger, takeover, or acquisition.
39.58.750	Receipt, disbursement, or transfer of public funds by wire or other electronic communication means authorized.

**39.58.010 Definitions.** In this chapter, unless the context otherwise requires:

(1) "Capitalization" means the measure or measures of capitalization, other than net worth, of a depository applying for designation as or operating as a public depository pursuant to this chapter, based upon regulatory standards of financial institution capitalization adopted by rule or resolution of the commission after consultation with the director of the department of financial institutions;

(2) "Collateral" means the particular assets pledged as security to insure payment or performance of the obligations under this chapter as enumerated in RCW 39.58.050;

(3) "Commission" means the Washington public deposit protection commission created under RCW 39.58.030;

(4) "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;

(5) "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;

(6) "Director of the department of financial institutions" means the Washington state director of the department of financial institutions;

(7) "Eligible collateral" means securities which are enumerated in RCW 39.58.050 (5) and (6) as eligible collateral for public deposits;

(8) "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;

(9) "Investment deposits" means time deposits, money market deposit accounts, and savings deposits of public funds available for investment;

(10) "Liquidity" means the measure or measures of liquidity of a depository applying for designation as or operating as a public depository pursuant to this chapter, based upon regulatory standards of financial institution liquidity adopted by rule or resolution of the commission after consultation with the director of the department of financial institutions;

(11) "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;

(12) "Maximum liability," with reference to a public depository's liability under this chapter for loss per occurrence by another public depository, on any given date means:

(a) A sum equal to ten percent of:

(i) All uninsured public deposits held by a public depository that has not incurred a loss by the then most recent commission report date; or

(ii) The average of the balances of said uninsured public deposits on the last four immediately preceding reports required pursuant to RCW 39.58.100, whichever amount is greater; or

(b) Such other sum or measure as the commission may from time to time set by resolution according to criteria established by rule, consistent with the commission's broad administrative discretion to achieve the objective of RCW 39.58.020.

As long as the uninsured public deposits of a public depository are one hundred percent collateralized by eligible collateral as provided for in RCW 39.58.050, the "maximum liability" of a public depository that has not incurred a loss may not exceed the amount set forth in (a) of this subsection.

This definition of "maximum liability" does not limit the authority of the commission to adjust the collateral requirements of public depositories pursuant to RCW 39.58.040;

(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, or other required report required by its primary regulatory authority or federal deposit insurer, and may include capital notes and debentures which are subordinate to the interests of depositors, or (b) equity capital adjusted by rule or resolution of the commission after consultation with the director of the department of financial institutions;

(14) "Public deposit" means public funds on deposit with a public depository;

(15) "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;

(16) "Public funds" means moneys under the control of a treasurer, the state 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 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;

(17) "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;

(18) "State public depository" means a Washington state-chartered financial institution that is authorized as a public depository under this chapter;

(19) "State treasurer" means the treasurer of the state of Washington;

(20) "Treasurer" means a county treasurer, a city treasurer, a treasurer of any other municipal corporation, and any other custodian of public funds, except the state treasurer;

(21) "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, or such other third-party safekeeping agent approved by the commission. [2009 c 9 § 1; 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.]

**Alphabetization—2009 c 9:** "The code reviser shall alphabetize and renumber the definitions in RCW 39.58.010." [2009 c 9 § 19.]

**Effective date—2009 c 9:** "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 6, 2009]." [2009 c 9 § 20.]

**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.*

**39.58.040 General powers of commission.** The commission shall have the power and broad administrative discretion:

(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 capitalization, collateral, liquidity, and net worth as the commission shall request;

(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 fix by rule or resolution, consistent with this chapter, the requirements for initial and continued qualification of financial institutions as public depositories on the basis of a depository's financial condition, including its capitalization, collateral, liquidity, and net worth, and fixing other terms and conditions consistent with this chapter, under which public deposits may be received and held;

(5) To make and enforce rules setting forth criteria for the establishment by policy of standards governing matters that are subject to the commission's powers to fix requirements, terms, and conditions under subsection (4) of this section

for a public depository, and, if these standards are not met, providing for additional collateral or other conditional or unconditional requirements or restrictions applicable to the public depository's right to receive or hold public deposits;

(6) To require additional or different types and amounts of collateral, or to restrict a public depository's right to receive or hold public deposits if the standards for the financial condition of public depositories are not met;

(7) To fix the official date on which any loss shall be deemed to have occurred taking into consideration the orders, rules, and regulations of the supervisory authority of a public depository's primary regulatory authority and federal deposit insurer as they affect the failure or inability of a public depository to repay public deposits in full;

(8) 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; and

(9) To make and enforce sanctions against a public depository for noncompliance with the provisions of this chapter and rules or policies of the commission. [2009 c 9 § 2; 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.]

**Effective date—2009 c 9:** See note following RCW 39.58.010.

**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 determine by rule or resolution whether any security, whether or not enumerated in this section, is or shall remain eligible as collateral when in the commission's judgment it is desirable or necessary to do so. [2009 c 9 § 4; 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.]

**Effective date—2009 c 9:** See note following RCW 39.58.010.

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.060 Loss in a public depository—Procedure for payment.** When the commission determines that a loss has occurred in a 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 the department of financial institutions or the receiver shall, within twenty days after issuance of a restraining order or taking possession of any 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 provide written verification of the amounts thereof to the commission and each public depositor;

(2) Within ten days after receipt of written verification, each public depositor shall furnish to the commission verified statements of its deposits in the public depository, including the uninsured and uncollateralized status of the public deposits, as disclosed by its records;

(3) Upon receipt of written verification and statements, the commission shall ascertain and fix the amount of the public deposits, net after deduction of any amount received from deposit insurance and held collateral, and, after determining and declaring the apparent net loss, assess the same against all 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 public depositories pro rata in proportion to the maximum liability of each 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 take possession of the securities segregated as collateral by the depository pursuant to this chapter and liquidate the same for the purpose of paying such assessment;

(5) Upon receipt of the 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;

(6) Any owner of public deposits receiving assessment proceeds shall provide a receivership certificate to the commission. [2009 c 9 § 5; 1996 c 256 § 5; 1983 c 66 § 9; 1973 c 126 § 12; 1969 ex.s. c 193 § 6.]

**Effective date—2009 c 9:** See note following RCW 39.58.010.

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.065 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**39.58.100 Reports of public depositories—Certification by director of financial institutions.** (1) 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 uninsured amount of those funds, the net worth of the depository, and the amount and nature of eligible collateral then segregated for the benefit of the commission.

(2) The commission may instruct the director of the department of financial institutions to examine and thereafter certify as to the accuracy of any statement to the commission by any state public depository, or to provide such other examination report information or data as may be required by the commission. The type, content, and frequency of the reports may be determined by the director of the department of financial institutions, consistent with the requirements of the commission as defined by rule. [2009 c 9 § 7; 1996 c 256 § 11; 1984 c 177 § 16; 1983 c 66 § 12; 1969 ex.s. c 193 § 10.]

**Effective date—2009 c 9:** See note following RCW 39.58.010.

**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 forty-eight hours, or by close of business of the next business day thereafter, 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. [2009 c 9 § 8; 1983 c 66 § 13; 1975 1st ex.s. c 77 § 4.]

**Effective date—2009 c 9:** See note following RCW 39.58.010.

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.105 Investigation of financial institution applying to become public depository—Report.** (1) The commission may require the state auditor or the director of the department of financial institutions, to the extent of their respective authority under applicable federal and Washington state law, 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 the state auditor or the director of the department of financial institutions, to the extent of their respective authority under applicable federal and Washington state law, to make 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.

(2) In lieu of any such investigation or report, the commission may rely upon information made available to it or the director of the department 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, any state financial institutions regulatory agency, or any successor state or federal financial institutions regulatory agency, and any such information or data received by the commission shall be kept and maintained in the same manner and have the same protections as examination reports received by the commission from the director of the department of financial institutions pursuant to RCW 30.04.075(2)(h) and 32.04.220(2)(h).

(3) The director of the department of financial institutions shall in addition advise the commission of any action he or she has directed any state 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. [2009 c 9 § 9; 1996 c 256 § 12; 1983 c 66 § 14; 1975 1st ex.s. c 77 § 5.]

**Effective date—2009 c 9:** See note following RCW 39.58.010.

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.108 Requirements to become depository.** Any financial institution may become, and thereafter operate as, a public depository upon approval by the commission and segregation of collateral in the manner as set forth in this chapter, and subject to compliance with all rules and policies adopted by the commission. A public depository shall at all times pledge and segregate eligible securities in an amount established by the commission by rule or noticed resolution. [2009 c 9 § 10; 1996 c 256 § 13; 1984 c 177 § 17; 1983 c 66 § 15; 1975 1st ex.s. c 77 § 6.]

**Effective date—2009 c 9:** See note following RCW 39.58.010.

**Severability—1983 c 66:** See note following RCW 39.58.010.

**39.58.130 Investment deposits—Net worth of public depository.** A treasurer and the state treasurer are authorized to deposit in a public depository 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 depository exceed at any time the net worth of that depository. If a public depository's net worth is reduced, a treasurer and the state treasurer may allow public funds on deposit in excess of the reduced net worth to remain until maturity upon pledging by the depository 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 depository, the depository shall permit withdrawal prior to maturity by the treasurer of deposits, including accrued interest, in accordance with applicable statutes and governmental regulations. [2009 c 9 § 11; 1996 c 256 § 14; 1984 c 177 § 18; 1983 c 66 § 16; 1969 ex.s. c 193 § 13.]

**Effective date—2009 c 9:** See note following RCW 39.58.010.

**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 depository from all treasurers and the state treasurer shall not exceed at any time one hundred fifty percent of the value of the depository's net worth, nor (2) shall the aggregate deposits received by any public depository exceed thirty percent of the total aggregate deposits of all public treasurers in all depositories as determined by the public deposit protection commission. However, a public depository 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. [2009 c 9 § 12; 1996 c 256 § 15; 1986 c 25 § 1; 1984 c 177 § 19.]

**Effective date—2009 c 9:** See note following RCW 39.58.010.

**39.58.140 Liability of treasurers and state treasurer.** When deposits are made in accordance with this chapter, a treasurer and the state treasurer shall not be liable for any loss thereof resulting from the failure or default of any public depository without fault or neglect on his or her part or on the part of his or her assistants or clerks. [2009 c 9 § 13; 1996 c 256 § 16; 1969 ex.s. c 193 § 29.]

**Effective date—2009 c 9:** See note following RCW 39.58.010.

*Liability of state treasurer: RCW 43.85.070.*

**39.58.200 Public depository pool—Uniform treatment by commission.** For the purposes of this chapter, the commission shall include all public depositories in a single public depository pool. All public depositories, as defined in RCW 39.58.010, shall be treated uniformly by the commission without regard to distinctions in the nature of its financial institution charter. [2009 c 9 § 3.]

**Effective date—2009 c 9:** See note following RCW 39.58.010.

**39.58.210 Failure to furnish information—Failure to comply with chapter—Revocation of authority—Costs for noncompliance.** If a depository neglects or refuses to promptly and accurately furnish, or to allow verification of, any required information requested by the commission or by the director of the department of financial institutions when acting on behalf of the commission pursuant to this chapter, or if a public depository otherwise fails to comply with this chapter or any rules or policies of the commission, the commission may at its option deny or revoke the authority of such depository to act as a public depository pursuant to this chapter, or otherwise suspend such depository from receiving or holding public deposits until such time as the depository receives the information or complies with the commission's rules and policies. The commission shall have the authority to assess by rule costs for a depository's noncompliance with this chapter and rules and resolutions adopted pursuant to this chapter. [2009 c 9 § 15.]

**Effective date—2009 c 9:** See note following RCW 39.58.010.

**39.58.220 Commission—Delegation of authority—Exception.** The commission may by resolution delegate all of its authority to the state treasurer except rule making. [2009 c 9 § 16.]

**Effective date—2009 c 9:** See note following RCW 39.58.010.

**39.58.230 Liability after merger, takeover, or acquisition.** The liability of a public depository under this chapter shall not be altered by any merger, takeover, or acquisition, except to the extent that such liability is assumed by agreement or operation of law by the successor entity or resulting financial institution. [2009 c 9 § 17.]

**Effective date—2009 c 9:** See note following RCW 39.58.010.

**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 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 treasurers of municipalities 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. [2009 c 9 § 14; 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—2009 c 9:** See note following RCW 39.58.010.

**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 39.76 RCW

### INTEREST ON UNPAID PUBLIC CONTRACTS

#### Sections

39.76.010 Repealed.  
39.76.020 Interest on unpaid public contracts—Exceptions.

**39.76.010 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**39.76.020 Interest on unpaid public contracts—Exceptions.** RCW 39.76.011 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. [2009 c 219 § 5; 1981 c 68 § 2.]

## Chapter 39.86 RCW

### PRIVATE ACTIVITY BOND ALLOCATION

#### Sections

39.86.110 Definitions.  
39.86.190 Biennial reports.

**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 commerce.
- (2) "Board" means the community economic revitalization board established under chapter 43.160 RCW.
- (3) "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.
- (4) "Bonds" means bonds, notes, or other obligations of an issuer.
- (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. [2009 c 565 § 23; 1995 c 399 § 57; 1987 c 297 § 2.]

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

**39.86.190 Biennial reports.** By February 1 of each even-numbered 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. [2009 c 518 § 19; 1987 c 297 § 10.]

## Chapter 39.94 RCW FINANCING CONTRACTS

### Sections

39.94.010	Purposes—Construction.
39.94.030	Authority to enter into financing contracts—Terms—Intent—Obligation of state revenues.

**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 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. [2009 c 500 § 6; 1998 c 291 § 2; 1989 c 356 § 1.]

**Effective date—2009 c 500:** See note following RCW 39.42.070.

**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) 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 any 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 any law limiting debt of the state 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. [2009 c 500 § 7; 1998 c 291 § 4; 1989 c 356 § 3.]

**Effective date—2009 c 500:** See note following RCW 39.42.070.

**Application—1998 c 291:** See note following RCW 39.94.050.

## Chapter 39.102 RCW

### LOCAL INFRASTRUCTURE FINANCING TOOL PROGRAM

#### Sections

39.102.020	Definitions. <i>(Expires June 30, 2039.)</i>
39.102.070	Local infrastructure financing—Conditions. <i>(Expires June 30, 2039.)</i>
39.102.110	Local excise tax allocation revenues. <i>(Expires June 30, 2039.)</i>
39.102.120	Local property tax allocation revenues. <i>(Expires June 30, 2039.)</i>
39.102.140	Reporting requirements. <i>(Expires June 30, 2039.)</i>
39.102.150	Issuance of general obligation bonds. <i>(Expires June 30, 2039.)</i>
39.102.195	Limitation on use of revenues. <i>(Expires June 30, 2039.)</i>

**39.102.020 Definitions. *(Expires June 30, 2039.)*** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Annual state contribution limit" means seven million five hundred thousand dollars statewide per fiscal year.

(2) "Assessed value" means the valuation of taxable real property as placed on the last completed assessment roll.

(3) "Board" means the community economic revitalization board under chapter 43.160 RCW.

(4) "Demonstration project" means one of the following projects:

- (a) Bellingham waterfront redevelopment project;
  - (b) Spokane river district project at Liberty Lake; and
  - (c) Vancouver riverwest project.
- (5) "Department" means the department of revenue.

(6) "Fiscal year" means the twelve-month period beginning July 1st and ending the following June 30th.

(7) "Local excise tax allocation revenue" means an amount of local excise taxes equal to some or all of the sponsoring local government's local excise tax increment, amounts of local excise taxes equal to some or all of any participating local government's excise tax increment as agreed upon in the written agreement under RCW 39.102.080(1), or both, and dedicated to local infrastructure financing.

(8) "Local excise tax increment" means an amount equal to the estimated annual increase in local excise taxes in each calendar year following the approval of the revenue development area by the board from taxable activity within the revenue development area, as set forth in the application provided to the board under RCW 39.102.040, and updated in accordance with RCW 39.102.140(1)(f).

(9) "Local excise taxes" means local revenues derived from the imposition of sales and use taxes authorized in RCW 82.14.030.

(10) "Local government" means any city, town, county, port district, and any federally recognized Indian tribe.

(11) "Local infrastructure financing" means the use of revenues received from local excise tax allocation revenues, local property tax allocation revenues, other revenues from local public sources, and revenues received from the local option sales and use tax authorized in RCW 82.14.475, dedicated to pay either the principal and interest on bonds authorized under RCW 39.102.150 or to pay public improvement costs on a pay-as-you-go basis subject to RCW 39.102.195, or both.

(12) "Local property tax allocation revenue" means those tax revenues derived from the receipt of regular property taxes levied on the property tax allocation revenue value and used for local infrastructure financing.

(13) "Low-income housing" means residential housing for low-income persons or families who lack the means which is necessary to enable them, without financial assistance, to live in decent, safe, and sanitary dwellings, without overcrowding. For the purposes of this subsection, "low income" means income that does not exceed eighty percent of the median family income for the standard metropolitan statistical area in which the revenue development area is located.

(14) "Ordinance" means any appropriate method of taking legislative action by a local government.

(15) "Participating local government" means a local government having a revenue development area within its geographic boundaries that has entered into a written agreement with a sponsoring local government as provided in RCW 39.102.080 to allow the use of all or some of its local excise tax allocation revenues or other revenues from local public sources dedicated for local infrastructure financing.

(16) "Participating taxing district" means a local government having a revenue development area within its geographic boundaries that has entered into a written agreement with a sponsoring local government as provided in RCW 39.102.080 to allow the use of some or all of its local property tax allocation revenues or other revenues from local public sources dedicated for local infrastructure financing.

(17) "Property tax allocation revenue base value" means the assessed value of real property located within a revenue

development area less the property tax allocation revenue value.

(18)(a)(i) "Property tax allocation revenue value" means seventy-five percent of any increase in the assessed value of real property in a revenue development area resulting from:

(A) The placement of new construction, improvements to property, or both, on the assessment roll, where the new construction and improvements are initiated after the revenue development area is approved by the board;

(B) The cost of new housing construction, conversion, and rehabilitation improvements, when such cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.14.020, and the new housing construction, conversion, and rehabilitation improvements are initiated after the revenue development area is approved by the board;

(C) The cost of rehabilitation of historic property, when such cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.26.070, and the rehabilitation is initiated after the revenue development area is approved by the board.

(ii) Increases in the assessed value of real property in a revenue development area resulting from (a)(i)(A) through (C) of this subsection are included in the property tax allocation revenue value in the initial year. These same amounts are also included in the property tax allocation revenue value in subsequent years unless the property becomes exempt from property taxation.

(b) "Property tax allocation revenue value" includes seventy-five percent of any increase in the assessed value of new construction consisting of an entire building in the years following the initial year, unless the building becomes exempt from property taxation.

(c) Except as provided in (b) of this subsection, "property tax allocation revenue value" does not include any increase in the assessed value of real property after the initial year.

(d) There is no property tax allocation revenue value if the assessed value of real property in a revenue development area has not increased as a result of any of the reasons specified in (a)(i)(A) through (C) of this subsection.

(e) For purposes of this subsection, "initial year" means:

(i) For new construction and improvements to property added to the assessment roll, the year during which the new construction and improvements are initially placed on the assessment roll;

(ii) For the cost of new housing construction, conversion, and rehabilitation improvements, when such cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year; and

(iii) For the cost of rehabilitation of historic property, when such cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year.

(19) "Public improvement costs" means the cost of: (a) Design, planning, acquisition including land acquisition, site preparation including land clearing, construction, reconstruction, rehabilitation, improvement, and installation of public improvements; (b) demolishing, relocating, maintaining, and

operating property pending construction of public improvements; (c) the local government's portion of relocating utilities as a result of public improvements; (d) financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on general indebtedness issued to finance public improvements, and any necessary reserves for general indebtedness; (e) assessments incurred in revaluing real property for the purpose of determining the property tax allocation revenue base value that are in excess of costs incurred by the assessor in accordance with the revaluation plan under chapter 84.41 RCW, and the costs of apportioning the taxes and complying with this chapter and other applicable law; (f) administrative expenses and feasibility studies reasonably necessary and related to these costs; and (g) any of the above-described costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of local infrastructure financing to fund the costs of the public improvements.

(20) "Public improvements" means:

(a) Infrastructure improvements within the revenue development area that include:

(i) Street, bridge, and road construction and maintenance, including highway interchange construction;

(ii) Water and sewer system construction and improvements, including wastewater reuse facilities;

(iii) Sidewalks, traffic controls, and streetlights;

(iv) Parking, terminal, and dock facilities;

(v) Park and ride facilities of a transit authority;

(vi) Park facilities and recreational areas, including trails; and

(vii) Storm water and drainage management systems;

(b) Expenditures for facilities and improvements that support affordable housing as defined in RCW 43.63A.510.

(21) "Real property" has the same meaning as in RCW 84.04.090 and also includes any privately owned improvements located on publicly owned land that are subject to property taxation.

(22) "Regular property taxes" means regular property taxes as defined in RCW 84.04.140, except: (a) Regular property taxes levied by public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness; (b) regular property taxes levied by the state for the support of the common schools under RCW 84.52.065; and (c) regular property taxes authorized by RCW 84.55.050 that are limited to a specific purpose. "Regular property taxes" do not include excess property tax levies that are exempt from the aggregate limits for junior and senior taxing districts as provided in RCW 84.52.043.

(23) "Relocating a business" means the closing of a business and the reopening of that business, or the opening of a new business that engages in the same activities as the previous business, in a different location within a one-year period, when an individual or entity has an ownership interest in the business at the time of closure and at the time of opening or reopening. "Relocating a business" does not include the closing and reopening of a business in a new location where the business has been acquired and is under entirely new ownership at the new location, or the closing and reopening of a

business in a new location as a result of the exercise of the power of eminent domain.

(24) "Revenue development area" means the geographic area adopted by a sponsoring local government and approved by the board, from which local excise and property tax allocation revenues are derived for local infrastructure financing.

(25)(a) "Revenues from local public sources" means:

(i) Amounts of local excise tax allocation revenues and local property tax allocation revenues, dedicated by sponsoring local governments, participating local governments, and participating taxing districts, for local infrastructure financing; and

(ii) Any other local revenues, except as provided in (b) of this subsection, including revenues derived from federal and private sources.

(b) Revenues from local public sources do not include any local funds derived from state grants, state loans, or any other state moneys including any local sales and use taxes credited against the state sales and use taxes imposed under chapter 82.08 or 82.12 RCW.

(26) "Small business" has the same meaning as provided in RCW 19.85.020.

(27) "Sponsoring local government" means a city, town, or county, and for the purpose of this chapter a federally recognized Indian tribe or any combination thereof, that adopts a revenue development area and applies to the board to use local infrastructure financing.

(28) "State contribution" means the lesser of:

(a) One million dollars;

(b) The total amount of local excise tax allocation revenues, local property tax allocation revenues, and other revenues from local public sources, that are dedicated by a sponsoring local government, any participating local governments, and participating taxing districts, in the preceding calendar year to the payment of principal and interest on bonds issued under RCW 39.102.150 or to pay public improvement costs on a pay-as-you-go basis subject to RCW 39.102.195, or both; or

(c) The amount of project award granted by the board in the notice of approval to use local infrastructure financing under RCW 39.102.040.

(29) "State excise tax allocation revenue" means an amount equal to the annual increase in state excise taxes estimated to be received by the state in each calendar year following the approval of the revenue development area by the board, from taxable activity within the revenue development area as set forth in the application provided to the board under RCW 39.102.040 and periodically updated and reported as required in RCW 39.102.140(1)(f).

(30) "State excise taxes" means revenues derived from state retail sales and use taxes under RCW 82.08.020(1) and 82.12.020 at the rate provided in RCW 82.08.020(1), less the amount of tax distributions from all local retail sales and use taxes, other than the local sales and use taxes authorized by RCW 82.14.475 for the applicable revenue development area, imposed on the same taxable events that are credited against the state retail sales and use taxes under chapters 82.08 and 82.12 RCW.

(31) "State property tax allocation revenue" means an amount equal to the estimated tax revenues derived from the imposition of property taxes levied by the state for the sup-

port of common schools under RCW 84.52.065 on the property tax allocation revenue value, as set forth in the application submitted to the board under RCW 39.102.040 and updated annually in the report required under RCW 39.102.140(1)(f).

(32) "Taxing district" means a government entity that levies or has levied for it regular property taxes upon real property located within a proposed or approved revenue development area. [2009 c 267 § 1; 2008 c 209 § 1; 2007 c 229 § 1; 2006 c 181 § 102.]

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

**Expiration date—2009 c 267:** "This act expires June 30, 2039." [2009 c 267 § 9.]

**Expiration date—2008 c 209 § 1:** "Section 1 of this act expires June 30, 2039." [2008 c 209 § 2.]

**Application—2007 c 229:** "This act applies retroactively as well as prospectively." [2007 c 229 § 15.]

**Severability—2007 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." [2007 c 229 § 16.]

**Expiration date—2007 c 229:** "This act expires June 30, 2039." [2007 c 229 § 17.]

**39.102.070 Local infrastructure financing—Conditions. (Expires June 30, 2039.)** The use of local infrastructure financing under this chapter is subject to the following conditions:

(1) No funds may be used to finance, design, acquire, construct, equip, operate, maintain, remodel, repair, or reequip public facilities funded with taxes collected under RCW 82.14.048 or 82.14.390;

(2)(a) Except as provided in (b) of this subsection no funds may be used for public improvements other than projects identified within the capital facilities, utilities, housing, or transportation element of a comprehensive plan required under chapter 36.70A RCW;

(b) Funds may be used for public improvements that are historical preservation activities as defined in RCW 39.89.020;

(3) The public improvements proposed to be financed in whole or in part using local infrastructure financing are expected to encourage private development within the revenue development area and to increase the fair market value of real property within the revenue development area;

(4) A sponsoring local government, participating local government, or participating taxing district has entered or expects to enter into a contract with a private developer relating to the development of private improvements within the revenue development area or has received a letter of intent from a private developer relating to the developer's plans for the development of private improvements within the revenue development area;

(5) Private development that is anticipated to occur within the revenue development area, as a result of the public improvements, will be consistent with the countywide planning policy adopted by the county under RCW 36.70A.210 and the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW;

(6) The governing body of the sponsoring local government, and any cosponsoring local government, must make a finding that local infrastructure financing:

(a) Is not expected to be used for the purpose of relocating a business from outside the revenue development area, but within this state, into the revenue development area; and

(b) Will improve the viability of existing business entities within the revenue development area;

(7) The governing body of the sponsoring local government, and any cosponsoring local government, finds that the public improvements proposed to be financed in whole or in part using local infrastructure financing are reasonably likely to:

(a) Increase private residential and commercial investment within the revenue development area;

(b) Increase employment within the revenue development area;

(c) Improve the viability of any existing communities that are based on mixed-use development within the revenue development area; and

(d) Generate, over the period of time that the local option sales and use tax will be imposed under RCW 82.14.475, state excise tax allocation revenues and state property tax allocation revenues derived from the revenue development area that are equal to or greater than the respective state contributions made under this chapter;

(8) The sponsoring local government may only use local infrastructure financing in areas deemed in need of economic development or redevelopment within boundaries of the sponsoring local government. [2009 c 267 § 2; 2006 c 181 § 205.]

**Expiration date—2009 c 267:** See note following RCW 39.102.020.

**39.102.110 Local excise tax allocation revenues. (Expires June 30, 2039.)** (1) A sponsoring local government or participating local government that has received approval by the board to use local infrastructure financing may use annually its local excise tax allocation revenues to finance public improvements in the revenue development area financed in whole or in part by local infrastructure financing. The use of local excise tax allocation revenues dedicated by participating local governments must cease on the date specified in the written agreement required in RCW 39.102.080(1), or if no date is specified then the date when the local tax under RCW 82.14.475 expires. Any participating local government is authorized to dedicate local excise tax allocation revenues to the sponsoring local government as authorized in RCW 39.102.080(1).

(2) A sponsoring local government shall provide the board accurate information describing the geographical boundaries of the revenue development area at the time of application. The information shall be provided in an electronic format or manner as prescribed by the department. The sponsoring local government shall ensure that the boundary information provided to the board and department is kept current.

(3) In the event a city annexes a county area located within a county-sponsored revenue development area, the city shall remit to the county the portion of the local excise tax allocation revenue that the county would have received

had the area not been annexed to the city. The city shall remit such revenues until such time as the bonds issued under RCW 39.102.150 are retired. [2009 c 267 § 3; 2007 c 229 § 6; 2006 c 181 § 301.]

**Expiration date—2009 c 267:** See note following RCW 39.102.020.

**Application—Severability—Expiration date—2007 c 229:** See notes following RCW 39.102.020.

**39.102.120 Local property tax allocation revenues. (Expires June 30, 2039.)** (1) Commencing in the second calendar year following board approval of a revenue development area, the county treasurer shall distribute receipts from regular taxes imposed on real property located in the revenue development area as follows:

(a) Each participating taxing district and the sponsoring local government shall receive that portion of its regular property taxes produced by the rate of tax levied by or for the taxing district on the property tax allocation revenue base value for that local infrastructure financing project in the taxing district; and

(b) The sponsoring local government shall receive an additional portion of the regular property taxes levied by it and by or for each participating taxing district upon the property tax allocation revenue value within the revenue development area. However, if there is no property tax allocation revenue value, the sponsoring local government shall not receive any additional regular property taxes under this subsection (1)(b). The sponsoring local government may agree to receive less than the full amount of the additional portion of regular property taxes under this subsection (1)(b) as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of these tax receipts shall be allocated to the participating taxing districts that levied regular property taxes, or have regular property taxes levied for them, in the revenue development area for collection that year in proportion to their regular tax levy rates for collection that year. The sponsoring local government may request that the treasurer transfer this additional portion of the property taxes to its designated agent. The portion of the tax receipts distributed to the sponsoring local government or its agent under this subsection (1)(b) may only be expended to finance public improvement costs associated with the public improvements financed in whole or in part by local infrastructure financing.

(2) The county assessor shall determine the property tax allocation revenue value and property tax allocation revenue base value. This section does not authorize 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 or under other authorized revaluation procedures.

(3) The distribution of local property tax allocation revenue to the sponsoring local government must cease when local property tax allocation revenues are no longer obligated to pay the costs of the public improvements. Any excess local property tax allocation revenues and earnings on such revenues remaining at the time the distribution of local property tax allocation revenue terminates must be returned to the county treasurer and distributed to the participating taxing districts that imposed regular property taxes, or had regular property taxes imposed for it, in the revenue development



area for collection that year, in proportion to the rates of their regular property tax levies for collection that year.

(4) The allocation to the revenue development area of that portion of the sponsoring local government's and each participating taxing district's regular property taxes levied by or for each taxing district upon the property tax allocation revenue value within that revenue development area is declared to be a public purpose of and benefit to the sponsoring local government and each participating taxing district.

(5) The distribution of local property tax allocation revenues pursuant to this section shall not affect or be deemed to affect the rate of taxes levied by or within any sponsoring local government and participating taxing district or the consistency of any such levies with the uniformity requirement of Article VII, section 1 of the state Constitution.

(6) This section does not apply to those revenue development areas that include any part of an increment area created under chapter 39.89 RCW. [2009 c 267 § 4; 2007 c 229 § 7; 2006 c 181 § 302.]

**Expiration date—2009 c 267:** See note following RCW 39.102.020.

**Application—Severability—Expiration date—2007 c 229:** See notes following RCW 39.102.020.

**39.102.140 Reporting requirements. (Expires June 30, 2039.)** (1) A sponsoring local government shall provide a report to the board and the department by March 1st of each year. The report shall contain the following information:

(a) The amount of local excise tax allocation revenues, local property tax allocation revenues, other revenues from local public sources, and taxes under RCW 82.14.475 received by the sponsoring local government during the preceding calendar year that were dedicated to pay the public improvements financed in whole or in part with local infrastructure financing, and a summary of how these revenues were expended;

(b) The names of any businesses locating within the revenue development area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local infrastructure financing;

(c) The total number of permanent jobs created in the revenue development area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local infrastructure financing;

(d) The average wages and benefits received by all employees of businesses locating within the revenue development area as a result of the public improvements undertaken by the sponsoring local government and financed in whole or in part with local infrastructure financing;

(e) That the sponsoring local government is in compliance with RCW 39.102.070; and

(f) Beginning with the reports due March 1, 2010, the following must also be included:

(i) A list of public improvements financed on a pay-as-you-go basis in previous calendar years and by indebtedness issued under this chapter;

(ii) The date when any indebtedness issued under this chapter is expected to be retired;

(iii) At least once every three years, updated estimates of state excise tax allocation revenues, state property tax allocation revenues, and local excise tax increments, as determined

by the sponsoring local government, that are estimated to have been received by the state, any participating local government, sponsoring local government, and cosponsoring local government, since the approval of the project award under RCW 39.102.040 by the board; and

(iv) Any other information required by the department or the board to enable the department or the board to fulfill its duties under this chapter and RCW 82.14.475.

(2) The board shall make a report available to the public and the legislature by June 1st of each even-numbered year. The report shall include a list of public improvements undertaken by sponsoring local governments and financed in whole or in part with local infrastructure financing and it shall also include a summary of the information provided to the department by sponsoring local governments under subsection (1) of this section.

(3) The department, upon request, must assist a sponsoring local government in estimating the amount of state excise tax allocation revenues and local excise tax increments required in subsection (1)(f)(iii) of this section. [2009 c 518 § 12; 2009 c 267 § 5; 2007 c 229 § 9; 2006 c 181 § 403.]

**Reviser's note:** This section was amended by 2009 c 267 § 5 and by 2009 c 518 § 12, 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).

**Expiration date—2009 c 518 § 12:** "Section 12 of this act expires June 30, 2039." [2009 c 518 § 25.]

**Expiration date—2009 c 267:** See note following RCW 39.102.020.

**Application—Severability—Expiration date—2007 c 229:** See notes following RCW 39.102.020.

**39.102.150 Issuance of general obligation bonds. (Expires June 30, 2039.)** (1) A sponsoring local government that has designated a revenue development area and been authorized the use of local infrastructure financing may incur general indebtedness, including issuing general obligation bonds, to finance the public improvements and retire the indebtedness in whole or in part from local excise tax allocation revenues, local property tax allocation revenues, and sales and use taxes imposed under the authority of RCW 82.14.475 that it receives, subject to the following requirements:

(a)(i) The ordinance adopted by the sponsoring local government and authorizing the use of local infrastructure financing indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated; and

(ii) The sponsoring local government includes this statement of the intent in all notices required by RCW 39.102.100; or

(b) The sponsoring local government adopts a resolution, after opportunity for public comment, that indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated.

(2)(a) Except as provided in (b) of this subsection, the general indebtedness incurred under subsection (1) of this section may be payable from other tax revenues, the full faith and credit of the local government, and nontax income, revenues, fees, and rents from the public improvements, as well as contributions, grants, and nontax money available to the

local government for payment of costs of the public improvements or associated debt service on the general indebtedness.

(b) A sponsoring local government that issues bonds under this section shall not pledge any money received from the state of Washington for the payment of such bonds, other than the local sales and use taxes imposed under the authority of RCW 82.14.475 and collected by the department.

(3) In addition to the requirements in subsection (1) of this section, a sponsoring local government designating a revenue development area and authorizing the use of local infrastructure financing may require the nonpublic participant to provide adequate security to protect the public investment in the public improvement within the revenue development area.

(4) Bonds issued under this section shall be authorized by ordinance of the governing body of the sponsoring local government and may be issued in one or more series and shall bear such date or dates, be payable upon demand or mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either coupon or registered as provided in RCW 39.46.030, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium of payment, at such place or places, and be subject to such terms of redemption with or without premium, be secured in such manner, and have such other characteristics, as may be provided by such ordinance or trust indenture or mortgage issued pursuant thereto.

(5) The sponsoring local government may annually pay into a fund to be established for the benefit of bonds issued under this section a fixed proportion or a fixed amount of any local excise tax allocation revenues and local property tax allocation revenues derived from property or business activity within the revenue development area containing the public improvements funded by the bonds, such payment to continue until all bonds payable from the fund are paid in full. The local government may also annually pay into the fund established in this section a fixed proportion or a fixed amount of any revenues derived from taxes imposed under RCW 82.14.475, such payment to continue until all bonds payable from the fund are paid in full. Revenues derived from taxes imposed under RCW 82.14.475 are subject to the use restriction in RCW 39.102.130.

(6) In case any of the public officials of the sponsoring local government whose signatures appear on any bonds or any coupons issued under this chapter shall cease to be such officials before the delivery of such bonds, such signatures shall, nevertheless, be valid and sufficient for all purposes, the same as if such officials had remained in office until such delivery. Any provision of any law to the contrary notwithstanding, any bonds issued under this chapter are fully negotiable.

(7) Notwithstanding subsections (4) through (6) of this section, bonds issued under this section may be issued and sold in accordance with chapter 39.46 RCW. [2009 c 267 § 6; 2007 c 229 § 10; 2006 c 181 § 501.]

**Expiration date—2009 c 267:** See note following RCW 39.102.020.

**Application—Severability—Expiration date—2007 c 229:** See notes following RCW 39.102.020.

[2009 RCW Supp—page 682]

**39.102.195 Limitation on use of revenues. (Expires June 30, 2039.)** To the extent that amounts received as local excise tax allocation revenues, local property tax allocation revenues, other revenues from local public sources, that are dedicated to local infrastructure financing, and revenues received from the local option sales and use tax authorized in RCW 82.14.475, are set aside in a debt service fund that is pledged to the repayment of bonds, those amounts so set aside and pledged may not be used to pay for public improvement costs on a pay-as-you-go basis after the date that the sponsoring local government that issued the bonds as provided in RCW 39.102.150 is required to begin paying debt service on those bonds, unless and until those bonds to which the amounts have been so pledged have been retired. [2009 c 267 § 7; 2007 c 229 § 14.]

**Expiration date—2009 c 267:** See note following RCW 39.102.020.

**Application—Severability—Expiration date—2007 c 229:** See notes following RCW 39.102.020.

## Chapter 39.104 RCW

### LOCAL REVITALIZATION FINANCING

#### Sections

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**39.104.010 Finding.** The legislature recognizes that the state as a whole benefits from investment in public infrastructure because it promotes community and economic development. Public investment stimulates business activity and helps create jobs, stimulates the redevelopment of brownfields and blighted areas in the inner city, lowers the cost of housing, and promotes efficient land use. The legislature finds that these activities generate revenue for the state and that it is in the public interest to invest in these projects through a credit against the state sales and use tax to those local governments that can demonstrate the expected returns to the state. [2009 c 270 § 101.]

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

(1) "Annual state contribution limit" means two million five hundred thousand dollars statewide per fiscal year and the additional amounts designated for demonstration projects in RCW 82.14.505.

(2) "Assessed value" means the valuation of taxable real property as placed on the last completed assessment roll.

(3) "Department" means the department of revenue.

(4) "Fiscal year" means the twelve-month period beginning July 1st and ending the following June 30th.

(5) "Local government" means any city, town, county, and port district.

(6) "Local property tax allocation revenue" means those tax revenues derived from the receipt of regular property taxes levied on the property tax allocation revenue value and used for local revitalization financing.

(7) "Local revitalization financing" means the use of revenues from local public sources, dedicated to pay the principal and interest on bonds authorized under RCW 39.104.110 and public improvement costs within the revitalization area on a pay-as-you-go basis, and revenues received from the local option sales and use tax authorized in RCW 82.14.510, dedicated to pay the principal and interest on bonds authorized under RCW 39.104.110.

(8) "Local sales and use tax increment" means the estimated annual increase in local sales and use taxes as determined by the local government in the calendar years following the approval of the revitalization area by the department from taxable activity within the revitalization area.

(9) "Local sales and use taxes" means local revenues derived from the imposition of sales and use taxes authorized in RCW 82.14.030.

(10) "Ordinance" means any appropriate method of taking legislative action by a local government.

(11) "Participating local government" means a local government having a revitalization area within its geographic boundaries that has taken action as provided in RCW 39.104.070(1) to allow the use of all or some of its local sales and use tax increment or other revenues from local public sources dedicated for local revitalization financing.

(12) "Participating taxing district" means a local government having a revitalization area within its geographic boundaries that has not taken action as provided in RCW 39.104.060(2).

(13) "Property tax allocation revenue base value" means the assessed value of real property located within a revitalization area, less the property tax allocation revenue value.

(14)(a)(i) "Property tax allocation revenue value" means seventy-five percent of any increase in the assessed value of real property in a revitalization area resulting from:

(A) The placement of new construction, improvements to property, or both, on the assessment roll, where the new construction and improvements are initiated after the revitalization area is approved by the department;

(B) The cost of new housing construction, conversion, and rehabilitation improvements, when the cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.14.020, and the new housing construction, conversion, and rehabilitation improvements are initiated after the revitalization area is approved by the department;

(C) The cost of rehabilitation of historic property, when the cost is treated as new construction for purposes of chapter 84.55 RCW as provided in RCW 84.26.070, and the rehabilitation is initiated after the revitalization area is approved by the department.

(ii) Increases in the assessed value of real property in a revitalization area resulting from (a)(i)(A) through (C) of this subsection are included in the property tax allocation revenue value in the initial year. These same amounts are also included in the property tax allocation revenue value in subsequent years unless the property becomes exempt from property taxation.

(b) "Property tax allocation revenue value" includes seventy-five percent of any increase in the assessed value of new construction consisting of an entire building in the years following the initial year, unless the building becomes exempt from property taxation.

(c) Except as provided in (b) of this subsection, "property tax allocation revenue value" does not include any increase in the assessed value of real property after the initial year.

(d) There is no property tax allocation revenue value if the assessed value of real property in a revitalization area has not increased as a result of any of the reasons specified in (a)(i)(A) through (C) of this subsection.

(e) For purposes of this subsection, "initial year" means:

(i) For new construction and improvements to property added to the assessment roll, the year during which the new construction and improvements are initially placed on the assessment roll;

(ii) For the cost of new housing construction, conversion, and rehabilitation improvements, when the cost is treated as new construction for purposes of chapter 84.55 RCW, the year when the cost is treated as new construction for purposes of levying taxes for collection in the following year; and

(iii) For the cost of rehabilitation of historic property, when the cost is treated as new construction for purposes of chapter 84.55 RCW, the year when such cost is treated as new construction for purposes of levying taxes for collection in the following year.

(15) "Public improvement costs" means the costs of:

(a) Design, planning, acquisition, including land acquisition, site preparation including land clearing, construction, reconstruction, rehabilitation, improvement, and installation of public improvements;

(b) Demolishing, relocating, maintaining, and operating property pending construction of public improvements;

(c) Relocating utilities as a result of public improvements;

(d) Financing public improvements, including interest during construction, legal and other professional services, taxes, insurance, principal and interest costs on general indebtedness issued to finance public improvements, and any necessary reserves for general indebtedness; and

(e) Administrative expenses and feasibility studies reasonably necessary and related to these costs, including related costs that may have been incurred before adoption of the ordinance authorizing the public improvements and the use of local revitalization financing to fund the costs of the public improvements.

(16) "Public improvements" means:

(a) Infrastructure improvements within the revitalization area that include:

(i) Street, road, bridge, and rail construction and maintenance;

(ii) Water and sewer system construction and improvements;

(iii) Sidewalks, streetlights, landscaping, and streetscaping;

(iv) Parking, terminal, and dock facilities;

(v) Park and ride facilities of a transit authority;

(vi) Park facilities, recreational areas, and environmental remediation;

(vii) Storm water and drainage management systems;

(viii) Electric, gas, fiber, and other utility infrastructures; and

(b) Expenditures for any of the following purposes:

(i) Providing environmental analysis, professional management, planning, and promotion within the revitalization area, including the management and promotion of retail trade activities in the revitalization area;

(ii) Providing maintenance and security for common or public areas in the revitalization area; or

(iii) Historic preservation activities authorized under RCW 35.21.395.

(17) "Real property" has the same meaning as in RCW 84.04.090 and also includes any privately owned improvements located on publicly owned land that are subject to property taxation.

(18) "Regular property taxes" means regular property taxes as defined in RCW 84.04.140, except: (a) Regular property taxes levied by public utility districts specifically for the purpose of making required payments of principal and interest on general indebtedness; (b) regular property taxes levied by the state for the support of common schools under RCW 84.52.065; and (c) regular property taxes authorized by RCW 84.55.050 that are limited to a specific purpose. "Regular property taxes" do not include excess property tax levies that are exempt from the aggregate limits for junior and senior taxing districts as provided in RCW 84.52.043.

(19)(a) "Revenues from local public sources" means:

(i) The local sales and use tax amounts received as a result of interlocal agreement, local sales and use tax amounts from sponsoring local governments based on its local sales and use tax increment, and local property tax allocation revenues, which are dedicated by a sponsoring local government, participating local governments, and participating taxing districts, for payment of bonds under RCW 39.104.110 or public improvement costs within the revitalization area on a pay-as-you-go basis; and

(ii) Any other local revenues, except as provided in (b) of this subsection, including revenues derived from federal and private sources, which are dedicated for the payment of bonds under RCW 39.104.110 or public improvement costs within the revitalization area on a pay-as-you-go basis.

(b) Revenues from local public sources do not include any local funds derived from state grants, state loans, or any other state moneys including any local sales and use taxes credited against the state sales and use taxes imposed under chapter 82.08 or 82.12 RCW.

(20) "Revitalization area" means the geographic area adopted by a sponsoring local government and approved by the department, from which local sales and use tax increments are estimated and property tax allocation revenues are derived for local revitalization financing.

(21) "Sponsoring local government" means a city, town, county, or any combination thereof, that adopts a revitalization area.

(22) "State contribution" means the lesser of:

(a) Five hundred thousand dollars;

(b) The project award amount approved by the department as provided in RCW 39.104.100 or 82.14.505; or

(c) The total amount of revenues from local public sources dedicated in the preceding calendar year to the payment of principal and interest on bonds issued under RCW 39.104.110 and public improvement costs within the revitalization area on a pay-as-you-go basis. Revenues from local public sources dedicated in the preceding calendar year that are in excess of the project award may be carried forward and used in later years for the purpose of this subsection (22)(c).

(23) "State property tax increment" means the estimated amount of annual tax revenues estimated to be received by the state from the imposition of property taxes levied by the state for the support of common schools under RCW 84.52.065 on the property tax allocation revenue value, as determined by the sponsoring local government in an application under RCW 39.104.100 and updated periodically as required in RCW 82.32.765.

(24) "State sales and use tax increment" means the estimated amount of annual increase in state sales and use taxes to be received by the state from taxable activity within the revitalization area in the years following the approval of the revitalization area by the department as determined by the sponsoring local government in an application under RCW 39.104.100 and updated periodically as required in RCW 82.32.765.

(25) "State sales and use taxes" means state retail sales and use taxes under RCW 82.08.020(1) and 82.12.020 at the rate provided in RCW 82.08.020(1), less the amount of tax distributions from all local retail sales and use taxes, other than the local sales and use taxes authorized by RCW 82.14.510 for the applicable revitalization area, imposed on the same taxable events that are credited against the state retail sales and use taxes under RCW 82.08.020(1) and 82.12.020.

(26) "Taxing district" means a government entity that levies or has levied for it regular property taxes upon real property located within a proposed or approved revitalization area. [2009 c 270 § 102.]

**39.104.030 Conditions.** A local government may finance public improvements using local revitalization financing subject to the following conditions:

(1) The local government has adopted an ordinance designating a revitalization area within its boundaries and specified the public improvements proposed to be financed in whole or in part with the use of local revitalization financing;

(2) The public improvements proposed to be financed in whole or in part using local revitalization financing are expected to encourage private development within the revitalization area and to increase the fair market value of real property within the revitalization area;

(3) The local government has entered into a contract with a private developer relating to the development of private improvements within the revitalization area or has received a letter of intent from a private developer relating to the devel-

oper's plans for the development of private improvements within the revitalization area;

(4) Private development that is anticipated to occur within the revitalization area, as a result of the public improvements, will be consistent with the countywide planning policy adopted by the county under RCW 36.70A.210 and the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW;

(5) The local government may not use local revitalization financing to finance the costs associated with the financing, design, acquisition, construction, equipping, operating, maintaining, remodeling, repairing, and reequipping of public facilities funded with taxes collected under RCW 82.14.048 or 82.14.390;

(6) The governing body of the local government must make a finding that local revitalization financing:

(a) Will not be used for the purpose of relocating a business from outside the revitalization area, but within this state, into the revitalization area unless convincing evidence is provided that the firm being relocated would otherwise leave the state;

(b) Will improve the viability of existing business entities within the revitalization area; and

(c) Will be used exclusively in areas within the jurisdiction of the local government deemed in need of either economic development or redevelopment, or both, and absent the financing available under this chapter and RCW 82.14.510 and 82.14.515 the proposed economic development or redevelopment would more than likely not occur; and

(7) The governing body of the local government finds that the public improvements proposed to be financed in whole or in part using local revitalization financing are reasonably likely to:

(a) Increase private investment within the revitalization area;

(b) Increase employment within the revitalization area; and

(c) Generate, over the period of time that the local sales and use tax will be imposed under RCW 82.14.510, increases in state and local property, sales, and use tax revenues that are equal to or greater than the respective state and local contributions made under this chapter. [2009 c 270 § 103.]

**39.104.040 Creation of revitalization area.** (1) Before adopting an ordinance creating the revitalization area, a sponsoring local government must:

(a) Provide notice to all taxing districts and local governments with geographic boundaries within the proposed revitalization area of the sponsoring local government's intent to create a revitalization area. Notice must be provided in writing to the governing body of the taxing districts and local governments at least thirty days in advance of the public hearing as required by (b) of this subsection. The notice must include at least the following information:

(i) The name of the proposed revitalization area;

(ii) The date for the public hearing as required by (b) of this subsection;

(iii) The earliest anticipated date when the sponsoring local government will take action to adopt the proposed revitalization area; and

(iv) The name of a contact person with phone number of the sponsoring local government and mailing address where a copy of an ordinance adopted under RCW 39.104.050 and 39.104.060 may be sent; and

(b) Hold a public hearing on the proposed financing of the public improvements in whole or in part with local revitalization financing. Notice of the public hearing must be published in a legal newspaper of general circulation within the proposed revitalization area at least ten days before the public hearing and posted in at least six conspicuous public places located in the proposed revitalization area. Notices must describe the contemplated public improvements, estimate the costs of the public improvements, describe the portion of the costs of the public improvements to be borne by local revitalization financing, describe any other sources of revenue to finance the public improvements, describe the boundaries of the proposed revitalization area, and estimate the period during which local revitalization financing is contemplated to be used. The public hearing may be held by either the governing body of the sponsoring local government, or a committee of the governing body that includes at least a majority of the whole governing body.

(2) To create a revitalization area, a sponsoring local government must adopt an ordinance establishing the revitalization area that:

(a) Describes the public improvements proposed to be made in the revitalization area;

(b) Describes the boundaries of the revitalization area, subject to the limitations in RCW 39.104.050;

(c) Estimates the cost of the proposed public improvements and the portion of these costs to be financed by local revitalization financing;

(d) Estimates the time during which local property tax allocation revenues, and other revenues from local public sources, such as amounts of local sales and use taxes from participating local governments, are to be used for local revitalization financing;

(e) Provides the date when the use of local property tax allocation revenues will commence and a list of the taxing districts that have not adopted an ordinance as described in RCW 39.104.060 to be removed as a participating taxing district;

(f) Finds that all of the requirements in RCW 39.104.030 are met;

(g) Provides the anticipated rate of sales and use tax under RCW 82.14.510 that the local government will impose if awarded a state contribution under RCW 39.104.100;

(h) Provides the anticipated date when the criteria for the sales and use tax in RCW 82.14.510 will be met and the anticipated date when the sales and use tax in RCW 82.14.510 will be imposed.

(3) The sponsoring local government must deliver a certified copy of the adopted ordinance to the county treasurer, the governing body of each participating taxing authority and participating taxing district within which the revitalization area is located, and the department. [2009 c 270 § 104.]

**39.104.050 Limitations on revitalization areas.** The designation of a revitalization area is subject to the following limitations:

(1) No revitalization area may have within its geographic boundaries any part of a hospital benefit zone under chapter 39.100 RCW, any part of a revenue development area created under chapter 39.102 RCW, any part of an increment area under chapter 39.89 RCW, or any part of another revitalization area under this chapter;

(2) A revitalization area is limited to contiguous tracts, lots, pieces, or parcels of land without the creation of islands of property not included in the revitalization area;

(3) The boundaries may not be drawn to purposely exclude parcels where economic growth is unlikely to occur;

(4) The public improvements financed through bonds issued under RCW 39.104.110 must be located in the revitalization area;

(5) A revitalization area cannot comprise an area containing more than twenty-five percent of the total assessed value of the taxable real property within the boundaries of the sponsoring local government at the time the revitalization area is created;

(6) The boundaries of the revitalization area may not be changed for the time period that local property tax allocation revenues, local sales and use taxes of participating local governments, and the local sales and use tax under RCW 82.14.510 are used to pay bonds issued under RCW 39.104.110 and public improvement costs within the revitalization area on a pay-as-you-go basis, as provided under this chapter; and

(7) A revitalization area must be geographically restricted to the location of the public improvement and adjacent locations that the sponsoring local government finds to have a high likelihood of receiving direct positive business and economic impacts due to the public improvement, such as a neighborhood or a block. [2009 c 270 § 105.]

**39.104.060 Use of property tax allocation revenues for revitalization financing—Ordinance to opt out—Notice.** (1) Participating taxing districts must allow the use of all of their local property tax allocation revenues for local revitalization financing.

(2)(a) If a taxing district does not want to allow the use of its property tax revenues for the local revitalization financing of public improvements in a revitalization area, its governing body must adopt an ordinance to remove itself as a participating taxing district and must notify the sponsoring local government.

(b) The taxing district must provide a copy of the adopted ordinance and notice to the sponsoring local government creating the revitalization area before the anticipated date that the sponsoring local government proposes to adopt the ordinance creating the revitalization area as provided in the notice required by RCW 39.104.040(1)(a). [2009 c 270 § 106.]

**39.104.070 Participating in revitalization financing—Interlocal agreement—Imposition of sales and use tax—Ordinance to opt out—Notice.** (1) A participating local government must enter into an interlocal agreement as provided in chapter 39.34 RCW to participate in local revitalization financing with the sponsoring local government.

(2)(a) If a local government that imposes a sales and use tax under RCW 82.14.030 does not want to participate in the local revitalization financing of public improvements in a revitalization area, its governing body must adopt an ordinance and notify the sponsoring local government that the taxing authority will not be a participating local government.

(b) The local government must provide a copy of the adopted ordinance and the notice to the sponsoring local government creating the revitalization area before the anticipated date that the sponsoring local government proposes to adopt an ordinance creating the revitalization area as provided in the notice required by RCW 39.104.040(1)(a). [2009 c 270 § 107.]

**39.104.080 Local property tax allocation revenues—Distribution—Determination—Termination.** (1) Commencing in the second calendar year following the creation of a revitalization area by a sponsoring local government, the county treasurer shall distribute receipts from regular taxes imposed on real property located in the revitalization area as follows:

(a) Each participating taxing district and the sponsoring local government must receive that portion of its regular property taxes produced by the rate of tax levied by or for the taxing district on the property tax allocation revenue base value for that local revitalization financing project in the taxing district; and

(b) The sponsoring local government must receive an additional portion of the regular property taxes levied by it and by or for each participating taxing district upon the property tax allocation revenue value within the revitalization area. However, if there is no property tax allocation revenue value, the sponsoring local government may not receive any additional regular property taxes under this subsection (1)(b). The sponsoring local government may agree to receive less than the full amount of the additional portion of regular property taxes under this subsection (1)(b) as long as bond debt service, reserve, and other bond covenant requirements are satisfied, in which case the balance of these tax receipts shall be allocated to the participating taxing districts that levied regular property taxes, or have regular property taxes levied for them, in the revitalization area for collection that year in proportion to their regular tax levy rates for collection that year. The sponsoring local government may request that the treasurer transfer this additional portion of the property taxes to its designated agent. The portion of the tax receipts distributed to the sponsoring local government or its agent under this subsection (1)(b) may only be expended to finance public improvement costs associated with the public improvements financed in whole or in part by local revitalization financing.

(2) The county assessor shall determine the property tax allocation revenue value and property tax allocation revenue base value. This section does not authorize 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 or under other authorized revaluation procedures.

(3) The distribution of local property tax allocation revenue to the sponsoring local government must cease when local property tax allocation revenues are no longer obligated to pay the costs of the public improvements. Any excess

local property tax allocation revenues, and earnings on the revenues, remaining at the time the distribution of local property tax allocation revenue terminates, must be returned to the county treasurer and distributed to the participating taxing districts that imposed regular property taxes, or had regular property taxes imposed for it, in the revitalization area for collection that year, in proportion to the rates of their regular property tax levies for collection that year.

(4) The allocation to the revitalization area of that portion of the sponsoring local government's and each participating taxing district's regular property taxes levied upon the property tax allocation revenue value within that revitalization area is declared to be a public purpose of and benefit to the sponsoring local government and each participating taxing district.

(5) The distribution of local property tax allocation revenues under this section may not affect or be deemed to affect the rate of taxes levied by or within any sponsoring local government and participating taxing district or the consistency of any such levies with the uniformity requirement of Article VII, section 1 of the state Constitution. [2009 c 270 § 201.]

**39.104.090 Local sales and use tax increments.** (1) A sponsoring local government may use annually local sales and use tax amounts equal to some or all of its local sales and use tax increments to finance public improvements in the revitalization area. The amounts of local sales and use tax dedicated by a participating local government must begin and cease on the dates specified in an interlocal agreement authorized in chapter 39.34 RCW. Sponsoring local governments and participating local governments are authorized to allocate some or all of their local sales and use tax increment to the sponsoring local government as provided by RCW 39.104.070(1).

(2) The department, upon request, must assist sponsoring local governments in estimating sales and use tax revenues from estimated taxable activity in the proposed or adopted revitalization area. The sponsoring local government must provide the department with accurate information describing the geographical boundaries of the revitalization area in an electronic format or in a manner as otherwise prescribed by the department. [2009 c 270 § 301.]

**39.104.100 Application process—Department of revenue approval.** (1) Prior to applying to the department to receive a state contribution, a sponsoring local government shall adopt a revitalization area within the limitations in RCW 39.104.050 and in accordance with RCW 39.104.040.

(2) As a condition to imposing a sales and use tax under RCW 82.14.510, a sponsoring local government must apply to the department and be approved for a project award amount. The application must be in a form and manner prescribed by the department and include, but not be limited to:

(a) Information establishing that over the period of time that the local sales and use tax will be imposed under RCW 82.14.510, increases in state and local property, sales, and use tax revenues as a result of public improvements in the revitalization area will be equal to or greater than the respective state and local contributions made under this chapter;

(b) Information demonstrating that the sponsoring local government will meet the requirements necessary to receive the full amount of state contribution it is requesting on an annual basis;

(c) The amount of state contribution it is requesting;

(d) The anticipated effective date for imposing the tax under RCW 82.14.510;

(e) The estimated number of years that the tax will be imposed;

(f) The anticipated rate of tax to be imposed under RCW 82.14.510, subject to the rate-setting conditions in RCW 82.14.510(3), should the sponsoring local government be approved for a project award; and

(g) The anticipated date when bonds under RCW 39.104.110 will be issued.

The department shall make available electronic forms to be used for this purpose. As part of the application, each applicant must provide to the department a copy of the adopted ordinance creating the revitalization area as required in RCW 39.104.040, copies of any adopted interlocal agreements from participating local governments, and any notices from taxing districts that elect not to be a participating taxing district.

(3)(a) Project awards must be determined on:

(i) A first-come basis for applications completed in their entirety and submitted electronically;

(ii) The availability of a state contribution;

(iii) Whether the sponsoring local government would be able to generate enough tax revenue under RCW 82.14.510 to generate the amount of project award requested.

(b) The total of all project awards may not exceed the annual state contribution limit.

(c) If the level of available state contribution is less than the amount requested by the next available applicant, the applicant must be given the first opportunity to accept the lesser amount of state contribution but only if the applicant produces a new application within sixty days of being notified by the department and the application describes the impact on the proposed project as a result of the lesser award in addition to new application information outlined in subsection (2) of this section.

(d) Applications that are not approved for a project award due to lack of available state contribution must be retained on file by the department in order of the date of their receipt.

(e) Once total project awards reach the amount of annual state contribution limit, no more applications will be accepted.

(f) If the annual contribution limit is increased, applications will be accepted again beginning sixty days after the effective date of the increase. However, in the time period before any new applications are accepted, all sponsoring local governments with a complete application already on file with the department must be provided an opportunity to either withdraw their application or update the information in the application. The updated application must be for a project that is substantially the same as the project in the original application. The department must consider these applications, in the order originally submitted, for project awards prior to considering any new applications.

(4) The department shall notify the sponsoring local government of approval or denial of a project award within sixty days of the department's receipt of the sponsoring local government's application. Determination of a project award by the department is final. Notification must include the earliest date when the tax authorized under RCW 82.14.510 may be imposed, subject to conditions in chapter 82.14 RCW. The project award notification must specify the rate requested in the application and any adjustments to the rate that would need to be made based on the project award and rate restrictions in RCW 82.14.510.

(5) The department must begin accepting applications on September 1, 2009. [2009 c 270 § 401.]

**39.104.110 Issuance of general obligation bonds.** (1)

A sponsoring local government creating a revitalization area and authorizing the use of local revitalization financing may incur general indebtedness, and issue general obligation bonds, to finance the public improvements and retire the indebtedness in whole or in part from local revitalization financing it receives, subject to the following requirements:

(a) The ordinance adopted by the sponsoring local government creating the revitalization area and authorizing the use of local revitalization financing indicates an intent to incur this indebtedness and the maximum amount of this indebtedness that is contemplated; and

(b) The sponsoring local government includes this statement of the intent in all notices required by RCW 39.104.040.

(2) The general indebtedness incurred under subsection (1) of this section may be payable from other tax revenues, the full faith and credit of the sponsoring local government, and nontax income, revenues, fees, and rents from the public improvements, as well as contributions, grants, and nontax money available to the local government for payment of costs of the public improvements or associated debt service on the general indebtedness.

(3) In addition to the requirements in subsection (1) of this section, a sponsoring local government creating a revitalization area and authorizing the use of local revitalization financing may require any nonpublic participants to provide adequate security to protect the public investment in the public improvement within the revitalization area.

(4) Bonds issued under this section must be authorized by ordinance of the sponsoring local government and may be issued in one or more series and must bear a date or dates, be payable upon demand or mature at a time or times, bear interest at a rate or rates, be in a denomination or denominations, be in a form either coupon or registered as provided in RCW 39.46.030, carry conversion or registration privileges, have a rank or priority, be executed in a manner, be payable in a medium of payment, at a place or places, and be subject to terms of redemption with or without premium, be secured in a manner, and have other characteristics, as may be provided by an ordinance or trust indenture or mortgage issued pursuant thereto.

(5) The sponsoring local government may annually pay into a fund to be established for the benefit of bonds issued under this section a fixed proportion or a fixed amount of any local property tax allocation revenues derived from property within the revitalization area containing the public improvements funded by the bonds, the payment to continue until all

bonds payable from the fund are paid in full. The local government may also annually pay into the fund established in this section a fixed proportion or a fixed amount of any revenues derived from taxes imposed under RCW 82.14.510, such payment to continue until all bonds payable from the fund are paid in full. Revenues derived from taxes imposed under RCW 82.14.510 are subject to the use restriction in RCW 82.14.515.

(6) In case any of the public officials of the sponsoring local government whose signatures appear on any bonds or any coupons issued under this chapter cease to be the officials before the delivery of the bonds, the signatures must, nevertheless, be valid and sufficient for all purposes, the same as if the officials had remained in office until the delivery. Any provision of any law to the contrary notwithstanding, any bonds issued under this chapter are fully negotiable.

(7) Notwithstanding subsections (4) through (6) of this section, bonds issued under this section may be issued and sold in accordance with chapter 39.46 RCW. [2009 c 270 § 701.]

**39.104.120 Use of tax revenue for bond repayment.**

A sponsoring local government that issues bonds under RCW 39.104.110 to finance public improvements may pledge for the payment of such bonds all or part of any local property tax allocation revenues derived from the public improvements. The sponsoring local government may also pledge all or part of any revenues derived from taxes imposed under RCW 82.14.510 and held in connection with the public improvements. All of such tax revenues are subject to the use restriction in RCW 82.14.515. [2009 c 270 § 702.]

**39.104.130 Limitation on bonds issued.** The bonds issued by a local government under RCW 39.104.110 to finance public improvements do not constitute an obligation of the state of Washington, either general or special. [2009 c 270 § 703.]

**39.104.140 Construction—Port districts—Authority.**

Nothing in this act may be construed to give port districts the authority to impose a sales or use tax under chapter 82.14 RCW. [2009 c 270 § 803.]

**39.104.150 Administration by the department—**

**Adoption of rules.** The department of revenue may adopt any rules under chapter 34.05 RCW it considers necessary for the administration of this chapter. [2009 c 270 § 804.]

**39.104.900 Severability—2009 c 270.** 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. [2009 c 270 § 801.]

**39.104.901 Captions and part headings not law—2009 c 270.** Captions and part headings used in this act do not constitute any part of the law. [2009 c 270 § 802.]



## Title 41

PUBLIC EMPLOYMENT, CIVIL SERVICE,  
AND PENSIONS

## Chapters

- 41.04 General provisions.
- 41.05 State health care authority.
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- 41.14 Civil service for sheriff's office.
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## Chapter 41.04 RCW

## GENERAL PROVISIONS

## Sections

- 41.04.010 Veterans' scoring criteria status in examinations.
- 41.04.273 Prohibition of retirement benefits passing to slayer or abuser beneficiary—Determination by department of retirement systems—Duties upon notice—Payment upon verdicts—Admissibility of evidence—Immunity.
- 41.04.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**41.04.010 Veterans' scoring criteria status in examinations.** In all competitive examinations, unless otherwise provided in this section, to determine the qualifications of applicants for public offices, positions, or employment, either the state, and all of its political subdivisions and all municipal corporations, or private companies or agencies contracted with by the state to give the competitive examinations shall give a scoring criteria status to all veterans as defined in RCW 41.04.007, 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 served during a period of war or in an armed conflict as defined in RCW 41.04.005

and does not receive military retirement. The percentage shall be added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations;

(2) Five percent to a veteran who did not serve during a period of war or in an armed conflict as defined in RCW 41.04.005 or is receiving military retirement. The percentage shall be added to the passing mark, grade, or rating of competitive examinations until the veteran's first appointment. The percentage shall not be utilized in promotional examinations;

(3) Five percent to a veteran who was called to active military service from employment with the state or any of its political subdivisions or municipal corporations. The percentage shall be added to promotional examinations until the first promotion only;

(4) All veterans' scoring criteria may be claimed upon release from active military service. [2009 c 248 § 1; 2007 c 449 § 1; 2003 c 45 § 1; 2002 c 292 § 4; 2000 c 140 § 1; 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.*

**41.04.273 Prohibition of retirement benefits passing to slayer or abuser 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) "Abuser" has the same meaning as provided in RCW 11.84.010.

(b) "Decedent" means any person who is entitled to benefits from the Washington state department of retirement systems by written designation or by operation of law:

(i) Whose life is taken by a slayer; or

(ii) Who is deceased and who, at any time during life in which he or she was a vulnerable adult, was the victim of financial exploitation by an abuser, except as provided in RCW 11.84.170.

(c) "Slayer" means a slayer as defined in RCW 11.84.010.

(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 or abuser of the decedent and the property shall be distributed as if the slayer or abuser had predeceased the decedent.

(3) A slayer or abuser 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 or abuser 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 or abuser. However, upon receipt of written notice that a beneficiary is a defendant in a civil lawsuit or probate proceeding that alleges the beneficiary is a slayer or abuser, or is charged with a crime that, if committed,

means the beneficiary is a slayer or abuser, the department of retirement systems shall determine whether the beneficiary is a defendant in such a civil proceeding 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 proceeding, or both if both are pending; or

(iii) The beneficiary is convicted or is found to be a slayer or abuser in the civil proceeding.

(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 proceeding, 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 or abuser in a civil proceeding, the department shall distribute the benefits according to subsection (2) of this section.

(5) Any record of conviction for having participated in the willful and unlawful killing of the decedent or for conduct constituting financial exploitation against the decedent, including but not limited to theft, forgery, fraud, identity theft, robbery, burglary, or extortion, shall be admissible in evidence against a claimant of property in any civil action arising under this section.

(6) In the absence of a criminal conviction, a superior court may determine:

(a) By a preponderance of the evidence whether a person participated in the willful and unlawful killing of the decedent;

(b) By clear, cogent, and convincing evidence whether a person participated in conduct constituting financial exploitation against the decedent, as provided in chapter 11.84 RCW.

(7) This section shall not subject the department of retirement systems to liability for payment made to a slayer or abuser or alleged slayer or abuser, prior to the department's receipt of written notice that the slayer or abuser has been convicted of, or the alleged slayer or abuser has been formally criminally or civilly charged in court with, the death or financial exploitation of the decedent. If the conviction or civil judgment of a slayer or abuser 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. [2009 c 525 § 19; 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.

[2009 RCW Supp—page 690]

**41.04.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 8.5.]

## Chapter 41.05 RCW

### STATE HEALTH CARE AUTHORITY

#### Sections

41.05.008	Duties of employing agencies. ( <i>Effective January 1, 2010.</i> )
41.05.009	Determination of employee eligibility for benefits. ( <i>Effective January 1, 2010.</i> )
41.05.0091	Eligibility exists prior to January 1, 2010. ( <i>Effective January 1, 2010.</i> )
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41.05.080	Participation in insurance plans and contracts—Retired, disabled, or separated employees—Certain surviving spouses, domestic partners, and dependent children ( <i>as amended by 2009 c 523</i> ).
41.05.195	Medicare supplemental insurance policies.
41.05.650	Community health care collaborative grant program—Grants—Administrative support—Eligibility.
41.05.651	Rules—2009 c 299.
41.05.660	Community health care collaborative grant program—Award and disbursement of grants.

**41.05.008 Duties of employing agencies.** (*Effective January 1, 2010.*) (1) Every employing agency shall carry out all actions required by the authority under this chapter including, but not limited to, those necessary for the operation of benefit plans, education of employees, claims administration, and appeals process.

(2) Employing agencies shall report all data relating to employees eligible to participate in benefits or plans adminis-

tered by the authority in a format designed and communicated by the authority. [2009 c 537 § 1; 2005 c 143 § 4.]

**Effective date—2009 c 537:** "This act takes effect January 1, 2010." [2009 c 537 § 9.]

**41.05.009 Determination of employee eligibility for benefits. (Effective January 1, 2010.)** (1) The authority, or at the authority's direction, an employing agency shall initially determine and periodically review whether an employee is eligible for benefits pursuant to the criteria established under this chapter.

(2) An employing agency shall inform an employee in writing whether or not he or she is eligible for benefits when initially determined and upon any subsequent change, including notice of the employee's right to an appeal. [2009 c 537 § 2.]

**Effective date—2009 c 537:** See note following RCW 41.05.008.

**41.05.0091 Eligibility exists prior to January 1, 2010. (Effective January 1, 2010.)** An employee determined eligible for benefits prior to January 1, 2010, shall not have his or her eligibility terminated pursuant to the criteria established under chapter 537, Laws of 2009 unless the termination is the result of: (1) A voluntary reduction in work hours; or (2) the employee's employment with an agency other than the agency by which he or she was determined eligible prior to January 1, 2010. [2009 c 537 § 10.]

**Effective date—2009 c 537:** See note following RCW 41.05.008.

**41.05.011 Definitions. (Effective January 1, 2010.)** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(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 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; justices of the supreme court and judges of the court of appeals and the superior courts; members of the state legislature. Pursuant to contractual agreement with the authority, "employee" may also include: (a) Employees of a

county, municipality, or other political subdivision of the state and members of the legislative authority of any county, city, or town who are elected to office after February 20, 1970, 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 and 41.05.021(1)(g); (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; (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; and (d) employees of a tribal government, if the governing body of the tribal government seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.05.021(1) (f) and (g). "Employee" does not include: Adult family homeowners; unpaid volunteers; patients of state hospitals; inmates; employees of the Washington state convention and trade center as provided in RCW 41.05.110; students of institutions of higher education as determined by their institution; and any others not expressly defined as employees under this chapter or by the authority under this chapter.

(7) "Seasonal employee" means an employee hired to work during a recurring, annual season with a duration of three months or more, and anticipated to return each season to perform similar work.

(8) "Faculty" means an academic employee of an institution of higher education whose workload is not defined by work hours but whose appointment, workload, and duties directly serve the institution's academic mission, as determined under the authority of its enabling statutes, its governing body, and any applicable collective bargaining agreement.

(9) "Board" means the public employees' benefits board established under RCW 41.05.055.

(10) "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, 41.35, 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, 41.35, or 41.40 RCW.

(11) "Premium payment plan" means a benefit plan whereby state and public employees may pay their share of group health plan premiums with pretax dollars as provided in the salary reduction plan under this chapter pursuant to 26

U.S.C. Sec. 125 or other sections of the internal revenue code.

(12) "Salary" means a state employee's monthly salary or wages.

(13) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the salary reduction plan.

(14) "Plan year" means the time period established by the authority.

(15) "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; or
- (c) RCW 41.40.010 on or after March 1, 2002;

and who are at least age fifty-five and have at least ten years of service under the teachers' retirement system plan 3 as defined in RCW 41.32.010(40), the Washington school employees' retirement system plan 3 as defined in RCW 41.35.010, or the public employees' retirement system plan 3 as defined in RCW 41.40.010.

(16) "Emergency service personnel killed in the line of duty" means law enforcement officers and firefighters as defined in RCW 41.26.030, members of the Washington state patrol retirement fund as defined in RCW 43.43.120, and reserve officers and firefighters as defined in RCW 41.24.010 who die as a result of injuries sustained in the course of employment as determined consistent with Title 51 RCW by the department of labor and industries.

(17) "Employer" means the state of Washington.

(18) "Employing agency" means a division, department, or separate agency of state government, including an institution of higher education; a county, municipality, school district, educational service district, or other political subdivision; and a tribal government covered by this chapter.

(19) "Tribal government" means an Indian tribal government as defined in section 3(32) of the employee retirement income security act of 1974, as amended, or an agency or instrumentality of the tribal government, that has government offices principally located in this state.

(20) "Dependent care assistance program" means a benefit plan whereby state and public employees may pay for certain employment related dependent care with pretax dollars as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 129 or other sections of the internal revenue code.

(21) "Salary reduction plan" means a benefit plan whereby state and public employees may agree to a reduction of salary on a pretax basis to participate in the dependent care assistance program, medical flexible spending arrangement, or premium payment plan offered pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(22) "Medical flexible spending arrangement" means a benefit plan whereby state and public employees may reduce their salary before taxes to pay for medical expenses not reimbursed by insurance as provided in the salary reduction plan under this chapter pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code. [2009 c 537 § 3; 2008 c 229 § 2. Prior: 2007 c 488 § 2; 2007 c 114 § 2; 2005 c 143 § 1; 2001 c 165 § 2; prior: 2000 c 247 § 604; 2000 c 230 § 3; 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—2009 c 537:** See note following RCW 41.05.008.

**Effective date—2008 c 229:** See note following RCW 41.05.295.

**Short title—2007 c 488:** See note following RCW 43.43.285.

**Intent—2007 c 114:** "Consistent with the centennial accord, the new millennium agreement, related treaties, and federal and state law, it is the intent of the legislature to authorize tribal governments to participate in public employees' benefits board programs to the same extent that counties, municipalities, and other political subdivisions of the state are authorized to do so." [2007 c 114 § 1.]

**Effective date—2007 c 114:** "This act takes effect January 1, 2009." [2007 c 114 § 8.]

**Effective date—2001 c 165 § 2:** "Section 2 of this act takes effect March 1, 2002." [2001 c 165 § 5.]

**Effective date—Application—2001 c 165:** "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 except for section 2 of this act takes effect immediately [May 7, 2001]. This act applies to all surviving spouses and dependent children of (1) emergency service personnel and (2) members of the law enforcement officers' and firefighters' retirement system plan 2, killed in the line of duty." [2006 c 345 § 2; 2001 c 165 § 6.]

**Reviser's note:** Contractual right not granted—2006 c 345: See note following RCW 41.26.510.

**Effective date—2000 c 230:** See note following RCW 41.35.630.

**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.

**41.05.014 Applications and enrollment forms—Signatures.** (1) The administrator may require applications, enrollment forms, and eligibility certification documents for benefits that are administered by the authority under this chapter and chapters 70.47 and 70.47A RCW to be signed by the person submitting them. The administrator may accept electronic signatures.

(2) For the purpose of this section, "electronic signature" means a signature in electronic form attached to or logically associated with an electronic record including, but not limited to, a digital signature. [2009 c 201 § 2.]

**41.05.021 State health care authority—Administrator—Cost control and delivery strategies—Health information technology—Managed competition—Rules. (Effective January 1, 2010.)** (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; implement state initiatives, joint purchasing strategies, and techniques for efficient administration that have potential application to all state-purchased health services; and administer grants that further the mission and goals of the authority. 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;

(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; and

(vi) In collaboration with other state agencies that administer state purchased health care programs, private health care purchasers, health care facilities, providers, and carriers:

(A) Use evidence-based medicine principles to develop common performance measures and implement financial incentives in contracts with insuring entities, health care facilities, and providers that:

(I) Reward improvements in health outcomes for individuals with chronic diseases, increased utilization of appropriate preventive health services, and reductions in medical errors; and

(II) Increase, through appropriate incentives to insuring entities, health care facilities, and providers, the adoption and use of information technology that contributes to improved health outcomes, better coordination of care, and decreased medical errors;

(B) Through state health purchasing, reimbursement, or pilot strategies, promote and increase the adoption of health information technology systems, including electronic medical records, by hospitals as defined in RCW 70.41.020(4), integrated delivery systems, and providers that:

(I) Facilitate diagnosis or treatment;

(II) Reduce unnecessary duplication of medical tests;

(III) Promote efficient electronic physician order entry;

(IV) Increase access to health information for consumers and their providers; and

(V) Improve health outcomes;

(C) Coordinate a strategy for the adoption of health information technology systems using the final health information technology report and recommendations developed under chapter 261, Laws of 2005;

(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 and (g) of this subsection, setting the premium contribution for approved groups as outlined in RCW 41.05.050;

(f) To review and approve or deny the application when the governing body of a tribal government applies to transfer their employees to an insurance or self-insurance program administered under this chapter. In the event of an employee transfer pursuant to this subsection (1)(f), members of the governing body are eligible to be included in such a transfer if the members are authorized by the tribal government to participate in the insurance program being transferred from and subject to payment by the members of all costs of insurance for the members. The authority shall: (i) Establish the conditions for participation; (ii) have the sole right to reject the application; and (iii) set the premium contribution for approved groups as outlined in RCW 41.05.050. Approval of the application by the authority transfers the employees and dependents involved to the insurance, self-insurance, or health care program approved by the authority;

(g) To ensure the continued status of the employee insurance or self-insurance programs administered under this chapter as a governmental plan under section 3(32) of the employee retirement income security act of 1974, as amended, the authority shall limit the participation of employees of a county, municipal, school district, educational service district, or other political subdivision, or a tribal government, including providing for the participation of those employees whose services are substantially all in the performance of essential governmental functions, but not in the performance of commercial activities;

(h) To establish billing procedures and collect funds from school districts in a way that minimizes the administrative burden on districts;

(i) To publish and distribute to nonparticipating school districts and educational service districts by October 1st of each year a description of health care benefit plans available through the authority and the estimated cost if school districts and educational service district employees were enrolled;

(j) To apply for, receive, and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and make arrangements as to the use of these receipts to implement initiatives and strategies developed under this section;

(k) To issue, distribute, and administer grants that further the mission and goals of the authority;

(l) To adopt rules consistent with this chapter as described in RCW 41.05.160 including, but not limited to:

(i) Setting forth the criteria established by the board under RCW 41.05.065 for determining whether an employee is eligible for benefits;

(ii) Establishing an appeal process in accordance with chapter 34.05 RCW by which an employee may appeal an eligibility determination;

(iii) Establishing a process to assure that the eligibility determinations of an employing agency comply with the criteria under this chapter, including the imposition of penalties as may be authorized by the board.

(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 statewide, 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. [2009 c 537 § 4. Prior: 2007 c 274 § 1; 2007 c 114 § 3; 2006 c 103 § 2; 2005 c 446 § 1; 2002 c 142 § 1; 1999 c 372 § 4; 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.]

**Effective date—2009 c 537:** See note following RCW 41.05.008.

**Intent—Effective date—2007 c 114:** See notes following RCW 41.05.011.

**Intent—2006 c 103:** "(1) The legislature recognizes that improvements in the quality of health care lead to better health care outcomes for the residents of Washington state and contain health care costs. The improvements are facilitated by the adoption of electronic medical records and other health information technologies.

(2) It is the intent of the legislature to encourage all hospitals, integrated delivery systems, and providers in the state of Washington to adopt health information technologies by the year 2012." [2006 c 103 § 1.]

**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.

**41.05.029 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**41.05.036 Health information—Definitions.** The definitions in this section apply throughout RCW 41.05.039 through 41.05.046 unless the context clearly requires otherwise.

(1) "Administrator" means the administrator of the state health care authority under this chapter.

(2) "Exchange" means the methods or medium by which health care information may be electronically and securely exchanged among authorized providers, payors, and patients within Washington state.

(3) "Health care provider" or "provider" has the same meaning as in RCW 48.43.005.

(4) "Health data provider" means an organization that is a primary source for health-related data for Washington residents, including but not limited to:

(a) The children's health immunizations linkages and development profile immunization registry provided by the department of health pursuant to chapter 43.70 RCW;

(b) Commercial laboratories providing medical laboratory testing results;

(c) Prescription drugs clearinghouses, such as the national patient health information network; and

(d) Diagnostic imaging centers.

(5) "Lead organization" means a private sector organization or organizations designated by the administrator to lead development of processes, guidelines, and standards under chapter 300, Laws of 2009.

(6) "Payor" means public purchasers, as defined in this section, carriers licensed under chapters 48.20, 48.21, 48.44, 48.46, and 48.62 RCW, and the Washington state health insurance pool established in chapter 48.41 RCW.

(7) "Public purchaser" means the department of social and health services, the department of labor and industries, and the health care authority.

(8) "Secretary" means the secretary of the department of health. [2009 c 300 § 2.]

**Finding—2009 c 300:** "The legislature finds that:

(1) The inability to securely share critical health information between practitioners inhibits the delivery of safe, efficient care, as evidenced by:

(a) Adverse drug events that result in an average of seven hundred seventy thousand injuries and deaths each year; and

(b) Duplicative services that add to costs and jeopardize patient well-being;

(2) Consumers are unable to act as fully informed participants in their care unless they have ready access to their own health information;

(3) The blue ribbon commission on health care costs and access found that the development of a system to provide electronic access to patient information anywhere in the state was a key to improving health care; and

(4) In 2005, the legislature established a health information infrastructure advisory board to develop a strategy for the adoption and use of health information technologies that are consistent with emerging national standards and promote interoperability of health information systems." [2009 c 300 § 1.]

**41.05.039 Health information—Secure access—Lead organization—Administrator’s duties.** (1) By August 1, 2009, the administrator shall designate one or more lead organizations to coordinate development of processes, guidelines, and standards to:

(a) Improve patient access to and control of their own health care information and thereby enable their active participation in their own care; and

(b) Implement methods for the secure exchange of clinical data as a means to promote:

(i) Continuity of care;

(ii) Quality of care;

(iii) Patient safety; and

(iv) Efficiency in medical practices.

(2) The lead organization designated by the administrator under this section shall:

(a) Be representative of health care privacy advocates, providers, and payors across the state;

(b) Have expertise and knowledge in the major disciplines related to the secure exchange of health data;

(c) Be able to support the costs of its work without recourse to state funding. The administrator and the lead organization are authorized and encouraged to seek federal funds, including funds from the federal American recovery and reinvestment act, as well as solicit, receive, contract for, collect, and hold grants, donations, and gifts to support the implementation of this section and RCW 41.05.042;

(d) In collaboration with the administrator, identify and convene work groups, as needed, to accomplish the goals of this section and RCW 41.05.042;

(e) Conduct outreach and communication efforts to maximize the adoption of the guidelines, standards, and processes developed by the lead organization;

(f) Submit regular updates to the administrator on the progress implementing the requirements of this section and RCW 41.05.042; and

(g) With the administrator, report to the legislature December 1, 2009, and on December 1st of each year through December 1, 2012, on progress made, the time necessary for completing tasks, and identification of future tasks that should be prioritized for the next improvement cycle.

(3) Within available funds as specified in subsection (2)(c) of this section, the administrator shall:

(a) Participate in and review the work and progress of the lead organization, including the establishment and operation of work groups for this section and RCW 41.05.042; and

(b) Consult with the office of the attorney general to determine whether:

(i) An antitrust safe harbor is necessary to enable licensed carriers and providers to develop common rules and standards; and, if necessary, take steps, such as implementing rules or requesting legislation, to establish a safe harbor; and

(ii) Legislation is needed to limit provider liability if their health records are missing health information despite their participation in the exchange of health information.

(4) The lead organization or organizations shall take steps to minimize the costs that implementation of the processes, guidelines, and standards may have on participating entities, including providers. [2009 c 300 § 3.]

**Findings—2009 c 300:** See note following RCW 41.05.036.

**41.05.042 Health information—Processes, guidelines, and standards.** By December 1, 2011, the lead organization shall, consistent with the federal health insurance portability and accountability act, develop processes, guidelines, and standards that address:

(1) Identification and prioritization of high value health data from health data providers. High value health data include:

(a) Prescriptions;

(b) Immunization records;

(c) Laboratory results;

(d) Allergies; and

(e) Diagnostic imaging;

(2) Processes to request, submit, and receive data;

(3) Data security, including:

(a) Storage, access, encryption, and password protection;

(b) Secure methods for accepting and responding to requests for data;

(c) Handling unauthorized access to or disclosure of individually identifiable patient health information, including penalties for unauthorized disclosure; and

(d) Authentication of individuals, including patients and providers, when requesting access to health information, and maintenance of a permanent audit trail of such requests, including:

(i) Identification of the party making the request;

(ii) The data elements reported; and

(iii) Transaction dates;

(4) Materials written in plain language that explain the exchange of health information and how patients can effectively manage such information, including the use of online tools for that purpose;

(5) Materials for health care providers that explain the exchange of health information and the secure management of such information. [2009 c 300 § 4.]

**Findings—2009 c 300:** See note following RCW 41.05.036.

**41.05.046 Health information—Conflict with federal requirements.** If any provision in RCW 41.05.036, 41.05.039, and 41.05.042 conflicts with existing or new federal requirements, the administrator shall recommend modifications, as needed, to assure compliance with the aims of RCW 41.05.036, 41.05.039, and 41.05.042 and federal requirements. [2009 c 300 § 5.]

**Findings—2009 c 300:** See note following RCW 41.05.036.

**41.05.050 Contributions for employees and dependents—Definitions. (Effective January 1, 2010.)** (1) Every: (a) Department, division, or separate agency of state government; (b) county, municipal, school district, educational service district, or other political subdivisions; and (c) tribal governments 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, other political subdivision, or a tribal government 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, except as provided in subsection (4) of this section.

(2) If the authority at any time determines that the participation of a county, municipal, other political subdivision, or a tribal government covered under this chapter adversely impacts insurance rates for state employees, the authority shall implement limitations on the participation of additional county, municipal, other political subdivisions, or a tribal government.

(3) The contributions of any: (a) Department, division, or separate agency of the state government; (b) county, municipal, or other political subdivisions; and (c) any tribal government 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.

(4)(a) The authority shall collect from each participating school district and educational service district an amount equal to the composite rate charged to state agencies, plus an amount equal to the employee premiums by plan and family size as would be charged to state employees, for groups of district employees enrolled in authority plans. The authority may collect these amounts in accordance with the district fiscal year, as described in RCW 28A.505.030.

(b) For all groups of district employees enrolling in authority plans for the first time after September 1, 2003, the authority shall collect from each participating school district an amount equal to the composite rate charged to state agencies, plus an amount equal to the employee premiums by plan and by family size as would be charged to state employees, only if the authority determines that this method of billing the districts will not result in a material difference between revenues from districts and expenditures made by the authority on behalf of districts and their employees. The authority may collect these amounts in accordance with the district fiscal year, as described in RCW 28A.505.030.

(c) If the authority determines at any time that the conditions in (b) of this subsection cannot be met, the authority shall offer enrollment to additional groups of district employees on a tiered rate structure until such time as the authority determines there would be no material difference between revenues and expenditures under a composite rate structure for all district employees enrolled in authority plans.

(d) The authority may charge districts a one-time set-up fee for employee groups enrolling in authority plans for the first time.

(e) For the purposes of this subsection:

(i) "District" means school district and educational service district; and

(ii) "Tiered rates" means the amounts the authority must pay to insuring entities by plan and by family size.

(f) Notwithstanding this subsection and RCW 41.05.065(4), the authority may allow districts enrolled on a tiered rate structure prior to September 1, 2002, to continue participation based on the same rate structure and under the same conditions and eligibility criteria.

(5) 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. [2009 c 537 § 5;

2007 c 114 § 4; 2005 c 518 § 919; 2003 c 158 § 1. Prior: 2002 c 319 § 4; 2002 c 142 § 2; prior: 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.]

**Effective date—2009 c 537:** See note following RCW 41.05.008.

**Intent—Effective date—2007 c 114:** See notes following RCW 41.05.011.

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

**Intent—2002 c 319:** See note following RCW 41.04.208.

**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:** "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 344 § 8.]

**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.]

**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.]

**41.05.053 Repealed. (Effective January 1, 2010.)**  
See Supplementary Table of Disposition of Former RCW Sections, this volume.



**41.05.055 Public employees' benefits board—Members.** (*Effective January 1, 2010.*) (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 employees and to establish eligibility criteria for participation in insurance benefit plans.

(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. [2009 c 537 § 6; 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—2009 c 537:** See note following RCW 41.05.008.

**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—Eligibility—Definitions—Penalties.** (*Effective January 1, 2010.*) (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 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; and

(f) Minimum standards for insuring entities.

(3) To maintain the comprehensive nature of employee health care benefits, benefits provided to employees shall be substantially equivalent to the state employees' health benefits plan in effect on January 1, 1993. Nothing in this subsection shall prohibit changes or increases in employee point-of-service payments or employee premium payments for benefits or the administration of a high deductible health plan in conjunction with a health savings account. The board may establish employee eligibility criteria which are not substantially equivalent to employee eligibility criteria in effect on January 1, 1993.

(4) Except if bargained for under chapter 41.80 RCW, the board shall design benefits and determine the terms and conditions of employee and retired employee participation and coverage, including establishment of eligibility criteria subject to the requirements of this chapter. Employer groups obtaining benefits through contractual agreement with the authority for employees defined in RCW 41.05.011(6) (a) through (d) may contractually agree with the authority to benefits eligibility criteria which differs from that determined by the board. The eligibility criteria established by the board shall be no more restrictive than the following:

(a) Except as provided in (b) through (e) of this subsection, an employee is eligible for benefits from the date of employment if the employing agency anticipates he or she will work an average of at least eighty hours per month and for at least eight hours in each month for more than six consecutive months. An employee determined ineligible for benefits at the beginning of his or her employment shall become eligible in the following circumstances:

(i) An employee who works an average of at least eighty hours per month and for at least eight hours in each month and whose anticipated duration of employment is revised from less than or equal to six consecutive months to more than six consecutive months becomes eligible when the revision is made.

(ii) An employee who works an average of at least eighty hours per month over a period of six consecutive months and

for at least eight hours in each of those six consecutive months becomes eligible at the first of the month following the six-month averaging period.

(b) A seasonal employee is eligible for benefits from the date of employment if the employing agency anticipates that he or she will work an average of at least eighty hours per month and for at least eight hours in each month of the season. A seasonal employee determined ineligible at the beginning of his or her employment who works an average of at least half-time, as defined by the board, per month over a period of six consecutive months and at least eight hours in each of those six consecutive months becomes eligible at the first of the month following the six-month averaging period. A benefits-eligible seasonal employee who works a season of less than nine months shall not be eligible for the employer contribution during the off season, but may continue enrollment in benefits during the off season by self-paying for the benefits. A benefits-eligible seasonal employee who works a season of nine months or more is eligible for the employer contribution through the off season following each season worked.

(c) Faculty are eligible as follows:

(i) Faculty who the employing agency anticipates will work half-time or more for the entire instructional year or equivalent nine-month period are eligible for benefits from the date of employment. Eligibility shall continue until the beginning of the first full month of the next instructional year, unless the employment relationship is terminated, in which case eligibility shall cease the first month following the notice of termination or the effective date of the termination, whichever is later.

(ii) Faculty who the employing agency anticipates will not work for the entire instructional year or equivalent nine-month period are eligible for benefits at the beginning of the second consecutive quarter or semester of employment in which he or she is anticipated to work, or has actually worked, half-time or more. Such an employee shall continue to receive uninterrupted employer contributions for benefits if the employee works at least half-time in a quarter or semester. Faculty who the employing agency anticipates will not work for the entire instructional year or equivalent nine-month period, but who actually work half-time or more throughout the entire instructional year, are eligible for summer or off-quarter coverage. Faculty who have met the criteria of this subsection (4)(c)(ii), who work at least two quarters of the academic year with an average academic year workload of half-time or more for three quarters of the academic year, and who have worked an average of half-time or more in each of the two preceding academic years shall continue to receive uninterrupted employer contributions for benefits if he or she works at least half-time in a quarter or semester or works two quarters of the academic year with an average academic workload each academic year of half-time or more for three quarters. Eligibility under this section ceases immediately if this criteria is not met.

(iii) Faculty may establish or maintain eligibility for benefits by working for more than one institution of higher education. When faculty work for more than one institution of higher education, those institutions shall prorate the employer contribution costs, or if eligibility is reached through one institution, that institution will pay the full

employer contribution. Faculty working for more than one institution must alert his or her employers to his or her potential eligibility in order to establish eligibility.

(iv) The employing agency must provide written notice to faculty who are potentially eligible for benefits under this subsection (4)(c) of their potential eligibility.

(v) To be eligible for maintenance of benefits through averaging under (c)(ii) of this subsection, faculty must provide written notification to his or her employing agency or agencies of his or her potential eligibility.

(d) A legislator is eligible for benefits on the date his or her term begins. All other elected and full-time appointed officials of the legislative and executive branches of state government are eligible for benefits on the date his or her term begins or they take the oath of office, whichever occurs first.

(e) A justice of the supreme court and judges of the court of appeals and the superior courts become eligible for benefits on the date he or she takes the oath of office.

(f) Except as provided in (c)(i) and (ii) of this subsection, eligibility ceases for any employee the first of the month following termination of the employment relationship.

(g) In determining eligibility under this section, the employing agency may disregard training hours, standby hours, or temporary changes in work hours as determined by the authority under this section.

(h) Insurance coverage for all eligible employees begins on the first day of the month following the date when eligibility for benefits is established. If the date eligibility is established is the first working day of a month, insurance coverage begins on that date.

(i) Eligibility for an employee whose work circumstances are described by more than one of the eligibility categories in (a) through (e) of this subsection shall be determined solely by the criteria of the category that most closely describes the employee's work circumstances.

(j) Except for an employee eligible for benefits under (b) or (c)(ii) of this subsection, an employee who has established eligibility for benefits under this section shall remain eligible for benefits each month in which he or she is in pay status for eight or more hours, if (i) he or she remains in a benefits-eligible position and (ii) leave from the benefits-eligible position is approved by the employing agency. A benefits-eligible seasonal employee is eligible for the employer contribution in any month of his or her season in which he or she is in pay status eight or more hours during that month. Eligibility ends if these conditions are not met, the employment relationship is terminated, or the employee voluntarily transfers to a noneligible position.

(k) For the purposes of this subsection:

(i) "Academic year" means summer, fall, winter, and spring quarters or semesters;

(ii) "Half-time" means one-half of the full-time academic workload as determined by each institution, except that half-time for community and technical college faculty employees shall have the same meaning as "part-time" under RCW 28B.50.489;

(iii) "Benefits-eligible position" shall be defined by the board.

(5) 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.

(6) The board shall develop a health savings account option for employees that conform to section 223, Part VII of subchapter B of chapter 1 of the internal revenue code of 1986. The board shall comply with all applicable federal standards related to the establishment of health savings accounts.

(7) Notwithstanding any other provision of this chapter, the board shall develop a high deductible health plan to be offered in conjunction with a health savings account developed under subsection (6) of this section.

(8) 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.

(9) 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 adopt rules setting forth criteria by which it shall evaluate the plans.

(10) 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, political subdivisions, and tribal governments 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.

(11) The board may establish penalties to be imposed by the authority when the eligibility determinations of an employing agency fail to comply with the criteria under this chapter. [2009 c 537 § 7. Prior: 2007 c 156 § 10; 2007 c 114 § 5; 2006 c 299 § 2; prior: 2005 c 518 § 920; 2005 c 195 § 1; 2003 c 158 § 2; 2002 c 142 § 3; 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—2009 c 537:** See note following RCW 41.05.008.

**Intent—Effective date—2007 c 114:** See notes following RCW 41.05.011.

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

**Effective date—2005 c 195:** "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, 2005." [2005 c 195 § 4.]

**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.

**41.05.068 Federal employer incentive program—**  
**Authority to participate.** The authority may participate as an employer-sponsored program established in section 1860D-22 of the medicare prescription drug, improvement, and modernization act of 2003, P.L. 108-173 et seq., to receive federal employer subsidy funds for continuing to provide retired employee health coverage, including a pharmacy benefit. The administrator, in consultation with the office of financial management, shall evaluate participation in the employer incentive program, including but not limited to any necessary program changes to meet the eligibility requirements that employer-sponsored retiree health coverage provide prescription drug coverage at least equal to the actuarial value of standard prescription drug coverage under medicare part D. Any employer subsidy moneys received from participation in the federal employer incentive program shall be deposited in the state general fund. [2009 c 479 § 25; 2005 c 195 § 2.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Effective date—2005 c 195:** See note following RCW 41.05.065.

**41.05.080 Participation in insurance plans and contracts—Retired, disabled, or separated employees—Certain surviving spouses or surviving domestic partners and dependent children (as amended by 2009 c 522).** (1) Under the qualifications, terms, conditions, and benefits set by the board:

(a) Retired or disabled state employees, retired or disabled school employees, retired or disabled employees of county, municipal, or other political subdivisions, or retired or disabled employees of tribal governments covered by this chapter 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;

(c) Surviving spouses, surviving spouses or surviving domestic partners in the case of members of the Washington state patrol retirement system, and dependent children of emergency service personnel killed in the line of duty may participate in insurance plans and contracts.

(2) Rates charged surviving spouses, or surviving spouses or surviving domestic partners in the case of members of the Washington state patrol retirement system, of emergency service personnel killed in the line of duty, 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 surviving spouses, or surviving spouses or surviving domestic partners in the case of members of the Washington state patrol retirement system, of emergency service personnel killed in the line of duty, 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) Surviving spouses, surviving spouses or surviving domestic partners in the case of members of the Washington state patrol retirement system, and dependent children of emergency service personnel killed in the line of duty and 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, the spouse or domestic partner in the case of members of the Washington state patrol retirement system, 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. [2009 c 522 § 9; 2007 c 114 § 6; 2001 c 165 § 3; 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.]

**41.05.080 Participation in insurance plans and contracts—Retired, disabled, or separated employees—Certain surviving spouses, domestic partners, and dependent children (as amended by 2009 c 523).** (1) Under the qualifications, terms, conditions, and benefits set by the board:

(a) Retired or disabled state employees, retired or disabled school employees, retired or disabled employees of county, municipal, or other political subdivisions, or retired or disabled employees of tribal governments covered by this chapter 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;

(c) Surviving spouses, domestic partners, and dependent children of emergency service personnel killed in the line of duty may participate in insurance plans and contracts.

(2) Rates charged surviving spouses and domestic partners of emergency service personnel killed in the line of duty, 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 surviving spouses and domestic partners of emergency service personnel killed in the line of duty, 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) Surviving spouses, domestic partners, and dependent children of emergency service personnel killed in the line of duty and 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. [2009 c 523 § 1; 2007 c 114 § 6; 2001 c 165 § 3; 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.]

**Reviser's note:** RCW 41.05.080 was amended twice during the 2009 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.

**Intent—Effective date—2007 c 114:** See notes following RCW 41.05.011.

**Effective date—Application—2001 c 165:** See note following RCW 41.05.011.

**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.

**41.05.195 Medicare supplemental insurance policies.** Notwithstanding any other provisions of this chapter or rules or procedures adopted by the authority, the authority shall make available to retired or disabled employees who are enrolled in parts A and B of medicare one or more medicare supplemental insurance policies that conform to the requirements of chapter 48.66 RCW. The policies shall be chosen in consultation with the public employees' benefits board.

These policies shall be made available to retired or disabled state employees; retired or disabled school district employees; retired employees of county, municipal, or other political subdivisions or retired employees of tribal governments eligible for coverage available under the authority; or surviving spouses or domestic partners of emergency service personnel killed in the line of duty. [2009 c 523 § 2; 2007 c 114 § 7; 2005 c 47 § 1; 1993 c 492 § 222.]

**Intent—Effective date—2007 c 114:** 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.

**41.05.650 Community health care collaborative grant program—Grants—Administrative support—Eligibility.** (1) The community health care collaborative grant program is established to further the efforts of community-based coalitions to increase access to appropriate, affordable health care for Washington residents, particularly employed low-income persons and children in school who are uninsured and underinsured, through local programs addressing one or more of the following: (a) Access to medical treatment; (b) the efficient use of health care resources; and (c) quality of care.

(2) Consistent with funds appropriated for community health care collaborative grants specifically for this purpose, two-year grants may be awarded pursuant to RCW 41.05.660 by the administrator of the health care authority.

(3) The health care authority shall provide administrative support for the program. Administrative support activities may include health care authority facilitation of statewide discussions regarding best practices and standardized performance measures among grantees, or subcontracting for such discussions.

(4) Eligibility for community health care collaborative grants shall be limited to nonprofit organizations established to serve a defined geographic region or organizations with public agency status under the jurisdiction of a local, county, or tribal government. To be eligible, such entities must have a formal collaborative governance structure and decision-making process that includes representation by the following health care providers: Hospitals, public health, behavioral health, community health centers, rural health clinics, and private practitioners that serve low-income persons in the region, unless there are no such providers within the region, or providers decline or refuse to participate or place unreasonable conditions on their participation. The nature and format of the application, and the application procedure, shall be determined by the administrator of the health care authority. At a minimum, each application shall: (a) Identify the geographic region served by the organization; (b) show how the structure and operation of the organization reflects the interests of, and is accountable to, this region and members providing care within this region; (c) indicate the size of the grant being requested, and how the money will be spent; and (d) include sufficient information for an evaluation of the application based on the criteria established in RCW 41.05.660. [2009 c 299 § 1.]

**41.05.651 Rules—2009 c 299.** The health care authority may adopt rules to implement chapter 299, Laws of 2009. [2009 c 299 § 4.]

**41.05.660 Community health care collaborative grant program—Award and disbursement of grants.** (1) The community health care collaborative grants shall be awarded on a competitive basis based on a determination of which applicant organization will best serve the purposes of the grant program established in RCW 41.05.650. In making this determination, priority for funding shall be given to the applicants that demonstrate:

(a) The initiatives to be supported by the community health care collaborative grant are likely to address, in a measurable fashion, documented health care access and quality improvement goals aligned with state health policy priorities and needs within the region to be served;

(b) The applicant organization must document formal, active collaboration among key community partners that includes local governments, school districts, large and small businesses, nonprofit organizations, tribal governments, carriers, private health care providers, public health agencies, and community public health and safety networks, as defined in RCW 70.190.010;

(c) The applicant organization will match the community health care collaborative grant with funds from other sources. The health care authority may award grants solely to organizations providing at least two dollars in matching funds for each community health care collaborative grant dollar awarded;

(d) The community health care collaborative grant will enhance the long-term capacity of the applicant organization and its members to serve the region's documented health care access needs, including the sustainability of the programs to be supported by the community health care collaborative grant;

(e) The initiatives to be supported by the community health care collaborative grant reflect creative, innovative approaches which complement and enhance existing efforts to address the needs of the uninsured and underinsured and, if successful, could be replicated in other areas of the state; and

(f) The programs to be supported by the community health care collaborative grant make efficient and cost-effective use of available funds through administrative simplification and improvements in the structure and operation of the health care delivery system.

(2) The administrator of the health care authority shall endeavor to disburse community health care collaborative grant funds throughout the state, supporting collaborative initiatives of differing sizes and scales, serving at-risk populations.

(3) Grants shall be disbursed over a two-year cycle, provided the grant recipient consistently provides timely reports that demonstrate the program is satisfactorily meeting the purposes of the grant and the objectives identified in the organization's application. The requirements for the performance reports shall be determined by the health care authority administrator. The performance measures shall be aligned with the community health care collaborative grant program goals and, where possible, shall be consistent with statewide

policy trends and outcome measures required by other public and private grant funders. [2009 c 299 § 2.]

**Chapter 41.06 RCW**  
**STATE CIVIL SERVICE LAW**

## Sections

41.06.070	Exemptions—Right of reversion to civil service status—Exception.
41.06.133	Rules of director—Personnel administration—Required agency report.
41.06.170	Reduction, suspension, dismissal, demotion of employee—Right to appeal.
41.06.500	Managers—Rules—Goals.
41.06.912	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. <i>(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)</i>

**41.06.070 Exemptions—Right of reversion to civil service status—Exception.** (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 apple 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 the Washington grain commission;

(t) Officers and employees of any commission formed under chapter 15.66 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) 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);

(aa) 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) 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;

(c) 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 director of personnel may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the director of personnel stating the reasons for requesting such exemptions. The director of personnel shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the director 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 director of personnel 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) and (y) and (2) of this section, shall be determined by the director of personnel. 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.

For the twelve months following February 18, 2009, a salary or wage increase shall not be granted to any position exempt from classification under this chapter.

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. [2009 c 33 § 36; 2009 c 5 § 1; 2002 c 354 § 209; 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:** This section was amended by 2009 c 5 § 1 and by 2009 c 33 § 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).

**Effective date—2009 c 5:** "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 [February 18, 2009]." [2009 c 5 § 13.]

**Short title—Headings, captions not law—Severability—2002 c 354:** See RCW 41.80.907 through 41.80.909.

**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 children and families:* 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 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.

*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 79A.05.520.

**41.06.133 Rules of director—Personnel administration—Required agency report.** (1) The director shall adopt rules, consistent with the purposes and provisions of this chapter and with the best standards of personnel administration, regarding the basis and procedures to be followed for:

(a) The reduction, dismissal, suspension, or demotion of an employee;

(b) Training and career development;

(c) 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;

(d) Transfers;

(e) Promotional preferences;

(f) Sick leaves and vacations;

(g) Hours of work;

(h) Layoffs when necessary and subsequent reemployment, except for the financial basis for layoffs;

(i) The number of names to be certified for vacancies;

(j) Adoption and revision of a state salary schedule to reflect the prevailing rates in Washington state private indus-

tries and other governmental units. 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, 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 is subject to approval by the director of financial management in accordance with chapter 43.88 RCW;

(k) 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. For the twelve months following February 18, 2009, a salary or wage increase shall not be granted to any exempt position under this chapter;

(l) Optional lump sum relocation compensation approved by the agency director, whenever it is reasonably necessary that a person make a domiciliary move in accepting a transfer or other employment with the state. An agency must provide lump sum compensation within existing resources. If the person receiving the relocation payment terminates or causes termination with the state, for reasons other than layoff, disability separation, or other good cause as determined by an agency director, within one year of the date of the employment, the state is entitled to reimbursement of the lump sum compensation from the person;

(m) 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 director, 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 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. However, the surviving spouse of a veteran is entitled to the benefits of this section regardless of the veteran's length of active military service. 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.

(2) Rules adopted under this section by the director shall provide for local administration and management by the institutions of higher education and related boards, subject to periodic audit and review by the director.

(3) Rules adopted by the director under this section may be superseded by the provisions of a collective bargaining agreement negotiated under RCW 41.80.001 and 41.80.010 through 41.80.130. The supersession of such rules shall only affect employees in the respective collective bargaining units.



(4)(a) The director shall require that each state agency report annually the following data:

(i) The number of classified, Washington management service, and exempt employees in the agency and the change compared to the previous report;

(ii) The number of bonuses and performance-based incentives awarded to agency staff and the base wages of such employees; and

(iii) The cost of each bonus or incentive awarded.

(b) A report that compiles the data in (a) of this subsection for all agencies will be provided annually to the governor and the appropriate committees of the legislature and must be posted for the public on the department of personnel's agency web site. [2009 c 534 § 2; 2009 c 5 § 2; 2002 c 354 § 204.]

**Reviser's note:** This section was amended by 2009 c 5 § 2 and by 2009 c 534 § 2, 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).

**Finding—Intent—2009 c 534:** "The legislature finds that information technologies have substantially altered the roles and responsibilities of employees in many state agencies since the creation of the Washington management service. With the understanding that the current economic crisis dictates finding every possible efficiency, the legislature intends to review the state's senior management and exempt services and understands that possible refinements in the service are needed. A review, in consultation with the various stakeholders and in light of current best practices, is warranted." [2009 c 534 § 1.]

**Effective date—2009 c 5:** See note following RCW 41.06.070.

**Short title—Headings, captions not law—Severability—Effective dates—2002 c 354:** See RCW 41.80.907 through 41.80.910.

**41.06.170 Reduction, suspension, dismissal, demotion of employee—Right to appeal.** (1) The director, in the adoption of rules governing suspensions 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 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 director, 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, either individually or through his or her authorized representative, not later than thirty days after the effective date of such action to the personnel appeals board through June 30, 2005, and to the Washington personnel resources board after June 30, 2005. 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. Decisions of the Washington personnel resources board on appeals filed after June 30, 2005, shall be final and not subject to further appeal.

(3) Any employee whose position has been exempted after July 1, 1993, shall have the right to appeal, either individually or through his or her authorized representative, not later than thirty days after the effective date of such action to the personnel appeals board through June 30, 2005, and to the Washington personnel resources board after June 30, 2005.

If the position being exempted is vacant, the exclusive bargaining unit representative may act in lieu of an employee for the purposes of appeal.

(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 through December 31, 2005, and to the Washington personnel resources board after December 31, 2005. Notice of such appeal must be filed in writing within thirty days of the action from which appeal is taken.

(5) Subsections (1) and (2) of this section do not apply to any employee who is subject to the provisions of a collective bargaining agreement negotiated under RCW 41.80.001 and 41.80.010 through 41.80.130. [2009 c 534 § 3; 2002 c 354 § 213; 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).]

**Finding—Intent—2009 c 534:** See note following RCW 41.06.133.

**Appeals filed on or before June 30, 2005—2002 c 354:** "The transfer of the powers, duties, and functions of the personnel appeals board to the personnel resources board under RCW 41.06.111 and the transfer of jurisdiction for appeals filed under section 213, chapter 354, Laws of 2002 after June 30, 2005, shall not affect the right of an appellant to have an appeal filed on or before June 30, 2005, resolved by the personnel appeals board in accordance with the authorities, rules, and procedures that were established under chapter 41.64 RCW as it existed before July 1, 2004." [2002 c 354 § 214.]

**Short title—Headings, captions not law—Severability—Effective dates—2002 c 354:** See RCW 41.80.907 through 41.80.910.

**Effective date—1993 c 281:** See note following RCW 41.06.022.

**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 for other employees, and to the extent that the rules adopted under this section apply only to managers shall take precedence over rules adopted for other employees, 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 that provides 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.

(3) For the twelve months following February 18, 2009, a salary or wage increase shall not be granted to any position under this section. [2009 c 5 § 3; 2002 c 354 § 243; 2002 c 354 § 242; 1996 c 319 § 4; 1993 c 281 § 9.]

**Effective date—2009 c 5:** See note following RCW 41.06.070.

**Short title—Headings, captions not law—Severability—Effective dates—2002 c 354:** See RCW 41.80.907 through 41.80.910.

**Effective date—1993 c 281:** See note following RCW 41.06.022.

**41.06.912 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 86.]

## Chapter 41.14 RCW

### CIVIL SERVICE FOR SHERIFF'S OFFICE

#### Sections

41.14.020	Terms defined.
41.14.030	Civil service commission—Appointment, terms, qualifications, compensation, etc.

#### 41.14.020 Terms defined. Definition of terms:

(1) "Appointing power" means the county sheriff who is invested by law with power and authority to select, appoint,

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or employ any deputy, deputies, or other necessary employees subject to civil service;

(2) "Appointment" includes all means of selecting, appointing, or employing any person to any office, place, position, or employment subject to civil service;

(3) "Commission" means the civil service commission, or combined county civil service commission, herein created, and "commissioner" means any one of the members of any such commission;

(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. [2009 c 112 § 1; 1959 c 1 § 2 (Initiative Measure No. 23, approved November 4, 1958).]

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

**41.14.030 Civil service commission—Appointment, terms, qualifications, compensation, etc.** (1) 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, or five persons under subsection (2) of this section. 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.

(2)(a) Each county and each combination of counties under RCW 41.14.040 may, by ordinance, increase the number of members serving on a commission from three to five members. If a commission is increased to five members, the

terms of the three commissioners serving at the time of the increase are not affected. The initial term of office for the two additional commissioners is six years.

(b) Three commissioners constitute a quorum for a five-member commission and the votes of three commissioners concurring are sufficient for the decision of all matters and the transaction of all business decided or transacted by a five-member commission.

(c) At the time of appointment of the two additional commissioners, no more than three commissioners may be adherents of the same political party.

(d) Except as provided otherwise in this subsection (2), subsection (1) of this section applies to five-member commissions. [2009 c 112 § 2; 1959 c 1 § 3 (Initiative Measure No. 23, approved November 4, 1958).]

### Chapter 41.16 RCW

#### FIREFIGHTERS' RELIEF AND PENSIONS— 1947 ACT

##### Sections

- 41.16.010 Terms defined. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*)
- 41.16.922 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*)

**41.16.010 Terms defined.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*) 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 firefighter in a writing filed with the board, and who shall be entitled to receive any benefits of a deceased firefighter under this chapter.

(2) "Board" shall mean the municipal firefighters' 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 firefighters 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) "Firefighter" 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 firefighter and who is actively employed as a firefighter; and shall include any "prior firefighter."

(7) "Fire department" shall mean the regularly organized, full time, paid, and employed force of firefighters of the municipality.

(8) "Fund" shall mean the firefighters' pension fund created herein.

(9) "Municipality" shall mean every city and town having a regularly organized full time, paid, fire department employing firefighters.

(10) "Performance of duty" shall mean the performance of work and labor regularly required of firefighters 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 firefighter" shall mean a firefighter who was actively employed as a firefighter of a fire department prior to the first day of January, 1947, and who continues such employment thereafter.

(12) "Retired firefighter" shall mean and include a person employed as a firefighter and retired under the provisions of chapter 50, Laws of 1909, as amended.

(13) "Widow or widower" means the surviving wife, husband, or state registered domestic partner of a retired firefighter who was retired on account of length of service and who was lawfully married to, or in a state registered domestic partnership with, such firefighter; and whenever that term is used with reference to the wife or former wife, husband or former husband, or current or former state registered domestic partner of a retired firefighter who was retired because of disability, it shall mean his or her lawfully married wife, husband, or state registered domestic partner 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, husband, or state registered domestic partner who by process of law within one year prior to the retired firefighter'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. [2009 c 521 § 88; 2007 c 218 § 18; 2003 c 30 § 1; 1973 1st ex.s. c 154 § 61; 1947 c 91 § 1; Rem. Supp. 1947 § 9578-40.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

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

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

**41.16.922 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 87.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

## Chapter 41.18 RCW

FIREFIGHTERS' RELIEF AND PENSIONS—  
1955 ACT

## Sections

- 41.18.010 Definitions. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*)
- 41.18.042 Actuarially reduced retirement allowance—Spousal benefit.
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- 41.18.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*)

**41.18.010 Definitions.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*) For the purpose of this chapter, unless clearly indicated otherwise by the context, words and phrases shall have the meaning hereinafter ascribed.

(1) "Basic salary" means the basic monthly salary, including longevity pay, attached to the rank held by the retired firefighter at the date of his or her retirement, without regard to extra compensation which such firefighter 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.

(2) "Beneficiary" shall mean any person or persons designated by a firefighter in a writing filed with the board, and who shall be entitled to receive any benefits of a deceased firefighter under this chapter.

(3) "Board" shall mean the municipal firefighters' pension board.

(4) "Child" or "children" means a firefighter's child or children under the age of eighteen years, unmarried, and in the legal custody of such firefighter at the time of his death or her death.

(5) "Contributions" shall mean and include all sums deducted from the salary of firefighters and paid into the fund as hereinafter provided.

(6) "Disability" shall mean and include injuries or sickness sustained by a firefighter.

(7) "Earned interest" means and includes all annual increments to the firefighters' pension fund from income earned by investment of the fund. The earned interest payable to any firefighter when he or she leaves the service and accepts his or her contributions, shall be that portion of the total earned income of the fund which is directly attributable to each individual firefighter's contributions. Earnings of the fund for the preceding year attributable to individual contributions shall be allocated to individual firefighters' accounts as of January 1st of each year.

(8) "Fire department" shall mean the regularly organized, full time, paid, and employed force of firefighters of the municipality.

(9) "Firefighter" 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 firefighters and who is actively employed as a firefighter or, if provided by the municipality by appropriate

local legislation, as a fire dispatcher: PROVIDED, Nothing in chapter 209, Laws of 1969 ex. sess. shall impair or permit the impairment of any vested pension rights of persons who are employed as fire dispatchers at the time chapter 209, Laws of 1969 ex. sess. 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 firefighter or as a member of the fire department as a firefighter or fire dispatcher.

(10) "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.

(11) "Municipality" shall mean every city, town and fire protection district having a regularly organized full time, paid, fire department employing firefighters.

(12) "Performance of duty" shall mean the performance of work or labor regularly required of firefighters and shall include services of an emergency nature normally rendered while off regular duty.

(13) "Retired firefighter" means and includes a person employed as a firefighter and retired under the provisions of this chapter.

(14) "Widow or widower" means the surviving spouse of a firefighter and shall include the surviving wife, husband, or state registered domestic partner of a firefighter, retired on account of length of service, who was lawfully married to, or in a state registered domestic partnership with, him or to her for a period of five years prior to the time of his or her retirement; and the surviving wife, husband, or state registered domestic partner of a firefighter, retired on account of disability, who was lawfully married to, or in a state registered domestic partnership with, 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 or former state registered domestic partner of an active or retired firefighter. [2009 c 521 § 90; 2007 c 218 § 41; 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:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

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

**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.]

**41.18.042 Actuarially reduced retirement allowance—Spousal benefit.** (1) Any retired firefighter married to a spouse ineligible for survivor benefits under RCW

41.18.040, 41.18.080, and 41.18.100 may choose an actuarially equivalent benefit adopted by the board that pays the retired firefighter a reduced retirement allowance, and upon death such portion of the retired firefighter's reduced retirement allowance as designated by the retired firefighter shall be continued throughout the life of the spouse.

(2) A retired firefighter who married a spouse ineligible for survivor benefits under RCW 41.18.040, 41.18.080, and 41.18.100 prior to July 26, 2009, has one year after July 26, 2009, to designate their spouse as a survivor beneficiary.

(3) The benefit provided to a child survivor beneficiary under RCW 41.18.040, 41.18.080, and 41.18.100 shall not be affected or reduced by the retired firefighter's selection of the actuarially reduced spousal survivor benefit provided by this section, and shall be equivalent to the amount payable as if the choice under subsection (1) of this section was not made.

(4)(a) Any retired firefighter who chose to receive a reduced retirement allowance under subsection (1) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection if:

(i) The retiree's survivor spouse designated in subsection (1) of this section predeceases the retiree; and

(ii) The retiree provides to the board proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree from the beginning of the month following the date of the beneficiary's death shall be the current monthly amount payable as if the selection under subsection (1) of this section was not made. [2009 c 156 § 1.]

**41.18.080 Payment upon disablement not in line of duty.** Any firefighter 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 firefighter capable of performing his or her duties, it may refuse to recommend retirement and order the firefighter 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 firefighter. The board shall give the firefighter a thirty-day written notice of its recommendation, and he or she shall be retired upon expiration of said notice. Upon retirement he or she shall receive a pension equal to fifty percent of his or her basic salary. For a period of ninety days following such disability the firefighter 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 firefighter 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 firefighter 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; if such widow or widower has dependent

upon her or him for support a child or children of such deceased firefighter, 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 firefighter'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 children. [2009 c 156 § 2; 2007 c 218 § 49; 1973 1st ex.s. c 154 § 72; 1965 c 109 § 1; 1961 c 255 § 5; 1955 c 382 § 9.]

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

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

**41.18.100 Payment on death in line of duty or while retired on account of service connected disability.** In the event a firefighter is killed in the performance of duty, or in the event a firefighter 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 firefighter 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 firefighter 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 firefighter 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 firefighter's death or upon the widow's or widower's death the monthly pension benefits provided for under this section 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. A pension payable under the provisions of this section shall not be less than that specified under RCW 41.18.200. [2009 c 156 § 3; 2007 c 218 § 51; 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.]

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

**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.

**41.18.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of

kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 89.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

### Chapter 41.20 RCW

#### POLICE RELIEF AND PENSIONS IN FIRST-CLASS CITIES

##### Sections

41.20.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*)

**41.20.920 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 91.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

### Chapter 41.22 RCW

#### LAW ENFORCEMENT CHAPLAINS

##### Sections

41.22.020 Washington state patrol and the department of fish and wildlife—Volunteer chaplain authorized.

**41.22.020 Washington state patrol and the department of fish and wildlife—Volunteer chaplain authorized.** The Washington state patrol and the department of fish and wildlife may utilize the services of a volunteer chaplain. [2009 c 204 § 2; 1985 c 223 § 2.]

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### Chapter 41.24 RCW

#### VOLUNTEER FIREFIGHTERS' AND RESERVE OFFICERS' RELIEF AND PENSIONS

##### Sections

41.24.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*)

**41.24.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 92.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

### Chapter 41.26 RCW

#### LAW ENFORCEMENT OFFICERS' AND FIREFIGHTERS' RETIREMENT SYSTEM

##### Sections

41.26.030 Definitions.

41.26.048 Special death benefit—Death in the course of employment—Death from disease or infection arising from employment.

41.26.160 Death benefits—Duty or military service connected.

41.26.435 Transfer of service credit from other retirement system—Enforcement officer for department of fish and wildlife.

41.26.460 Options for payment of retirement allowances—Retirement allowance adjustment—Court-approved property settlement.

41.26.470 Earned disability allowance—Cancellation of allowance—Reentry—Receipt of service credit while disabled—Conditions—Disposition upon death of recipient—Disabled in the line of duty—Total disability.

41.26.510 Death benefits.

41.26.520 Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service.

41.26.922 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*)

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

(1) "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.

(2) "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 retire-

ment of each member to pay the member's future benefits during the period of retirement.

(3) "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.

(4)(a) "Basic salary" for plan 1 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 2 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 non-legislative 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.

(5)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, disability allowance, death benefit, or any other benefit described herein.

(b) "Beneficiary" for plan 2 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)(a) "Child" or "children" means an unmarried person who is under the age of eighteen or mentally or physically disabled as determined by the department, except a person who is disabled and 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.

(7) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(8) "Director" means the director of the department.

(9) "Disability board" for plan 1 members means either the county disability board or the city disability board established in RCW 41.26.110.

(10) "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 1 members.

(11) "Disability retirement" for plan 1 members, means the period following termination of a member's disability leave, during which the member is in receipt of a disability retirement allowance.

(12) "Domestic partners" means two adults who have registered as domestic partners under RCW 26.60.020.

(13) "Employee" means any law enforcement officer or firefighter as defined in subsections (16) and (18) of this section.

(14)(a) "Employer" for plan 1 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 firefighter, 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 firefighters 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 firefighters as defined in this chapter.

(b) "Employer" for plan 2 members, means the following entities to the extent that the entity employs any law enforcement officer and/or firefighter:

(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.

(15)(a) "Final average salary" for plan 1 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 2 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.

(16) "Firefighter" 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 firefighter, and who is actively employed as such;

(b) Anyone who is actively employed as a full time firefighter where the fire department does not have a civil service examination;

(c) Supervisory firefighter 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 (16)(d) shall not apply to plan 2 members;

(e) The executive secretary of a labor guild, association or organization (which is an employer under RCW 41.26.030(14) 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 (16)(e) shall not apply to plan 2 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 firefighter;

(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; and

(h) Any person who is employed on a full-time, fully compensated basis by an employer as an emergency medical technician.

(17) "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 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.

(18) "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(14)) if that individual has five years previous membership in the retirement system established in chapter 41.20 RCW. The provisions of this subsection (18)(d) shall not apply to plan 2 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 (18)(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.

(19) "Medical services" for plan 1 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.

(20) "Member" means any firefighter, law enforcement officer, or other person as would apply under subsections (16) or (18) of this section whose membership is transferred to the Washington law enforcement officers' and firefighters' retirement system on or after March 1, 1970, and every law enforcement officer and firefighter who is employed in that capacity on or after such date.

(21) "Plan 1" means the law enforcement officers' and firefighters' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(22) "Plan 2" means the law enforcement officers' and firefighters' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(23) "Position" means the employment held at any particular time, which may or may not be the same as civil service rank.

(24) "Regular interest" means such rate as the director may determine.

(25) "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.

(26) "Retirement fund" means the "Washington law enforcement officers' and firefighters' retirement system fund" as provided for herein.

(27) "Retirement system" means the "Washington law enforcement officers' and firefighters' retirement system" provided herein.

(28)(a) "Service" for plan 1 members, means all periods of employment for an employer as a firefighter 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 firefighter 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 2 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.

(29) "Service credit month" means a full service credit month or an accumulation of partial service credit months that are equal to one.

(30) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(31) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(32) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(33) "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. [2009 c 523 § 3; 2005 c 459 § 1; 2003 c 388 § 2; 2002 c 128 § 3. Prior: 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:** The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

**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 firefighters' 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.]

**41.26.048 Special death benefit—Death in the course of employment—Death from disease or infection arising from 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 or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, then to such member's legal representatives.

(2) The benefit under this section shall be paid only when death occurs: (a) As a result of injuries sustained in the course of employment; or (b) as a result of an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. 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. [2009 c 523 § 4; 2007 c 487 § 2; 2006 c 351 § 1; 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.]

**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.]

**41.26.160 Death benefits—Duty or military service connected.** (1) In the event of the duty connected 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 duty connected disability leave or retired for duty connected disability, or upon the death of a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, the surviving spouse shall become entitled, subject to RCW 41.26.162, 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 duty connected 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), 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 duty connected 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 duty connected disability, or at the time of the death of a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, 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 or while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, then if he or she was married at the time he or she was disabled or left the employ of an employer due to service in the national guard or military reserves during a period of war as defined in RCW 41.04.005, 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 duty connected 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), there shall be paid to the legal heirs of the member the excess, if any, of accumulated contributions of the 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 the member.

(5) If a surviving spouse receiving benefits under this section remarries after June 13, 2002, the surviving spouse shall continue to receive the benefits under this section.

(6) 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), payment to the spouse shall cease and the child or children shall receive the benefits as provided in subsection (3) of this section.

(7) The payment provided by this section shall become due the day following the date of death and payments shall be retroactive to that date. [2009 c 226 § 1; 2005 c 62 § 1; 2002 c 158 § 1; 1999 c 134 § 2; 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—1999 c 134:** "The purpose of sections 1 through 4 of this act is to clarify that the intent of the legislature in enacting RCW 41.26.160, insofar as that section provides benefits to members or surviving spouses for deaths incurred in the line of duty, was to provide a statute in the nature of a workers' compensation act that provides compensation to employees or surviving spouses for personal injuries or deaths incurred in the course of employment. Accordingly, this act amends and divides RCW 41.26.160 into two separate sections. Section 2 of this act clarifies and emphasizes the leg-

islature's intent that the death benefits granted by RCW 41.26.160, as amended, are granted only to those members who die or become disabled by any injury or incapacity that is incurred in the line of duty. Section 3 of this act continues to provide death retirement benefits to members or surviving spouses for deaths not incurred in the line of duty." [1999 c 134 § 1.]

**Retroactive application—1999 c 134 § 2:** "The provisions of section 2 of this act apply retrospectively to all line of duty death retirement allowances granted under chapter 41.26 RCW prior to April 28, 1999." [1999 c 134 § 4.]

**Effective date—1999 c 134:** "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 28, 1999]." [1999 c 134 § 5.]

**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.

**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.

**41.26.435 Transfer of service credit from other retirement system—Enforcement officer for department of fish and wildlife.** (1) A member of plan 2 who was a member of the public employees' retirement system plan 2 or plan 3 while employed as an enforcement officer for the department of fish and wildlife has the option to make an election no later than December 31, 2009, filed in writing with the department of retirement systems, to transfer all service credit previously earned as an enforcement officer in the public employees' retirement system plan 2 or plan 3 to the law enforcement officers' and firefighters' retirement system plan 2. Service credit that a member elects to transfer from the public employees' retirement system to the law enforcement officers' and firefighters' retirement system under this section shall be transferred no earlier than June 30, 2014, and only after the member completes payment as provided in subsection (2) of this section.

(2)(a) A member who elects to transfer service credit under subsection (1) of this section shall make the payments required by this subsection prior to having service credit earned as an enforcement officer with the department of fish and wildlife under the public employees' retirement system plan 2 or plan 3 transferred to the law enforcement officers' and firefighters' retirement system plan 2.

(b) A member who elects to transfer service credit from the public employees' retirement system plan 2 under this subsection shall pay, for the applicable period of service, the difference between the contributions the employee paid to the public employees' retirement system plan 2 and the contributions that would have been paid by the employee had the employee been a member of the law enforcement officers' and firefighters' retirement system plan 2, plus interest on this difference as determined by the director. This payment must be made no later than June 30, 2014, and must be made prior to retirement.

(c) A member who elects to transfer service credit from the public employees' retirement system plan 3 under this subsection shall transfer to the law enforcement officers' and firefighters' retirement system plan 2, for the applicable period of service, the full balance of the member's defined

contribution account within plan 3 as of the effective date of the transfer. At no time will the member pay, for the applicable period of service, a sum less than the contributions that would have been paid by the employee had the employee been a member of the law enforcement officers' and firefighters' retirement system plan 2, plus interest as determined by the director. This transfer and any additional payment, if necessary, must be made no later than June 30, 2014, and must be made prior to retirement.

(d) Upon completion of the payment required in (b) of this subsection, the department shall transfer from the public employees' retirement system to the law enforcement officers' and firefighters' retirement system plan 2: (i) All of the employee's applicable accumulated contributions plus interest and all of the applicable employer contributions plus interest; and (ii) all applicable months of service, as defined in RCW 41.26.030(14)(b), credited to the employee under this chapter for service as an enforcement officer with the department of fish and wildlife as though that service was rendered as a member of the law enforcement officers' and firefighters' retirement system plan 2.

(e) Upon completion of the payment required in (c) of this subsection, the department shall transfer from the public employees' retirement system to the law enforcement officers' and firefighters' retirement system plan 2: (i) All of the employee's applicable accumulated contributions plus interest and all of the applicable employer contributions plus interest; and (ii) all applicable months of service, as defined in RCW 41.26.030(14)(b), credited to the employee under this chapter for service as an enforcement officer with the department of fish and wildlife as though that service was rendered as a member of the law enforcement officers' and firefighters' retirement system plan 2.

(f) If a member who elected to transfer pursuant to this section dies or retires for disability prior to June 30, 2014, the member's benefit is calculated as follows:

(i) All of the applicable service credit, accumulated contributions, and interest is transferred to the law enforcement officers' and firefighters' retirement system plan 2 and used in the calculation of a benefit.

(ii) If a member's obligation under (b) or (c) of this subsection has not been paid in full at the time of death or disability retirement, the member, or in the case of death the surviving spouse or eligible minor children, have the following options:

(A) Pay the bill in full;

(B) If a continuing monthly benefit is chosen, have the benefit actuarially reduced to reflect the amount of the unpaid obligation under (b) or (c) of this subsection; or

(C) Continue to make payment against the obligation under (b) or (c) of this subsection, provided that payment in full is made no later than June 30, 2014.

(g) Upon transfer of service credit, contributions, and interest under this subsection, the employee is permanently excluded from membership in the public employees' retirement system for all service related to time served as an enforcement officer with the department of fish and wildlife under the public employees' retirement system plan 2 or plan 3. [2009 c 157 § 1.]

**41.26.460 Options for payment of retirement allowances—Retirement allowance adjustment—Court-approved property settlement.** (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 domestic partner; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse or domestic partner, 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 or a domestic partner, must provide the written consent of his or her spouse or domestic partner to the option selected under this section, except as provided in (b) of this subsection. If a member is married or a domestic partner and both the member and member's spouse or domestic partner 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 or domestic partner 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 or domestic partner 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 or domestic partner 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.

(4) No later than July 1, 2001, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse or domestic partner from a postretirement marriage or domestic partnership as a survivor during a one-year period beginning one year after the date of the postretirement marriage or domestic partnership provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage or domestic partnership prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse or domestic partner as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse or a person not their domestic partner as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(5) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who meets the length of service requirements of RCW 41.26.530(1) and the member's divorcing spouse or domestic partner be divided into two separate benefits payable over the life of each spouse or domestic partner.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried or in a domestic partnership at the time of retirement remains subject to the spousal or domestic partner consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into

two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse or former domestic partner shall be eligible to commence receiving their separate benefit upon reaching the ages provided in RCW 41.26.430(1) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse or domestic partner if the nonmember ex spouse or former domestic partner was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (4) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse or domestic partner shall be eligible to commence receiving their separate benefits upon filing a copy of the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2009 c 523 § 5; 2003 c 294 § 3; 2002 c 158 § 7; 2000 c 186 § 1; 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 2.10.146.

**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—Disabled in the line of duty—Total disability.** (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-three, except under subsection (7) of this section.

(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 dis-

ability 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 41.45.060 and 41.45.067.

(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 domestic partner, or, if there is neither such designated person or persons still living at the time of his or her death nor a surviving spouse or domestic partner, 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.

(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 contributions at

the time of retirement over all payments made on his or her behalf under this chapter.

(6) A member who becomes disabled in the line of duty, and 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. A person in receipt of this benefit is a retiree.

(7) A member who becomes disabled in the line of duty shall be entitled to receive a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five.

(8) A member who became disabled in the line of duty before January 1, 2001, and is receiving an allowance under RCW 41.26.430 or subsection (1) of this section shall be entitled to receive a minimum retirement allowance equal to ten percent of such member's final average salary. The member shall additionally receive a retirement allowance equal to two percent of such member's average final salary for each year of service beyond five, 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 fifty-three. An additional benefit shall not result in a total monthly benefit greater than that provided in subsection (1) of this section.

(9) A member who is totally disabled in the line of duty is entitled to receive a retirement allowance equal to seventy percent of the member's final average salary. The allowance provided under this subsection shall be offset by:

(a) Temporary disability wage-replacement benefits or permanent total disability benefits provided to the member under Title 51 RCW; and

(b) Federal social security disability benefits, if any; so that such an allowance does not result in the member receiving combined benefits that exceed one hundred percent of the member's final average salary. However, the offsets shall not in any case reduce the allowance provided under this subsection below the member's accrued retirement allowance.

A member is considered totally disabled if he or she is unable to perform any substantial gainful activity due to a physical or mental condition that may be expected to result in death or that has lasted or is expected to last at least twelve months. Substantial gainful activity is defined as average earnings in excess of eight hundred sixty dollars a month in 2006 adjusted annually as determined by the director based on federal social security disability standards. The department may require a person in receipt of an allowance under this subsection to provide any financial records that are necessary to determine continued eligibility for such an allowance. A person in receipt of an allowance under this subsection whose earnings exceed the threshold for substantial gainful activity shall have their benefit converted to a line-of-duty disability retirement allowance as provided in subsection (7) of this section.

Any person in receipt of an allowance under the provisions of this section is subject to comprehensive medical

examinations as may be required by the department under subsection (2) of this section in order to determine continued eligibility for such an allowance. [2009 c 523 § 6; 2009 c 95 § 1; 2006 c 39 § 1; 2005 c 451 § 1; 2004 c 4 § 1; 2001 c 261 § 2; 2000 c 247 § 1104; 1999 c 135 § 1; 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.]

**Reviser's note:** This section was amended by 2009 c 95 § 1 and by 2009 c 523 § 6, 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—2006 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 takes effect immediately [March 14, 2006]." [2006 c 39 § 3.]

**Effective date—2005 c 451:** "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 13, 2005]." [2005 c 451 § 2.]

**Application—2004 c 4 § 1:** "This act applies to all members, subject to section 1 of this act, who become or became disabled in the line of duty on or after January 1, 2001." [2004 c 4 § 2.]

**Effective date—2001 c 261 § 2:** "Section 2 of this act takes effect March 1, 2002." [2001 c 261 § 5.]

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**Application—1999 c 135 § 1:** "Section 1 of this act applies to any member who received a disability retirement allowance on or after February 1, 1990." [1999 c 135 § 2.]

**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 firefighters: RCW 41.04.500 through 41.04.550.*

**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 or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, 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, domestic partner, or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 41.26.430, 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; if a surviving spouse or domestic partner 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 or domestic partner, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse or domestic partner 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 or domestic partner 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, domestic partner, 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.

(4) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, or the retirement allowance of a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction. The member's retirement allowance is computed under RCW 41.26.420.

(5) The retirement allowance paid to the spouse or domestic partner and dependent children of a member who is killed in the course of employment, as set forth in \*RCW 41.05.011(14), shall include reimbursement for any pay-

ments of premium rates to the Washington state health care authority pursuant to RCW 41.05.080. [2009 c 523 § 7; 2009 c 226 § 2; 2006 c 345 § 1; 2004 c 5 § 1; 2000 c 247 § 1001. Prior: 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:** \*(1) RCW 41.05.011 was amended by 2009 c 537 § 3, changing subsection (14) to subsection (16), effective January 1, 2010.

(2) This section was amended by 2009 c 226 § 2 and by 2009 c 523 § 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).

**Contractual right not granted—2006 c 345:** "The legislature reserves the right to amend or repeal this act in the future and no member or beneficiary has a contractual right to receive any distribution not granted prior to that time." [2006 c 345 § 3.]

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**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 (7) 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) A law enforcement member may be authorized by an employer to work part time and to go on a part-time leave of absence. During a part-time leave of absence a member is prohibited from any other employment with their employer. A member is eligible to receive credit for any portion of service credit not earned during a month of part-time leave of absence if the member makes the employer, member, and

state contributions, plus interest, as determined by the department for the period of the authorized leave within five years of resumption of full-time service or prior to retirement whichever comes sooner. Any service credit purchased for a part-time leave of absence is included in the two-year maximum provided in subsection (3) of this section.

(5) If a member fails to meet the time limitations of subsection (3) or (4) 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.

(6) For the purpose of subsection (3) or (4) of this section the contribution shall not include the contribution for the unfunded supplemental present value as required by RCW 41.45.060, 41.45.061, and 41.45.067. 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.

(7) A member who leaves the employ of an employer to enter the uniformed services 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 uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.45.060, 41.45.061, and 41.45.067 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); or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) Upon receipt of member contributions under (a)(ii), (d)(ii), or (e)(ii) of this subsection, or adequate proof under (a)(iv), (d)(iv), or (e)(iv) 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), (d)(iii), or (e)(iii) 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.

(d) The surviving spouse, domestic partner, or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds stand-

ing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(8) 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. [2009 c 523 § 8; 2009 c 205 § 8; 2005 c 64 § 9; 2002 c 28 § 1; 2000 c 247 § 1105; 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.]

**Reviser's note:** This section was amended by 2009 c 205 § 8 and by 2009 c 523 § 8, 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 dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**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.

**41.26.922 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 93.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

## Chapter 41.28 RCW

### RETIREMENT OF PERSONNEL IN CERTAIN FIRST-CLASS CITIES

#### Sections

41.28.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*)

**41.28.930 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*) For the purposes of this chapter, the terms spouse,

marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 94.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

### Chapter 41.32 RCW TEACHERS' RETIREMENT

#### Sections

41.32.360	Repealed.
41.32.366	Repealed.
41.32.520	Payment on death before retirement or within sixty days following application for disability retirement—Military service.
41.32.805	Death benefits.
41.32.810	Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service.
41.32.865	Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service.
41.32.895	Death benefits.
41.32.950	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> ) ( <i>Effective January 1, 2014.</i> )

**41.32.360 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**41.32.366 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**41.32.520 Payment on death before retirement or within sixty days following application for disability retirement—Military service.** (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 estab-

lished 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, except under subsection (4) of this section, 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.

(4) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, or the retirement allowance of a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction. The member's retirement allowance is computed under RCW 41.32.480. [2009 c 226 § 5; 2003 c 155 § 1; 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.]

**Application—2003 c 155:** "This act applies to any member killed in the course of employment, as determined by the director of the department of labor and industries, on or after July 1, 2001." [2003 c 155 § 9.]

**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.

**41.32.805 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, 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, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.32.765; 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.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.32.765. The member's retirement allowance is computed under RCW 41.32.760. [2009 c 226 § 6; 2003 c 155 § 2; 2000 c 247 § 1002; 1995 c 144 § 16; 1993 c 236 § 4; 1991 c 365 § 30; 1990 c 249 § 16; 1977 ex.s. c 293 § 12.]

**Applicability—2003 c 155:** See note following RCW 41.32.520.

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**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 uniformed services 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 uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; 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); or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, or adequate proof under (a)(iv), (d)(iv), or (e)(iv) 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), (d)(iii), or (e)(iii) 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.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and

becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 6; 2005 c 64 § 7; 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.

**41.32.865 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 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 uniformed services 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 uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services. 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, or prior to retirement, the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

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.

(a) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under this subsection within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under this subsection within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 7; 2005 c 64 § 8; 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.*

**41.32.895 Death benefits.** (1) 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, except under subsection

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(2) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.32.875.

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.

(2) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.32.875. The member's retirement allowance is computed under RCW 41.32.840. [2009 c 226 § 7; 2003 c 155 § 3; 2000 c 247 § 1003; 1996 c 39 § 7; 1995 c 239 § 117.]

**Applicability—2003 c 155:** See note following RCW 41.32.520.

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**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.*

**41.32.950 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 95.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

## Chapter 41.34 RCW

### PLAN 3 RETIREMENT SYSTEM CONTRIBUTIONS

#### Sections

41.34.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is*

*approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*

**41.34.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)* For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 96.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

### Chapter 41.35 RCW

## WASHINGTON SCHOOL EMPLOYEES' RETIREMENT SYSTEM

### Sections

41.35.015	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. <i>(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)</i>
41.35.460	Death benefits.
41.35.470	Leaves of absence, military service.
41.35.650	Leaves of absence, military service.
41.35.710	Death benefits.

**41.35.015 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)* For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 97.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

**41.35.460 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 41.35.420, 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, except under subsection (4) of this section, 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.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an

employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.35.420. The member's retirement allowance is computed under RCW 41.35.400. [2009 c 226 § 8; 2003 c 155 § 4; 1998 c 341 § 107.]

**Applicability—2003 c 155:** See note following RCW 41.32.520.

**41.35.470 Leaves 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 41.35.400 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 2 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 uniformed services 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 uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; 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); or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, or adequate proof under (a)(iv), (d)(iv), or (e)(iv) 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), (d)(iii), or (e)(iii) 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.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be



paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 4; 2005 c 64 § 4; 1998 c 341 § 108.]

**41.35.650 Leaves 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 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 uniformed services 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 uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services. 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, or prior to retirement, the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

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.

(a) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under this subsection within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military ser-

vice was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under this subsection within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 5; 2005 c 64 § 5; 1998 c 341 § 206.]

**41.35.710 Death benefits.** (1) 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, except under subsection (2) of this section, 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 cal-

culated with the assumption that the age of the spouse and member were equal at the time of the member's death.

(2) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.35.680. The member's retirement allowance is computed under RCW 41.35.620. [2009 c 226 § 9; 2003 c 155 § 5; 1998 c 341 § 212.]

**Applicability—2003 c 155:** See note following RCW 41.32.520.

## Chapter 41.37 RCW

### WASHINGTON PUBLIC SAFETY EMPLOYEES' RETIREMENT SYSTEM

#### Sections

41.37.250	Death benefits.
41.37.260	Leaves of absence, military service.
41.37.902	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)

**41.37.250 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 that member's credit in the retirement system at the time of the 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 the person or persons, trust, or organization as the member 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 member's accumulated contributions standing to the 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 that spouse had been nominated by written designation, or if there is no surviving spouse, then to the 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 41.37.210, 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 41.37.170 and, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.37.210; 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 the child or children shall con-

tinue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until the 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, the member's child or children under the age of majority shall receive an allowance, share and share alike, calculated under this section 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 designated person or persons still living at the time of the member's death, then to the member's legal representatives.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to reduction under RCW 41.37.210. The member's retirement allowance is computed under RCW 41.37.190. [2009 c 226 § 10; 2005 c 327 § 7; 2004 c 242 § 31.]

**Effective date—2005 c 327 §§ 4-7:** See note following RCW 41.37.010.

**41.37.260 Leaves 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 RCW 41.37.190 through 41.37.290.

(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. This credit may be obtained only if:

(a) 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; 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 uniformed services 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 uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.37.220 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); or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, or adequate proof under (a)(iv), (d)(iv), or (e)(iv) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.37.220 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) 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.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 3; 2005 c 64 § 11; 2004 c 242 § 32.]

**Effective date—2005 c 64 § 11:** "Section 11 of this act takes effect July 1, 2006." [2005 c 64 § 12.]

**41.37.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 98.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

## Chapter 41.40 RCW

### WASHINGTON PUBLIC EMPLOYEES' RETIREMENT SYSTEM

#### Sections

41.40.010	Definitions.
41.40.015	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> ) ( <i>Effective January 1, 2014.</i> )
41.40.088	Education employment—Service credit—Computation.
41.40.270	Death before retirement or within sixty days following application for disability retirement—Military service—Payment of contributions to nominee, surviving spouse, or legal representative—Waiver of payment, effect—Benefits.
41.40.700	Death benefits.
41.40.710	Service credit for paid leave of absence, officers of labor organizations, unpaid leave of absence, military service.
41.40.750	Transfer of membership and service credit—Restoration of contributions and service credit.
41.40.805	Leaves of absence—Military service.
41.40.835	Death benefits.

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

(1) "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.

(2) "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.

(3) "Adjustment ratio" means the value of index A divided by index B.

(4) "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.

(5) "Annuity" means payments for life derived from accumulated contributions of a member. All annuities shall be paid in monthly installments.

(6)(a) "Average final compensation" for plan 1 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 2 and plan 3 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) or (c) of this subsection.

(c) In calculating average final compensation under this subsection for a member of plan 1, 2, or 3, the department of retirement systems shall include any compensation forgone by the member during the 2009-2011 fiscal biennium as a result of reduced work hours, voluntary leave without pay, or temporary furloughs if the reduced compensation is an integral part of the employer's expenditure reduction efforts, as certified by the employer.

(7)(a) "Beneficiary" for plan 1 members, means any person in receipt of a retirement allowance, pension or other benefit provided by this chapter.

(b) "Beneficiary" for plan 2 and plan 3 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.

(8)(a) "Compensation earnable" for plan 1 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 1 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 2 and plan 3 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 2 and plan 3 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) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(10) "Director" means the director of the department.

(11) "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.

(12) "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.

(13)(a) "Employer" for plan 1 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 2 and plan 3 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 2.

(14) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

(15) "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.

(16) "Index A" means the index for the year prior to the determination of a postretirement adjustment.

(17) "Index B" means the index for the year prior to index A.

(18) "Index year" means the earliest calendar year in which the index is more than sixty percent of index A.

(19) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (11) of this section.

(20) "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.

(21) "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.

(22) "Member account" or "member's account" for purposes of plan 3 means the sum of the contributions and earnings on behalf of the member in the defined contribution portion of plan 3.

(23) "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.

(24) "New member" means a person who becomes a member on or after April 1, 1949, except as otherwise provided in this section.

(25) "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.

(26) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(27) "Plan 1" means the public employees' retirement system, plan 1 providing the benefits and funding provisions covering persons who first became members of the system prior to October 1, 1977.

(28) "Plan 2" means the public employees' retirement system, plan 2 providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977, and are not included in plan 3.

(29) "Plan 3" means the public employees' retirement system, plan 3 providing the benefits and funding provisions covering persons who:

(a) First become a member on or after:

(i) March 1, 2002, and are employed by a state agency or institute of higher education and who did not choose to enter plan 2; or

(ii) September 1, 2002, and are employed by other than a state agency or institute of higher education and who did not choose to enter plan 2; or

(b) Transferred to plan 3 under RCW 41.40.795.

(30) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(31) "Regular interest" means such rate as the director may determine.

(32) "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.

(33) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(34) "Retirement allowance" means the sum of the annuity and the pension.

(35) "Retirement system" means the public employees' retirement system provided for in this chapter.

(36) "Separation from service" occurs when a person has terminated all employment with an employer. Separation from service or employment does not occur, and if claimed by an employer or employee may be a violation of RCW 41.40.055, when an employee and employer have a written or oral agreement to resume employment with the same employer following termination. Mere expressions or inquiries

about postretirement employment by an employer or employee that do not constitute a commitment to reemploy the employee after retirement are not an agreement under this subsection.

(37)(a) "Service" for plan 1 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 1 "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 2 and plan 3 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, public safety employees' retirement system, or law enforcement officers' and firefighters' 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, public safety employees' retirement system, or law enforcement officers' and firefighters' 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 2 and plan 3 "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.

(38) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(39) "Service credit year" means an accumulation of months of service credit which is equal to one when divided by twelve.

(40) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(41) "State elective position" means any position held by any person elected or appointed to statewide office or elected or appointed as a member of the legislature.

(42) "State treasurer" means the treasurer of the state of Washington.

(43) "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. [2009 c 430 § 1; 2007 c 50 § 4; 2004 c 242 § 53; 2003 c 412 § 4; 2000 c 247 § 102; 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.]

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

**Effective date—2004 c 242:** See RCW 41.37.901.

**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 § 1:** "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.]

**41.40.015 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 99.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

**41.40.088 Education employment—Service credit—Computation.** (1) A plan 1 member who is employed by a school district or districts, an educational service district, the Washington state center for childhood deafness and hearing loss, 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 2 or plan 3 member who is employed by a school district or districts, an educational service district, the state school for the blind, the Washington state center for childhood deafness and hearing loss, 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 2 or plan 3.

(3) The department shall adopt rules implementing this section. [2009 c 381 § 32; 2000 c 247 § 107; 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.]

**Findings—Intent—2009 c 381:** See note following RCW 72.40.015.

**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.

**41.40.270 Death before retirement or within sixty days following application for disability retirement—Military service—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 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, except under subsection (5) of this section, 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.

(5) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, or the retirement allowance of a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction. The member's retirement allowance is computed under RCW 41.40.185. [2009 c 226 § 11; 2009 c 111 § 1; 2003 c 155 § 6; 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.]

**Reviser's note:** This section was amended by 2009 c 111 § 1 and by 2009 c 226 § 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).

**Applicability—2003 c 155:** See note following RCW 41.32.520.

**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.

**41.40.700 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 one of the following:

(a) A retirement allowance computed as provided for in RCW 41.40.630, 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, except under subsection (4) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.40.630; 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;

(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; or

(c) For a member who leaves the employ of an employer to enter the uniformed services of the United States and who dies after January 1, 2007, while honorably serving in the uniformed services of the United States in Operation Enduring Freedom or Persian Gulf, Operation Iraqi Freedom, an amount equal to two hundred 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.

(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 eligi-

ble 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.

(4) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.40.630. The member's retirement allowance is computed under RCW 41.40.620. [2009 c 226 § 12; 2007 c 487 § 8; 2003 c 155 § 7; 2000 c 247 § 1004; 1995 c 144 § 8; 1993 c 236 § 5; 1991 c 365 § 28; 1990 c 249 § 18; 1977 ex.s. c 295 § 11.]

**Applicability—2003 c 155:** 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.

**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 2 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 uniformed services 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 uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(ii) The member makes the employee contributions required under RCW 41.45.061 and 41.45.067 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); or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service in a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) Upon receipt of member contributions under (a)(ii), (d)(iii), or (e)(iii) of this subsection, or adequate proof under (a)(iv), (d)(iv), or (e)(iv) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.45.060, 41.45.061, and 41.45.067 for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii), (d)(iii), or (e)(iii) 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.

(d) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased

member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or eligible child or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(e) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 1; 2005 c 64 § 2; 2000 c 247 § 1106; 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.

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**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.

**41.40.750 Transfer of membership and service credit—Restoration of contributions and service credit.**

(1) Effective September 1, 2000, the membership of all plan 2 members currently employed in eligible positions in a school district or educational service district and all plan 2 service credit for such members, is transferred to the Washington school employees' retirement system plan 2. Plan 2 members who have withdrawn their member contributions for prior plan 2 service may restore contributions and service credit to the Washington school employees' retirement system plan 2 as provided under RCW 41.40.740.

(2)(a) The membership and previous service credit of a plan 2 member not employed in an eligible position on September 1, 2000, will be transferred to the Washington school employees' retirement system plan 2 when he or she becomes employed in an eligible position prior to August 1, 2009. Plan 2 members not employed in an eligible position on September 1, 2000, who have withdrawn their member contributions for prior plan 2 service may restore contributions and service credit to the Washington school employees' retirement system plan 2 as provided under RCW 41.40.740, if they first establish eligibility in the Washington school employees' retirement system plan 2 prior to August 1, 2009.

(b) The membership and previous service credit of a plan 2 member last employed by a school district or educational service district and retired prior to September 1, 2000, will be transferred to the Washington school employees' retirement system plan 2 if the member opts to reestablish membership prior to August 1, 2009.

(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.

(4) From September 1, 2009, through November 30, 2009, upon written request to the department, active and inactive members transferred under subsection (2) of this section who did not establish membership and earn service credit for employment with a school district or educational service district prior to the transfer, and who have not transferred to plan 3 of the Washington school employees' retirement system or plan 3 of the public employees' retirement system, may restore their transferred membership and previous service credit to plan 2. All previously transferred contributions and interest, and additional interest as determined by the department, shall be returned to plan 2. An additional amount shall be transferred from the Washington school employees' retirement system sufficient to offset the liabilities returned to plan 2 under this subsection, as determined by the state actuary. [2009 c 209 § 1; 2001 2nd sp.s. c 10 § 13; 1998 c 341 § 113.]

**Effective dates—2001 2nd sp.s. c 10:** See note following RCW 41.40.037.

**Effective date—1998 c 341:** See RCW 41.35.901.

**41.40.805 Leaves 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 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 uniformed services 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 uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services. 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 41.45.060 and 41.45.067 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, or prior to retirement, the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service during a period

of war may receive no more than five years of free retirement system service credit under this subsection.

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.

(a) The surviving spouse or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or eligible child or children:

(i) Provides to the director proof of the member's death while serving in the uniformed services;

(ii) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(iii) Pays the employee contributions required under this subsection within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(b) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(i) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(ii) The member provides to the director proof of honorable discharge from the uniformed services; and

(iii) The member pays the employee contributions required under this subsection within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(iv) Prior to retirement the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds stand-

ing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection. [2009 c 205 § 2; 2005 c 64 § 3; 2000 c 247 § 306.]

**41.40.835 Death benefits.** (1) 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 41.40.790 actuarially reduced to reflect a joint and one hundred percent survivor option and, except under subsection (2) of this section, if the member was not eligible for normal retirement at the date of death a further reduction as described in RCW 41.40.820.

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.

(2) A member who is killed in the course of employment, as determined by the director of the department of labor and industries, or a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction under RCW 41.40.820. The member's retirement allowance is computed under RCW 41.40.790. [2009 c 226 § 13; 2003 c 155 § 8; 2000 c 247 § 312.]

**Applicability—2003 c 155:** See note following RCW 41.32.520.

### Chapter 41.44 RCW

#### STATEWIDE CITY EMPLOYEES' RETIREMENT

##### Sections

41.44.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*)

**41.44.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict

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with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 100.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

### Chapter 41.45 RCW

#### ACTUARIAL FUNDING OF STATE RETIREMENT SYSTEMS

##### Sections

41.45.010 Intent—Goals.  
41.45.035 Long-term economic assumptions—Asset value smoothing technique.  
41.45.060 Basic state and employer contribution rates—Methods used—Role of council—Role of state actuary.  
41.45.0631 Washington state patrol retirement system—Contribution rate—Allocation of costs.  
41.45.070 Supplemental rate.  
41.45.150 Unfunded liabilities—Employer contribution rates.  
41.45.155 Certain plans 2 and 3 normal costs—Minimum basic employer contribution rates.  
41.45.230 Pension funding stabilization account—Creation.

**41.45.010 Intent—Goals.** 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 firefighters' retirement systems, chapter 41.26 RCW; the school employees' retirement system, chapter 41.35 RCW; the public safety employees' retirement system, chapter 41.37 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 fully fund the public employees' retirement system plans 2 and 3, the teachers' retirement system plans 2 and 3, the school employees' retirement system plans 2 and 3, the public safety employees' retirement system plan 2, and the law enforcement officers' and firefighters' retirement system plan 2 as provided by law;

(2) To fully amortize the total costs of the law enforcement officers' and firefighters' retirement system plan 1, not later than June 30, 2024;

(3) To fully amortize the unfunded actuarial accrued liability in the public employees' retirement system plan 1 and the teachers' retirement system plan 1 within a rolling ten-year period, using methods and assumptions that balance needs for increased benefit security, decreased contribution rate volatility, and affordability of pension contribution rates;

(4) To establish long-term employer contribution rates which will remain a relatively predictable proportion of the future state budgets; and

(5) To fund, to the extent feasible, all benefits for plan 2 and 3 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. [2009 c 561 § 1; 2005 c 370 § 4; (2005 c 370 § 3 expired July 1, 2006); 2004 c 242 § 36; 2002 c 26 § 3; 2001 2nd sp.s. c 11 § 2; (2001 2nd

sp.s. c 11 § 1 expired March 1, 2002); 2000 c 247 § 501; 1998 c 341 § 401; 1995 c 239 § 305; 1989 c 273 § 1.]

**Effective date—2009 c 561:** "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, 2009." [2009 c 561 § 9.]

**Effective date—2005 c 370 §§ 2 and 4:** See note following RCW 41.45.060.

**Effective date—2005 c 370 §§ 1, 3, and 6:** See note following RCW 41.45.060.

**Expiration date—2005 c 370 §§ 1 and 3:** See note following RCW 41.45.060.

**Effective date—2004 c 242:** See RCW 41.37.901.

**Expiration date—2001 2nd sp.s. c 11 §§ 1 and 7:** "Sections 1, 7, and \*18 of this act expire March 1, 2002." [2001 2nd sp.s. c 11 § 20.]

**\*Reviser's note:** Section 18 of this act was vetoed.

**Effective date—2001 2nd sp.s. c 11:** "Sections 2, 3, 4, 8, 13, 14, and 16 of this act take effect March 1, 2002." [2001 2nd sp.s. c 11 § 21.]

**Effective date—2001 2nd sp.s. c 11:** See note following RCW 41.45.030.

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**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.*

**41.45.035 Long-term economic assumptions—Asset value smoothing technique.** (1) Beginning July 1, 2001, the following long-term economic assumptions shall be used by the state actuary for the purposes of RCW 41.45.030:

(a) The growth in inflation assumption shall be 3.5 percent;

(b) The growth in salaries assumption, exclusive of merit or longevity increases, shall be 4.5 percent;

(c) The investment rate of return assumption shall be 8 percent; and

(d) The growth in system membership assumption shall be 1.25 percent for the public employees' retirement system, the public safety employees' retirement system, the school employees' retirement system, and the law enforcement officers' and firefighters' retirement system. The assumption shall be .90 percent for the teachers' retirement system.

(2) Beginning July 1, 2009, the growth in salaries assumption for the public employees' retirement system, the public safety employees' retirement system, the teachers' retirement system, the school employees' retirement system, plan 1 of the law enforcement officers' and firefighters' retirement system, and the Washington state patrol retirement system, exclusive of merit or longevity increases, shall be the sum of:

(a) The growth in inflation assumption in subsection (1)(a) of this section; and

(b) The productivity growth assumption of 0.5 percent.

(3)(a) Beginning with actuarial studies done after July 1, 2003, changes to plan asset values that vary from the long-term investment rate of return assumption shall be recognized in the actuarial value of assets over a period that varies up to eight years depending on the magnitude of the deviation of each year's investment rate of return relative to the long-term rate of return assumption. Beginning with actuarial studies

performed after July 1, 2004, the actuarial value of assets shall not be greater than one hundred thirty percent of the market value of assets as of the valuation date or less than seventy percent of the market value of assets as of the valuation date. Beginning April 1, 2004, the council, by affirmative vote of four councilmembers, may adopt changes to this asset value smoothing technique. Any changes adopted by the council shall be subject to revision by the legislature.

(b) The state actuary shall periodically review the appropriateness of the asset smoothing method in this section and recommend changes to the council as necessary. Any changes adopted by the council shall be subject to revision by the legislature. [2009 c 561 § 2; 2004 c 93 § 2; 2003 1st sp.s. c 11 § 1; 2001 2nd sp.s. c 11 § 6.]

**Effective date—2009 c 561:** See note following RCW 41.45.010.

**Effective date—2003 1st sp.s. c 11:** "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, 2003." [2003 1st sp.s. c 11 § 4.]

**Effective date—2001 2nd sp.s. c 11:** See note following RCW 41.45.030.

**41.45.060 Basic state and employer contribution rates—Methods used—Role of council—Role of state actuary.** (1) The state actuary shall provide preliminary actuarial valuation results based on the economic assumptions and asset value smoothing technique included in RCW 41.45.035 or adopted under RCW 41.45.030 or 41.45.035.

(2) Not later than July 31, 2008, and every two years thereafter, consistent with the economic assumptions and asset value smoothing technique included in RCW 41.45.035 or adopted under RCW 41.45.030 or 41.45.035, the council shall adopt and may make changes to:

(a) A basic state contribution rate for the law enforcement officers' and firefighters' retirement system plan 1;

(b) Basic employer contribution rates for the public employees' retirement system, the teachers' retirement system, and the Washington state patrol retirement system; and

(c) Basic employer contribution rates for the school employees' retirement system and the public safety employees' retirement system for funding both those systems and the public employees' retirement system plan 1.

The council may adopt annual rate changes for any plan for any rate-setting period. The contribution rates adopted by the council shall be subject to revision by the legislature.

(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 law enforcement officers' and firefighters' retirement system plan 1 not later than June 30, 2024;

(b) To fully fund the public employees' retirement system plans 2 and 3, the teachers' retirement system plans 2 and 3, the public safety employees' retirement system plan 2, and the school employees' retirement system plans 2 and 3 in accordance with RCW 41.45.061, 41.45.067, and this section; and

(c) To fully fund the public employees' retirement system plan 1 and the teachers' retirement system plan 1 in accordance with RCW 41.45.070, 41.45.150, and this section.

(4) The aggregate actuarial cost method shall be used to calculate a combined plan 2 and 3 normal cost, a Washington state patrol retirement system normal cost, and a public safety employees' retirement system normal cost.

(5) A modified entry age normal cost method, as set forth in this chapter, shall be used to calculate employer contributions to the public employees' retirement system plan 1 and the teachers' retirement system plan 1.

(6) The employer contribution rate for the public employees' retirement system and the school employees' retirement system shall equal the sum of:

(a) The amount required to pay the combined plan 2 and plan 3 normal cost for the system, subject to any minimum rates applied pursuant to RCW 41.45.155; plus

(b) The amount required to amortize the unfunded actuarial accrued liability in plan 1 of the public employees' retirement system over a rolling ten-year period using projected future salary growth and growth in system membership, and subject to any minimum or maximum rates applied pursuant to RCW 41.45.150; plus

(c) The amounts required to amortize the costs of any benefit improvements in plan 1 of the public employees' retirement system that become effective after June 30, 2009. The cost of each benefit improvement shall be amortized over a fixed ten-year period using projected future salary growth and growth in system membership. The amounts required under this subsection are not subject to, and are collected in addition to, any minimum or maximum rates applied pursuant to RCW 41.45.150.

(7) The employer contribution rate for the public safety employees' retirement system shall equal the sum of:

(a) The amount required to pay the normal cost for the system, subject to any minimum rates applied pursuant to RCW 41.45.155; plus

(b) The amount required to amortize the unfunded actuarial accrued liability in plan 1 of the public employees' retirement system over a rolling ten-year period using projected future salary growth and growth in system membership, and subject to any minimum or maximum rates applied pursuant to RCW 41.45.150; plus

(c) The amounts required to amortize the costs of any benefit improvements in plan 1 of the public employees' retirement system that become effective after June 30, 2009. The cost of each benefit improvement shall be amortized over a fixed ten-year period using projected future salary growth and growth in system membership. The amounts required under this subsection are not subject to, and are collected in addition to, any minimum or maximum rates applied pursuant to RCW 41.45.150.

(8) The employer contribution rate for the teachers' retirement system shall equal the sum of:

(a) The amount required to pay the combined plan 2 and plan 3 normal cost for the system, subject to any minimum rates applied pursuant to RCW 41.45.155; plus

(b) The amount required to amortize the unfunded actuarial accrued liability in plan 1 of the teachers' retirement system over a rolling ten-year period using projected future salary growth and growth in system membership, and subject to any minimum or maximum rates applied pursuant to RCW 41.45.150; plus

(c) The amounts required to amortize the costs of any benefit improvements in plan 1 of the teachers' retirement system that become effective after June 30, 2009. The cost of each benefit improvement shall be amortized over a fixed ten-year period using projected future salary growth and growth in system membership. The amounts required under this subsection are not subject to, and are collected in addition to, any minimum or maximum rates applied pursuant to RCW 41.45.150.

(9) 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. The rates shall be effective for the ensuing biennial period, subject to any legislative modifications.

(10) The director shall collect those rates adopted by the council. The rates established in RCW 41.45.062, or by the council, shall be subject to revision by the legislature.

(11) The state actuary shall prepare final actuarial valuation results based on the economic assumptions, asset value smoothing technique, and contribution rates included in or adopted under RCW 41.45.030, 41.45.035, and this section. [2009 c 561 § 3; 2007 c 280 § 2; 2005 c 370 § 2; (2005 c 370 § 1 expired July 1, 2006); 2004 c 242 § 39. Prior: 2003 c 294 § 10; 2003 c 92 § 3; 2002 c 26 § 2; prior: 2001 2nd sp.s. c 11 § 10; 2001 c 329 § 10; 2000 2nd sp.s. c 1 § 905; 2000 c 247 § 504; prior: 1998 c 341 § 404; 1998 c 340 § 11; 1998 c 283 § 6; 1995 c 239 § 309; 1993 c 519 § 19; 1992 c 239 § 2; 1990 c 18 § 1; 1989 c 273 § 6.]

**Effective date—2009 c 561:** See note following RCW 41.45.010.

**Effective date—2005 c 370 §§ 2 and 4:** "Sections 2 and 4 of this act take effect July 1, 2006." [2005 c 370 § 8.]

**Effective date—2005 c 370 §§ 1, 3, and 6:** "Sections 1, 3, 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 take effect July 1, 2005." [2005 c 370 § 7.]

**Expiration date—2005 c 370 §§ 1 and 3:** "Sections 1 and 3 of this act expire July 1, 2006." [2005 c 370 § 9.]

**Effective date—2004 c 242:** See RCW 41.37.901.

**Severability—Effective date—2003 c 92:** See RCW 41.26.905 and 41.26.906.

**Effective date—2001 2nd sp.s. c 11:** See note following RCW 41.45.030.

**Effective date—2001 c 329:** See note following RCW 43.43.120.

**Severability—Effective date—2000 2nd sp.s. c 1:** See notes following RCW 41.05.143.

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**Effective date—1998 c 341:** See note following RCW 41.34.060.

**Effective date—1998 c 340:** See note following RCW 2.10.146.

**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.*

**41.45.0631 Washington state patrol retirement system—Contribution rate—Allocation of costs.** (1) The



allocation of costs between the employer and members of the Washington state patrol retirement system shall be made only after the application of any minimum total contribution rate that may be in effect for the system under subsection (4) of this section. For benefit improvements effective on or after July 1, 2007, costs shall be shared equally by members and the employer, and any cap on member contributions shall be adjusted accordingly. The member contribution rate shall be based on the adjusted total contribution rate described in subsection (2) of this section. Beginning July 1, 2007, the required member contribution rate for members of the Washington state patrol retirement system shall be the lesser of the following: (a) One-half of the adjusted total contribution rate for the system; or (b) seven percent, plus fifty percent of the contribution rate increase caused by any benefit improvements effective on or after July 1, 2007.

(2) The employer shall continue to pay for all costs attributable to distributions under RCW 43.43.270(2) for survivors of members who became disabled under RCW 43.43.040(2) prior to July 1, 2006, until such costs are fully paid. In order to avoid charging members for these costs, the total required contribution rate shall be adjusted to exclude these costs. The result of the adjustment shall be the adjusted total contribution rate that is to be used to calculate the required member contribution rate.

(3) The employer rate shall be the contribution rate required to cover all total system costs that are not covered by the member contribution rate.

(4) Beginning July 1, 2009, a minimum total contribution rate is established for the Washington state patrol retirement system. The total Washington state patrol retirement system contribution rate may exceed, but may not drop below, the established minimum total contribution rate. From July 1, 2009, through June 30, 2011, the minimum total contribution rate shall equal the total contribution rate required to fund fifty percent of the Washington state patrol retirement system's normal cost as calculated under the entry age normal cost method. Beginning July 1, 2011, the minimum total contribution rate shall equal the total contribution rate required to fund seventy percent of the Washington state patrol retirement system's normal cost as calculated under the entry age normal cost method. This minimum rate, when applicable, shall be collected in addition to any contribution rate required to amortize any unfunded costs attributable to distributions under RCW 43.43.270(2) for survivors of members who became disabled under RCW 43.43.040(2) prior to July 1, 2006.

(5) Upon completion of each biennial actuarial valuation, the state actuary shall review the appropriateness of this minimum total contribution rate and recommend to the council any adjustments as may be needed. Any changes adopted by the council shall be subject to revision by the legislature. [2009 c 561 § 7. Prior: 2007 c 300 § 1; 2007 c 280 § 5; 2006 c 94 § 2; 2001 c 329 § 11.]

**Effective date—2009 c 561:** See note following RCW 41.45.010.

**Effective date—2007 c 300:** "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, 2007." [2007 c 300 § 3.]

**Effective date—2001 c 329:** See note following RCW 43.43.120.

**41.45.070 Supplemental rate.** (1) In addition to the basic employer contribution rate established in RCW 41.45.060 or \*41.45.054, the department shall also charge employers of public employees' retirement system, teachers' retirement system, school employees' retirement system,

public safety 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 subsections (6), (7), and (9) 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 member, employer, and state contribution rate established in RCW 41.45.0604 for the law enforcement officers' and firefighters' retirement system plan 2, the department shall also establish supplemental rates to pay for the cost of additional benefits, if any, granted to members of the law enforcement officers' and firefighters' retirement system plan 2. Except as provided in subsection (6) of this section, these supplemental rates shall be calculated by the actuary retained by the law enforcement officers' and firefighters' board and the state actuary through the process provided in RCW 41.26.720(1)(a) 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) Beginning July 1, 2009, the supplemental rate charged under this section to fund benefit increases provided to active members of the public employees' retirement system plan 1 and the teachers' retirement system plan 1 shall be calculated as the level percentage of all system pay needed to fund the cost of the benefit over a fixed ten-year period, using projected future salary growth and growth in system membership. The supplemental rate to fund benefit increases provided to active members of the public employees' retirement system plan 1 shall be charged to all system employers in the public employees' retirement system, the school employees' retirement system, and the public safety employees' retirement system. The supplemental rate to fund benefit increases provided to active members of the teachers' retirement system plan 1 shall be charged to all system employers in the teachers' retirement system.

(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 2 and plan 3, the teachers' retirement system plan 2 and plan 3, the public safety employees' retirement system plan 2, the school employees' retirement system plan 2 and plan 3, or the Washington state patrol retirement system shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit, as calculated under RCW 41.45.060, 41.45.061, 41.45.0631, or 41.45.067.

(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. Beginning July 1, 2009, the supplemental rate charged under this section to fund increases in the automatic postretirement adjustments for active or retired members of the public employees' retirement system plan 1 and the teachers' retirement system plan 1 shall be calculated as the level percentage of pay needed to fund the cost of the automatic adjustments over a fixed ten-year period, using projected future salary growth and growth in system mem-

bership. The supplemental rate to fund increases in the automatic postretirement adjustments for active members or retired members of the public employees' retirement system plan 1 shall be charged to all system employers in the public employees' retirement system, the school employees' retirement system, and the public safety employees' retirement system. The supplemental rate to fund increases in automatic postretirement adjustments for active members or retired members of the teachers' retirement system plan 1 shall be charged to all system employers in the teachers' retirement system.

(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.

(7) 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.

(8) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members and survivors pursuant to chapter 94, Laws of 2006.

(9) A supplemental rate shall not be charged to pay for the cost of the additional benefits granted to members of the teachers' retirement system and the school employees' retirement system plans 2 and 3 in sections 2, 4, 6, and 8, chapter 491, Laws of 2007 until September 1, 2008. A supplemental rate shall not be charged to pay for the cost of the additional benefits granted to members of the public employees' retirement system plans 2 and 3 under sections 9 and 10, chapter 491, Laws of 2007 until July 1, 2008. [2009 c 561 § 4; 2007 c 491 § 12; 2006 c 94 § 3; (2005 c 327 § 10 expired July 1, 2006); 2004 c 242 § 41. Prior: (2003 1st sp.s. c 11 § 3 repealed by 2005 c 327 § 11); 2003 c 92 § 5; prior: 2001 2nd sp.s. c 11 § 16; 2001 2nd sp.s. c 11 § 15; 2000 c 247 § 505; 1998 c 340 § 10; 1995 c 239 § 310; 1990 c 18 § 2; 1989 1st ex.s. c 1 § 1; 1989 c 273 § 7.]

**Reviser's note:** \*(1) RCW 41.45.054 was decodified by 2005 c 370 § 5, effective September 1, 2005.

\*\* (2) Chapter 41.31A RCW was repealed by 2007 c 491 § 13, effective January 2, 2008, however, RCW 41.31A.020 was also amended by 2007 c 491 § 1 and 2007 c 492 § 10. For rule of construction, see RCW 1.12.025(1).

**Effective date—2009 c 561:** See note following RCW 41.45.010.

**Severability—Conflict with federal requirements—2007 c 491:** See notes following RCW 41.32.765.

**Effective date—2006 c 94 § 3:** "Section 3 of this act takes effect July 1, 2006." [2006 c 94 § 4.]

**Expiration date—2005 c 327 § 10:** "Section 10 of this act expires July 1, 2006." [2005 c 327 § 13.]

**Effective date—2004 c 242:** See RCW 41.37.901.

**Effective date—2003 1st sp.s. c 11:** See note following RCW 41.45.035.

**Severability—Effective date—2003 c 92:** See RCW 41.26.905 and 41.26.906.

**Effective date—2001 2nd sp.s. c 11:** See note following RCW 41.45.010.

**Effective date—2001 2nd sp.s. c 11:** See note following RCW 41.45.030.

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**Effective date—1998 c 341:** See RCW 41.35.901.

**Effective date—1998 c 340:** See note following RCW 2.10.146.

**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.*

**41.45.150 Unfunded liabilities—Employer contribution rates.** (1) Beginning July 1, 2009, and ending June 30, 2015, maximum annual contribution rates are established for the portion of the employer contribution rate for the public employees' retirement system and the public safety employees' retirement system that is used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the public employees' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. The maximum rates are:

Fiscal Year ending:

2010	2011	2012	2013	2014	2015
1.25%	1.25%	3.75%	4.50%	5.25%	6.00%

(2) Beginning September 1, 2009, and ending August 31, 2015, maximum annual contribution rates are established for the portion of the employer contribution rate for the school employees' retirement system that is used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the public employees' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. The maximum rates are:

Fiscal Year ending:

2010	2011	2012	2013	2014	2015
1.25%	1.25%	3.75%	4.50%	5.25%	6.00%

(3) Beginning September 1, 2009, and ending August 31, 2015, maximum annual contribution rates are established for the portion of the employer contribution rate for the teachers' retirement system that is used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the teachers' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. The maximum rates are:

Fiscal Year ending:

2010	2011	2012	2013	2014	2015
2.04%	2.04%	6.50%	7.50%	8.50%	9.50%

(4) Beginning July 1, 2015, a minimum 5.25 percent contribution is established as part of the basic employer contribution rate for the public employees' retirement system and the public safety employees' retirement system, to be used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the public employees' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. This minimum contribution rate shall remain effective until the actuarial value of assets in plan 1 of the public employees' retirement system equals \*one hundred twenty-five percent of the actuarial accrued liability.

(5) Beginning September 1, 2015, a minimum 5.25 percent contribution is established as part of the basic employer contribution rate for the school employees' retirement system, to be used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the public employees' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. This minimum contribution rate shall remain effective until the actuarial value of assets in plan 1 of the public employees' retirement system equals one hundred percent of the actuarial accrued liability.

(6) Beginning September 1, 2015, a minimum 8.00 percent contribution is established as part of the basic employer contribution rate for the teachers' retirement system, to be used for the sole purpose of amortizing that portion of the unfunded actuarial accrued liability in the teachers' retirement system plan 1 that excludes any amounts required to amortize plan 1 benefit improvements effective after June 30, 2009. This minimum contribution rate shall remain effective until the actuarial value of assets in plan 1 of the teachers' retirement system equals one hundred percent of the actuarial accrued liability.

(7) Upon completion of each biennial actuarial valuation, the state actuary shall review the appropriateness of the minimum contribution rates and recommend to the council any adjustments as may be needed due to material changes in benefits or actuarial assumptions, methods, or experience. Any changes adopted by the council shall be subject to revision by the legislature. [2009 c 561 § 5; 2006 c 365 § 2.]

**\*Reviser's note:** Due to a drafting error, "one hundred twenty-five percent" was not changed to "one hundred percent", which would have been consistent with other changes made at the time.

**Effective date—2009 c 561:** See note following RCW 41.45.010.

**Effective date—2006 c 365:** See note following RCW 41.45.020.

**41.45.155 Certain plans 2 and 3 normal costs—Minimum basic employer contribution rates.** (1) Beginning July 1, 2011, a minimum contribution rate is established for the plans 2 and 3 normal cost as part of the basic employer contribution rate for the public employees' retirement system. The minimum contribution rate for the plans 2 and 3 employer normal cost shall equal the total contribution rate required to fund eighty percent of the plans 2 and 3 employer normal cost as calculated under the entry age normal cost method. This minimum rate, when applicable, shall be collected in addition to any contribution rate required to amortize past gain-sharing distributions in plan 3.

(2) Beginning July 1, 2011, a minimum contribution rate is established for the plan 2 normal cost as part of the basic employer contribution rate for the public safety employees' retirement system. The minimum contribution rate for the plan 2 normal cost shall equal the total contribution rate required to fund eighty percent of the plan 2 normal cost as calculated under the entry age normal cost method.

(3) Beginning September 1, 2011, a minimum contribution rate is established for the plans 2 and 3 normal cost as part of the basic employer contribution rate for the school employees' retirement system. The minimum contribution rate for the plans 2 and 3 employer normal cost shall equal the total contribution rate required to fund eighty percent of the plans 2 and 3 employer normal cost as calculated under the

entry age normal cost method. This minimum rate, when applicable, shall be collected in addition to any contribution rate required to amortize past gain-sharing distributions in plan 3.

(4) Beginning September 1, 2011, a minimum contribution rate is established for the plans 2 and 3 normal cost as part of the basic employer contribution rate for the teachers' retirement system. The minimum contribution rate for the plans 2 and 3 employer normal cost shall equal the total contribution rate required to fund eighty percent of the plans 2 and 3 employer normal cost as calculated under the entry age normal cost method. This minimum rate, when applicable, shall be collected in addition to any contribution rate required to amortize past gain-sharing distributions in plan 3.

(5) Upon completion of each biennial actuarial valuation, the state actuary shall review the appropriateness of these minimum contribution rates and recommend to the council any adjustments as may be needed due to material changes in benefits or actuarial assumptions, methods, or experience. Any changes adopted by the council shall be subject to revision by the legislature. [2009 c 561 § 6; 2006 c 365 § 3.]

**Effective date—2009 c 561:** See note following RCW 41.45.010.

**Effective date—2006 c 365:** See note following RCW 41.45.020.

**41.45.230 Pension funding stabilization account—Creation.** The pension funding stabilization 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 payment of state government employer contributions for members of the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, and the public safety employees' retirement system. During the 2007-09 fiscal biennium, expenditures from the account may also be used for payment of the retirement and annuity plans for higher education employees and for transfer into the general fund. The account may not be used to pay for any new benefit or for any benefit increase that takes effect after July 1, 2005. An increase that is provided in accordance with a formula that is in existence on July 1, 2005, is not considered a benefit increase for this purpose. Moneys in the account shall be for the exclusive use of the specified retirement systems and invested by the state investment board pursuant to RCW 43.33A.030 and 43.33A.170. For purposes of RCW 43.135.035, expenditures from the pension funding stabilization account shall not be considered a state program cost shift from the state general fund to another account. During the 2007-2009 fiscal biennium, the legislature may transfer from the pension funding stabilization account to the state general fund such amounts as reflect the excess fund balance of the account. [2009 c 564 § 1808; 2008 c 329 § 910; 2006 c 56 § 1.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Severability—Effective date—2008 c 329:** See notes following RCW 28B.105.110.

**Effective dates—2006 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 takes effect immediately [March 15, 2006], except section 10 of this act, which takes effect July 1, 2006." [2006 c 56 § 13.]

**Chapter 41.48 RCW**  
**FEDERAL SOCIAL SECURITY FOR**  
**PUBLIC EMPLOYEES**

## Sections

41.48.060	OASI contribution account.
41.48.065	OASI revolving fund.
41.48.080	Administration costs—Allocation.

**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. During the 2009-2011 fiscal biennium, moneys in the OASI contribution account may also be transferred into the OASI revolving fund.

(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. [2009 c 564 § 923; 1991 sp.s. c 13 § 112; 1973 c 126 § 14; 1967 c 213 § 1; 1951 c 184 § 6.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**41.48.065 OASI revolving fund.** (1) 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, including the costs of program

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administration. Withdrawals from the fund may 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.

(2) All costs allocable to the administration of this chapter shall be charged to and paid to the OASI revolving fund by the participating divisions and instrumentalities of the state pro rata according to their respective contributions.

(3) 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. [2009 c 171 § 1; 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.]

**41.48.080 Administration costs—Allocation.** All costs allocable to the administration of this chapter shall be charged to and paid to the OASI revolving fund by the participating divisions and instrumentalities of the state pro rata according to their respective contributions. [2009 c 171 § 2; 1951 c 184 § 9.]

**Chapter 41.50 RCW**

**DEPARTMENT OF RETIREMENT SYSTEMS**

## Sections

41.50.110	Expenses of administration paid from department of retirement systems expense fund—Administrative expense fee.
41.50.810	Blind mailings to retirees—Restrictions.
41.50.902	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> ) ( <i>Effective January 1, 2014.</i> )

**41.50.110 Expenses of administration paid from department of retirement systems expense fund—Administrative expense fee.** (1) Except as provided by RCW 41.50.255 and subsection (6) of this section, all expenses of the administration of the department, the expenses of administration of the retirement systems, and the expenses of the administration of the office of the state actuary created in chapters 2.10, 2.12, 41.26, 41.32, 41.40, 41.34, 41.35, 41.37, 43.43, and 44.44 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, 41.37.010, 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, 41.37.010, 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(3) shall be paid pursuant to subsection (1) of this section.

(7) During the 2007-2009 and 2009-2011 fiscal biennia, the legislature may transfer from the department of retirement systems' expense fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2009 c 564 § 924; 2008 c 329 § 911; 2005 c 518 § 923; 2004 c 242 § 46; 2003 1st sp.s. c 25 § 914. Prior: 2003 c 295 § 3; 2003 c 294 § 11; 1998 c 341 § 508; 1996 c 39 § 17; 1995 c 239 § 313; 1990 c 8 § 3; 1979 ex.s. c 249 § 8.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Severability—Effective date—2008 c 329:** See notes following RCW 28B.105.110.

**Effective date—2005 c 518 § 923:** "Section 923 (RCW 41.50.110) of this act takes effect July 1, 2006." [2005 c 518 § 1806.]

**Severability—2005 c 518:** See note following RCW 28A.500.030.

**Effective date—2004 c 242:** See RCW 41.37.901.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**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.*

#### **41.50.810 Blind mailings to retirees—Restrictions.**

(1) Any organization that exclusively provides representation or services to retired members of the Washington state retirement systems and has membership dues deducted through the department of retirement systems has the right to request the department to assist in doing blind mailings to retirees twice each year. The mailings must provide information to members of the retirement systems eligible for membership in the retiree organization regarding services offered by the retiree organization. The mailings shall not be for the purpose of supporting or opposing any political party, ballot measure, or candidate. The retiree organization must provide all printed materials to be mailed and envelopes to a mail processing center and pay all costs for generating mailing labels, inserting materials into envelopes, sealing, labeling, and delivering materials to be mailed to a bulk mail center or post office. The organization must use its own bulk mail permit and pay all postage costs.

(2) The department must provide requested retiree data for addressing the envelopes to the mail center under a secure data share agreement with the mail center under which neither the organizations nor any other entity has direct access to any names or addresses. The department has no obligation to approve or disapprove, or in any other way take any responsibility for, the content of the mailings. Only organizations that meet the requirements under subsection (1) of this section and have legal authority to provide services to retirement system retirees have the right to request assistance with blind mailings. [2009 c 30 § 1.]

#### **41.50.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)**

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 101.]

**Effective dates—2009 c 521 § 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

### **Chapter 41.54 RCW**

#### **PORTABILITY OF PUBLIC RETIREMENT BENEFITS**

##### Sections

41.54.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is*

*approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*

**41.54.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)* For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 102.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

#### Chapter 41.56 RCW

### PUBLIC EMPLOYEES' COLLECTIVE BARGAINING

#### Sections

- 41.56.496 Commercial nuclear plants—Application of chapter to certain employees.  
41.56.906 Construction of chapter—Certain agreements subject to RCW 28A.400.320.

**41.56.496 Commercial nuclear plants—Application of chapter to certain employees.** (1) In order to assure the uninterrupted and dedicated service of employees employed by employees of operators of certain commercial nuclear plants, the provisions of RCW 41.56.430 through 41.56.470, 41.56.480, and 41.56.490 shall apply to the operating and maintenance employees of a joint operating agency as defined in RCW 43.52.250 who are employed at a commercial nuclear power plant operating under a site certificate issued under chapter 80.50 RCW, except as provided in subsection (2) of this section.

(2) In making its determination, the arbitration panel shall take into consideration the following factors:

(a) The constitutional and statutory authority of the employer;

(b) Stipulations of the parties;

(c) A comparison of the wages, benefits, hours of work, and working conditions of the personnel involved in the proceeding with those of like personnel in relevant Washington labor markets. For classifications not found in Washington, the comparison shall be made with similar personnel in the states of California and Arizona, taking into account the relative differences in the cost of living;

(d) Economic indices, fiscal constraints, relative differences in the cost of living, and similar factors determined by the arbitration panel to be pertinent to the case;

(e) Other factors, not confined to the factors under (a) through (d) of this subsection, that are normally or traditionally taken into consideration in the determination of wages,

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benefits, hours of work, and working conditions. [2009 c 126 § 1.]

**41.56.906 Construction of chapter—Certain agreements subject to RCW 28A.400.320.** Nothing in this chapter may be construed to grant school district employers or classified school district employees the right to reach agreements that are in conflict with the termination provisions of RCW 28A.400.320. [2009 c 396 § 11.]

#### Chapter 41.59 RCW

### EDUCATIONAL EMPLOYMENT RELATIONS ACT

#### Sections

- 41.59.936 Construction of chapter—Certain agreements subject to RCW 28A.405.470.

**41.59.936 Construction of chapter—Certain agreements subject to RCW 28A.405.470.** Nothing in this chapter may be construed to grant employers or employees the right to reach agreements that are in conflict with the termination provisions of RCW 28A.405.470. [2009 c 396 § 10.]

#### Chapter 41.68 RCW

### REPARATIONS TO STATE EMPLOYEES TERMINATED DURING WORLD WAR II

#### Sections

- 41.68.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)*

**41.68.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.) (Effective January 1, 2014.)* For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 103.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

## Title 42

### PUBLIC OFFICERS AND AGENCIES

#### Chapters

**42.04 General provisions.**

**42.17 Disclosure—Campaign finances—Lobbying.**

- 42.23 Code of ethics for municipal officers—Contract interests.**  
**42.52 Ethics in public service.**  
**42.56 Public records act.**

**Chapter 42.04 RCW**  
**GENERAL PROVISIONS**

Sections

42.04.060 Business hours—Posting on web site.

**42.04.060 Business hours—Posting on web site.** All state elective and appointive officers shall keep their offices open for the transaction of business for a minimum of forty hours per week, except weeks that include state legal holidays. Customary business hours must be posted on the agency or office's web site and made known by other means designed to provide the public with notice.

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. [2009 c 428 § 1; 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.*

**Chapter 42.17 RCW**  
**DISCLOSURE—CAMPAIGN**  
**FINANCES—LOBBYING**

Sections

42.17.2401 "Executive state officer" defined.  
 42.17.530 Political advertising or electioneering communication—Libel or defamation per se.

**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 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 commerce, the secretary of corrections, the director of early learning, the director of ecology, the commissioner of employment security, the chair 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 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 executive director of the Puget Sound partnership, the director of the recreation and conservation office, 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, and 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, the boards of trustees of each community college and each technical 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, life sciences discovery fund authority board of trustees, 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, recreation and conservation funding board, state investment board, commission on judicial conduct, legislative ethics board, liquor control board, lottery commission, marine oversight board, Pacific Northwest electric power and conservation planning council, parks and recreation commission, board of pilotage commissioners, pollution control hearings board, public disclosure commission, public pension commission, shorelines hearings board, public employees' benefits board, salmon recovery funding 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. [2009 c 565 § 24. Prior: 2007 c 341 § 48; 2007 c 241 § 2; 2007 c 15 § 1; 2006 c 265 § 113; 2005 c 424 § 17; prior: 2001 c 36 § 1; 2001 c 9 § 1; 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.]

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Part headings not law—Effective date—Severability—2006 c 265:** See RCW 43.215.904 through 43.215.906.

**Captions not law—Liberal construction—Severability—Effective dates—2005 c 424:** See RCW 43.350.900 through 43.350.903.

**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.

**42.17.530 Political advertising or electioneering communication—Libel or defamation per se.** (1) It is a violation of this chapter for a person to sponsor with actual malice a statement constituting libel or defamation per se under the following circumstances:

(a) Political advertising or an electioneering communication that contains a false statement of material fact about a candidate for public office;

(b) Political advertising or an electioneering communication 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 or an electioneering communication 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) For the purposes of this section, "libel or defamation per se" means statements that tend (a) to expose a living person to hatred, contempt, ridicule, or obloquy, or to deprive him or her of the benefit of public confidence or social intercourse, or to injure him or her in his or her business or occupation, or (b) to injure any person, corporation, or association in his, her, or its business or occupation.

(3) It is not a violation of this section for a candidate or his or her agent to make statements described in subsection (1)(a) or (b) of this section about the candidate himself or herself because a person cannot defame himself or herself. It is not a violation of this section for a person or organization referenced in subsection (1)(c) of this section to make a statement about that person or organization because such persons and organizations cannot defame themselves.

(4) Any violation of this section shall be proven by clear and convincing evidence. If a violation is proven, damages are presumed and do not need to be proven. [2009 c 222 § 2; 2005 c 445 § 10; 1999 c 304 § 2; 1988 c 199 § 2; 1984 c 216 § 3.]

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**Intent—Findings—2009 c 222:** "(1) The concurring opinion of the Washington state supreme court in *Rickert v. State, Public Disclosure Commission*, 161 Wn.2d 843, 168 P. 3d 826 (2007) found the statute that prohibits persons from sponsoring, with actual malice, political advertising and electioneering communications about a candidate containing false statements of material fact to be invalid under the First Amendment to the United States Constitution because it posed no requirement that the prohibited statements be defamatory.

(2) It is the intent of the legislature to amend chapter 42.17 RCW to find that a violation of state law occurs if a person sponsors false statements about candidates in political advertising and electioneering communications when the statements are made with actual malice and are defamatory.

(3) The legislature finds that in such circumstances damages are presumed and do not need to be established when such statements are made with actual malice in political advertising and electioneering communications and constitute libel or defamation per se. The legislature finds that incumbents, challengers, voters, and the political process will benefit from vigorous political debate that is not made with actual malice and is not defamatory.

(4) The legislature finds that when such defamatory statements contain a false statement of material fact about a candidate for public office they expose the candidate to contempt, ridicule, or reproach and can deprive the candidate of the benefit of public confidence, or prejudice him or her in his or her profession, trade, or vocation. The legislature finds that when such statements falsely represent that a candidate is the incumbent for the office sought when in fact the candidate is not the incumbent they deprive the actual incumbent and the candidates of the benefit of public confidence and injure the actual incumbent in the ability to effectively serve as an elected official. The legislature further finds that defamatory statements made by an incumbent regarding the incumbent's challenger may deter individuals from seeking public office and harm the democratic process. Further, the legislature finds that when such statements make, 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, they deprive the person or organization of the benefit of public confidence and/or will expose the person or organization to contempt, ridicule, or reproach, or injure the person or organization in their business or occupation.

(5) The legislature finds that defamatory statements, made with actual malice, damage the integrity of elections by distorting the electoral process. Democracy is premised on an informed electorate. To the extent such defamatory statements misinform the voters, they interfere with the process upon which democracy is based. Such defamatory statements also lower the quality of campaign discourse and debate, and lead or add to voter alienation by fostering voter cynicism and distrust of the political process." [2009 c 222 § 1.]

**Finding—Intent—1999 c 304:** "(1) The Washington supreme court in a case involving a ballot measure, *State v. 119 Vote No! Committee*, 135 Wn.2d 618 (1998), found the statute that prohibits persons from sponsoring, with actual malice, political advertising containing false statements of material fact to be invalid under the First Amendment to the United States Constitution.

(2) The legislature finds that a review of the opinions indicates that a majority of the supreme court may find valid a statute that limited such a prohibition on sponsoring with actual malice false statements of material fact in a political campaign to statements about a candidate in an election for public office.

(3) It is the intent of the legislature to amend the current law to provide protection for candidates for public office against false statements of material fact sponsored with actual malice." [1999 c 304 § 1.]

## Chapter 42.23 RCW

### CODE OF ETHICS FOR MUNICIPAL OFFICERS— CONTRACT INTERESTS

#### Sections

42.23.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**42.23.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election*)



*under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 104.]

### Chapter 42.52 RCW

#### ETHICS IN PUBLIC SERVICE

##### Sections

42.52.8021	Exemption—Solicitation for Washington state flag account.
42.52.906	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. ( <i>Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.</i> )

**42.52.8021 Exemption—Solicitation for Washington state flag account.** This chapter does not prohibit the secretary of state or the secretary of state's designee from soliciting and accepting contributions to the Washington state flag account created in RCW 43.07.388. [2009 c 71 § 3.]

**42.52.906 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 105.]

### Chapter 42.56 RCW

#### PUBLIC RECORDS ACT

##### Sections

42.56.090	Times for inspection and copying—Posting on web site.
42.56.230	Personal information. ( <i>Effective January 1, 2010.</i> )
42.56.270	Financial, commercial, and proprietary information.
42.56.320	Educational information.
42.56.360	Health care.
42.56.380	Agriculture and livestock.
42.56.400	Insurance and financial institutions.
42.56.420	Security.

42.56.565 Inspection or copying by persons serving criminal sentences—Injunction.

**42.56.090 Times for inspection and copying—Posting on web site.** 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 for a minimum of thirty hours per week, except weeks that include state 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. Customary business hours must be posted on the agency or office's web site and made known by other means designed to provide the public with notice. [2009 c 428 § 2; 1995 c 397 § 12; 1973 c 1 § 28 (Initiative Measure No. 276, approved November 7, 1972). Formerly RCW 42.17.280.]

**42.56.230 Personal information.** (*Effective January 1, 2010.*) The following personal information is exempt from public inspection and copying under this chapter:

(1) Personal information in any files maintained for students in public schools, patients or clients of public institutions or public health agencies, or welfare recipients;

(2) 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;

(3) 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 (a) be prohibited to such persons by RCW 84.08.210, 82.32.330, 84.40.020, or 84.40.340 or (b) violate the taxpayer's right to privacy or result in unfair competitive disadvantage to the taxpayer;

(4) Credit card numbers, debit card numbers, electronic check numbers, card expiration dates, or bank or other financial account numbers, except when disclosure is expressly required by or governed by other law;

(5) Personal and financial information related to a small loan or any system of authorizing a small loan in RCW 31.45.093; and

(6) Documents and related materials and scanned images of documents and related materials used to prove identity, age, residential address, social security number, or other personal information required to apply for a driver's license or identocard. [2009 c 510 § 8; 2008 c 200 § 5; 2005 c 274 § 403.]

**Effective date—2009 c 510:** See RCW 31.45.901.

**Finding—Intent—Liberal construction—2009 c 510:** See note following RCW 31.45.010.

**42.56.270 Financial, commercial, and proprietary information.** The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) 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 (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750 or (b) highway construction or improvement as required by RCW 47.28.070;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 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;

(5) 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;

(6) 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;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) 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;

(9) 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;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of community, trade, and economic development:

(i) Financial and proprietary information collected from any person and provided to the department of community,

trade, and economic development pursuant to RCW 43.330.050(8); and

(ii) Financial or proprietary information collected from any person and provided to the department of community, trade, and economic development or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business;

(b) When developed by the department of community, trade, and economic development based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of community, trade, and economic development from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70.95N RCW to implement chapter 70.95N RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under chapter 43.350 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business; and

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information. [2009 c 394 § 3; 2008 c 306 § 1. Prior: 2007 c 470 § 2; (2007 c 470 § 1 expired June 30, 2008); 2007 c 251 § 13; (2007 c 251 § 12 expired June 30, 2008); 2007 c 197 § 4; (2007 c 197 § 3 expired June 30, 2008); prior: 2006 c 369 § 2; 2006 c 341 § 6; 2006 c 338 § 5; 2006 c 302 § 12; 2006 c 209 § 7; 2006 c 183 § 37; 2006 c 171 § 8; 2005 c 274 § 407.]

**Intent—2009 c 394:** See note following RCW 28B.20.150.

**Effective date—2008 c 306 § 1:** "Section 1 of this act takes effect June 30, 2008." [2008 c 306 § 2.]

**Effective date—2007 c 470 § 2:** "Section 2 of this act takes effect June 30, 2008." [2007 c 470 § 4.]

**Expiration date—2007 c 470 § 1:** "Section 1 of this act expires June 30, 2008." [2007 c 470 § 3.]

**Effective date—2007 c 251 § 13:** "Section 13 of this act takes effect June 30, 2008." [2007 c 251 § 18.]

**Expiration date—2007 c 251 § 12:** "Section 12 of this act expires June 30, 2008." [2007 c 251 § 17.]

**Captions not law—Severability—2007 c 251:** See notes following RCW 35.104.010.

**Effective date—2007 c 197 § 4:** "Section 4 of this act takes effect June 30, 2008." [2007 c 197 § 11.]

**Expiration date—2007 c 197 § 3:** "Section 3 of this act expires June 30, 2008." [2007 c 197 § 10.]

**Effective date—2006 c 369 § 2:** "Section 2 of this act takes effect July 1, 2006." [2006 c 369 § 3.]

**Effective date—2006 c 341 § 6:** "Section 6 of this act takes effect July 1, 2006." [2006 c 341 § 7.]

**Findings—Intent—2006 c 338:** See note following RCW 19.112.110.

**Effective date—Severability—2006 c 338:** See RCW 19.112.903 and 19.112.904.

**Effective date—2006 c 302 §§ 10 and 12:** See note following RCW 66.28.180.

**Construction—Severability—Effective date—2006 c 183:** See RCW 70.95N.900 through 70.95N.902.

**Effective date—2006 c 171 §§ 8 and 10:** "Sections 8 and 10 of this act take effect July 1, 2006." [2006 c 171 § 13.]

**Findings—Severability—2006 c 171:** See RCW 43.325.001 and 43.325.901.

**42.56.320 Educational information.** The following educational information is exempt from disclosure under this chapter:

(1) Financial disclosures filed by private vocational schools under chapters 28B.85 and 28C.10 RCW;

(2) 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;

(3) Individually identifiable information received by the workforce training and education coordinating board for research or evaluation purposes;

(4) Except for public records as defined in RCW 40.14.010, any records or documents obtained by a state 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 those records or documents; and

(5) The annual declaration of intent filed by parents under RCW 28A.200.010 for a child to receive home-based instruction. [2009 c 191 § 1; 2005 c 274 § 412.]

**42.56.360 Health care.** (1) The following health care information is exempt from disclosure under this chapter:

(a) Information obtained by the board of pharmacy as provided in RCW 69.45.090;

(b) 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;

(c) Information and documents created specifically for, and collected and maintained by a quality improvement committee under RCW 43.70.510, 70.230.080, or 70.41.200, or by a peer review committee under RCW 4.24.250, or by a quality assurance committee pursuant to RCW 74.42.640 or 18.20.390, or by a hospital, as defined in RCW 43.70.056, for reporting of health care-associated infections under RCW 43.70.056, a notification of an incident under RCW 70.56.040(5), and reports regarding adverse events under RCW 70.56.020(2)(b), regardless of which agency is in possession of the information and documents;

(d)(i) 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;

(ii) 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 subsection (1)(d) as exempt from disclosure;

(iii) 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;

(e) Records of the entity obtained in an action under RCW 18.71.300 through 18.71.340;

(f) Except for published statistical compilations and reports relating to the infant mortality review studies that do not identify individual cases and sources of information, 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 of health under RCW 70.05.170;

(g) Complaints filed under chapter 18.130 RCW after July 27, 1997, to the extent provided in RCW 18.130.095(1);

(h) Information obtained by the department of health under chapter 70.225 RCW; and

(i) Information collected by the department of health under chapter 70.245 RCW except as provided in RCW 70.245.150.

(2) Chapter 70.02 RCW applies to public inspection and copying of health care information of patients. [2009 c 1 § 24 (Initiative Measure No. 1000, approved November 4, 2008); (2009 c 1 § 23 (Initiative Measure No. 1000, approved November 4, 2008) expired July 1, 2009); 2008 c 136 § 5; (2008 c 136 § 4 expired July 1, 2009). Prior: 2007 c 273 § 25; 2007 c 261 § 4; 2007 c 259 § 49; prior: 2006 c 209 § 9; 2006 c 8 § 112; 2005 c 274 § 416.]

**Reviser's note:** This section was amended by 2009 c 1 § 24 without cognizance of its amendment by 2008 c 136 § 5. 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).

**Expiration date—2009 c 1 § 23 (Initiative Measure No. 1000):** "Section 23 of this act expires July 1, 2009." [2009 c 1 § 31 (Initiative Measure No. 1000, approved November 4, 2008).]

**Short title—Severability—Effective dates—Captions, part headings, and subpart headings not law—2009 c 1 (Initiative Measure No. 1000):** See RCW 70.245.901 through 70.245.904.

**Effective date—2008 c 136 § 5:** "Section 5 of this act takes effect July 1, 2009." [2008 c 136 § 7.]

**Expiration date—2008 c 136 § 4:** "Section 4 of this act expires July 1, 2009." [2008 c 136 § 6.]

**Effective date—Implementation—2007 c 273:** See RCW 70.230.900 and 70.230.901.

**Findings—2007 c 261:** See note following RCW 43.70.056.

**Severability—Subheadings not law—2007 c 259:** See notes following RCW 41.05.033.

**Effective date—2006 c 8 §§ 112 and 210:** "Sections 112 and 210 of this act take effect July 1, 2006." [2006 c 8 § 405.]

**Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8:** See notes following RCW 5.64.010.

*Basic health plan—Confidentiality: RCW 70.47.150.*

**42.56.380 Agriculture and livestock.** The following information relating to agriculture and livestock is exempt from disclosure under this chapter:

- (1) Business-related information under RCW 15.86.110;
- (2) Information provided under RCW 15.54.362;
- (3) Production or sales records required to determine assessment levels and actual assessment payments to commodity boards and commissions formed under chapters 15.24, 15.26, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, and 16.67 RCW or required by the department of agriculture to administer these chapters or the department's programs;
- (4) 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;
- (5) Financial and commercial information and records supplied by persons (a) to the department of agriculture for the purpose of conducting a referendum for the potential establishment of a commodity board or commission; or (b) to the department of agriculture or commodity boards or commissions formed under chapter 15.24, 15.28, 15.44, 15.65, 15.66, 15.74, 15.88, 15.115, 15.100, 15.89, or 16.67 RCW with respect to domestic or export marketing activities or individual producer's production information;

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(6) Except under RCW 15.19.080, information obtained regarding the purchases, sales, or production of an individual American ginseng grower or dealer;

(7) Information that can be identified to a particular business and that is collected under RCW 15.17.140(2) and 15.17.143 for certificates of compliance;

(8) Financial statements provided under RCW 16.65.030(1)(d);

(9) Information submitted by an individual or business for the purpose of participating in a state or national animal identification system. Disclosure to local, state, and federal officials is not public disclosure. This exemption does not affect the disclosure of information used in reportable animal health investigations under chapter 16.36 RCW once they are complete; and

(10) Results of testing for animal diseases not required to be reported under chapter 16.36 RCW that is done at the request of the animal owner or his or her designee that can be identified to a particular business or individual. [2009 c 33 § 37; 2007 c 177 § 1. Prior: 2006 c 330 § 26; 2006 c 75 § 3; 2005 c 274 § 418.]

**Effective date—2006 c 330 § 26:** "Section 26 of this act takes effect July 1, 2006." [2006 c 330 § 32.]

**Construction—Severability—2006 c 330:** See RCW 15.89.900 and 15.89.901.

**Effective date—2006 c 75 § 3:** "Section 3 of this act takes effect July 1, 2006." [2006 c 75 § 5.]

**Findings—2006 c 75:** "The legislature finds that livestock identification numbers, premise information, and animal movement data are proprietary information that all have a role in defining a livestock producer's position within the marketplace, including his or her competitive advantage over other producers. The legislature therefore finds that exempting certain voluntary livestock identification, premise, and movement information from state public disclosure requirements will foster an environment that is more conducive to voluntary participation, and lead to a more effective livestock identification system." [2006 c 75 § 1.]

**42.56.400 Insurance and financial institutions.** The following information relating to insurance and financial institutions is exempt from disclosure under this chapter:

- (1) 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;
- (2) Information obtained and exempted or withheld from public inspection by the health care authority under RCW 41.05.026, whether retained by the authority, transferred to another state purchased health care program by the authority, or transferred by the authority to a technical review committee created to facilitate the development, acquisition, or implementation of state purchased health care under chapter 41.05 RCW;
- (3) The names and individual identification data of either all owners or all insureds, or both, received by the insurance commissioner under chapter 48.102 RCW;
- (4) Information provided under RCW 48.30A.045 through 48.30A.060;
- (5) 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;
- (6) 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, all of which is confidential and privileged information;

(7) Information provided to the insurance commissioner under RCW 48.110.040(3);

(8) Documents, materials, or information obtained by the insurance commissioner under RCW 48.02.065, all of which are confidential and privileged;

(9) Confidential proprietary and trade secret information provided to the commissioner under RCW 48.31C.020 through 48.31C.050 and 48.31C.070;

(10) Data filed under RCW 48.140.020, 48.140.030, 48.140.050, and 7.70.140 that, alone or in combination with any other data, may reveal the identity of a claimant, health care provider, health care facility, insuring entity, or self-insurer involved in a particular claim or a collection of claims. For the purposes of this subsection:

(a) "Claimant" has the same meaning as in RCW 48.140.010(2).

(b) "Health care facility" has the same meaning as in RCW 48.140.010(6).

(c) "Health care provider" has the same meaning as in RCW 48.140.010(7).

(d) "Insuring entity" has the same meaning as in RCW 48.140.010(8).

(e) "Self-insurer" has the same meaning as in RCW 48.140.010(11);

(11) Documents, materials, or information obtained by the insurance commissioner under RCW 48.135.060;

(12) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.060;

(13) Confidential and privileged documents obtained or produced by the insurance commissioner and identified in RCW 48.37.080;

(14) Documents, materials, or information obtained by the insurance commissioner under RCW 48.37.140;

(15) Documents, materials, or information obtained by the insurance commissioner under RCW 48.17.595; and

(16) Documents, materials, or information obtained by the insurance commissioner under RCW 48.102.051(1) and 48.102.140 (3) and (7)(a)(ii). [2009 c 104 § 23. Prior: 2007 c 197 § 7; 2007 c 117 § 36; 2007 c 82 § 17; prior: 2006 c 284 § 17; 2006 c 8 § 210; 2005 c 274 § 420.]

**Severability—Effective date—2007 c 117:** See RCW 48.17.900 and 48.17.901.

**Severability—Effective date—2006 c 284:** See RCW 48.135.900 and 48.135.901.

**Effective date—2006 c 8 §§ 112 and 210:** See note following RCW 42.56.360.

**Findings—Intent—Part headings and subheadings not law—Severability—2006 c 8:** See notes following RCW 5.64.010.

**42.56.420 Security.** The following information relating to security is exempt from disclosure under this chapter:

(1) Those portions of records assembled, prepared, or maintained to prevent, mitigate, or respond to criminal terrorist acts, which are acts that significantly disrupt the conduct of government or of the general civilian population of the

state or the United States and that manifest an extreme indifference to human life, the public disclosure of which would have a substantial likelihood of threatening public safety, consisting of:

(a) Specific and unique vulnerability assessments or specific and unique response or deployment plans, including compiled underlying data collected in preparation of or essential to the assessments, or to the response or deployment plans; and

(b) Records not subject to public disclosure under federal law that are shared by federal or international agencies, and information prepared from national security briefings provided to state or local government officials related to domestic preparedness for acts of terrorism;

(2) Those portions of records containing specific and unique vulnerability assessments or specific and unique emergency and escape response plans at a city, county, or state adult or juvenile correctional facility, or secure facility for persons civilly confined under chapter 71.09 RCW, the public disclosure of which would have a substantial likelihood of threatening the security of a city, county, or state adult or juvenile correctional facility, secure facility for persons civilly confined under chapter 71.09 RCW, or any individual's safety;

(3) Information compiled by school districts or schools in the development of their comprehensive safe school plans under RCW 28A.320.125, to the extent that they identify specific vulnerabilities of school districts and each individual school;

(4) Information regarding the infrastructure and security of computer and telecommunications networks, consisting of security passwords, security access codes and programs, access codes for secure software applications, security and service recovery plans, security risk assessments, and security test results to the extent that they identify specific system vulnerabilities; and

(5) The \*security section of transportation system safety and security program plans required under RCW 35.21.228, 35A.21.300, 36.01.210, 36.57.120, 36.57A.170, and 81.112.180. [2009 c 67 § 1; 2005 c 274 § 422.]

**\*Reviser's note:** "Security section of transportation system safety and security program plans" was changed to "system security and emergency preparedness plan" by chapter 422, Laws of 2007.

**42.56.565 Inspection or copying by persons serving criminal sentences—Injunction.** (1) The inspection or copying of any nonexempt public record by persons serving criminal sentences in state, local, or privately operated correctional facilities may be enjoined pursuant to this section.

(a) The injunction may be requested by: (i) An agency or its representative; (ii) a person named in the record or his or her representative; or (iii) a person to whom the requests specifically pertains or his or her representative.

(b) The request must be filed in: (i) The superior court in which the movant resides; or (ii) the superior court in the county in which the record is maintained.

(c) In order to issue an injunction, the court must find that:

(i) The request was made to harass or intimidate the agency or its employees;

- (ii) Fulfilling the request would likely threaten the security of correctional facilities;
  - (iii) Fulfilling the request would likely threaten the safety or security of staff, inmates, family members of staff, family members of other inmates, or any other person; or
  - (iv) Fulfilling the request may assist criminal activity.
- (2) In deciding whether to enjoin a request under subsection (1) of this section, the court may consider all relevant factors including, but not limited to:
- (a) Other requests by the requestor;
  - (b) The type of record or records sought;
  - (c) Statements offered by the requestor concerning the purpose for the request;
  - (d) Whether disclosure of the requested records would likely harm any person or vital government interest;
  - (e) Whether the request seeks a significant and burdensome number of documents;
  - (f) The impact of disclosure on correctional facility security and order, the safety or security of correctional facility staff, inmates, or others; and
  - (g) The deterrence of criminal activity.
- (3) The motion proceeding described in this section shall be a summary proceeding based on affidavits or declarations, unless the court orders otherwise. Upon a showing by a preponderance of the evidence, the court may enjoin all or any part of a request or requests. Based on the evidence, the court may also enjoin, for a period of time the court deems reasonable, future requests by:
- (a) The same requestor; or
  - (b) An entity owned or controlled in whole or in part by the same requestor.

(4) An agency shall not be liable for penalties under RCW 42.56.550(4) for any period during which an order under this section is in effect, including during an appeal of an order under this section, regardless of the outcome of the appeal. [2009 c 10 § 1.]

**Effective date—2009 c 10:** "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 20, 2009]." [2009 c 10 § 2.]

**Title 43**

**STATE GOVERNMENT—EXECUTIVE**

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- 43.01 State officers—General provisions.
- 43.03 Salaries and expenses.
- 43.06 Governor.
- 43.06A Office of the family and children’s ombudsman.
- 43.07 Secretary of state.
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- 43.99H Financing for appropriations—1989-1991 biennium.
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- 43.160 Economic development—Public facilities loans and grants.
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- 43.336 Washington tourism commission.
- 43.338 Washington manufacturing innovation and modernization extension service program.
- 43.360 Washington main street program.
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- 43.365 Motion picture competitiveness program.
- 43.370 Statewide health resources strategy.

### Chapter 43.01 RCW

#### STATE OFFICERS—GENERAL PROVISIONS

##### Sections

- 43.01.036 Reports—Electronic format—Online access.
- 43.01.040 Vacations—Computation and accrual—Transfer—Statement of necessity required for extension of unused leave.
- 43.01.050 Daily remittance of moneys to treasury—Undistributed receipts account—Use.
- 43.01.070 Daily remittance of moneys to treasury—Liability of officers for noncompliance.

**43.01.036 Reports—Electronic format—Online access.** (1)(a) All reports required to be submitted to the legislature shall be provided only in an electronic format. Reports must be submitted electronically to the chief clerk of the house of representatives and the secretary of the senate. The chief clerk of the house of representatives and the secretary of the senate shall provide an online site for reports submitted to the legislature on the legislative internet home page. The reports shall be organized in such a way as to make the reports easy to find and accessible by legislators, staff, and the public.

(b) Upon electronic submittal of the required report to the chief clerk of the house of representatives and the secretary of the senate, the agency shall send a letter, also by electronic means, to the appropriate legislative committee that the report has been filed. The letter may include a brief summary of the report. The public entity submitting the report may make hard copies available by request.

(2)(a) All annual and biennial reports to the governor shall be provided only in an electronic format. The reports

shall be organized in such a way as to make the reports easy to find and accessible by the public.

(b) Upon electronic submittal of the required report to the governor's office, the agency shall send a letter, also by electronic means, that the report has been filed. The letter may include a brief summary of the report. The entity submitting the report may make hard copies available by request. [2009 c 518 § 24.]

**43.01.040 Vacations—Computation and accrual—Transfer—Statement of necessity required for extension of unused leave.** Each subordinate officer and employee of the several offices, departments, and institutions of the state government shall be entitled under their contract of employment with the state government to not less than one working day of vacation leave with full pay for each month of employment if said employment is continuous for six months.

Each such subordinate officer and employee shall be entitled under such contract of employment to not less than one additional working day of vacation with full pay each year for satisfactorily completing the first two, three and five continuous years of employment respectively.

Such part time officers or employees of the state government who are employed on a regular schedule of duration of not less than one year shall be entitled under their contract of employment to that fractional part of the vacation leave that the total number of hours of such employment bears to the total number of hours of full time employment.

Each subordinate officer and employee of the several offices, departments and institutions of the state government shall be entitled under his or her contract of employment with the state government to accrue unused vacation leave not to exceed thirty working days. Officers and employees transferring within the several offices, departments and institutions of the state government shall be entitled to transfer such accrued vacation leave to each succeeding state office, department or institution. All vacation leave shall be taken at the time convenient to the employing office, department or institution: PROVIDED, That if a subordinate officer's or employee's request for vacation leave is deferred by reason of the convenience of the employing office, department or institution, and a statement of the necessity therefor is filed by such employing office, department or institution with the appropriate personnel board or other state agency or officer, then the aforesaid maximum thirty working days of accrued unused vacation leave shall be extended for each month said leave is so deferred. [2009 c 549 § 5001; 1984 c 184 § 19; 1982 1st ex.s. c 51 § 2; 1965 ex.s. c 13 § 1; 1965 c 8 § 43.01.040. Prior: 1955 c 140 § 1; 1921 c 7 § 133; RRS § 10891.]

**Severability—1984 c 184:** See note following RCW 41.50.150.

**Savings—1982 1st ex.s. c 51:** "This act shall not have the effect of terminating or modifying any rights acquired under a contract in existence prior to the effective date of this act." [1982 1st ex.s. c 51 § 4.]

**Effective date—1982 1st ex.s. c 51:** "This act shall take effect July 1, 1982." [1982 1st ex.s. c 51 § 5.]

**Severability—1982 1st ex.s. c 51:** "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 51 § 6.]

*Military leave of absence: RCW 38.40.060.*

43.01.050 Daily remittance of moneys to treasury—Undistributed receipts account—Use. Each state officer or other person, other than county treasurer, who is authorized by law to collect or receive moneys which are required by statute to be deposited in the state treasury shall transmit to the state treasurer each day, all such moneys collected by him or her on the preceding day: PROVIDED, That the state treasurer may in his or her discretion grant exceptions where such daily transfers would not be administratively practical or feasible. In the event that remittances are not accompanied by a statement designating source and fund, the state treasurer shall deposit these moneys in an account hereby created in the state treasury to be known as the undistributed receipts account. These moneys shall be retained in the account until such time as the transmitting agency provides a statement in duplicate of the source from which each item of money was derived and the fund into which it is to be transmitted. The director of financial management in accordance with RCW 43.88.160 shall promulgate regulations designed to assure orderly and efficient administration of this account. In the event moneys are deposited in this account that constitute overpayments, refunds may be made by the remitting agency without virtue of a legislative appropriation. [2009 c 549 § 5002; 1985 c 57 § 26; 1981 2nd ex.s. c 4 § 5; 1979 c 151 § 80; 1967 c 212 § 1; 1965 c 8 § 43.01.050. Prior: 1909 c 133 § 1, part; 1907 c 96 § 1, part; RRS § 5501, part.]

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

Severability—1981 2nd ex.s. c 4: See note following RCW 43.30.325.

Commissioner of public lands and department of natural resources, deposit of funds: RCW 43.30.325.

State depositories: Chapter 43.85 RCW.

43.01.070 Daily remittance of moneys to treasury—Liability of officers for noncompliance. If any officer fails to comply with the provisions of RCW 43.01.050, he or she shall be liable to the state upon his or her official bond in a sum equal to ten percent annual interest on the funds for such time as he or she retained them. [2009 c 549 § 5003; 1965 c 8 § 43.01.070. Prior: 1907 c 96 § 3; RRS § 5503.]

Chapter 43.03 RCW
SALARIES AND EXPENSES

Sections

- 43.03.011 Salaries of state elected officials of the executive branch.
43.03.012 Salaries of judges.
43.03.013 Salaries of members of the legislature.
43.03.015 Emoluments of office for appointees to office of state legislator.
43.03.020 Expenses of lieutenant governor acting as governor.
43.03.030 Increase or reduction of appointees' compensation.
43.03.040 Salaries of certain directors and chief executive officers.
43.03.110 Moving expenses of employees.
43.03.120 Moving expenses of new employees.
43.03.170 Advance payment of travel expenses—Advance warrants—Issuance—Limitations.
43.03.180 Advance payment of travel expenses—Itemized travel expense voucher to be submitted—Repayment of unexpended portion of advance—Default.
43.03.200 Advance payment of travel expenses—Advances construed.
43.03.310 Duties of citizens' commission—Travel expenses—Chair—Schedule of salaries—Publication—Hearings.

43.03.011 Salaries of state elected officials of the executive branch. Pursuant to Article XXVIII, section 1 of

the state Constitution and RCW 43.03.010 and 43.03.310, the annual salaries of the state elected officials of the executive branch shall be as follows:

- (1) Effective September 1, 2008:
(a) Governor \$ 166,891
(b) Lieutenant governor \$ 93,948
(c) Secretary of state \$ 116,950
(d) Treasurer \$ 116,950
(e) Auditor \$ 116,950
(f) Attorney general \$ 151,718
(g) Superintendent of public instruction \$ 121,618
(h) Commissioner of public lands \$ 121,618
(i) Insurance commissioner \$ 116,950
(2) Effective September 1, 2009:
(a) Governor \$ 166,891
(b) Lieutenant governor \$ 93,948
(c) Secretary of state \$ 116,950
(d) Treasurer \$ 116,950
(e) Auditor \$ 116,950
(f) Attorney general \$ 151,718
(g) Superintendent of public instruction \$ 121,618
(h) Commissioner of public lands \$ 121,618
(i) Insurance commissioner \$ 116,950
(3) Effective September 1, 2010:
(a) Governor \$ 166,891
(b) Lieutenant governor \$ 93,948
(c) Secretary of state \$ 116,950
(d) Treasurer \$ 116,950
(e) Auditor \$ 116,950
(f) Attorney general \$ 151,718
(g) Superintendent of public instruction \$ 121,618
(h) Commissioner of public lands \$ 121,618
(i) Insurance commissioner \$ 116,950

(4) The lieutenant governor shall receive the fixed amount of his or her salary plus 1/260th of the difference between his or her salary and that of the governor for each day that the lieutenant governor is called upon to perform the duties of the governor by reason of the absence from the state, removal, resignation, death, or disability of the governor. [2009 c 581 § 1; 2009 c 549 § 5004; 2007 c 524 § 1; 2005 c 519 § 1; 2003 1st sp.s. c 1 § 1; 2001 1st sp.s. c 3 § 1; 1999 sp.s. c 3 § 1; 1997 c 458 § 1; 1995 2nd sp.s. c 1 § 1; 1993 sp.s. c 26 § 1; 1991 sp.s. c 1 § 1; 1989 2nd ex.s. c 4 § 1; 1987 1st ex.s. c 1 § 1, part.]

43.03.012 Salaries of judges. Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 2.04.092, 2.06.062, 2.08.092, 3.58.010, and 43.03.310, the annual salaries of the judges of the state shall be as follows:

- (1) Effective September 1, 2008:
(a) Justices of the supreme court \$ 164,221
(b) Judges of the court of appeals \$ 156,328
(c) Judges of the superior court \$ 148,832
(d) Full-time judges of the district court \$ 141,710
(2) Effective September 1, 2009:
(a) Justices of the supreme court \$ 164,221
(b) Judges of the court of appeals \$ 156,328
(c) Judges of the superior court \$ 148,832
(d) Full-time judges of the district court \$ 141,710
(3) Effective September 1, 2010:
(a) Justices of the supreme court \$ 164,221



(b) Judges of the court of appeals . . . . . \$ 156,328  
 (c) Judges of the superior court . . . . . \$ 148,832  
 (d) Full-time judges of the district court . . . . \$ 141,710  
 (4) The salary for a part-time district court judge shall be the proportion of full-time work for which the position is authorized, multiplied by the salary for a full-time district court judge. [2009 c 581 § 2; 2007 c 524 § 2; 2005 c 519 § 2; 2003 1st sp.s. c 1 § 2; 2001 1st sp.s. c 3 § 2; 1999 sp.s. c 3 § 2; 1997 c 458 § 2; 1995 2nd sp.s. c 1 § 2; 1993 sp.s. c 26 § 2; 1991 sp.s. c 1 § 2; 1989 2nd ex.s. c 4 § 2; 1987 1st ex.s. c 1 § 1, part.]

**43.03.013 Salaries of members of the legislature.** Pursuant to Article XXVIII, section 1 of the state Constitution and RCW 43.03.010 and 43.03.310, the annual salary of members of the legislature shall be:

(1) Effective September 1, 2008:	
(a) Legislators . . . . .	\$ 42,106
(b) Speaker of the house . . . . .	\$ 50,106
(c) Senate majority leader . . . . .	\$ 50,106
(d) House minority leader . . . . .	\$ 46,106
(e) Senate minority leader . . . . .	\$ 46,106
(2) Effective September 1, 2009:	
(a) Legislators . . . . .	\$ 42,106
(b) Speaker of the house . . . . .	\$ 50,106
(c) Senate majority leader . . . . .	\$ 50,106
(d) House minority leader . . . . .	\$ 46,106
(e) Senate minority leader . . . . .	\$ 46,106
(3) Effective September 1, 2010:	
(a) Legislators . . . . .	\$ 42,106
(b) Speaker of the house . . . . .	\$ 50,106
(c) Senate majority leader . . . . .	\$ 50,106
(d) House minority leader . . . . .	\$ 46,106
(e) Senate minority leader . . . . .	\$ 46,106

[2009 c 581 § 3; 2007 c 524 § 3; 2005 c 519 § 3; 2003 1st sp.s. c 1 § 3; 2001 1st sp.s. c 3 § 3; 1999 sp.s. c 3 § 3; 1997 c 458 § 3; 1995 2nd sp.s. c 1 § 3; 1993 sp.s. c 26 § 3; 1991 sp.s. c 1 § 3; 1989 2nd ex.s. c 4 § 3; 1987 1st ex.s. c 1 § 1, part.]

**43.03.015 Emoluments of office for appointees to office of state legislator.** Any person appointed to fill a vacancy that may occur in either the senate or house of representatives of the state legislature, prior to his or her qualification at the next succeeding regular or special session of the legislature shall be entitled to the same emoluments of office as the duly elected member whom he or she succeeded. [2009 c 549 § 5005; 1967 ex.s. c 100 § 2.]

*Eligibility of member of legislature to appointment or election to office of official whose salary was increased during legislator's term: RCW 3.58.010.*

**43.03.020 Expenses of lieutenant governor acting as governor.** Whenever by reason of the absence from the state or the disability of the governor, the lieutenant governor is called upon temporarily to perform the duties of the office of governor, he or she shall be paid upon his or her personal voucher therefor the sum of ten dollars per day for expenses. [2009 c 549 § 5006; 1965 c 8 § 43.03.020. Prior: 1919 c 118 § 1; RRS § 10979.]

**43.03.030 Increase or reduction of appointees' compensation.** (1) Wherever the compensation of any appointive state officer or employee is fixed by statute, it may be hereafter increased or decreased in the manner provided by law for the fixing of compensation of other appointive state officers or employees; but this subsection shall not apply to the heads of state departments.

(2) Wherever the compensation of any state officer appointed by the governor, or of any employee in any office or department under the control of any such officer, is fixed by statute, such compensation may hereafter, from time to time, be changed by the governor, and he or she shall have power to fix such compensation at any amount not to exceed the amount fixed by statute.

(3) For the twelve months following February 18, 2009, a salary or wage increase shall not be granted to any position under this section. [2009 c 549 § 5007; 2009 c 5 § 4; 1965 c 8 § 43.03.030. Prior: (i) 1921 c 49 § 1; RRS § 10896. (ii) 1933 c 47 § 1; RRS § 10976-1.]

**Effective date—2009 c 5:** See note following RCW 41.06.070.

**43.03.040 Salaries of certain directors and chief executive officers.** The directors of the several departments and members of the several boards and commissions, whose salaries are fixed by the governor and the chief executive officers of the agencies named in RCW 43.03.028(2) as now or hereafter amended shall each severally receive such salaries, payable in monthly installments, as shall be fixed by the governor or the appropriate salary fixing authority, in an amount not to exceed the recommendations of the committee on agency officials' salaries. For the twelve months following February 18, 2009, a salary or wage increase shall not be granted to any position under this section. [2009 c 5 § 5; 1993 sp.s. c 24 § 914; 1986 c 155 § 12; 1977 ex.s. c 127 § 2; 1970 ex.s. c 43 § 3; 1965 c 8 § 43.03.040. Prior: 1961 c 307 § 2; 1955 c 340 § 2; 1949 c 111 § 1; 1937 c 224 § 1; Rem. Supp. 1949 § 10776-1.]

**Effective date—2009 c 5:** See note following RCW 41.06.070.

**Severability—Effective dates—1993 sp.s. c 24:** See notes following RCW 28A.310.020.

**Contingent effective date—Severability—1986 c 155:** See notes following RCW 43.03.300.

**Severability—1970 ex.s. c 43:** See note following RCW 43.03.027.

**43.03.110 Moving expenses of employees.** Whenever it is reasonably necessary to the successful performance of the required duty of a state office, commission, department or institution to transfer a deputy or other employee from one station to another within the state, thereby necessitating a change of such deputy's or employee's domicile, it shall be lawful for such office, commission, department or institution to move such deputy's or employee's household goods and effects to the new station at the expense of the state, or to defray the actual cost of such removal by common carrier, or otherwise, at the expense of the state, in which latter event reimbursement to the deputy or employee shall be upon voucher submitted by him or her and approved by the department head. [2009 c 549 § 5008; 1967 ex.s. c 16 § 1; 1965 c 8 § 43.03.110. Prior: 1943 c 128 § 1; Rem. Supp. 1943 § 9948-1.]

**43.03.120 Moving expenses of new employees.** Any state office, commission, department or institution may also pay the moving expenses of a new employee, necessitated by his or her acceptance of state employment, pursuant to mutual agreement with such employee in advance of his or her employment: PROVIDED, That if such employee is in the classified service as defined in chapter 41.06 RCW, that said employee has been duly certified from an eligible register. No such offer or agreement for such payment shall be made to a prospective member of the classified service, prior to such certification, except through appropriate public announcement by the department of personnel, or other corresponding personnel agency as provided by chapter 41.06 RCW. Payment for all expenses authorized by RCW 43.03.060, 43.03.110 through 43.03.210 including moving expenses of new employees, exempt or classified, and others, shall be subject to reasonable regulations promulgated by the director of financial management, including regulations defining allowable moving costs: PROVIDED, That, if the new employee terminates or causes termination of his or her employment with the state within one year of the date of employment, the state shall be entitled to reimbursement for the moving costs which have been paid and may withhold such sum as necessary therefor from any amounts due the employee. [2009 c 549 § 5009; 1979 c 151 § 86; 1967 ex.s. c 16 § 2.]

**43.03.170 Advance payment of travel expenses—Advance warrants—Issuance—Limitations.** The head of any state department may issue an advance warrant on the request of any officer or employee for the purpose of defraying his or her anticipated reimbursable expenses while traveling on business of such state department away from his or her designated post of duty, except expenses in connection with the use of a personal automobile. The amount of such advance shall not exceed the amount of such reasonably anticipated expenses of the officer or employee to be necessarily incurred in the course of such business of the state for a period of not to exceed ninety days. Department heads shall establish written policies prescribing a reasonable amount for which such warrants may be written. [2009 c 549 § 5010; 1979 ex.s. c 71 § 1; 1967 ex.s. c 16 § 8.]

**43.03.180 Advance payment of travel expenses—Itemized travel expense voucher to be submitted—Repayment of unexpended portion of advance—Default.** On or before the tenth day following each month in which such advance was furnished to the officer or employee, he or she shall submit to the head of his or her department a fully itemized travel expense voucher fully justifying the expenditure of such advance or whatever part thereof has been expended, for legally reimbursable items on behalf of the state. Any unexpended portion of such advance shall be returned to the agency at the close of the authorized travel period. Payment shall accompany such itemized voucher at the close of the travel period; and may be made by check or similar instrument payable to the department. Any default in accounting for or repaying an advance shall render the full amount which is unpaid immediately due and payable with interest at the rate of ten percent per annum from the date of default until paid. [2009 c 549 § 5011; 1967 ex.s. c 16 § 9.]

[2009 RCW Supp—page 762]

**43.03.200 Advance payment of travel expenses—Advances construed.** An advance made under RCW 43.03.150 through 43.03.210 shall be considered as having been made to such officer or employee to be expended by him or her as an agent of the state for state purposes only, and specifically to defray necessary costs while performing his or her official duties. No such advance shall be considered for any purpose as a loan to such officer or employee, and any unauthorized expenditure of such funds shall be considered a misappropriation of state funds by a custodian of such funds. [2009 c 549 § 5012; 1967 ex.s. c 16 § 11.]

**43.03.310 Duties of citizens' commission—Travel expenses—Chair—Schedule of salaries—Publication—Hearings.** (1) The citizens' commission on salaries for elected officials shall study the relationship of salaries to the duties of members of the legislature, all elected officials of the executive branch of state government, and all judges of the supreme court, court of appeals, superior courts, and district courts, and shall fix the salary for each respective position.

(2) Except as provided otherwise in RCW 43.03.305 and this section, the commission shall be solely responsible for its own organization, operation, and action and shall enjoy the fullest cooperation of all state officials, departments, and agencies.

(3) Members of the commission shall receive no compensation for their services, but shall be eligible to receive a subsistence allowance and travel expenses pursuant to RCW 43.03.050 and 43.03.060.

(4) The members of the commission shall elect a chair from among their number. The commission shall set a schedule of salaries by an affirmative vote of not less than nine members of the commission.

(5) The commission shall file its initial schedule of salaries for the elected officials with the secretary of state no later than the first Monday in June, 1987, and shall file a schedule biennially thereafter. Each such schedule shall be filed in legislative bill form, shall be assigned a chapter number and published with the session laws of the legislature, and shall be codified by the statute law committee. The signature of the chair of the commission shall be affixed to each schedule submitted to the secretary of state. The chair shall certify that the schedule has been adopted in accordance with the provisions of state law and with the rules, if any, of the commission. Such schedules shall become effective ninety days after the filing thereof, except as provided in Article XXVIII, section 1 of the state Constitution. State laws regarding referendum petitions shall apply to such schedules to the extent consistent with Article XXVIII, section 1 of the state Constitution.

(6) Before the filing of any salary schedule, the commission shall first develop a proposed salary schedule and then hold no fewer than four regular meetings as defined by chapter 42.30 RCW to take public testimony on the proposed schedule within the four months immediately preceding the filing. In the 2009-2011 fiscal biennium, the commission shall hold no more than two regular meetings as defined by chapter 42.30 RCW to take public testimony on the proposed schedule within the four months immediately preceding the filing. At the last public hearing that is held as a regular

meeting on the proposed schedule, the commission shall adopt the salary schedule as originally proposed or as amended at that meeting that will be filed with the secretary of state.

(7) All meetings, actions, hearings, and business of the commission shall be subject in full to the open public meetings act, chapter 42.30 RCW.

(8) Salaries of the officials referred to in subsection (1) of this section that are in effect on January 12, 1987, shall continue until modified by the commission under this section. [2009 c 564 § 925; 1998 c 164 § 1; 1995 c 3 § 2; 1986 c 155 § 3.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Effective date—1995 c 3:** See note following RCW 43.03.305.

**Contingent effective date—Severability—1986 c 155:** See notes following RCW 43.03.300.

## Chapter 43.06 RCW GOVERNOR

### Sections

43.06.020	Records to be kept.
43.06.040	Lieutenant governor acts in governor's absence.
43.06.050	Powers and duties of acting governor.
43.06.055	Governor-elect—Appropriation to provide office and staff.
43.06.070	Removal of appointive officers.
43.06.080	Removal of appointive officers—Statement of reasons to be filed.
43.06.090	Removal of appointive officers—Filling of vacancy.
43.06.110	Economic opportunity act programs—State participation—Authority of governor.
43.06.120	Federal funds and programs—Acceptance of funds by governor authorized—Administration and disbursement.
43.06.155	Health care reform deliberations—Principles—Policies.
43.06.200	Definitions.
43.06.270	State of emergency—State militia or state patrol—Use in restoring order.

*Child welfare services, duty to determine whether to expand delivery by contractors: RCW 74.13.372.*

**43.06.020 Records to be kept.** The governor must cause to be kept the following records:

First, a register of all pardons, commutations, executive paroles, final discharges, and restorations of citizenship made by him or her;

Second, an account of all his or her disbursements of state moneys, and of all rewards offered by him or her for the apprehension of criminals and persons charged with crime;

Third, a register of all appointments made by him or her with date of commission, name of appointee and name of predecessor, if any. [2009 c 549 § 5013; 1965 c 8 § 43.06.020. Prior: 1921 c 28 § 1; 1890 p 628 § 2; RRS § 10983.]

**43.06.040 Lieutenant governor acts in governor's absence.** If the governor absents himself or herself from the state, he or she shall, prior to his or her departure, notify the lieutenant governor of his or her proposed absence, and during such absence the lieutenant governor shall perform all the duties of the governor. [2009 c 549 § 5014; 1965 c 8 § 43.06.040. Prior: 1890 p 629 § 6; RRS § 10985.]

*Duties of lieutenant governor: State Constitution Art. 3 § 16.*

**43.06.050 Powers and duties of acting governor.** Every provision of law in relation to the powers and duties of

the governor, and in relation to acts and duties to be performed by others towards him or her, extends to the person performing for the time being the duties of governor. [2009 c 549 § 5015; 1965 c 8 § 43.06.050. Prior: 1890 p 629 § 4; RRS § 10986.]

**43.06.055 Governor-elect—Appropriation to provide office and staff.** The legislature preceding the gubernatorial election shall make an appropriation which may only be expended by a newly elected governor other than the incumbent for the purpose of providing office and staff for the governor-elect preparatory to his or her assumption of duties as governor. The funds for the appropriation shall be made available to him or her not later than thirty days prior to the date when the legislature will convene. [2009 c 549 § 5016; 1969 ex.s. c 88 § 1.]

**43.06.070 Removal of appointive officers.** The governor may remove from office any state officer appointed by him or her not liable to impeachment, for incompetency, misconduct, or malfeasance in office. [2009 c 549 § 5017; 1965 c 8 § 43.06.070. Prior: 1893 c 101 § 1; RRS § 10988.]

**43.06.080 Removal of appointive officers—Statement of reasons to be filed.** Whenever the governor is satisfied that any officer not liable to impeachment has been guilty of misconduct, or malfeasance in office, or is incompetent, he or she shall file with the secretary of state a statement showing his or her reasons, with his or her order of removal, and the secretary of state shall forthwith send a certified copy of such order of removal and statement of causes by registered mail to the last known post office address of the officer in question. [2009 c 549 § 5018; 1965 c 8 § 43.06.080. Prior: 1893 c 101 § 2; RRS § 10989.]

**43.06.090 Removal of appointive officers—Filling of vacancy.** At the time of making any removal from office, the governor shall appoint some proper person to fill the office, who shall forthwith demand and receive from the officer removed the papers, records, and property of the state pertaining to the office, and shall perform the duties of the office and receive the compensation thereof until his or her successor is appointed. [2009 c 549 § 5019; 1965 c 8 § 43.06.090. Prior: 1893 c 101 § 3; RRS § 10990.]

**43.06.110 Economic opportunity act programs—State participation—Authority of governor.** The governor, or his or her designee, is hereby authorized and empowered to undertake such programs as will, in the judgment of the governor, or his or her designee, enable families and individuals of all ages, in rural and urban areas, in need of the skills, knowledge, motivations, and opportunities to become economically self-sufficient to obtain and secure such skills, knowledge, motivations, and opportunities. Such programs may be engaged in as solely state operations, or in conjunction or cooperation with any appropriate agency of the federal government, any branch or agency of the government of this state, any city or town, county, municipal corporation, metropolitan municipal corporation or other political subdivision of the state, or any private corporation. Where compliance

with the provisions of federal law or rules or regulations promulgated thereunder is a necessary condition to the receipt of federal funds by the state, the governor or his or her designee, is hereby authorized to comply with such laws, rules or regulations to the extent necessary for the state to cooperate most fully with the federal government in furtherance of the programs herein authorized. [2009 c 549 § 5020; 1971 ex.s. c 177 § 2; 1965 c 14 § 2.]

*County participation in Economic Opportunity Act programs: RCW 36.32.410.*

**43.06.120 Federal funds and programs—Acceptance of funds by governor authorized—Administration and disbursement.** The governor is authorized to accept on behalf of the state of Washington funds provided by any act of congress for the benefit of the state or its political subdivisions. He or she is further authorized to administer and disburse such funds, or to designate an agency to administer and disburse them, until the legislature otherwise directs. [2009 c 549 § 5021; 1967 ex.s. c 41 § 1.]

**43.06.155 Health care reform deliberations—Principles—Policies.** (1) The following principles shall provide guidance to the state of Washington in its health care reform deliberations:

(a) **Guarantee choice.** Provide the people of Washington state with a choice of health plans and physicians, including health plans offered through the private insurance market and public programs, for those who meet eligibility standards. People will be allowed to keep their own doctor and their employer-based health plan.

(b) **Make health coverage affordable.** Reduce waste and fraud, high administrative costs, unnecessary tests and services, and other inefficiencies that drive up costs with no added health benefits.

(c) **Protect families' financial health.** Reduce the growing premiums and other costs that the people of Washington state pay for health care. People must be protected from bankruptcy due to catastrophic illness.

(d) **Invest in prevention and wellness.** Invest in public health measures proven to reduce cost drivers in our system, such as obesity, sedentary lifestyles, and smoking, as well as guarantee access to proven preventive treatments.

(e) **Provide portability of coverage.** People should not be locked into their job just to secure health coverage, and no American should be denied coverage because of preexisting conditions.

(f) **Aim for universality.** Building on the work of the blue ribbon commission and other state health care reform initiatives and recognizing the current economic climate, the state will partner with national health care reform efforts toward a goal of enabling all Washingtonians to have access to affordable, effective health care by 2014 as economic conditions and national reforms indicate.

(g) **Improve patient safety and quality care.** Ensure the implementation of proven patient safety measures and provide incentives for changes in the delivery system to reduce unnecessary variability in patient care. Support the widespread use of health information technology with rigorous privacy protections and the development of data on the effec-

tiveness of medical interventions to improve the quality of care delivered.

(h) **Maintain long-term fiscal sustainability.** Any reform plan must pay for itself by reducing the level of cost growth, improving productivity, dedicating additional sources of revenue, and defining the appropriate role of the private and public sectors in financing health care coverage in Washington state.

(2) Over the past twenty years, both the private and public health care sectors in the state of Washington have implemented policies that are consistent with the principles in subsection (1) of this section. Most recently, the governor's blue ribbon commission on health reform agreed to recommendations that are highly consistent with those principles. Current policies in Washington state in accord with those principles include:

(a) With respect to aiming for universality and access to a choice of affordable health care plans and health care providers:

(i) The Washington basic health plan offers affordable health coverage to low-income families and individuals in Washington state through a choice of private managed health care plans and health care providers;

(ii) Apple health for kids will achieve its dual goals that every child in Washington state have health care coverage by 2010 and that the health status of children in Washington state be improved. Only four percent of children in Washington state lack health insurance, due largely to efforts to expand coverage that began in 1993;

(iii) Through the health insurance partnership program, Washington state has designed the infrastructure for a health insurance exchange for small employers that would give employers and employees a choice of private health benefit plans and health care providers, offer portability of coverage and provide a mechanism to offer premium subsidies to low-wage employees of these employers;

(iv) Purchasers, insurance carriers, and health care providers are working together to significantly reduce health care administrative costs. These efforts have already produced efficiencies, and will continue through the activities provided in \*Second Substitute Senate Bill No. 5346, if enacted by the 2009 legislature; and

(v) Over one hundred thousand Washingtonians have enrolled in the state's discount prescription drug card program, saving consumers over six million dollars in prescription drug costs since February 2007, with an average discount of twenty-two dollars or forty-three percent of the price of each prescription filled.

(b) With respect to improving patient safety and quality of care and investing in prevention and wellness, the public and private health care sectors are engaged in numerous nationally recognized efforts:

(i) The Puget Sound health alliance is a national leader in identifying evidence-based health care practices, and reporting to the public on health care provider performance with respect to these practices. Many of these practices address disease prevention and management of chronic illness;

(ii) The Washington state health technology assessment program and prescription drug program use medical evidence and independent clinical advisors to guide the purchasing of

clinically and cost-effective health care services by state-purchased health care programs;

(iii) Washington state's health record bank pilot projects are testing a new model of patient controlled electronic health records in three geographic regions of the state. The state has also provided grants to a number of small provider practices to help them implement electronic health records;

(iv) Efforts are underway to ensure that the people of Washington state have a medical home, with primary care providers able to understand their needs, meet their care needs effectively, better manage their chronic illnesses, and coordinate their care across the health care system. These efforts include group health cooperative of Puget Sound's medical home projects, care collaboratives sponsored by the state department of health, state agency chronic care management pilot projects, development of apple health for kids health improvement measures as indicators of children having a medical home, and implementation of medical home reimbursement pilot projects under \*\*Substitute Senate Bill No. 5891, if enacted by the 2009 legislature; and

(v) Health care providers, purchasers, the state, and private quality improvement organizations are partnering to undertake numerous patient safety efforts, including hospital and ambulatory surgery center adverse events reporting, with root cause analysis to identify actions to be undertaken to prevent further adverse events; reporting of hospital acquired infections and undertaking efforts to reduce the rate of these infections; developing a surgical care outcomes assessment program that includes a presurgery checklist to reduce medical errors; and developing a patient decision aid pilot to more fully inform patients of the risks and benefits of treatment alternatives, decrease unnecessary procedures and variation in care, and provide increased legal protection to physicians whose patients use a patient decision aid to provide informed consent. [2009 c 545 § 2.]

**Reviser's note:** \*(1) Second Substitute Senate Bill No. 5346 became chapter 298, Laws of 2009.

\*\*\*(2) Substitute Senate Bill No. 5891 became chapter 305, Laws of 2009.

**Findings—2009 c 545:** "The legislature finds that the principles for health care reform articulated by the president of the United States in his proposed federal fiscal year 2010 budget to the congress of the United States provide an opportunity for the state of Washington to be both a partner with, and a model for, the federal government in its health care reform efforts. The legislature further finds that the recommendations of the 2007 blue ribbon commission on health care costs and access are consistent with these principles." [2009 c 545 § 1.]

**43.06.200 Definitions.** Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in RCW 43.06.010, and 43.06.200 through 43.06.270 each as now or hereafter amended shall have the following meaning:

"State of emergency" means an emergency proclaimed as such by the governor pursuant to RCW 43.06.010 as now or hereafter amended.

"Governor" means the governor of this state or, in case of his or her removal, death, resignation or inability to discharge the powers and duties of his or her office, then the person who may exercise the powers of governor pursuant to the Constitution and laws of this state relating to succession in office.

"Criminal offense" means any prohibited act for which any criminal penalty is imposed by law and includes any misdemeanor, gross misdemeanor, or felony. [2009 c 549 § 5022; 1977 ex.s. c 328 § 11; 1975-'76 2nd ex.s. c 108 § 26; 1969 ex.s. c 186 § 1.]

**Severability—1977 ex.s. c 328:** See note following RCW 43.21G.010.

**Severability—Effective date—1975-'76 2nd ex.s. c 108:** See notes following RCW 43.21F.010.

**Provisions cumulative—1969 ex.s. c 186:** "The provisions of this act shall be cumulative to and shall not operate to repeal any other laws, or local ordinances, except those specifically mentioned in this act." [1969 ex.s. c 186 § 10.]

**Severability—1969 ex.s. c 186:** "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 ex.s. c 186 § 11.]

*Energy supply emergencies: Chapter 43.21G RCW.*

**43.06.270 State of emergency—State militia or state patrol—Use in restoring order.** The governor may in his or her discretion order the state militia pursuant to chapter 38.08 RCW or the state patrol to assist local officials to restore order in the area described in the proclamation of a state of emergency. [2009 c 549 § 5023; 1969 ex.s. c 186 § 9.]

## Chapter 43.06A RCW

### OFFICE OF THE FAMILY AND CHILDREN'S OMBUDSMAN

#### Sections

43.06A.085 Liability for good faith performance—Privileged communications.

**43.06A.085 Liability for good faith performance—Privileged communications.** (1) An employee of the office of the family and children's ombudsman is not liable for good faith performance of responsibilities under this chapter.

(2) No discriminatory, disciplinary, or retaliatory action may be taken against an employee of the department, an employee of a contracting agency of the department, a foster parent, or a recipient of family and children's services for any communication made, or information given or disclosed, to aid the office of the family and children's ombudsman in carrying out its responsibilities, unless the communication or information is made, given, or disclosed maliciously or without good faith. This subsection is not intended to infringe on the rights of the employer to supervise, discipline, or terminate an employee for other reasons.

(3) All communications by an ombudsman, if reasonably related to the requirements of that individual's responsibilities under this chapter and done in good faith, are privileged and that privilege shall serve as a defense in any action in libel or slander. [2009 c 88 § 2; 1999 c 390 § 7.]

## Chapter 43.07 RCW

### SECRETARY OF STATE

#### Sections

43.07.010 Official bond.  
43.07.020 Assistant and deputy secretary of state.  
43.07.030 General duties.  
43.07.040 Custodian of state records.

43.07.050	Bureau of statistics—Secretary ex officio commissioner.
43.07.090	Bureau of statistics—Power to obtain statistics—Penalty.
43.07.110	Bureau of statistics—Deputy commissioner.
43.07.310	Division of elections—Duties.
43.07.370	Washington state legacy project—Gifts, grants, conveyances—Expenditures—Rules.
43.07.388	Washington state flag account.

**43.07.010 Official bond.** The secretary of state must execute an official bond to the state in the sum of ten thousand dollars, conditioned for the faithful performance of the duties of his or her office, and shall receive no pay until such bond, approved by the governor, is filed with the state auditor. [2009 c 549 § 5024; 1965 c 8 § 43.07.010. Prior: 1890 p 633 § 10; RRS § 10994.]

**43.07.020 Assistant and deputy secretary of state.** The secretary of state may have one assistant secretary of state and one deputy secretary of state each of whom shall be appointed by him or her in writing, and continue during his or her pleasure. The assistant secretary of state and deputy secretary of state shall have the power to perform any act or duty relating to the secretary of state's office, that the secretary of state has, and the secretary of state shall be responsible for the acts of said assistant and deputy. [2009 c 549 § 5025; 1965 c 8 § 43.07.020. Prior: 1947 c 107 § 1; 1903 c 75 § 1; 1890 p 633 § 12; RRS § 10995.]

**43.07.030 General duties.** The secretary of state shall:

- (1) Keep a register of and attest the official acts of the governor;
- (2) Affix the state seal, with his or her attestation, to commissions, pardons, and other public instruments to which the signature of the governor is required, and also attestations and authentications of certificates and other documents properly issued by the secretary;
- (3) Record all articles of incorporation, deeds, or other papers filed in the secretary of state's office;
- (4) Receive and file all the official bonds of officers required to be filed with the secretary of state;
- (5) Take and file in the secretary of state's office receipts for all books distributed by him or her;
- (6) Certify to the legislature the election returns for all officers required by the Constitution to be so certified, and certify to the governor the names of all other persons who have received at any election the highest number of votes for any office the incumbent of which is to be commissioned by the governor;
- (7) Furnish, on demand, to any person paying the fees therefor, a certified copy of all or any part of any law, record, or other instrument filed, deposited, or recorded in the secretary of state's office;
- (8) Present to the speaker of the house of representatives, at the beginning of each regular session of the legislature during an odd-numbered year, a full account of all purchases made and expenses incurred by the secretary of state on account of the state;
- (9) File in his or her office an impression of each and every seal in use by any state officer;
- (10) Keep a record of all fees charged or received by the secretary of state. [2009 c 549 § 5026; 1982 c 35 § 186; 1980

c 87 § 21; 1969 ex.s. c 53 § 3; 1965 c 8 § 43.07.030. Prior: 1890 p 630 § 2; RRS § 10992.]

**Intent—Severability—Effective dates—Application—1982 c 35:** See notes following RCW 43.07.160.

**43.07.040 Custodian of state records.** The secretary of state is charged with the custody:

- (1) Of all acts and resolutions passed by the legislature;
- (2) Of the journals of the legislature;
- (3) Of the seal of the state;
- (4) Of all books, records, deeds, parchments, maps, and papers required to be kept on deposit in his or her office pursuant to law;
- (5) Of the enrolled copy of the Constitution. [2009 c 549 § 5027; 1965 c 8 § 43.07.040. Prior: 1903 c 107 § 1; 1890 p 629 § 1; RRS § 10991.]

**43.07.050 Bureau of statistics—Secretary ex officio commissioner.** The secretary of state shall be ex officio commissioner of statistics. He or she shall establish within his or her office, and under his or her immediate supervision, a bureau to be known as the bureau of statistics, agriculture and immigration. [2009 c 549 § 5028; 1965 c 8 § 43.07.050. Prior: 1895 c 85 § 1; RRS § 10933.]

**43.07.090 Bureau of statistics—Power to obtain statistics—Penalty.** The commissioner shall have the power to send for persons and papers whenever in his or her opinion it is necessary, and he or she may examine witnesses under oath, being hereby qualified to administer the same in the performance of his or her duty, and the testimony so taken must be filed and preserved in his or her office. He or she shall have free access to all places and works of labor, and any principal, owner, operator, manager, or lessee of any mine, factory, workshop, warehouse, manufacturing or mercantile establishment, or any agent or employee of any such principal, owner, operator, manager, or lessee, who shall refuse to the commissioner or his or her duly authorized representative admission therein, or who shall, when requested by him or her, wilfully neglect or refuse to furnish him or her any statistics or information pertaining to his or her lawful duties which may be in the possession or under the control of said principal, owner, operator, lessee, manager, or agent thereof, shall be punished by a fine of not less than fifty nor more than two hundred dollars. [2009 c 549 § 5029; 1965 c 8 § 43.07.090. Prior: 1895 c 85 § 5; RRS § 10937.]

**43.07.110 Bureau of statistics—Deputy commissioner.** The commissioner shall appoint a deputy commissioner, who shall act in his or her absence, and the deputy shall receive the sum of twelve hundred dollars per annum to be paid by the state treasurer in the same manner as other state officers are paid; the sum allowed for deputy and other incidental expenses of the bureau shall not exceed the sum of three thousand dollars any one year. The commissioner shall have authority to employ one person to act as immigration agent, which agent shall reside in such city as said commissioner may designate, and he or she shall be provided with such literature and incidental accessories as in his or her judg-

ment may be necessary. [2009 c 549 § 5030; 1965 c 8 § 43.07.110. Prior: 1895 c 85 § 7; RRS § 10939.]

**43.07.310 Division of elections—Duties.** The secretary of state, through the division of elections, is responsible for the following duties, as prescribed by Title 29A RCW:

(1) The filing, verification of signatures, and certification of state initiative, referendum, and recall petitions;

(2) The production and distribution of a state voters' pamphlet;

(3) The examination, testing, and certification of voting equipment, voting devices, and vote-tallying systems;

(4) The administration, canvassing, and certification of the presidential primary, state primaries, and state general elections;

(5) The administration of motor voter and other voter registration and voter outreach programs;

(6) The training, testing, and certification of state and local elections personnel as established in RCW 29A.04.530;

(7) The conduct of reviews as established in RCW 29A.04.570; and

(8) Other duties that may be prescribed by the legislature. [2009 c 415 § 11; 2003 c 111 § 2303; 1992 c 163 § 2.]

**Effective date—2003 c 111:** See RCW 29A.04.903.

**43.07.370 Washington state legacy project—Gifts, grants, conveyances—Expenditures—Rules.** (1) The secretary of state may solicit and accept gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise, and sell, lease, exchange, invest, or expend these donations or the proceeds, rents, profits, and income from the donations except as limited by the donor's terms.

(2) Moneys received under this section may be used only for the following purposes:

(a) Conducting the Washington state legacy project;

(b) Archival activities;

(c) Washington state library activities;

(d) Development, construction, and operation of the Washington state heritage center; and

(e) Donation of Washington state flags.

(3)(a) Moneys received under subsection (2)(a) through (c) of this section must be deposited in the Washington state legacy project, state library, and archives account established in RCW 43.07.380.

(b) Moneys received under subsection (2)(d) of this section must be deposited in the Washington state heritage center account created in RCW 43.07.129.

(c) Moneys received under subsection (2)(e) of this section must be deposited in the Washington state flag account created in RCW 43.07.388.

(4) The secretary of state shall adopt rules to govern and protect the receipt and expenditure of the proceeds. [2009 c 71 § 1; 2008 c 222 § 12; 2007 c 523 § 3; 2003 c 164 § 1.]

**Purpose—2008 c 222:** See note following RCW 44.04.320.

**Contingency—2007 c 523:** See note following RCW 43.07.128.

**43.07.388 Washington state flag account.** The Washington state flag account is created in the custody of the state treasurer. All moneys received under RCW 43.07.370(2)(e)

must be deposited in the account. Expenditures from the account may be used only for the purpose of donating Washington state flags to Washington state military personnel. Only the secretary of state or the secretary of state's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2009 c 71 § 2.]

## Chapter 43.08 RCW STATE TREASURER

### Sections

43.08.010	General duties.
43.08.020	Residence—Bond—Oath.
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**43.08.010 General duties.** The state treasurer shall:

(1) Receive and keep all moneys of the state in the manner provided in RCW 43.88.160, as now or hereafter amended;

(2) Disburse the public moneys only upon warrants or checks drawn upon the treasurer in the manner provided by law;

(3) Account for moneys in the manner provided by law;

(4) Render accounts in the manner provided by law;

(5) Indorse on each warrant when required by law, the date of payment, the amount of the principal, and the interest due on that date;

(6) Report annually to the legislature a detailed statement of the condition of the treasury, and of its operations for the preceding fiscal year;

(7) Give information, in writing, to either house of the legislature, whenever required, upon any subject connected with the treasury, or touching any duty of his or her office;

(8) Account for and pay over all moneys on hand to his or her successor in office, and deliver all books, vouchers, and effects of office to him or her, who shall receipt therefor;

(9) Upon payment of any warrant, or check, take upon the back thereof the indorsement of the person to whom it is paid. [2009 c 549 § 5031; 1977 c 75 § 38; 1965 c 8 § 43.08.010. Prior: 1890 p 642 § 1; RRS § 11019; prior: 1886 p 134 § 2; 1871 p 77 § 2; 1864 p 52 § 3; 1854 p 413 § 3.]

*Budget and accounting system, powers and duties: RCW 43.88.160.*

**43.08.020 Residence—Bond—Oath.** The state treasurer shall reside and keep his or her office at the seat of government. Before entering upon his or her duties, he or she shall execute and deliver to the secretary of state a bond to the state in a sum of not less than five hundred thousand dollars, to be approved by the secretary of state and one of the justices of the supreme court, conditioned to pay all moneys at such times as required by law, and for the faithful performance of all duties required of him or her by law. He or she shall take an oath of office, to be indorsed on his or her commission, and file a copy thereof, together with the bond, in the office of the secretary of state. [2009 c 549 § 5032; 1972 ex.s. c 12 § 1. Prior: 1971 c 81 § 108; 1971 c 14 § 1; 1965 c 8 § 43.08.020; prior: 1890 p 642 § 2; RRS § 11022; prior: 1886 p 133 § 1; 1881 p 18 § 1; 1871 p 76 § 1; 1864 p 51 § 2; 1854 p 413 § 2.]

**43.08.030 Seal.** The treasurer shall keep a seal of office for the authentication of all papers, writings, and documents required to be certified by him or her. [2009 c 549 § 5033; 1965 c 8 § 43.08.030. Prior: 1890 p 643 § 6; RRS § 11025; prior: 1886 p 135 § 6; 1871 p 78 § 6; 1864 p 53 § 7; 1854 p 414 § 7.]

**43.08.040 Administration of oaths.** The treasurer may administer all oaths required by law in matters pertaining to the duties of his or her office. [2009 c 549 § 5034; 1965 c 8 § 43.08.040. Prior: 1890 p 643 § 5; RRS § 11024; prior: 1886 p 135 § 5; 1871 p 78 § 5; 1864 p 53 § 6; 1854 p 414 § 6.]

**43.08.050 Records and accounts—Public inspection.** All the books, papers, letters, and transactions pertaining to the office of treasurer shall be open for the inspection of a committee of the legislature to examine or settle all accounts, and to count all money; and to the inspection of the public generally during office hours; and when the successor of any treasurer is elected and qualified, the state auditor shall examine and settle all the accounts of the treasurer remaining unsettled, and give him or her a certified statement showing the balance of moneys, securities, and effects for which he or she is accountable, which have been delivered to his or her successor, and report the same to the legislature. [2009 c 549 § 5035; 1965 c 8 § 43.08.050. Prior: 1890 p 643 § 3; RRS § 11023; prior: 1886 p 134 § 3; 1864 p 53 § 4; 1854 p 414 § 4.]

*Public records, budget and accounting system: RCW 43.88.200.*

**43.08.062 Warrants—Presentation—Cancellation.** Should the payee or legal holder of any warrant drawn against the state treasury fail to present the warrant for payment within one hundred eighty days of the date of its issue or, if registered and drawing interest, within one hundred eighty days of its call, the state treasurer shall enter the same as canceled on the books of his or her office.

Should the payee or legal owner of such a canceled warrant thereafter present it for payment, the state treasurer may, upon proper showing by affidavit and the delivery of the warrant into his or her possession, issue a new warrant in lieu thereof, and the state treasurer is authorized to pay the new warrant. [2009 c 549 § 5036; 1986 c 99 § 1; 1981 c 10 § 2;

1965 c 8 § 43.08.062. Prior: 1890 p 638 § 13; RRS § 11008; prior: 1883 p 61 § 1. Formerly RCW 43.09.100.]

**43.08.066 Lost or destroyed warrants, instruments, or other evidence of indebtedness—Conditions on issuance.** Before a duplicate instrument is issued, the state treasurer or other issuing officer shall require the person making application for its issue to file in his or her office a written affidavit specifically alleging on oath that he or she is the proper owner, payee, or legal representative of such owner or payee of the original instrument, giving the date of issue, the number, amount, and for what services or claim or purpose the original instrument or series of instruments of which it is a part was issued, and that the same has been lost or destroyed, and has not been paid, or has not been received by him or her: PROVIDED, That in the event that an original and its duplicate instrument are both presented for payment as a result of forgery or fraud, the issuing officer shall be the state agency responsible for endeavoring to recover any losses suffered by the state. [2009 c 549 § 5037; 1979 ex.s. c 71 § 4; 1972 ex.s. c 74 § 1; 1971 ex.s. c 54 § 1; 1965 ex.s. c 61 § 2; 1965 c 8 § 43.08.066. Prior: 1890 p 639 § 16; RRS § 11011; prior: 1888 p 236 § 2. Formerly RCW 43.09.120.]

**43.08.068 Lost or destroyed warrants, instruments, or other evidence of indebtedness—Records to be kept—Cancellation of originals—Notice.** The state treasurer or other issuing officer 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 agency, and of the issue of any duplicate therefor; and upon the issuance of any duplicate, the officer shall enter upon his or her books the cancellation of the original instrument and immediately notify the state treasurer, the state auditor, and all trustees and paying agents authorized to redeem such instruments on behalf of the state of Washington, of such cancellation. The treasurer shall keep a similar list of all warrants, bonds or other instruments so canceled. [2009 c 549 § 5038; 1965 ex.s. c 61 § 3; 1965 c 8 § 43.08.068. Prior: 1890 p 640 § 17; RRS § 11012; prior: 1888 p 236 § 3. Formerly RCW 43.09.130.]

**43.08.070 Warrants—Indorsement—Interest—Issuance of new warrants.** Upon the presentation of any state warrant to the state treasurer, if there is not sufficient money then available in the appropriate fund with which to redeem all warrants drawn against such fund which the treasurer anticipates will be presented for payment during the current business day, he or she may endorse on the warrant, "Not paid for want of funds," with the day and date of presentation, and the warrant shall draw legal interest from and including that date until five days from and after being called for payment in accordance with RCW 43.08.080, or until paid, whichever occurs first; or, in the alternative, the treasurer may prepare and register a single new warrant, drawn against the appropriate fund, and exchange such new warrant for one or more warrants not paid for want of funds when presented for payment totaling a like amount but not exceeding one million dollars, which new warrant shall then draw legal interest from and including its date of issuance until five days from



and after being called for payment in accordance with RCW 43.08.080, or until paid, whichever occurs first. The legal rate or rates of interest on these warrants shall be established by the state treasurer in accordance with RCW 39.56.030. [2009 c 549 § 5039; 1981 c 10 § 3; 1971 ex.s. c 88 § 2; 1965 c 8 § 43.08.070. Prior: 1869 p 408 § 2; RRS § 5516.]

**Severability—1971 ex.s. c 88:** "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 88 § 6.]

**43.08.080 Call of warrants.** When the state treasurer deems that there is sufficient money in a fund to pay all or part of the registered warrants of such fund, and the warrants are not presented for payment, he or she may advertise at least once in some newspaper published at the seat of government, stating the serial number of the warrants he or she is calling and prepared to pay; and if such warrants are not presented for payment within five days from and after the date of publication of the notice, the warrants shall not then draw any further interest: PROVIDED, That when said fund has a balance in excess of three percent of the preceding monthly warrant issue of said fund, or at any time that the money in the fund exceeds the warrants outstanding, the state treasurer shall similarly advertise a call for all those registered warrants which can be fully paid out of said fund in accordance with their registration sequence. [2009 c 549 § 5040; 1971 ex.s. c 88 § 3; 1965 c 8 § 43.08.080. Prior: 1890 p 644 § 8; RRS § 5517; prior: 1886 p 135 § 9; 1871 p 79 § 9.]

**Severability—1971 ex.s. c 88:** See note following RCW 43.08.070.

**43.08.100 Fiscal agent for state—Duties of fiscal agent.** The fiscal agent of the state shall receive all moneys due the state from any other state or from the federal government, take all necessary steps for the collection thereof, and apply the same to the funds to which they belong. He or she shall collect from time to time all moneys that may accrue to the state by virtue of section 13 of the enabling act, or from any other source not otherwise provided for by law. [2009 c 549 § 5041; 1965 c 8 § 43.08.100. Prior: (i) 1891 c 138 § 2; RRS § 5485. (ii) 1891 c 138 § 4; RRS § 5487.]

**43.08.120 Assistant—Deputies—Responsibility for acts.** The state treasurer may appoint an assistant state treasurer, who shall have the power to perform any act or duty which may be performed by the state treasurer, and in case of a vacancy in the office of state treasurer, perform the duties of the office until the vacancy is filled as provided by law.

The state treasurer may appoint no more than three deputy state treasurers, who shall have the power to perform any act or duty which may be performed by the state treasurer.

The assistant state treasurer and the deputy state treasurers shall be exempt from the provisions of chapter 41.06 RCW and shall hold office at the pleasure of the state treasurer; they shall, before entering upon the duties of their office, take and subscribe, and file with the secretary of state, the oath of office provided by law for other state officers.

The state treasurer shall be responsible on his or her official bond for all official acts of the assistant state treasurer and the deputy state treasurers. [2009 c 549 § 5042; 1973 c

10 § 1; 1971 c 15 § 1; 1965 c 8 § 43.08.120. Prior: 1921 c 36 § 1; RRS § 11020.]

**43.08.130 Wilful refusal to pay warrants—Exceptions—Recovery.** If the state treasurer wilfully refuses to pay except in accordance with the provisions of RCW 43.08.070 or by cash or check any warrant designated as payable in the state treasurer's office which is lawfully drawn upon the state treasury, or knowingly pays any warrant otherwise than as provided by law, then any person injured thereby may recover by action against the treasurer and the sureties on his or her official bond. [2009 c 549 § 5043; 1972 ex.s. c 145 § 2; 1965 c 8 § 43.08.130. Prior: 1890 p 644 § 7; RRS § 11026; prior: 1886 p 135 § 8; 1871 p 78 § 8; 1864 p 53 § 8; 1854 p 414 § 8.]

**43.08.135 Cash or demand deposits—Duty to maintain—RCW 9A.56.060(1) not deemed violated, when.** The state treasurer shall maintain at all times cash, or demand deposits in qualified public depositories in an amount needed to meet the operational needs of state government: PROVIDED, That the state treasurer shall not be considered in violation of RCW 9A.56.060(1) if he or she maintains demand accounts in public depositories in an amount less than all treasury warrants issued and outstanding. [2009 c 549 § 5044; 1983 c 3 § 100; 1972 ex.s. c 145 § 3.]

**43.08.150 Monthly financial report on funds and accounts.** As soon as possible after the close of each calendar month, the state treasurer shall prepare a report as to the state of the general fund and every other fund under his or her control itemized as to:

- (1) The amount in the fund at the close of business at the end of the preceding month;
- (2) The amount of revenue deposited or transferred to the credit of each fund during the current month;
- (3) The amount of withdrawals or transfers from each fund during the current month; and
- (4) The amount on hand in each fund at the close of business at the end of the current month.

One copy of each report shall be provided promptly to those requesting them so long as the supply lasts. [2009 c 549 § 5045; 1977 c 75 § 39; 1965 c 8 § 43.08.150. Prior: 1947 c 32 § 1; Rem. Supp. 1947 § 11019-1.]

*Biennial reports, periods: RCW 43.01.035.*

*Investment of surplus funds, rules and allocations to be published in report: RCW 43.86A.050.*

*Reports, budget and accounting system: RCW 43.88.160.*

**43.08.190 State treasurer's service fund—Creation—Purpose.** There is hereby created a fund within the state treasury to be known as the "state treasurer's service fund." Such fund shall be used solely for the payment of costs and expenses incurred in the operation and administration of the state treasurer's office.

Moneys shall be allocated monthly and placed in the state treasurer's service fund equivalent to a maximum of one percent of the trust and treasury average daily cash balances from the earnings generated under the authority of RCW 43.79A.040 and 43.84.080 other than earnings generated

from investment of balances in funds and accounts specified in RCW 43.79A.040 or 43.84.092(4). The allocation shall precede the distribution of the remaining earnings as prescribed under RCW 43.79A.040 and 43.84.092. The state treasurer shall establish a uniform allocation rate based on the appropriations for the treasurer's office.

During the 2009-2011 fiscal biennium, the legislature may transfer from the state treasurer's service fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2009 c 564 § 926; 2008 c 329 § 912; 2005 c 518 § 925; 2003 1st sp.s. c 25 § 916; 1991 sp.s. c 13 § 83; 1985 c 405 § 506; 1973 c 27 § 2.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Severability—Effective date—2008 c 329:** See notes following RCW 28B.105.110.

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Severability—1985 c 405:** See note following RCW 9.46.100.

**43.08.250 Money received by treasurer from certain court actions—Use.** (1) The money received by the state treasurer from fees, fines, forfeitures, penalties, reimbursements or assessments by any court organized under Title 3 or 35 RCW, or chapter 2.08 RCW, shall be deposited in the state general fund.

(2) The money received by the state treasurer from the increase in fees imposed by sections 9, 10, 12, 13, 14, 17, and 19, chapter 457, Laws of 2005 shall be deposited in the state general fund. It is the intent of the legislature that fifty percent of such money be appropriated to the administrator for the courts for the purposes of contributing to district court judges' salaries and to eligible elected municipal court judges' salaries. It is further the intent of the legislature that the balance of such moneys be used to fund criminal indigent defense assistance and enhancement at the trial court level, representation of parents in dependency and termination proceedings, and civil legal representation of indigent persons. [2009 c 479 § 26; 2008 c 329 § 913; 2007 c 522 § 950. Prior: 2005 c 518 § 926; 2005 c 457 § 8; 2005 c 282 § 44; 2003 1st sp.s. c 25 § 918; prior: 2001 2nd sp.s. c 7 § 914; 2001 c 289 § 4; 2000 2nd sp.s. c 1 § 911; 1999 c 309 § 915; 1997 c 149 § 910; 1996 c 283 § 901; 1995 2nd sp.s. c 18 § 912; 1993 sp.s. c 24 § 917; 1992 c 54 § 3; prior: 1991 sp.s. c 16 § 919; 1991 sp.s. c 13 § 25; 1985 c 57 § 27; 1984 c 258 § 338.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Severability—Effective date—2008 c 329:** See notes following RCW 28B.105.110.

**Severability—Effective date—2007 c 522:** See notes following RCW 15.64.050.

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

**Intent—2005 c 457:** "The legislature recognizes the state's obligation to provide adequate representation to criminal indigent defendants and to parents in dependency and termination cases. The legislature also recognizes that trial courts are critical to maintaining the rule of law in a free society and that they are essential to the protection of the rights and enforcement of obligations for all. Therefore, the legislature intends to create a dedicated revenue source for the purposes of meeting the state's commitment to improving trial courts in the state, providing adequate representation to crim-

inal indigent defendants, providing for civil legal services for indigent persons, and ensuring equal justice for all citizens of the state." [2005 c 457 § 1.]

**Findings—Effective date—2005 c 105:** See RCW 2.53.005 and 2.53.900.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Severability—Effective date—2001 2nd sp.s. c 7:** See notes following RCW 43.320.110.

**Severability—Effective date—2000 2nd sp.s. c 1:** See notes following RCW 41.05.143.

**Severability—Effective date—1999 c 309:** See notes following RCW 41.06.152.

**Severability—1997 c 149:** "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 149 § 917.]

**Effective date—1997 c 149:** "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 149 § 918.]

**Severability—1996 c 283:** "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." [1996 c 283 § 904.]

**Effective date—1996 c 283:** "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 30, 1996]." [1996 c 283 § 905.]

**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.310.020.

**Effective date—1992 c 54:** See note following RCW 36.18.020.

**Severability—Effective date—1991 sp.s. c 16:** See notes following RCW 9.46.100.

**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.

**Court Improvement Act of 1984—Effective dates—Severability—Short title—1984 c 258:** See notes following RCW 3.30.010.

**Intent—1984 c 258:** See note following RCW 3.34.130.

*Public safety and education assessment: RCW 3.62.090.*

**43.08.290 City-county assistance account—Use and distribution of funds.** (1) The city-county assistance account is created in the state treasury. All receipts from real estate excise tax disbursements provided under RCW 82.45.060 must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes provided in this section.

(2) Funds deposited in the city-county assistance account must be distributed equally to the cities and counties.

(3)(a) Funds distributed to counties must, to the extent possible, increase the sum of revenues under RCW 82.14.030(1) and streamlined sales tax mitigation funds received by each county to the greater of two hundred fifty thousand dollars or:

(i) For a county with an unincorporated population of one hundred thousand or less, seventy percent of the state-wide weighted average per capita level of sales and use tax revenues received under RCW 82.14.030(1) with respect to taxable activity in the unincorporated areas of all counties

imposing the sales and use tax authorized under RCW 82.14.030(1) in the previous calendar year, for certifications before October 1, 2009, or the previous fiscal year, for certifications on and after October 1, 2009; and

(ii) For a county with an unincorporated population of more than one hundred thousand, sixty-five percent of the statewide weighted average per capita level of sales and use tax revenues received under RCW 82.14.030(1) with respect to taxable activity in the unincorporated areas of all counties imposing the sales and use tax authorized under RCW 82.14.030(1) in the previous calendar year, for certifications before October 1, 2009, or the previous fiscal year, for certifications on and after October 1, 2009.

(b) For each county with an unincorporated population of fifteen thousand or less, the county must receive the greater of the amount in (a) of this subsection or the amount received in local government assistance provided by section 716, chapter 276, Laws of 2004.

(c) For each county with an unincorporated population of more than fifteen thousand and less than twenty-two thousand, the county must receive in calendar year 2006 and 2007 the greater of the amount provided in (a) of this subsection or the amount received in local government assistance provided by section 716, chapter 276, Laws of 2004.

(d) To the extent that revenues are insufficient to fund the distributions under this subsection, the distributions of all counties as otherwise determined under this subsection must be ratably reduced.

(e) To the extent that revenues exceed the amounts needed to fund the distributions under this subsection, the excess funds must be divided ratably based upon unincorporated population among those counties receiving funds under this subsection and imposing the tax authorized under RCW 82.14.030(2) at the maximum rate.

(4)(a) For each city with a population of five thousand or less with a per capita assessed property value less than twice the statewide average per capita assessed property value for all cities for the calendar year previous to the certification under subsection (6) of this section, the city must receive the greater of the following three amounts:

(i) An amount necessary to increase the sum of revenues under RCW 82.14.030(1) and streamlined sales tax mitigation funds received by a city up to fifty-five percent of the statewide weighted average per capita level of sales and use tax revenues received under RCW 82.14.030(1) with respect to taxable activity in all cities imposing the sales and use tax authorized under RCW 82.14.030(1) in the previous calendar year, for certifications before October 1, 2009, or the previous fiscal year, for certifications on and after October 1, 2009.

(ii) The amount received in local government assistance provided for fiscal year 2005 by section 721, chapter 25, Laws of 2003 1st sp. sess.

(iii) For a city with a per capita assessed property value less than fifty-five percent of the statewide average per capita assessed property value for all cities, an amount determined by subtracting the city's per capita assessed property value from fifty-five percent of the statewide average per capita assessed property value, dividing that amount by one thousand, and multiplying the result by the city's population.

(b) For each city with a population of more than five thousand with a per capita assessed property value less than the statewide average per capita assessed property value for all cities for the calendar year previous to the certification under subsection (6) of this section, the city must receive the greater of the following two amounts:

(i) An amount necessary to increase the sum of revenues under RCW 82.14.030(1) and streamlined sales tax mitigation funds received by a city up to fifty percent of the statewide weighted average per capita level of sales and use tax revenues received under RCW 82.14.030(1) with respect to taxable activity in all cities imposing the sales and use tax authorized under RCW 82.14.030(1) in the previous calendar year, for certifications before October 1, 2009, or the previous fiscal year, for certifications on and after October 1, 2009.

(ii) For a city with a per capita assessed property value less than fifty-five percent of the statewide average per capita assessed property value for all cities, an amount determined by subtracting the city's per capita assessed property value from fifty-five percent of the statewide average per capita assessed property value, dividing that amount by one thousand, and multiplying the result by the city's population.

(c) No city may receive an amount greater than one hundred thousand dollars a year under (a) or (b) of this subsection.

(d) To the extent that revenues are insufficient to fund the distributions under this subsection, the distributions of all cities as otherwise determined under this subsection must be ratably reduced.

(e) To the extent that revenues exceed the amounts needed to fund the distributions under this subsection, the excess funds must be divided ratably based upon population among those cities receiving funds under this subsection and imposing the tax collected under RCW 82.14.030(2) at the maximum rate.

(f) This subsection only applies to cities incorporated before August 1, 2005.

(5) The two hundred fifty thousand dollar amount in subsection (3) of this section and the one hundred thousand dollar amount in subsection (4) of this section must be increased each year beginning in calendar year 2006 by inflation as defined in RCW 84.55.005, as determined by the department of revenue.

(6)(a) Distributions under subsections (3) and (4) of this section must be made quarterly beginning on October 1, 2005, based on population as last determined by the office of financial management. The department of revenue must certify the amounts to be distributed under this section by the state treasurer. The certification must be made by October 1, 2005, for the October 1, 2005, distribution and the January 1, 2006, distribution, based on calendar year 2004 department of revenue distributions of sales and use taxes authorized under RCW 82.14.030(1). The certification must be made by March 1, 2006, for distributions beginning April 1, 2006, by March 1, 2007, for distributions beginning April 1, 2007, and by March 1, 2008, for distributions beginning April 1, 2008. The March 1st certification must be used for distributions occurring on April 1st, July 1st, and October 1st of the year of certification and on January 1st of the year following certification.

(b) By March 1, 2009, the department of revenue must certify the amounts to be distributed under this section on April 1, 2009, July 1, 2009, and October 1, 2009. The certification must be based on calendar year 2008 department of revenue distributions of sales and use taxes authorized under RCW 82.14.030(1), and the population as last determined by the office of financial management.

(c) By October 1, 2009, the department of revenue must certify the amounts to be distributed under this section on January 1, 2010, April 1, 2010, July 1, 2010, and October 1, 2010. The certification must be based on department of revenue distributions in fiscal year 2009 of sales and use taxes authorized under RCW 82.14.030(1), streamlined sales tax mitigation data for mitigation distributions authorized under RCW 82.14.495 made December 2008 through September 2009, and population as last determined by the office of financial management.

(d) By September 1, 2010, and September 1st of every year thereafter, the department of revenue must make available a preliminary certification of the amounts to be distributed under this section on January 1st, April 1st, July 1st, and October 1st of the year immediately following certification. By October 1, 2010, and October 1st of every year thereafter, the department must finalize the certification. Once finalized, no changes may be made to the certification for any reason. Certifications must be based on distributions of sales and use taxes imposed under RCW 82.14.030(1) made by the department of revenue in the fiscal year that ended during the calendar year of certification, streamlined sales tax mitigation data for mitigation distributions authorized under RCW 82.14.495 made in the fiscal year that ended during the calendar year of certification, and population as last determined by the office of financial management.

(7) All distributions to local governments from the city-county assistance account constitute increases in state distributions of revenue to political subdivisions for purposes of state reimbursement for the costs of new programs and increases in service levels under RCW 43.135.060, including any claims or litigation pending against the state on or after January 1, 2005.

(8) As used in this section, "streamlined sales tax mitigation funds" means an amount determined by the department of revenue equal to the actual mitigation distribution amount under RCW 82.14.495 received by a jurisdiction in four consecutive calendar quarters, less the mitigation distribution amount that would have been received by the jurisdiction during the same four calendar quarters had mitigation been calculated without the local sales tax authorized under RCW 82.14.030(1). If the difference is a negative amount or if a jurisdiction does not receive any mitigation distribution during the applicable four calendar quarters, then "streamlined sales tax mitigation funds" is zero. [2009 c 127 § 1; 2005 c 450 § 2.]

**Application—2009 c 127:** "This act applies both prospectively and retroactively to March 1, 2009." [2009 c 127 § 2.]

**Effective date—2005 c 450:** See note following RCW 82.45.060.

**43.08.300 Public deposit protection—Report.** By December 1, 2009, and each December 1st thereafter, the office of the state treasurer shall report to the legislature actions taken by the public deposit protection commission

and the state treasurer regarding public deposit protection. [2009 c 9 § 18.]

**Effective date—2009 c 9:** See note following RCW 39.58.010.

## Chapter 43.09 RCW STATE AUDITOR

### Sections

43.09.260	Local government accounting—Examination of local governments—Reports—Action by attorney general.
43.09.280	Local government accounting—Expense of examination.
43.09.282	Local government accounting—Municipal revolving account—Records of auditing costs.
43.09.475	Performance audits of government account.

**43.09.260 Local government accounting—Examination of local governments—Reports—Action by attorney general.** (1) The examination of the financial affairs of all local governments shall be made at such reasonable, periodic intervals as the state auditor shall determine. However, an examination of the financial affairs of all local governments shall be made at least once in every three years, and an examination of individual local government health and welfare benefit plans and local government self-insurance programs shall be made at least once every two years.

(2) During the 2009-2011 fiscal biennium, the state auditor shall conduct audits no more often than once every two years of local governments with annual general fund revenues of ten million dollars or less and no findings of impropriety for the three-year period immediately preceding the audit period. This subsection does not prohibit the state auditor from conducting audits: (a) To address suspected fraud or irregular conduct; (b) at the request of the local government governing body; or (c) as required by federal laws or regulations.

(3) The term local governments for purposes of this chapter includes but is not limited to all counties, cities, and other political subdivisions, municipal corporations, and quasi-municipal corporations, however denominated.

(4) The state auditor shall establish a schedule to govern the auditing of local governments which shall include: A designation of the various classifications of local governments; a designation of the frequency for auditing each type of local government; and a description of events which cause a more frequent audit to be conducted.

(5) On every such examination, inquiry shall be made as to the financial condition and resources of the local government; whether the Constitution and laws of the state, the ordinances and orders of the local government, and the requirements of the state auditor have been properly complied with; and into the methods and accuracy of the accounts and reports.

(6) A report of such examination shall be made and filed in the office of state auditor, and one copy shall be transmitted to the local government. A copy of any report containing findings of noncompliance with state law shall be transmitted to the attorney general. If any such report discloses malfeasance, misfeasance, or nonfeasance in office on the part of any public officer or employee, within thirty days from the receipt of his or her copy of the report, the attorney general shall institute, in the proper county, such legal action as is proper in the premises by civil process and prosecute the

same to final determination to carry into effect the findings of the examination.

(7) It shall be unlawful for any local government or the responsible head thereof, to make a settlement or compromise of any claim arising out of such malfeasance, misfeasance, or nonfeasance, or any action commenced therefor, or for any court to enter upon any compromise or settlement of such action, without the written approval and consent of the attorney general and the state auditor. [2009 c 564 § 927; 1995 c 301 § 15; 1991 sp.s. c 30 § 26; 1979 c 71 § 1; 1965 c 8 § 43.09.260. Prior: 1909 c 76 § 8; RRS § 9958.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Effective date, implementation, application—Severability—1991 sp.s. c 30:** See RCW 48.62.900 and 48.62.901.

*School district budgeting violations not to affect duties of attorney general under RCW 43.09.260: RCW 28A.505.150.*

**43.09.280 Local government accounting—Expense of examination.** The expense of auditing public accounts shall be borne by each entity subject to such audit for the auditing of all accounts under its jurisdiction and the state auditor shall certify the expense of such audit to the fiscal or warrant-issuing officer of such entity, who shall immediately make payment to the state auditor. If the expense as certified is not paid by any local government within thirty days from the date of certification, the state auditor may certify the expense to the auditor of the county in which the local government is situated, who shall promptly issue his or her warrant on the county treasurer payable out of the current expense fund of the county, which fund, except as to auditing the financial affairs and making inspection and examination of the county, shall be reimbursed by the county auditor or chief financial officer designated in a charter county out of the money due the local government at the next monthly settlement of the collection of taxes and shall be transferred to the current expense fund. [2009 c 337 § 14; 1995 c 301 § 18; 1979 c 71 § 2; 1965 c 8 § 43.09.280. Prior: 1963 c 209 § 5; 1911 c 30 § 1; 1909 c 76 § 11; RRS § 9961.]

**43.09.282 Local government accounting—Municipal revolving account—Records of auditing costs.** For the purposes of centralized funding, accounting, and distribution of the costs of the audits performed on local governments by the state auditor, there is hereby created an account entitled the municipal revolving account. The state treasurer shall be custodian of the account. All moneys received by the state auditor or by any officer or employee thereof shall be deposited with the state treasurer and credited to the municipal revolving account. Only the state auditor or the auditor's designee may authorize expenditures from the account. No appropriation is required for expenditures. The state auditor shall keep such records as are necessary to detail the auditing costs attributable to the various types of local governments. During the 2009-2011 fiscal biennium, the state auditor shall reduce the municipal revolving account charges for financial audits performed on local governments by five percent. [2009 c 564 § 928; 2008 c 328 § 6007; 1995 c 301 § 20; 1982 c 206 § 2; 1965 c 8 § 43.09.282. Prior: 1963 c 209 § 6.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Part headings not law—Severability—Effective date—2008 c 328:** See notes following RCW 43.155.050.

**Effective date—1982 c 206 § 2:** "Section 2 of this act shall take effect on July 1, 1983." [1982 c 206 § 4.]

**43.09.475 Performance audits of government account.** The performance audits of government account is hereby created in the custody of the state treasurer. Revenue identified in RCW 82.08.020(5) and 82.12.0201 shall be deposited in the account. Money in the account shall be used to fund the performance audits and follow-up performance audits under RCW 43.09.470 and shall be expended by the state auditor in accordance with chapter 1, Laws of 2006. Only the state auditor or the state auditor's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. During the 2009-2011 fiscal biennium, the legislature may transfer from the performance audits of government account to the state general fund such amounts as deemed to be appropriate or necessary. [2009 c 564 § 929; 2006 c 1 § 5 (Initiative Measure No. 900, approved November 8, 2005).]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Policies and purposes—Construction—Severability—Part headings not law—2006 c 1 (Initiative Measure No. 900):** See notes following RCW 43.09.470.

## Chapter 43.10 RCW ATTORNEY GENERAL

### Sections

43.10.010	Qualifications—Oath—Bond.
43.10.020	Additional bond—Penalty for failure to furnish.
43.10.030	General powers and duties.
43.10.060	Appointment and authority of assistants.
43.10.080	Employment of experts, technicians.
43.10.090	Criminal investigations—Supervision.
43.10.110	Other powers and duties.
43.10.115	Private practice of law—Attorney general—Prohibited.
43.10.120	Private practice of law—Deputies and assistants—Prohibited.
43.10.130	Private practice of law—Exceptions.
43.10.160	Legal services revolving fund—Transfers and payments into fund—Allotments to attorney general.
43.10.170	Legal services revolving fund—Disbursements.
43.10.180	Legal services revolving fund—Allocation of costs to funds and agencies—Accounting—Billing.
43.10.240	Investigative and criminal prosecution activity—Annual report—Security protection.
43.10.280	Dependency and termination of parental rights—Legal services to supervising agencies under state contract.

**43.10.010 Qualifications—Oath—Bond.** No person shall be eligible to be attorney general unless he or she is a qualified practitioner of the supreme court of this state.

Before entering upon the duties of his or her office, any person elected or appointed attorney general shall take, subscribe, and file the oath of office as required by law; take, subscribe, and file with the secretary of state an oath to comply with the provisions of RCW 43.10.115; and execute and file with the secretary of state, a bond to the state, in the sum of five thousand dollars, with sureties to be approved by the governor, conditioned for the faithful performance of his or her duties and the paying over of all moneys, as provided by law. [2009 c 549 § 5046; 1973 c 43 § 1; 1965 c 8 § 43.10.010. Prior: 1929 c 92 § 1, part; RRS § 11030, part; prior: 1921 c 119 § 1; 1888 p 7 § 4.]

**Severability—1973 c 43:** "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 43 § 6.]

**43.10.020 Additional bond—Penalty for failure to furnish.** If the governor deems any bond filed by the attorney general insufficient, he or she may require an additional bond for any amount not exceeding five thousand dollars.

If any attorney general fails to give such additional bond as required by the governor within twenty days after notice in writing of such requirement, his or her office may be declared vacant by the governor and filled as provided by law. [2009 c 549 § 5047; 1965 c 8 § 43.10.020. Prior: (i) 1929 c 92 § 1, part; RRS § 11030, part. (ii) 1929 c 92 § 2; RRS § 11031; prior: 1921 c 119 § 1; 1888 p 7 §§ 4, 5.]

**43.10.030 General powers and duties.** The attorney general shall:

(1) Appear for and represent the state before the supreme court or the court of appeals in all cases in which the state is interested;

(2) Institute and prosecute all actions and proceedings for, or for the use of the state, which may be necessary in the execution of the duties of any state officer;

(3) Defend all actions and proceedings against any state officer or employee acting in his or her official capacity, in any of the courts of this state or the United States;

(4) Consult with and advise the several prosecuting attorneys in matters relating to the duties of their office, and when the interests of the state require, he or she shall attend the trial of any person accused of a crime, and assist in the prosecution;

(5) Consult with and advise the governor, members of the legislature, and other state officers, and when requested, give written opinions upon all constitutional or legal questions relating to the duties of such officers;

(6) Prepare proper drafts of contracts and other instruments relating to subjects in which the state is interested;

(7) Give written opinions, when requested by either branch of the legislature, or any committee thereof, upon constitutional or legal questions;

(8) Enforce the proper application of funds appropriated for the public institutions of the state, and prosecute corporations for failure or refusal to make the reports required by law;

(9) Keep in proper books a record of all cases prosecuted or defended by him or her, on behalf of the state or its officers, and of all proceedings had in relation thereto, and deliver the same to his or her successor in office;

(10) Keep books in which he or she shall record all the official opinions given by him or her during his or her term of office, and deliver the same to his or her successor in office;

(11) Pay into the state treasury all moneys received by him or her for the use of the state. [2009 c 549 § 5048; 1975 c 40 § 5; 1971 c 81 § 109; 1965 c 8 § 43.10.030. Prior: (i) 1929 c 92 § 3; RRS § 112. (ii) 1929 c 92 § 4; RRS § 11032; prior: 1891 c 55 § 2; 1888 p 8 § 6.]

**43.10.060 Appointment and authority of assistants.** The attorney general may appoint necessary assistants, who shall hold office at his or her pleasure, and who shall have the power to perform any act which the attorney general is autho-

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rized by law to perform. [2009 c 549 § 5049; 1965 c 8 § 43.10.060. Prior: 1929 c 92 § 7, part; RRS § 11034-1, part.]

**43.10.080 Employment of experts, technicians.** The attorney general may employ such skilled experts, scientists, technicians, or other specially qualified persons as he or she deems necessary to aid him or her in the preparation or trial of actions or proceedings. [2009 c 549 § 5050; 1965 c 8 § 43.10.080. Prior: 1941 c 50 § 3; Rem. Supp. 1941 § 11034-5.]

**43.10.090 Criminal investigations—Supervision.** Upon the written request of the governor, the attorney general shall investigate violations of the criminal laws within this state.

If, after such investigation, the attorney general believes that the criminal laws are improperly enforced in any county, and that the prosecuting attorney of the county has failed or neglected to institute and prosecute violations of such criminal laws, either generally or with regard to a specific offense or class of offenses, the attorney general shall direct the prosecuting attorney to take such action in connection with any prosecution as the attorney general determines to be necessary and proper.

If any prosecuting attorney, after the receipt of such instructions from the attorney general, fails or neglects to comply therewith within a reasonable time, the attorney general may initiate and prosecute such criminal actions as he or she shall determine. In connection therewith, the attorney general shall have the same powers as would otherwise be vested in the prosecuting attorney.

From the time the attorney general has initiated or taken over a criminal prosecution, the prosecuting attorney shall not have power or authority to take any legal steps relating to such prosecution, except as authorized or directed by the attorney general. [2009 c 549 § 5051; 1965 c 8 § 43.10.090. Prior: 1937 c 88 § 1; RRS § 112-1.]

*Corporations, governor may require attorney general to investigate: RCW 43.06.010.*

*Prosecuting attorneys, governor may require attorney general to aid: RCW 43.06.010.*

**43.10.110 Other powers and duties.** The attorney general shall have the power and it shall be his or her duty to perform any other duties that are, or may from time to time be required of him or her by law. [2009 c 549 § 5052; 1965 c 8 § 43.10.110. Prior: 1929 c 92 § 8; RRS § 11034-2.]

**43.10.115 Private practice of law—Attorney general—Prohibited.** The attorney general shall not practice law for remuneration in his or her private capacity:

(1) As an attorney in any court of this state during his or her continuance in office; or

(2) As adviser or advocate for any person who may wish to become his or her client. [2009 c 549 § 5053; 1973 c 43 § 2.]

*Severability—1973 c 43:* See note following RCW 43.10.010.

**43.10.120 Private practice of law—Deputies and assistants—Prohibited.** No full time deputy or assistant

attorney general shall practice law for remuneration in his or her private capacity:

(1) As an attorney in any court of this state during his or her continuance in office; or

(2) As adviser or advocate for any person who may wish to become his or her client. [2009 c 549 § 5054; 1973 c 43 § 3.]

**Severability—1973 c 43:** See note following RCW 43.10.010.

**43.10.130 Private practice of law—Exceptions.** None of the provisions of RCW 43.10.010 and 43.10.115 through 43.10.125 shall be construed as prohibiting the attorney general or any of his or her full time deputies or assistants from:

(1) Performing legal services for himself or herself or his or her immediate family; or

(2) Performing legal services of a charitable nature. [2009 c 549 § 5055; 1973 c 43 § 5.]

**Severability—1973 c 43:** See note following RCW 43.10.010.

**43.10.160 Legal services revolving fund—Transfers and payments into fund—Allotments to attorney general.** The amounts to be disbursed from the legal services revolving fund from time to time shall be transferred thereto by the state treasurer from funds appropriated to any and all agencies for legal services or administrative expenses on a quarterly basis. Agencies operating in whole or in part from non-appropriated funds shall pay into the legal services revolving fund such funds as will fully reimburse funds appropriated to the attorney general for any legal services provided activities financed by nonappropriated funds.

The director of financial management shall allot all such funds to the attorney general for the operation of his or her office, pursuant to appropriation, in the same manner as appropriated funds are allocated to other agencies headed by elected officers under chapter 43.88 RCW. [2009 c 549 § 5056; 1979 c 151 § 94; 1974 ex.s. c 146 § 2; 1971 ex.s. c 71 § 2.]

**Effective date—1974 ex.s. c 146:** See note following RCW 43.10.150.

**43.10.170 Legal services revolving fund—Disbursements.** Disbursements from the legal services revolving fund shall be pursuant to vouchers executed by the attorney general or his or her designee in accordance with the provisions of RCW 43.88.160. [2009 c 549 § 5057; 1971 ex.s. c 71 § 3.]

**43.10.180 Legal services revolving fund—Allocation of costs to funds and agencies—Accounting—Billing.** (1) The attorney general shall keep such records as are necessary to facilitate proper allocation of costs to funds and agencies served and the director of financial management shall prescribe appropriate accounting procedures to accurately allocate costs to funds and agencies served. Billings shall be adjusted in line with actual costs incurred at intervals not to exceed six months.

(2) During the 2009-2011 fiscal biennium, all expenses for administration of the office of the attorney general shall be allocated to and paid from the legal services revolving fund in accordance with accounting procedures prescribed by the director of financial management. [2009 c 564 § 930;

2007 c 522 § 951; 2005 c 518 § 927; 2003 1st sp.s. c 25 § 917; 1979 c 151 § 95; 1974 ex.s. c 146 § 3; 1971 ex.s. c 71 § 4.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Severability—Effective date—2007 c 522:** See notes following RCW 15.64.050.

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Effective date—1974 ex.s. c 146:** See note following RCW 43.10.150.

**43.10.240 Investigative and criminal prosecution activity—Annual report—Security protection.** The attorney general shall annually report to the chief of the Washington state patrol a summary of the attorney general's investigative and criminal prosecution activity conducted pursuant to this chapter. Except to the extent the summary describes information that is a matter of public record, the information made available to the chief of the Washington state patrol shall be given all necessary security protection in accordance with the terms and provisions of applicable laws and rules and shall not be revealed or divulged publicly or privately. [2009 c 560 § 26; 1985 c 251 § 1.]

**Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560:** See notes following RCW 18.06.080.

**43.10.280 Dependency and termination of parental rights—Legal services to supervising agencies under state contract.** The office of the attorney general shall provide, or cause to be provided, legal services in only dependency or termination of parental rights matters to supervising agencies with whom the department of social and health services has entered into performance-based contracts to provide child welfare services as soon as the contracts become effective. [2009 c 520 § 7.]

## Chapter 43.15 RCW

### OFFICE OF LIEUTENANT GOVERNOR

#### Sections

43.15.020 President of the senate—Committee and board appointments and assignments.

**43.15.020 President of the senate—Committee and board appointments and assignments.** The lieutenant governor serves as president of the senate and is responsible for making appointments to, and serving on, the committees and boards as set forth in this section.

(1) The lieutenant governor serves on the following boards and committees:

(a) Capitol furnishings preservation committee, RCW 27.48.040;

(b) Washington higher education facilities authority, RCW 28B.07.030;

(c) Productivity board, also known as the employee involvement and recognition board, RCW 41.60.015;

(d) State finance committee, RCW 43.33.010;

(e) State capitol committee, RCW 43.34.010;

(f) Washington health care facilities authority, RCW 70.37.030;

- (g) State medal of merit nominating committee, RCW 1.40.020;
- (h) Medal of valor committee, RCW 1.60.020; and
- (i) Association of Washington generals, RCW 43.15.030.
- (2) The lieutenant governor, and when serving as president of the senate, appoints members to the following boards and committees:
  - (a) Civil legal aid oversight committee, RCW 2.53.010;
  - (b) Office of public defense advisory committee, RCW 2.70.030;
  - (c) Washington state gambling commission, RCW 9.46.040;
  - (d) Sentencing guidelines commission, RCW 9.94A.860;
  - (e) State building code council, RCW 19.27.070;
  - (f) Women's history consortium board of advisors, RCW 27.34.365;
  - (g) Financial literacy public-private partnership, \*RCW 28A.300.450;
  - (h) Joint administrative rules review committee, RCW 34.05.610;
  - (i) Capital projects advisory review board, RCW 39.10.220;
  - (j) Select committee on pension policy, RCW 41.04.276;
  - (k) Legislative ethics board, RCW 42.52.310;
  - (l) Washington citizens' commission on salaries, RCW 43.03.305;
  - (m) Legislative oral history committee, RCW 44.04.325;
  - (n) State council on aging, RCW 43.20A.685;
  - (o) State investment board, RCW 43.33A.020;
  - (p) Capitol campus design advisory committee, RCW 43.34.080;
  - (q) Washington state arts commission, RCW 43.46.015;
  - (r) Information services board, RCW 43.105.032;
  - (s) K-20 educational network board, RCW 43.105.800;
  - (t) Municipal research council, RCW 43.110.010;
  - (u) Council for children and families, RCW 43.121.020;
  - (v) PNWER-Net working subgroup under chapter 43.147 RCW;
  - (w) Community economic revitalization board, RCW 43.160.030;
  - (x) Washington economic development finance authority, RCW 43.163.020;
  - (y) Life sciences discovery fund authority, RCW 43.350.020;
  - (z) Legislative children's oversight committee, RCW 44.04.220;
  - (aa) Joint legislative audit and review committee, RCW 44.28.010;
  - (bb) Joint committee on energy supply and energy conservation, RCW 44.39.015;
  - (cc) Legislative evaluation and accountability program committee, RCW 44.48.010;
  - (dd) Agency council on coordinated transportation, RCW 47.06B.020;
  - (ee) Manufactured housing task force, RCW 59.22.090;
  - (ff) Washington horse racing commission, RCW 67.16.014;
  - (gg) Correctional industries board of directors, RCW 72.09.080;

- (hh) Joint committee on veterans' and military affairs, RCW 73.04.150;
- (ii) Joint legislative committee on water supply during drought, RCW 90.86.020;
- (jj) Statute law committee, RCW 1.08.001; and
- (kk) Joint legislative oversight committee on trade policy, RCW 44.55.020. [2009 c 560 § 27; 2008 c 152 § 9; 2006 c 317 § 4.]

\*Reviser's note: RCW 28A.300.450 was amended by 2009 c 443 § 1, changing the "financial literacy public-private partnership" to the "financial education public-private partnership."

**Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560:** See notes following RCW 18.06.080.

**Findings—Intent—2008 c 152:** See note following RCW 13.34.136.

### Chapter 43.17 RCW

#### ADMINISTRATIVE DEPARTMENTS AND AGENCIES—GENERAL PROVISIONS

##### Sections

- 43.17.010 Departments created.
- 43.17.020 Chief executive officers—Appointment.
- 43.17.030 Powers and duties—Oath.
- 43.17.040 Chief assistant director—Powers.
- 43.17.050 Office at capital—Branch offices.
- 43.17.060 Departmental rules and regulations.
- 43.17.100 Surety bonds for appointive state officers and employees.
- 43.17.150 Receipt of property or money from United States attorney general—Use, expenditure—Deposit.
- 43.17.390 Quality management, accountability, and performance system—Independent assessment.

**43.17.010 Departments created.** There shall be departments of the state government which shall be known as (1) the department of social and health services, (2) the department of ecology, (3) the department of labor and industries, (4) the department of agriculture, (5) the department of fish and wildlife, (6) the department of transportation, (7) the department of licensing, (8) the department of general administration, (9) the department of commerce, (10) the department of veterans affairs, (11) the department of revenue, (12) the department of retirement systems, (13) the department of corrections, (14) the department of health, (15) the department of financial institutions, (16) the department of archaeology and historic preservation, (17) the department of early learning, and (18) the Puget Sound partnership, which shall be charged with the execution, enforcement, and administration of such laws, and invested with such powers and required to perform such duties, as the legislature may provide. [2009 c 565 § 25; 2007 c 341 § 46; 2006 c 265 § 111; 2005 c 333 § 10. Prior: 1993 sp.s. c 2 § 16; 1993 c 472 § 17; 1993 c 280 § 18; 1989 1st ex.s. c 9 § 810; 1987 c 506 § 2; 1985 c 466 § 47; 1984 c 125 § 12; 1981 c 136 § 61; 1979 c 10 § 1; prior: 1977 ex.s. c 334 § 5; 1977 ex.s. c 151 § 20; 1977 c 7 § 1; prior: 1975-'76 2nd ex.s. c 115 § 19; 1975-'76 2nd ex.s. c 105 § 24; 1971 c 11 § 1; prior: 1970 ex.s. c 62 § 28; 1970 ex.s. c 18 § 50; 1969 c 32 § 1; prior: 1967 ex.s. c 26 § 12; 1967 c 242 § 12; 1965 c 156 § 20; 1965 c 8 § 43.17.010; prior: 1957 c 215 § 19; 1955 c 285 § 2; 1953 c 174 § 1; prior: (i) 1937 c 111 § 1, part; RRS § 10760-2, part. (ii) 1935 c 176 § 1; 1933 c 3 § 1; 1929 c 115 § 1; 1921 c 7 § 2; RRS § 10760. (iii) 1945 c 267 § 1, part; Rem. Supp. 1945 § 10459-1, part. (iv) 1947 c 114 § 5; Rem. Supp. 1947 § 10786-10c.]



**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**Part headings not law—Effective date—Severability—2006 c 265:** See RCW 43.215.904 through 43.215.906.

**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.

**Effective date—Implementation—1993 c 472:** See RCW 43.320.900 and 43.320.901.

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Severability—1985 c 466:** See notes following RCW 43.31.005.

**Severability—Headings—Effective date—1984 c 125:** See RCW 43.63A.901 through 43.63A.903.

**Effective date—1981 c 136:** See RCW 72.09.900.

**Effective date—1977 ex.s. c 334:** See note following RCW 46.01.011.

**Federal requirements—Severability—1977 ex.s. c 151:** See RCW 47.98.070 and 47.98.080.

**Severability—1975-'76 2nd ex.s. c 105:** See note following RCW 41.04.270.

**Effective date—Severability—1970 ex.s. c 18:** See notes following RCW 43.20A.010.

*Department of*

*agriculture: Chapter 43.23 RCW.*

*community, trade, and economic development: Chapter 43.330 RCW.*

*corrections: Chapter 72.09 RCW.*

*ecology: Chapter 43.21A RCW.*

*employment security: Chapter 50.08 RCW.*

*financial institutions: Chapter 43.320 RCW.*

*fish and wildlife: Chapters 43.300 and 77.04 RCW.*

*general administration: Chapter 43.19 RCW.*

*health: Chapter 43.70 RCW.*

*information services: Chapter 43.105 RCW.*

*labor and industries: Chapter 43.22 RCW.*

*licensing: Chapters 43.24, 46.01 RCW.*

*natural resources: Chapter 43.30 RCW.*

*personnel: Chapter 41.06 RCW.*

*retirement systems: Chapter 41.50 RCW.*

*revenue: Chapter 82.01 RCW.*

*services for the blind: Chapter 74.18 RCW.*

*social and health services: Chapter 43.20A RCW.*

*transportation: Chapter 47.01 RCW.*

*veterans affairs: Chapter 43.60A RCW.*

### 43.17.020 Chief executive officers—Appointment.

There shall be a chief executive officer of each department to be known as: (1) The secretary of social and health services, (2) the director of ecology, (3) the director of labor and industries, (4) the director of agriculture, (5) the director of fish and wildlife, (6) the secretary of transportation, (7) the director of licensing, (8) the director of general administration, (9) the director of commerce, (10) the director of veterans affairs, (11) the director of revenue, (12) the director of retirement systems, (13) the secretary of corrections, (14) the secretary of health, (15) the director of financial institutions, (16) the director of the department of archaeology and historic preservation, (17) the director of early learning, and (18) the executive director of the Puget Sound partnership.

Such officers, except the director of fish and wildlife, shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. The

director of fish and wildlife shall be appointed by the fish and wildlife commission as prescribed by RCW 77.04.055. [2009 c 565 § 26; 2007 c 341 § 47; 2006 c 265 § 112. Prior: 2005 c 333 § 11; 2005 c 319 § 2; 1995 1st sp.s. c 2 § 2 (Referendum Bill No. 45, approved November 7, 1995); prior: 1993 sp.s. c 2 § 17; 1993 c 472 § 18; 1993 c 280 § 19; 1989 1st ex.s. c 9 § 811; 1987 c 506 § 3; 1985 c 466 § 48; 1984 c 125 § 13; 1981 c 136 § 62; 1979 c 10 § 2; prior: 1977 ex.s. c 334 § 6; 1977 ex.s. c 151 § 21; 1977 c 7 § 2; prior: 1975-'76 2nd ex.s. c 115 § 20; 1975-'76 2nd ex.s. c 105 § 25; 1971 c 11 § 2; prior: 1970 ex.s. c 62 § 29; 1970 ex.s. c 18 § 51; 1969 c 32 § 2; prior: 1967 ex.s. c 26 § 13; 1967 c 242 § 13; 1965 c 156 § 21; 1965 c 8 § 43.17.020; prior: 1957 c 215 § 20; 1955 c 285 § 3; 1953 c 174 § 2; prior: (i) 1935 c 176 § 2; 1933 c 3 § 2; 1929 c 115 § 2; 1921 c 7 § 3; RRS § 10761. (ii) 1937 c 111 § 1, part; RRS § 10760. (iii) 1945 c 267 § 1, part; Rem. Supp. 1945 § 10459-1, part.]

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**Part headings not law—Effective date—Severability—2006 c 265:** See RCW 43.215.904 through 43.215.906.

**Findings—Intent—2005 c 319:** "The legislature finds that it is in the interest of the state to restructure the roles and responsibilities of the state's transportation agencies in order to improve efficiency and accountability. The legislature also finds that continued citizen oversight of the state's transportation system remains an important priority. To achieve these purposes, the legislature intends to provide direct accountability of the department of transportation to the governor, in his or her role as chief executive officer of state government, by making the secretary of transportation a cabinet-level official. Additionally, it is essential to clearly delineate between the separate and distinct roles and responsibilities of the executive and legislative branches of government. The role of executive is to oversee the implementation of transportation programs, while the legislature reserves to itself the role of policymaking. Finally, consolidating public outreach and auditing of the state's transportation agencies under a single citizen-governed entity, the transportation commission, will provide the public with information about the performance of the transportation system and an avenue for direct participation in its oversight." [2005 c 319 § 1.]

**Part headings—2005 c 319:** "Part headings used in this act are no part of the law." [2005 c 319 § 142.]

**Effective dates—2005 c 319:** "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, 2005, except for section 103 of this act which takes effect July 1, 2006." [2005 c 319 § 145.]

**Effective date—1995 1st sp.s. c 2:** "Sections 2 through 43 of this act shall take effect July 1, 1996." [1995 1st sp.s. c 2 § 45.]

**Referral to electorate—1995 1st sp.s. c 2:** See note following RCW 77.04.013.

**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.

**Effective date—Implementation—1993 c 472:** See RCW 43.320.900 and 43.320.901.

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Legislative findings and intent—1987 c 506:** See note following RCW 77.04.020.

**Effective date—Severability—1985 c 466:** See notes following RCW 43.31.125.

**Severability—Headings—Effective date—1984 c 125:** See RCW 43.63A.901 through 43.63A.903.

**Effective date—1981 c 136:** See RCW 72.09.900.

**Effective date—1977 ex.s. c 334:** See note following RCW 46.01.011.

**Federal requirements—Severability—1977 ex.s. c 151:** See RCW 47.98.070 and 47.98.080.

**Severability—1975-'76 2nd ex.s. c 105:** See note following RCW 41.04.270.

**Effective date—Severability—1970 ex.s. c 18:** See notes following RCW 43.20A.010.

**43.17.030 Powers and duties—Oath.** The directors of the several departments shall exercise such powers and perform such executive and administrative duties as are provided by law.

Each appointive officer before entering upon the duties of his or her office shall take and subscribe the oath of office prescribed by law for elective state officers, and file the same in the office of the secretary of state. [2009 c 549 § 5058; 1965 c 8 § 43.17.030. Prior: 1921 c 7 § 18; RRS § 10776.]

*Oaths of elective state officers: RCW 43.01.020.*

**43.17.040 Chief assistant director—Powers.** The director of each department may, from time to time, designate and deputize one of the assistant directors of his or her department to act as the chief assistant director, who shall have charge and general supervision of the department in the absence or disability of the director, and who, in case a vacancy occurs in the office of director, shall continue in charge of the department until a director is appointed and qualified, or the governor appoints an acting director. [2009 c 549 § 5059; 1965 c 8 § 43.17.040. Prior: 1921 c 7 § 118; RRS § 10876.]

**43.17.050 Office at capital—Branch offices.** Each department shall maintain its principal office at the state capital. The director of each department may, with the approval of the governor, establish and maintain branch offices at other places than the state capital for the conduct of one or more of the functions of his or her department.

The governor, in his or her discretion, may require all administrative departments of the state and the appointive officers thereof, other than those created by this chapter, to maintain their principal offices at the state capital in rooms to be furnished by the director of general administration. [2009 c 549 § 5060; 1965 c 8 § 43.17.050. Prior: (i) 1921 c 7 § 20; RRS § 10778. (ii) 1921 c 7 § 134; RRS § 10892.]

*Departments to share occupancy—Capital projects surcharge: RCW 43.01.090.*

*Housing for state offices, departments, and institutions: Chapter 43.82 RCW.*

**43.17.060 Departmental rules and regulations.** The director of each department may prescribe rules and regulations, not inconsistent with law, for the government of his or her department, the conduct of its subordinate officers and employees, the disposition and performance of its business, and the custody, use, and preservation of the records, papers, books, documents, and property pertaining thereto. [2009 c 549 § 5061; 1965 c 8 § 43.17.060. Prior: 1921 c 7 § 19; RRS § 10777.]

**43.17.100 Surety bonds for appointive state officers and employees.** Every appointive state officer and employee of the state shall give a surety bond, payable to the state in

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such sum as shall be deemed necessary by the director of the department of general administration, conditioned for the honesty of the officer or employee and for the accounting of all property of the state that shall come into his or her possession by virtue of his or her office or employment, which bond shall be approved as to form by the attorney general and shall be filed in the office of the secretary of state.

The director of general administration may purchase one or more blanket surety bonds for the coverage required in this section.

Any bond required by this section shall not be considered an official bond and shall not be subject to chapter 42.08 RCW. [2009 c 549 § 5062; 1977 ex.s. c 270 § 7; 1975 c 40 § 6; 1965 c 8 § 43.17.100. Prior: 1921 c 7 § 16; RRS § 10774.]

**Construction—1977 ex.s. c 270:** See RCW 43.41.901.

*Official bonds: Chapter 42.08 RCW.*

*Powers and duties of director of general administration as to official bonds: RCW 43.41.360.*

**43.17.150 Receipt of property or money from United States attorney general—Use, expenditure—Deposit.** (1) Each state agency is authorized to receive property or money made available by the attorney general of the United States under section 881(e) of Title 21 of the United States Code and, except as required to the contrary under subsection (2) of this section, to use the property or spend the money for such purposes as are permitted under both federal law and the state law specifying the powers and duties of the agency.

(2) Unless precluded by federal law, all funds received by a state agency under section 881(e) of Title 21 of the United States Code shall be promptly deposited into the state general fund. [2009 c 479 § 27; 1986 c 246 § 1.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**43.17.390 Quality management, accountability, and performance system—Independent assessment.** Starting in 2012, and at least once every three years thereafter, each agency shall apply to the Washington state quality award, or similar organization, for an independent assessment of its quality management, accountability, and performance system. The assessment shall evaluate the effectiveness of all elements of its management, accountability, and performance system, including: Leadership, strategic planning, customer focus, analysis and information, employee performance management, and process improvement. The purpose of the assessment is to recognize best practice and identify improvement opportunities. [2009 c 564 § 931; 2005 c 384 § 4.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Findings—2005 c 384:** See note following RCW 43.17.380.

## Chapter 43.19 RCW

### DEPARTMENT OF GENERAL ADMINISTRATION

#### Sections

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**43.19.180 State purchasing and material control director—Appointment—Personnel.** The director of general administration shall appoint and deputize an assistant director to be known as the state purchasing and material control director, who shall have charge and supervision of the division of purchasing. In this capacity he or she shall ensure that overall state purchasing and material control policy is implemented by state agencies, including educational institutions, within established time limits.

With the approval of the director of general administration, he or she may appoint and employ such assistants and personnel as may be necessary to carry on the work of the division. [2009 c 549 § 5063; 1975-'76 2nd ex.s. c 21 § 1; 1965 c 8 § 43.19.180. Prior: 1955 c 285 § 10; 1935 c 176 § 16; RRS § 10786-15; prior: 1921 c 7 § 31; RRS § 10789.]

**Severability—1975-'76 2nd ex.s. c 21:** "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 21 § 14.]

**43.19.1905 Statewide policy for purchasing and material control—Working group—Definitions.** (1) The director of general administration shall establish overall state policy for compliance by all state agencies, including educational institutions, regarding the following purchasing and material control functions:

- (a) Development of a state commodity coding system, including common stock numbers for items maintained in stores for reissue;
- (b) Determination where consolidations, closures, or additions of stores operated by state agencies and educational institutions should be initiated;
- (c) Institution of standard criteria for determination of when and where an item in the state supply system should be stocked;
- (d) Establishment of stock levels to be maintained in state stores, and formulation of standards for replenishment of stock;
- (e) Formulation of an overall distribution and redistribution system for stock items which establishes sources of supply support for all agencies, including interagency supply support;
- (f) Determination of what function data processing equipment, including remote terminals, shall perform in statewide purchasing and material control for improvement of service and promotion of economy;

(g) Standardization of records and forms used statewide for supply system activities involving purchasing, receiving, inspecting, storing, requisitioning, and issuing functions, including a standard notification form for state agencies to report cost-effective direct purchases, which shall at least identify the price of the goods as available through the division of purchasing, the price of the goods as available from the alternative source, the total savings, and the signature of the notifying agency's director or the director's designee;

(h) Screening of supplies, material, and equipment excess to the requirements of one agency for overall state need before sale as surplus;

(i) Establishment of warehouse operation and storage standards to achieve uniform, effective, and economical stores operations;

(j) Establishment of time limit standards for the issuing of material in store and for processing requisitions requiring purchase;

(k) Formulation of criteria for determining when centralized rather than decentralized purchasing shall be used to obtain maximum benefit of volume buying of identical or similar items, including procurement from federal supply sources;

(l) Development of criteria for use of leased, rather than state owned, warehouse space based on relative cost and accessibility;

(m) Institution of standard criteria for purchase and placement of state furnished materials, carpeting, furniture, fixtures, and nonfixed equipment, in newly constructed or renovated state buildings;

(n) Determination of how transportation costs incurred by the state for materials, supplies, services, and equipment can be reduced by improved freight and traffic coordination and control;

(o) Establishment of a formal certification program for state employees who are authorized to perform purchasing functions as agents for the state under the provisions of chapter 43.19 RCW;

(p) Development of performance measures for the reduction of total overall expense for material, supplies, equipment, and services used each biennium by the state;

(q) Establishment of a standard system for all state organizations to record and report dollar savings and cost avoidance which are attributable to the establishment and implementation of improved purchasing and material control procedures;

(r) Development of procedures for mutual and voluntary cooperation between state agencies, including educational institutions, and political subdivisions for exchange of purchasing and material control services;

(s) Resolution of all other purchasing and material matters which require the establishment of overall statewide policy for effective and economical supply management;

(t) Development of guidelines and criteria for the purchase of vehicles, high gas mileage vehicles, alternate vehicle fuels and systems, equipment, and materials that reduce overall energy-related costs and energy use by the state, including investigations into all opportunities to aggregate the purchasing of clean technologies by state and local governments, and including the requirement that new passenger vehicles purchased by the state meet the minimum standards for passen-

ger automobile fuel economy established by the United States secretary of transportation pursuant to the energy policy and conservation act (15 U.S.C. Sec. 2002);

(u) Development of goals for state use of recycled or environmentally preferable products through specifications for products and services, processes for requests for proposals and requests for qualifications, contractor selection, and contract negotiations;

(v) Development of procurement policies and procedures, such as unbundled contracting and subcontracting, that encourage and facilitate the purchase of products and services by state agencies and institutions from Washington small businesses to the maximum extent practicable and consistent with international trade agreement commitments;

(w) Development of food procurement procedures and materials that encourage and facilitate the purchase of Washington grown food by state agencies and institutions to the maximum extent practicable and consistent with international trade agreement commitments; and

(x) Development of policies requiring all food contracts to include a plan to maximize to the extent practicable and consistent with international trade agreement commitments the availability of Washington grown food purchased through the contract.

(2) The department of general administration shall convene a working group including representatives of the office of financial management, the department of information services, and the state printer. The purpose of the working group is to work collaboratively to develop common policies and procedures that encourage and facilitate state government purchases from Washington small businesses, as required in subsection (1)(v) of this section, and in RCW 39.29.065, 43.78.110, and 43.105.041(1)(j). By December 1, 2009, these central services agencies shall jointly provide a written progress report to the governor and legislature on actions taken and planned, barriers identified, and solutions recommended to reach this goal.

(3) The definitions in this subsection apply throughout this section and RCW 43.19.1908.

(a) "Common vendor registration and bid notification system" has the definition in RCW 39.29.006.

(b) "Small business" has the definition in RCW 39.29.006.

(c) "Washington grown" has the definition in RCW 15.64.060. [2009 c 486 § 10; 2008 c 215 § 4. Prior: 2002 c 299 § 5; 2002 c 285 § 1; 1995 c 269 § 1402; 1993 sp.s. c 10 § 3; 1987 c 504 § 16; 1980 c 172 § 7; 1975-'76 2nd ex.s. c 21 § 5.]

**Intent—2009 c 486:** See note following RCW 39.29.006.

**Conflict with federal requirements—2009 c 486:** See note following RCW 28B.30.530.

**Findings—Intent—Short title—Captions not law—Conflict with federal requirements—2008 c 215:** See notes following RCW 15.64.060.

**Effective date—1995 c 269:** See note following RCW 9.94A.850.

**Part headings not law—Severability—1995 c 269:** See notes following RCW 13.40.005.

**Notification forms—1993 sp.s. c 10:** "The department of general administration shall forward copies of notification forms required under RCW 43.19.1905(7) to the office of financial management. By September 1, 1994, the department of general administration shall report to the house of representatives fiscal committees and senate ways and means committee on the volume and type of purchases made and the aggregate savings identified

by state agencies making purchases as authorized by this act for fiscal year 1994." [1993 sp.s. c 10 § 4.]

**Purpose—1993 sp.s. c 10:** See note following RCW 43.19.190.

**Severability—Effective date—1987 c 504:** See RCW 43.105.901 and 43.105.902.

**Severability—1975-'76 2nd ex.s. c 21:** See note following RCW 43.19.180.

*Energy conservation—Legislative finding—Declaration—Purpose:* RCW 43.19.668 and 43.19.669.

### 43.19.1908 Bids—Solicitation—Qualified bidders.

Competitive bidding required by RCW 43.19.190 through 43.19.1939 shall be solicited by public notice, by posting of the contract opportunity on the state's common vendor registration and bid notification system, and through the sending of notices by mail, electronic transmission, or other means to bidders on the appropriate list of bidders who shall have qualified by application to the division of purchasing. Bids may be solicited by the purchasing division from any source thought to be of advantage to the state. All bids shall be in written or electronic form and conform to rules of the division of purchasing. [2009 c 486 § 11; 2006 c 363 § 2; 1994 c 300 § 2; 1965 c 8 § 43.19.1908. Prior: 1959 c 178 § 5.]

**Intent—2009 c 486:** See note following RCW 39.29.006.

**Conflict with federal requirements—2009 c 486:** See note following RCW 28B.30.530.

**43.19.1915 Bidder's bond—Annual bid bond.** When any bid has been accepted, the division of purchasing may require of the successful bidder a bond payable to the state in such amount with such surety or sureties as determined by the division of purchasing, conditioned that he or she will fully, faithfully and accurately execute the terms of the contract into which he or she has entered. The bond shall be filed in the office of the division of purchasing. Bidders who regularly do business with the state shall be permitted to file with the division of purchasing an annual bid bond in an amount established by the division and such annual bid bond shall be acceptable as surety in lieu of furnishing surety with individual bids. [2009 c 549 § 5064; 1965 c 8 § 43.19.1915. Prior: 1959 c 178 § 8.]

**43.19.1937 Acceptance of benefits, gifts, etc., prohibited—Penalties.** No state employee whose duties performed for the state include:

(1) Advising on or drawing specifications for supplies, equipment, commodities, or services;

(2) Suggesting or determining vendors to be placed upon a bid list;

(3) Drawing requisitions for supplies, equipment, commodities, or services;

(4) Evaluating specifications or bids and suggesting or determining awards; or

(5) Accepting the receipt of supplies, equipment, and commodities or approving the performance of services or contracts;

shall accept or receive, directly or indirectly, a personal financial benefit, or accept any gift, token, membership, or service, as a result of a purchase entered into by the state, from any person, firm, or corporation engaged in the sale,

lease, or rental of property, material, supplies, equipment, commodities, or services to the state of Washington.

Violation of this section shall be considered a malfeasance and may cause loss of position, and the violator shall be liable to the state upon his or her official bond for all damages sustained by the state. Contracts involved may be canceled at the option of the state. Penalties provided in this section are not exclusive, and shall not bar action under any other statute penalizing the same act or omission. [2009 c 549 § 5065; 1995 c 269 § 1405; 1975-'76 2nd ex.s. c 21 § 13; 1965 c 8 § 43.19.1937. Prior: 1959 c 178 § 19.]

**Effective date—1995 c 269:** See note following RCW 9.94A.850.

**Part headings not law—Severability—1995 c 269:** See notes following RCW 13.40.005.

**Severability—1975-'76 2nd ex.s. c 21:** See note following RCW 43.19.180.

*Public officers*

*code of ethics: Chapters 42.23 and 42.52 RCW.*

*misconduct: Chapter 42.20 RCW.*

**43.19.200 Duty of others in relation to purchases—Emergency purchases—Written notifications.** (1) The governing authorities of the state's educational institutions, the elective state officers, the supreme court, the court of appeals, the administrative and other departments of the state government, and all appointive officers of the state, shall prepare estimates of the supplies required for the proper conduct and maintenance of their respective institutions, offices, and departments, covering periods to be fixed by the director, and forward them to the director in accordance with his or her directions. No such authorities, officers, or departments, or any officer or employee thereof, may purchase any article for the use of their institutions, offices, or departments, except in case of emergency purchases as provided in subsection (2) of this section.

(2) The authorities, officers, and departments enumerated in subsection (1) of this section may make emergency purchases in response to unforeseen circumstances beyond the control of the agency which present a real, immediate, and extreme threat to the proper performance of essential functions or which may reasonably be expected to result in excessive loss or damage to property, bodily injury, or loss of life. When an emergency purchase is made, the agency head shall submit written notification of the purchase, within three days of the purchase, to the director of general administration. This notification shall contain a description of the purchase, description of the emergency and the circumstances leading up to the emergency, and an explanation of why the circumstances required an emergency purchase.

(3) Purchases made for the state's educational institutions, the offices of the elective state officers, the supreme court, the court of appeals, the administrative and other departments of the state government, and the offices of all appointive officers of the state, shall be paid for out of the moneys appropriated for supplies, material, and service of the respective institutions, offices, and departments.

(4) The director of general administration shall submit, on an annual basis, the written notifications required by subsection (2) of this section to the director of financial management. [2009 c 549 § 5066; 1986 c 158 § 10; 1984 c 102 § 2;

1971 c 81 § 111; 1965 c 8 § 43.19.200. Prior: 1955 c 285 § 13; prior: 1921 c 7 § 37, part; RRS § 10795, part.]

**Findings—1984 c 102:** "The legislature finds that the emergency purchasing provisions of state law are being more liberally construed than the legislature originally intended. Therefore, the legislature finds that it is necessary to clarify the law as it pertains to emergency purchases and to provide a mechanism for legislative oversight." [1984 c 102 § 1.]

**43.19.501 Thurston county capital facilities account.** The Thurston county capital facilities account is created in the state treasury. The account is subject to the appropriation and allotment procedures under chapter 43.88 RCW. Moneys in the account may be expended for capital projects in facilities owned and managed by the department of general administration in Thurston county. For the 2007-2009 biennium, moneys in the account may be used for predesign identified in section 1037, chapter 328, Laws of 2008.

During the 2009-2011 fiscal biennium, the legislature may transfer from the Thurston county capital facilities account to the state general fund such amounts as reflect the excess fund balance of the account. [2009 c 564 § 932; 2008 c 328 § 6016; 1994 c 219 § 18.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Part headings not law—Severability—Effective date—2008 c 328:** See notes following RCW 43.155.050.

**Findings—Purpose—1994 c 219:** See note following RCW 43.01.090.

**Finding—1994 c 219:** See note following RCW 43.88.030.

**43.19.534 Purchase of articles or products from inmate work programs—Replacement of goods and services obtained from outside the state—Rules.** (1) State agencies, the legislature, and departments shall purchase for their use all goods and services required by the legislature, agencies, or departments that are produced or provided in whole or in part from class II inmate work programs operated by the department of corrections through state contract. These goods and services shall not be purchased from any other source unless, upon application by the department or agency: (a) The department of general administration finds that the articles or products do not meet the reasonable requirements of the agency or department, (b) are not of equal or better quality, or (c) the price of the product or service is higher than that produced by the private sector. However, the criteria contained in (a), (b), and (c) of this section for purchasing goods and services from sources other than correctional industries do not apply to goods and services produced by correctional industries that primarily replace goods manufactured or services obtained from outside the state. The department of corrections and department of general administration shall adopt administrative rules that implement this section.

(2) During the 2009-2011 fiscal biennium, and in conformance with section 223(11), chapter 470, Laws of 2009, this section does not apply to the purchase of uniforms by the Washington state ferries. [2009 c 470 § 717; 1993 sp.s. c 20 § 1; 1986 c 94 § 2.]

**Effective date—2009 c 470:** See note following RCW 46.68.170.

**Severability—1993 sp.s. c 20:** "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 sp.s. c 20 § 9.]

**43.19.595 Motor vehicle transportation service—Transfer of motor vehicles, property, etc., from motor pool to department.** All passenger motor vehicles, property, facilities, equipment, credits, funds, and all other assets and obligations of the automobile pool and pertaining to passenger motor vehicles currently operated by the department of highways and funded by that portion of the highway equipment fund known as "District No. 8 (Motor Pool)" shall be transferred to the department of general administration on July 1, 1975. The director of general administration may accept such property prior thereto if he or she deems it expedient to accomplish an orderly transition. [2009 c 549 § 5067; 1975 1st ex.s. c 167 § 9.]

**Severability—1975 1st ex.s. c 167:** See note following RCW 43.19.010.

**43.19.600 Motor vehicle transportation service—Transfer of passenger motor vehicles to department from other agencies—Studies.** (1) On or after July 1, 1975, any passenger motor vehicles currently owned or hereafter acquired by any state agency, except vehicles acquired from federal granted funds and over which the federal government retains jurisdiction and control, may be purchased by or transferred to the department of general administration with the consent of the state agency concerned. The director of general administration may accept vehicles subject to the provisions of RCW 43.19.560 through 43.19.630, 43.41.130 and 43.41.140 prior to July 1, 1975, if he or she deems it expedient to accomplish an orderly transition.

(2) The department, in cooperation with the office of financial management, shall study and ascertain current and prospective needs of state agencies for passenger motor vehicles and shall recommend transfer to a state motor pool or other appropriate disposition of any vehicle found not to be required by a state agency.

(3) The department shall direct the transfer of passenger motor vehicles from a state agency to a state motor pool or other disposition as appropriate, based on a study under subsection (2) of this section, or after a public hearing held by the department, if a finding is made based on testimony and data therein submitted that the economy, efficiency, or effectiveness of state government would be improved by such a transfer or other disposition of passenger motor vehicles. Any dispute over the accuracy of testimony and data submitted as to the benefits in state governmental economy, efficiency, and effectiveness to be gained by such transfer shall be resolved by the governor or the governor's designee. [2009 c 549 § 5068; 1982 c 163 § 12; 1979 c 151 § 102; 1975 1st ex.s. c 167 § 10.]

**Severability—Effective date—1982 c 163:** See notes following RCW 2.10.052.

**Severability—1975 1st ex.s. c 167:** See note following RCW 43.19.010.

**43.19.620 Motor vehicle transportation service—Rules and regulations.** The director of general administration, through the supervisor of motor transport, shall adopt, promulgate, and enforce such regulations as may be deemed necessary to accomplish the purpose of RCW 43.19.560 through 43.19.630, 43.41.130, and 43.41.140. Such regulations, in addition to other matters, shall provide authority for

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any agency director or his or her delegate to approve the use on official state business of personally owned or commercially owned rental passenger motor vehicles. Before such an authorization is made, it must first be reasonably determined that state owned passenger vehicles or other suitable transportation is not available at the time or location required or that the use of such other transportation would not be conducive to the economical, efficient, and effective conduct of business.

Such regulations shall be consistent with and shall carry out the objectives of the general policies and guidelines adopted by the office of financial management pursuant to RCW 43.41.130. [2009 c 549 § 5069; 1989 c 57 § 7; 1979 c 151 § 103; 1975 1st ex.s. c 167 § 14.]

**Effective date—1989 c 57:** "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 57 § 11.]

**Severability—1975 1st ex.s. c 167:** See note following RCW 43.19.010.

**43.19.630 Motor vehicle transportation service—Use of personal motor vehicle.** RCW 43.19.560 through 43.19.620, 43.41.130, and 43.41.140 shall not be construed to prohibit a state officer or employee from using his or her personal motor vehicle on state business and being reimbursed therefor, where permitted under state travel policies, rules, and regulations promulgated by the office of financial management, and where such use is in the interest of economic, efficient, and effective management and performance of official state business. [2009 c 549 § 5070; 1989 c 57 § 8; 1979 c 151 § 104; 1975 1st ex.s. c 167 § 16.]

**Effective date—1989 c 57:** See note following RCW 43.19.620.

**Severability—1975 1st ex.s. c 167:** See note following RCW 43.19.010.

**43.19.635 Motor vehicle transportation service—Unauthorized use of state vehicles—Procedure—Disciplinary action.** (1) The governor, acting through the department of general administration and any other appropriate agency or agencies as he or she may direct, is empowered to utilize all reasonable means for detecting the unauthorized use of state owned motor vehicles, including the execution of agreements with the state patrol for compliance enforcement. Whenever such illegal use is discovered which involves a state employee, the employing agency shall proceed as provided by law to establish the amount, extent, and dollar value of any such use, including an opportunity for notice and hearing for the employee involved. When such illegal use is so established, the agency shall assess its full cost of any mileage illegally used and shall recover such amounts by deductions from salary or allowances due to be paid to the offending official or employee by other means. Recovery of costs by the state under this subsection shall not preclude disciplinary or other action by the appropriate appointing authority or employing agency under subsection (2) of this section.

(2) Any wilful and knowing violation of any provision of RCW 43.19.560 through 43.19.620, 43.41.130 and 43.41.140 shall subject the state official or employee committing such violation to disciplinary action by the appropriate appointing or employing agency. Such disciplinary action may include,

but shall not be limited to, suspension without pay, or termination of employment in the case of repeated violations.

(3) Any casual or inadvertent violation of RCW 43.19.560 through 43.19.620, 43.41.130 and 43.41.140 may subject the state official or employee committing such violation to disciplinary action by the appropriate appointing authority or employing agency. Such disciplinary action may include, but need not be limited to, suspension without pay. [2009 c 549 § 5071; 1975 1st ex.s. c 167 § 17.]

**Severability—1975 1st ex.s. c 167:** See note following RCW 43.19.010.

#### 43.19.642 Biodiesel fuel blends—Use by agencies—

**Biannual report.** (1) Effective June 1, 2006, for agencies complying with the ultra-low sulfur diesel mandate of the United States environmental protection agency for on-highway diesel fuel, agencies shall use biodiesel as an additive to ultra-low sulfur diesel for lubricity, provided that the use of a lubricity additive is warranted and that the use of biodiesel is comparable in performance and cost with other available lubricity additives. The amount of biodiesel added to the ultra-low sulfur diesel fuel shall be not less than two percent.

(2) Effective June 1, 2009, state agencies are required to use a minimum of twenty percent biodiesel as compared to total volume of all diesel purchases made by the agencies for the operation of the agencies' diesel-powered vessels, vehicles, and construction equipment.

(3) All state agencies using biodiesel fuel shall, beginning on July 1, 2006, file biannual reports with the department of general administration documenting the use of the fuel and a description of how any problems encountered were resolved.

(4) For the 2009-2011 fiscal biennium, the Washington state ferries is required to use a minimum of five percent biodiesel as compared to total volume of all diesel purchases made by the Washington state ferries for the operation of the Washington state ferries diesel-powered vessels so long as the per gallon price of diesel containing a five percent biodiesel blend level does not exceed the per gallon price of diesel by more than five percent. If the per gallon price of diesel containing a five percent biodiesel blend level exceeds the per gallon price of diesel by more than five percent, the requirements of this section do not apply to vessel fuel purchases by the Washington state ferries.

(5) By December 1, 2009, the department of general administration shall:

(a) Report to the legislature on the average true price differential for biodiesel by blend and location; and

(b) Examine alternative fuel procurement methods that work to address potential market barriers for in-state biodiesel producers and report these findings to the legislature. [2009 c 470 § 716; 2007 c 348 § 201; 2006 c 338 § 10; 2003 c 17 § 2.]

**Effective date—2009 c 470:** See note following RCW 46.68.170.

**Findings—Part headings not law—2007 c 348:** See RCW 43.325.005 and 43.325.903.

**Findings—Intent—2006 c 338:** See note following RCW 19.112.110.

**Effective date—Severability—2006 c 338:** See RCW 19.112.903 and 19.112.904.

**Findings—2003 c 17:** "The legislature recognizes that:

(1) Biodiesel is less polluting than petroleum diesel;

(2) Using biodiesel in neat form or blended with petroleum diesel significantly reduces air toxics and cancer-causing compounds as well as the soot associated with petroleum diesel exhaust;

(3) Biodiesel degrades much faster than petroleum diesel;

(4) Biodiesel is less toxic than petroleum fuels;

(5) The United States environmental protection agency's new emission standards for petroleum diesel that take effect June 1, 2006, will require the addition of a lubricant to ultra-low sulfur diesel to counteract premature wear of injection pumps;

(6) Biodiesel provides the needed lubricity to ultra-low sulfur diesel;

(7) Biodiesel use in state-owned diesel-powered vehicles provides a means for the state to comply with the alternative fuel vehicle purchase requirements of the energy policy act of 1992, P.L. 102-486; and

(8) The state is in a position to set an example of large scale use of biodiesel in diesel-powered vehicles and equipment." [2003 c 17 § 1.]

#### 43.19.648 Publicly owned vehicles, vessels, and construction equipment—Fuel usage—Tires.

(1) Effective June 1, 2015, all state agencies and local government subdivisions of the state, to the extent determined practicable by the rules adopted by the department of community, trade, and economic development pursuant to RCW 43.325.080, are required to satisfy one hundred percent of their fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel.

(2) In order to phase in this transition for the state, all state agencies, to the extent determined practicable by the department of community, trade, and economic development by rules adopted pursuant to RCW 43.325.080, are required to achieve forty percent fuel usage for operating publicly owned vessels, vehicles, and construction equipment from electricity or biofuel by June 1, 2013. The department of general administration, in consultation with the department of community, trade, and economic development, shall report to the governor and the legislature by December 1, 2013, on what percentage of the state's fuel usage is from electricity or biofuel.

(3) Except for cars owned or operated by the Washington state patrol, when tires on vehicles in the state's motor vehicle fleet are replaced, they must be replaced with tires that have the same or better rolling resistance as the original tires.

(4) By December 31, 2015, the state must, to the extent practicable, install electrical outlets capable of charging electric vehicles in each of the state's fleet parking and maintenance facilities.

(5) The department of transportation's obligations under subsection (2) of this section are subject to the availability of amounts appropriated for the specific purpose identified in subsection (2) of this section.

(6) The department of transportation's obligations under subsection (4) of this section are subject to the availability of amounts appropriated for the specific purpose identified in subsection (4) of this section unless the department receives federal or private funds for the specific purpose identified in subsection (4) of this section.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540. [2009 c 459 § 7; 2007 c 348 § 202.]

**Finding—Purpose—2009 c 459:** See note following RCW 47.80.090.

**Findings—Part headings not law—2007 c 348:** See RCW 43.325.005 and 43.325.903.

*Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.*

## Chapter 43.19A RCW

### RECYCLED PRODUCT PROCUREMENT

#### Sections

- 43.19A.020 Recycled product purchasing—Federal product standards.  
 43.19A.022 Recycled content paper for printers and copiers—Purchasing priority.  
 43.19A.050 Strategy for state agency procurement.

**43.19A.020 Recycled product purchasing—Federal product standards.** (1) The federal product standards, adopted under 42 U.S.C. Sec. 6962(e) as it exists on July 1, 2001, are adopted as the minimum standards for the state of Washington. These standards shall be implemented for at least the products listed in this subsection, unless the director finds that a different standard would significantly increase recycled product availability or competition.

- (a) Organic recovered materials;
- (b) Latex paint products;
- (c) Products for lower value uses containing recycled plastics;
- (d) Retread and remanufactured tires;
- (e) Lubricating oils;
- (f) Automotive batteries;
- (g) Building products and materials;
- (h) Panelboard; and
- (i) Compost products.

(2) By July 1, 2001, the director shall adopt product standards for strawboard manufactured using as an ingredient straw that is produced as a by-product in the production of cereal grain or turf or grass seed and product standards for products made from strawboard.

(3) The standards required by this section shall be applied to recycled product purchasing by the department, other state agencies, and state postsecondary educational institutions. The standards may be adopted or applied by any other local government in product procurement. The standards shall provide for exceptions under appropriate circumstances to allow purchases of recycled products that do not meet the minimum content requirements of the standards. [2009 c 356 § 3; 2001 c 77 § 1; 1996 c 198 § 1; 1995 c 269 § 1406; 1991 c 297 § 3.]

**Effective date—2001 c 77:** "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, 2001." [2001 c 77 § 2.]

**Effective date—1995 c 269:** See note following RCW 9.94A.850.

[2009 RCW Supp—page 784]

**Part headings not law—Severability—1995 c 269:** See notes following RCW 13.40.005.

**43.19A.022 Recycled content paper for printers and copiers—Purchasing priority.** (1) By December 31, 2009, all state agencies shall purchase one hundred percent recycled content white cut sheet bond paper used in office printers and copiers. State agencies are encouraged to give priority to purchasing from companies that produce paper in facilities that generate energy from a renewable energy source.

(2) State agencies that utilize office printers and copiers that, after reasonable attempts, cannot be calibrated to utilize such paper referenced in subsection (1) of this section, must for those models of equipment:

(a) Purchase paper at the highest recycled content that can be utilized efficiently by the copier or printer;

(b) At the time of lease renewal or at the end of the life-cycle, either lease or purchase a model that will efficiently utilize one hundred percent recycled content white cut sheet bond paper;

(3) Printed projects that require the use of high volume production inserters or high-speed digital devices, such as those used by the state printer, department of information services, and the department of general administration, are not required to meet the one hundred percent recycled content white cut sheet bond paper standard, but must utilize the highest recycled content that can be utilized efficiently by such equipment and not impede the business of agencies.

(4) The state printer, department of general administration, and department of information services shall work together to identify for use by agencies one hundred percent recycled paper products that process efficiently through high-speed production equipment and do not impede the business of agencies. [2009 c 356 § 2.]

**43.19A.050 Strategy for state agency procurement.** The department shall prepare a strategy to increase purchases of recycled-content products by the department and all state agencies, including higher education institutions. The strategy shall include purchases from public works contracts. The strategy shall address the purchase of plastic products, retread and remanufactured tires, motor vehicle lubricants, latex paint, and lead acid batteries having recycled content. In addition, the strategy shall incorporate actions to achieve the following purchase level goals of compost products:

Compost products as a percentage of the total dollar amount on an annual basis:

- (1) At least forty percent by 1996;
- (2) At least sixty percent by 1997;
- (3) At least eighty percent by 1998. [2009 c 356 § 4; 1996 c 198 § 2; 1991 c 297 § 7.]

## Chapter 43.20 RCW

### STATE BOARD OF HEALTH

#### Sections

- 43.20.030 State board of health—Members—Chair—Staff support—Executive director, confidential secretary—Compensation and travel expenses of members.  
 43.20.050 Powers and duties of state board of health—State public health report—Delegation of authority—Enforcement of rules.



43.20.100 Biennial report.  
43.20.240 Public water systems—Complaint process.

**43.20.030 State board of health—Members—Chair—Staff support—Executive director, confidential secretary—Compensation and travel expenses of members.** The state board of health shall be composed of ten members. These shall be the secretary or the secretary's designee and nine other persons to be appointed by the governor, including four persons experienced in matters of health and sanitation, one of whom is a health official from a federally recognized tribe; an elected city official who is a member of a local health board; an elected county official who is a member of a local health board; a local health officer; and two persons representing the consumers of health care. Before appointing the city official, the governor shall consider any recommendations submitted by the association of Washington cities. Before appointing the county official, the governor shall consider any recommendations submitted by the Washington state association of counties. Before appointing the local health officer, the governor shall consider any recommendations submitted by the Washington state association of local public health officials. Before appointing one of the two consumer representatives, the governor shall consider any recommendations submitted by the state council on aging. The chair shall be selected by the governor from among the nine appointed members. The department of health shall provide necessary technical staff support to the board. The board may employ an executive director and a confidential secretary, each of whom shall be exempt from the provisions of the state civil service law, chapter 41.06 RCW.

Members of the board shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060. [2009 c 549 § 5072; 2006 c 238 § 1. Prior: 1984 c 287 § 75; 1984 c 243 § 2; (1993 c 492 § 255 repealed by 1995 c 43 § 16); 1970 ex.s. c 18 § 11; 1965 c 8 § 43.20.030; prior: 1921 c 7 § 56, part; RRS § 10814, part.]

**Short title—2006 c 238:** "This act shall be known as the Sue Crystal memorial act." [2006 c 238 § 2.]

**Legislative findings—Severability—Effective date—1984 c 287:** See notes following RCW 43.03.220.

**Effective date—Severability—1970 ex.s. c 18:** See notes following RCW 43.20A.010.

**43.20.050 Powers and duties of state board of health—State public health report—Delegation of authority—Enforcement of rules.** (1) The state board of health shall provide a forum for the development of public health policy in Washington state. It is authorized to recommend to the secretary means for obtaining appropriate citizen and professional involvement in all public health policy formulation and other matters related to the powers and duties of the department. It is further empowered to hold hearings and explore ways to improve the health status of the citizenry.

(a) At least every five years, the state board shall convene regional forums to gather citizen input on public health issues.

(b) Every two years, in coordination with the development of the state biennial budget, the state board shall prepare

the state public health report that outlines the health priorities of the ensuing biennium. The report shall:

(i) Consider the citizen input gathered at the forums;  
(ii) Be developed with the assistance of local health departments;

(iii) Be based on the best available information collected and reviewed according to RCW 43.70.050;

(iv) Be developed with the input of state health care agencies. At least the following directors of state agencies shall provide timely recommendations to the state board on suggested health priorities for the ensuing biennium: The secretary of social and health services, the health care authority administrator, the insurance commissioner, the superintendent of public instruction, the director of labor and industries, the director of ecology, and the director of agriculture;

(v) Be used by state health care agency administrators in preparing proposed agency budgets and executive request legislation;

(vi) Be submitted by the state board to the governor by January 1st of each even-numbered year for adoption by the governor. The governor, no later than March 1st of that year, shall approve, modify, or disapprove the state public health report.

(c) In fulfilling its responsibilities under this subsection, the state board may create ad hoc committees or other such committees of limited duration as necessary.

(2) In order to protect public health, the state board of health shall:

(a) Adopt rules for group A public water systems, as defined in RCW 70.119A.020, necessary to assure safe and reliable public drinking water and to protect the public health. Such rules shall establish requirements regarding:

(i) The design and construction of public water system facilities, including proper sizing of pipes and storage for the number and type of customers;

(ii) Drinking water quality standards, monitoring requirements, and laboratory certification requirements;

(iii) Public water system management and reporting requirements;

(iv) Public water system planning and emergency response requirements;

(v) Public water system operation and maintenance requirements;

(vi) Water quality, reliability, and management of existing but inadequate public water systems; and

(vii) Quality standards for the source or supply, or both source and supply, of water for bottled water plants;

(b) Adopt rules as necessary for group B public water systems, as defined in RCW 70.119A.020. The rules shall, at a minimum, establish requirements regarding the initial design and construction of a public water system. The state board of health rules may waive some or all requirements for group B public water systems with fewer than five connections;

(c) Adopt rules and standards for prevention, control, and abatement of health hazards and nuisances related to the disposal of wastes, solid and liquid, including but not limited to sewage, garbage, refuse, and other environmental contaminants; adopt standards and procedures governing the design, construction, and operation of sewage, garbage, refuse and other solid waste collection, treatment, and disposal facilities;

(d) Adopt rules controlling public health related to environmental conditions including but not limited to heating, lighting, ventilation, sanitary facilities, cleanliness and space in all types of public facilities including but not limited to food service establishments, schools, institutions, recreational facilities and transient accommodations and in places of work;

(e) Adopt rules for the imposition and use of isolation and quarantine;

(f) Adopt rules for the prevention and control of infectious and noninfectious diseases, including food and vector borne illness, and rules governing the receipt and conveyance of remains of deceased persons, and such other sanitary matters as admit of and may best be controlled by universal rule; and

(g) Adopt rules for accessing existing databases for the purposes of performing health related research.

(3) The state board shall adopt rules for the design, construction, installation, operation, and maintenance of those on-site sewage systems with design flows of less than three thousand five hundred gallons per day.

(4) The state board may delegate any of its rule-adopting authority to the secretary and rescind such delegated authority.

(5) All local boards of health, health authorities and officials, officers of state institutions, police officers, sheriffs, constables, and all other officers and employees of the state, or any county, city, or township thereof, shall enforce all rules adopted by the state board of health. In the event of failure or refusal on the part of any member of such boards or any other official or person mentioned in this section to so act, he or she shall be subject to a fine of not less than fifty dollars, upon first conviction, and not less than one hundred dollars upon second conviction.

(6) The state board may advise the secretary on health policy issues pertaining to the department of health and the state. [2009 c 495 § 1; 2007 c 343 § 11; 1993 c 492 § 489; 1992 c 34 § 4. Prior: 1989 1st ex.s. c 9 § 210; 1989 c 207 § 1; 1985 c 213 § 1; 1979 c 141 § 49; 1967 ex.s. c 102 § 9; 1965 c 8 § 43.20.050; prior: (i) 1901 c 116 § 1; 1891 c 98 § 2; RRS § 6001. (ii) 1921 c 7 § 58; RRS § 10816.]

**Effective date—2009 c 495:** "Except for section 9 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 [May 14, 2009]." [2009 c 495 § 17.]

**Captions and part headings not law—2007 c 343:** See RCW 70.118B.900.

**Findings—1993 c 492:** "The legislature finds that our health and financial security are jeopardized by our ever increasing demand for health care and by current health insurance and health system practices. Current health system practices encourage public demand for unneeded, ineffective, and sometimes dangerous health treatments. These practices often result in unaffordable cost increases that far exceed ordinary inflation for essential care. Current total health care expenditure rates should be sufficient to provide access to essential health care interventions to all within a reformed, efficient system.

The legislature finds that too many of our state's residents are without health insurance, that each year many individuals and families are forced into poverty because of serious illness, and that many must leave gainful employment to be eligible for publicly funded medical services. Additionally, thousands of citizens are at risk of losing adequate health insurance, have had insurance canceled recently, or cannot afford to renew existing coverage.

The legislature finds that businesses find it difficult to pay for health insurance and remain competitive in a global economy, and that individuals,

the poor, and small businesses bear an inequitable health insurance burden.

The legislature finds that persons of color have significantly higher rates of mortality and poor health outcomes, and substantially lower numbers and percentages of persons covered by health insurance than the general population. It is intended that chapter 492, Laws of 1993 make provisions to address the special health care needs of these racial and ethnic populations in order to improve their health status.

The legislature finds that uncontrolled demand and expenditures for health care are eroding the ability of families, businesses, communities, and governments to invest in other enterprises that promote health, maintain independence, and ensure continued economic welfare. Housing, nutrition, education, and the environment are all diminished as we invest ever increasing shares of wealth in health care treatments.

The legislature finds that while immediate steps must be taken, a long-term plan of reform is also needed." [1993 c 492 § 101.]

**Intent—1993 c 492:** "(1) The legislature intends that state government policy stabilize health services costs, assure access to essential services for all residents, actively address the health care needs of persons of color, improve the public's health, and reduce unwarranted health services costs to preserve the viability of nonhealth care businesses.

(2) The legislature intends that:

(a) Total health services costs be stabilized and kept within rates of increase similar to the rates of personal income growth within a publicly regulated, private marketplace that preserves personal choice;

(b) State residents be enrolled in the certified health plan of their choice that meets state standards regarding affordability, accessibility, cost-effectiveness, and clinical efficaciousness;

(c) State residents be able to choose health services from the full range of health care providers, as defined in RCW 43.72.010(12), in a manner consistent with good health services management, quality assurance, and cost effectiveness;

(d) Individuals and businesses have the option to purchase any health services they may choose in addition to those included in the uniform benefits package or supplemental benefits;

(e) All state residents, businesses, employees, and government participate in payment for health services, with total costs to individuals on a sliding scale based on income to encourage efficient and appropriate utilization of services;

(f) These goals be accomplished within a reformed system using private service providers and facilities in a way that allows consumers to choose among competing plans operating within budget limits and other regulations that promote the public good; and

(g) A policy of coordinating the delivery, purchase, and provision of health services among the federal, state, local, and tribal governments be encouraged and accomplished by chapter 492, Laws of 1993.

(3) Accordingly, the legislature intends that chapter 492, Laws of 1993 provide both early implementation measures and a process for overall reform of the health services system." [1993 c 492 § 102.]

**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.

**Severability—1992 c 34:** See note following RCW 69.07.170.

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Savings—1985 c 213:** "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, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1985 c 213 § 31.]

**Effective date—1985 c 213:** "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, 1985." [1985 c 213 § 33.]

**Severability—1967 ex.s. c 102:** See note following RCW 43.70.130.

**Rules and regulations—Visual and auditory screening of pupils:** RCW 28A.210.020.

**43.20.100 Biennial report.** The state board of health shall report to the governor by July 1st of each even-numbered year including therein suggestions for public health priorities for the following biennium and such legislative action

as it deems necessary. [2009 c 518 § 23; 1977 c 75 § 44; 1965 c 8 § 43.20.100. Prior: 1891 c 98 § 11; RRS § 6007.]

#### 43.20.240 Public water systems—Complaint process.

(1) The department shall have primary responsibility among state agencies to receive complaints from persons aggrieved by the failure of a public water system. If the remedy to the complaint is not within the jurisdiction of the department, the department shall refer the complaint to the state or local agency that has the appropriate jurisdiction. The department shall take such steps as are necessary to inform other state agencies of their primary responsibility for such complaints and the implementing procedures.

(2) Each county shall designate a contact person to the department for the purpose of receiving and following up on complaint referrals that are within county jurisdiction. In the absence of any such designation, the county health officer shall be responsible for performing this function.

(3) The department and each county shall establish procedures for providing a reasonable response to complaints received from persons aggrieved by the failure of a public water system.

(4) The department and each county shall use all reasonable efforts to assist customers of public water systems in obtaining a dependable supply of water at all times. The availability of resources and the public health significance of the complaint shall be considered when determining what constitutes a reasonable effort.

(5) The department shall, in consultation with local governments, water utilities, water-sewer districts, public utility districts, and other interested parties, develop a booklet or other single document that will provide to members of the public the following information:

(a) A summary of state and local law regarding the obligations of public water systems in providing drinking water supplies to their customers;

(b) A summary of the activities, including planning, rate setting, and compliance, that are to be performed by both local and state agencies;

(c) The rights of customers of public water systems, including identification of agencies or offices to which they may address the most common complaints regarding the failures or inadequacies of public water systems.

This booklet or document shall be available to members of the public no later than January 1, 1991. [2009 c 495 § 2; 1999 c 153 § 56; 1990 c 132 § 3.]

**Effective date—2009 c 495:** See note following RCW 43.20.050.

**Part headings not law—1999 c 153:** See note following RCW 57.04.050.

**Legislative findings—1990 c 132:** "The legislature finds the best interests of the citizens of the state are served if:

(1) Customers served by public water systems are assured of an adequate quantity and quality of water supply at reasonable rates;

(2) There is improved coordination between state agencies engaged in water system planning and public health regulation and local governments responsible for land use planning and public health and safety; and

(3) Existing procedures and processes for water system planning are strengthened and fully implemented by state agencies, local government, and public water systems." [1990 c 132 § 1.]

**Severability—1990 c 132:** "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 132 § 7.]

## Chapter 43.20A RCW DEPARTMENT OF SOCIAL AND HEALTH SERVICES

### Sections

- 43.20A.040 Secretary of social and health services—Appointment—Term—Salary—Temporary appointment if vacancy—As executive head and appointing authority.
- 43.20A.110 Secretary's delegation of powers and duties.
- 43.20A.310 Vocational rehabilitation, powers and duties of secretary or designee.
- 43.20A.320 Consultation with coordinating council for occupational education.
- 43.20A.415 Purchase of services from public or nonprofit agencies—Retention of basic responsibilities by secretary.
- 43.20A.560 Repealed.
- 43.20A.605 Authority to administer oaths and issue subpoenas—Provisions governing subpoenas.
- 43.20A.635 Services for children with disabilities.
- 43.20A.660 Reports of violations by secretary—Duty of attorney general, prosecuting attorney or city attorney to institute proceedings—Notice to alleged violator.
- 43.20A.710 Investigation of conviction records or pending charges of state employees and individual providers.

**43.20A.040 Secretary of social and health services—Appointment—Term—Salary—Temporary appointment if vacancy—As executive head and appointing authority.** The executive head and appointing authority of the department shall be the secretary of social and health services. He or she shall be appointed by the governor with the consent of the senate, and shall serve at the pleasure of the governor. He or she shall be paid a salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. If a vacancy occurs in his or her position while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate, when he or she shall present to that body his or her nomination for the office. [2009 c 549 § 5073; 1970 ex.s. c 18 § 4.]

**43.20A.110 Secretary's delegation of powers and duties.** The secretary may delegate any power or duty vested in or transferred to him or her by law, or executive order, to his or her deputy secretary or to any other assistant or subordinate; but the secretary shall be responsible for the official acts of the officers and employees of the department. [2009 c 549 § 5074; 1970 ex.s. c 18 § 9.]

**43.20A.310 Vocational rehabilitation, powers and duties of secretary or designee.** In addition to his or her other powers and duties, the secretary or his or her designee, shall have the following powers and duties:

(1) To prepare, adopt and certify the state plan for vocational rehabilitation;

(2) With respect to vocational rehabilitation, to adopt necessary rules and regulations and do such other acts not forbidden by law necessary to carry out the duties imposed by state law and the federal acts;

(3) To carry out the aims and purposes of the acts of congress pertaining to vocational rehabilitation. [2009 c 549 § 5075; 1979 c 141 § 65; 1970 ex.s. c 18 § 42.]

**43.20A.320 Consultation with coordinating council for occupational education.** The secretary or his or her designee shall consult with the coordinating council for occupational education in order to maintain close contact with

developing programs of vocational education, particularly as such programs may affect programs undertaken in connection with vocational rehabilitation. [2009 c 549 § 5076; 1970 ex.s. c 18 § 43.]

**43.20A.415 Purchase of services from public or non-profit agencies—Retention of basic responsibilities by secretary.** When, pursuant to RCW 43.20A.400 through 43.20A.430, the secretary elects to purchase a service or services, he or she shall retain continuing basic responsibility for:

- (1) Determining the eligibility of individuals for services;
- (2) The selection, quality, effectiveness, and execution of a plan or program of services suited to the need of an individual or of a group of individuals; and
- (3) Measuring the cost effectiveness of purchase of services. [2009 c 549 § 5077; 1971 ex.s. c 309 § 4.]

**43.20A.560 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.20A.605 Authority to administer oaths and issue subpoenas—Provisions governing subpoenas.** (1) The secretary shall have full authority to administer oaths and take testimony thereunder, to issue subpoenas requiring the attendance of witnesses before him or her together with all books, memoranda, papers, and other documents, articles or instruments, and to compel the disclosure by such witnesses of all facts known to them relative to the matters under investigation.

(2) Subpoenas issued in adjudicative proceedings are governed by RCW 34.05.588(1).

(3) Subpoenas issued in the conduct of investigations required or authorized by other statutory provisions or necessary in the enforcement of other statutory provisions shall be governed by RCW 34.05.588(2). [2009 c 549 § 5078; 1989 c 175 § 97; 1983 1st ex.s. c 41 § 21; 1979 c 141 § 47; 1967 ex.s. c 102 § 2. Formerly RCW 43.20.015.]

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Severability—1983 1st ex.s. c 41:** See note following RCW 26.09.060.

**Severability—1967 ex.s. c 102:** See note following RCW 43.70.130.

**43.20A.635 Services for children with disabilities.** It shall be the duty of the secretary of social and health services and he or she shall have the power to establish and administer a program of services for children who are crippled or who are suffering from physical conditions which lead to crippling, which shall provide for developing, extending, and improving services for locating such children, and for providing for medical, surgical, corrective, and other services and care, and facilities for diagnosis, hospitalization, and after care; to supervise the administration of those services, included in the program, which are not administered directly by it; to extend and improve any such services, including those in existence on April 1, 1941; to cooperate with medical, health, nursing, and welfare groups and organizations, and with any agency of the state charged with the administration of laws providing for vocational rehabilitation of physically handicapped children; to cooperate with the federal

government, through its appropriate agency or instrumentality in developing, extending, and improving such services; and to receive and expend all funds made available to the department by the federal government, the state or its political subdivisions or from other sources, for such purposes. [2009 c 549 § 5079; 1979 c 141 § 52; 1965 c 8 § 43.20.130. Prior: 1941 c 129 § 1; Rem. Supp. 1941 § 9992-107a; prior: 1937 c 114 § 7. Formerly RCW 74.12.210; 43.20.130.]

*Children with disabilities, copy of commitment order transmitted to department: RCW 26.40.060.*

*Children's center for research and training in mental retardation, assistant secretaries as members of advisory committee: RCW 28B.20.412.*

**43.20A.660 Reports of violations by secretary—Duty of attorney general, prosecuting attorney or city attorney to institute proceedings—Notice to alleged violator.** (1) It shall be the duty of each assistant attorney general, prosecuting attorney, or city attorney to whom the secretary reports any violation of chapter 43.20A RCW, or regulations promulgated thereunder, to cause appropriate proceedings to be instituted in the proper courts, without delay, and to be duly prosecuted as prescribed by law.

(2) Before any violation of chapter 43.20A RCW is reported by the secretary to the prosecuting attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his or her views to the secretary, either orally or in writing, with regard to such contemplated proceeding. [2009 c 549 § 5080; 1989 1st ex.s. c 9 § 215; 1979 c 141 § 57; 1967 ex.s. c 102 § 7. Formerly RCW 43.20.190.]

**Effective date—Severability—1989 1st ex.s. c 9:** See RCW 43.70.910 and 43.70.920.

**Severability—1967 ex.s. c 102:** See note following RCW 43.70.130.

**43.20A.710 Investigation of conviction records or pending charges of state employees and individual providers.** (1) The secretary shall investigate the conviction records, pending charges and disciplinary board final decisions of:

(a) Any current employee or applicant seeking or being considered for any position with the department who will or may have unsupervised access to children, vulnerable adults, or individuals with mental illness or developmental disabilities. This includes, but is not limited to, positions conducting comprehensive assessments, financial eligibility determinations, licensing and certification activities, investigations, surveys, or case management; or for state positions otherwise required by federal law to meet employment standards;

(b) Individual providers who are paid by the state and providers who are paid by home care agencies to provide in-home services involving unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, including but not limited to services provided under chapter 74.39 or 74.39A RCW; and

(c) Individuals or businesses or organizations for the care, supervision, case management, or treatment of children, persons with developmental disabilities, or vulnerable adults, including but not limited to services contracted for under

chapter 18.20, 70.127, 70.128, 72.36, or 74.39A RCW or Title 71A RCW.

(2) The investigation may include an examination of state and national criminal identification data. The secretary shall use the information solely for the purpose of determining the character, suitability, and competence of these applicants.

(3) Except as provided in subsection (4) of this section, an individual provider or home care agency provider who has resided in the state less than three years before applying for employment involving unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must be fingerprinted for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110. However, this subsection does not supersede \*RCW 74.15.030(2)(b).

(4) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055, except that the department may require a background check at any time under RCW 43.43.837. For the purposes of this subsection, "background check" includes, but is not limited to, a fingerprint check submitted for the purpose of investigating conviction records through both the Washington state patrol and the federal bureau of investigation.

(5) An individual provider or home care agency provider hired to provide in-home care for and having unsupervised access to a vulnerable adult as defined in chapter 74.34 RCW must have no conviction for a disqualifying crime under RCW 43.43.830 and 43.43.842. An individual or home care agency provider must also have no conviction for a crime relating to drugs as defined in RCW 43.43.830. This subsection applies only with respect to the provision of in-home services funded by medicaid personal care under RCW 74.09.520, community options program entry system waiver services under RCW 74.39A.030, or chore services under RCW 74.39A.110.

(6) The secretary shall provide the results of the state background check on long-term care workers, including individual providers, to the persons hiring them or to their legal guardians, if any, for their determination of the character, suitability, and competence of the applicants. If the person elects to hire or retain an individual provider after receiving notice from the department that the applicant has a conviction for an offense that would disqualify the applicant from having unsupervised access to persons with physical, mental, or developmental disabilities or mental illness, or to vulnerable adults as defined in chapter 74.34 RCW, then the secretary shall deny payment for any subsequent services rendered by the disqualified individual provider.

(7) Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose. [2009 c 580 § 5; 2001 c 296 § 5; 2000 c 87 § 2; 1999 c 336 § 7; 1997 c 392 § 525; 1993 c 210 § 1; 1989 c 334 § 13; 1986 c 269 § 1.]

\*Reviser's note: RCW 74.15.030(2)(b) was amended by 2007 c 387 § 5, changing the scope of the subsection.

**Intent—2001 c 296:** See note following RCW 9.96A.060.

**Finding—Intent—1999 c 336:** See note following RCW 74.39.007.

**Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392:** See notes following RCW 74.39A.009.

**Prospective application—1993 c 210:** "This act applies prospectively except individuals who currently employ individual providers paid by the state may be given the option to request a state background check during reassessment for services." [1993 c 210 § 2.]

*Children or vulnerable adults:* RCW 43.43.830 through 43.43.842.

*Employees with unsupervised access to children—Rules for background investigation:* RCW 41.06.475.

*State hospitals:* RCW 72.23.035.

## Chapter 43.20B RCW

### REVENUE RECOVERY FOR DEPARTMENT OF SOCIAL AND HEALTH SERVICES

#### Sections

43.20B.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**43.20B.902 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 106.]

## Chapter 43.21A RCW

### DEPARTMENT OF ECOLOGY

#### Sections

43.21A.050 Department of ecology—Director—Appointment—Powers and duties—Salary—Temporary appointment when vacancy.

43.21A.067 Water resources—"Basic data fund" created.

43.21A.090 Powers, duties and functions transferred to department to be performed by director—Delegation by director, limitations.

43.21A.100 Departmental administrative divisions—Deputy director, duties—Assistant directors, duties—As exempt from state civil service law—Salaries.

43.21A.140 Director to consult with department, state board of health.

43.21A.350 Master plan of development.

43.21A.600 Powers and duties—Electric power resources.

43.21A.605 Development of electric power resources—Cooperation with governmental units.

43.21A.610 Steam electric generating plant—Study—Construction.

43.21A.620 Steam electric generating plant—Revenue bonds and warrants.

43.21A.630 Steam electric generating plant—Examination, registration of bonds by state auditor—Defects, irregularities.

- 43.21A.667 Freshwater aquatic algae control account—Freshwater aquatic algae control program—Reports to the legislature.  
 43.21A.690 Cost-reimbursement agreements.

**43.21A.050 Department of ecology—Director—Appointment—Powers and duties—Salary—Temporary appointment when vacancy.** The executive and administrative head of the department shall be the director. The director shall be appointed by the governor with the consent of the senate. He or she shall have complete charge of and supervisory powers over the department. He or she 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 or she shall present to that body his or her nomination for the position. [2009 c 549 § 5081; 1970 ex.s. c 62 § 5.]

**43.21A.067 Water resources—"Basic data fund" created.** The director of ecology may create within his or her department a fund to be known as the "basic data fund."

Into such fund shall be deposited all moneys contributed by persons for stream flow, groundwater and water quality data or other hydrographic information furnished by the department in cooperation with the United States geological survey, and the fund shall be expended on a matching basis with the United States geological survey for the purpose of obtaining additional basic information needed for an intelligent inventory of water resources in the state.

Disbursements from the basic data fund shall be on vouchers approved by the department and the district engineer of the United States geological survey. [2009 c 549 § 5082; 1987 c 109 § 27; 1967 c 53 § 1; 1965 c 8 § 43.21.140. Prior: 1951 c 57 § 4; 1943 c 30 § 1; Rem. Supp. 1943 § 5505-1. Formerly RCW 43.21.140.]

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

**43.21A.090 Powers, duties and functions transferred to department to be performed by director—Delegation by director, limitations.** All powers, duties and functions transferred to the department by the terms of chapter 62, Laws of 1970 ex. sess. shall be performed by the director: PROVIDED, That the director may delegate, by appropriate rule or regulation, the performance of such of his or her powers, duties, and functions, other than those relating to the adoption, amendment or rescission of rules and regulations, to employees of the department whenever it appears desirable in fulfilling the policy and purposes of this chapter. [2009 c 549 § 5083; 1970 ex.s. c 62 § 9.]

**43.21A.100 Departmental administrative divisions—Deputy director, duties—Assistant directors, duties—As exempt from state civil service law—Salaries.** In order to obtain maximum efficiency and effectiveness within the department, the director may create such administrative divisions within the department as he or she deems necessary. The director shall appoint a deputy director as well as such assistant directors as shall be needed to administer the several divisions within the department. The deputy director shall

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have charge and general supervision of the department in the absence or disability of the director. In the case of a vacancy in the office of director, the deputy director shall administer the department until the governor appoints a successor to the director or an acting director. The officers appointed under this section and exempt from the provisions of the state civil service law as provided in RCW 41.06.073, shall be paid salaries to be fixed by the governor in accordance with the procedure established by law for the fixing of salaries for officers exempt from the operation of the state civil service law. [2009 c 549 § 5084; 1970 ex.s. c 62 § 10.]

**43.21A.140 Director to consult with department, state board of health.** The director in carrying out his or her powers and duties under this chapter shall consult with the department of social and health services and the state board of health, or their successors, insofar as necessary to assure that those agencies concerned with the preservation of life and health may integrate their efforts to the fullest extent possible and endorse policies in common. [2009 c 549 § 5085; 1979 c 141 § 67; 1970 ex.s. c 62 § 14.]

**43.21A.350 Master plan of development.** The department of ecology shall prepare and perfect from time to time a state master plan for flood control, state public reservations, financed in whole or in part from moneys collected by the state, sites for state public buildings and for the orderly development of the natural and agricultural resources of the state. The plan shall address how the department will expedite the completion of projects of statewide significance. The plan shall be a guide in making recommendations to the officers, boards, commissions, and departments of the state.

Whenever an improvement is proposed to be established by the state, the state agency having charge of the establishment thereof shall request of the director a report thereon, which shall be furnished within a reasonable time thereafter. In case an improvement is not established in conformity with the report, the state agency having charge of the establishment thereof shall file in its office and with the department a statement setting forth its reasons for rejecting or varying from such report which shall be open to public inspection.

The department shall insofar as possible secure the cooperation of adjacent states, and of counties and municipalities within the state in the coordination of their proposed improvements with such master plan. [2009 c 421 § 7; 1997 c 369 § 6; 1987 c 109 § 29; 1965 c 8 § 43.21.190. Prior: 1957 c 215 § 22; 1933 ex.s. c 54 § 3; RRS § 10930-3. Formerly RCW 43.21.190.]

**Effective date—2009 c 421:** See note following RCW 43.157.005.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Industrial project of statewide significance—Defined:* RCW 43.157.010.

**43.21A.600 Powers and duties—Electric power resources.** The department shall make studies and surveys, collect, compile and disseminate information and statistics to facilitate development of the electric power resources of the state by public utility districts, municipalities, electric cooperatives, joint operating agencies and public utility companies. The director may cause studies to be made relating to

the construction of steam generating plants using any available fuel and their integration with hydro-electric facilities. He or she may cause designs for any such plant to be prepared. He or she shall employ such engineers and other experts and assistants as may be necessary to carry out his or her power resources functions. [2009 c 549 § 5086; 1988 c 127 § 8; 1965 c 8 § 43.21.220. Prior: 1957 c 284 § 2. Formerly RCW 43.21.220.]

*Joint operating agencies: Chapter 43.52 RCW.*

**43.21A.605 Development of electric power resources—Cooperation with governmental units.** The director may represent the state and aid and assist the public utilities therein to the end that its resources shall be properly developed in the public interest insofar as they affect electric power and to this end he or she shall cooperate and may negotiate with Canada, the United States, the states thereof and their agencies to develop and integrate the resources of the region. [2009 c 549 § 5087; 1988 c 127 § 9; 1965 c 8 § 43.21.230. Prior: 1957 c 284 § 3. Formerly RCW 43.21.230.]

**43.21A.610 Steam electric generating plant—Study—Construction.** The director shall continue the study of the state power commission made in 1956 relating to the construction of a steam power electric generating plant, and if the construction of a steam electric generating plant is found to be feasible by the director, the director may construct such plant at a site determined by him or her to be feasible and operate it as a state owned facility. [2009 c 549 § 5088; 1988 c 127 § 10; 1965 c 8 § 43.21.250. Prior: 1957 c 275 § 3. Formerly RCW 43.21.250.]

**43.21A.620 Steam electric generating plant—Revenue bonds and warrants.** For the purposes provided for in RCW 43.21A.610 through 43.21A.642, the state finance committee shall, upon being notified to do so by the director, issue revenue bonds or warrants payable from the revenues from the steam electric plant provided for in RCW 43.21A.610. When the director deems it advisable that he or she acquire or construct said steam electric plant or make additions or betterments thereto, he or she shall so notify the state finance committee and he or she shall also notify the state finance committee as to the plan proposed, together with the estimated cost thereof. The state finance committee, upon receiving such notice, shall provide for the construction thereof and the issuance of revenue bonds or warrants therefor by a resolution which shall specify and adopt the system or plan proposed, and declare the estimated cost thereof, as nearly as may be, including as part of the cost, funds necessary for working capital for the operation of such utility and the payment of the expenses incurred in the acquisition or construction thereof. Such resolution shall specify that utility revenue bonds are to be issued to defray the cost thereof and the amount of such bonds to be issued. Bonds issued under the provisions of RCW 43.21A.610 through 43.21A.642 shall distinctly state that they are not a general obligation of the state. [2009 c 549 § 5089; 1988 c 127 § 15; 1965 c 8 § 43.21.300. Prior: 1957 c 275 § 8. Formerly RCW 43.21.300.]

**43.21A.630 Steam electric generating plant—Examination, registration of bonds by state auditor—Defects, irregularities.** Prior to the issuance and delivery of any revenue bonds, such bonds and a certified copy of the resolution authorizing them shall be delivered to the state auditor together with any additional information that he or she may require. When the bonds have been examined they shall be registered by the auditor in books to be kept by him or her for that purpose, and a certificate of registration shall be endorsed upon each bond and signed by the auditor or a deputy appointed by him or her for the purpose. The bonds shall then be prima facie valid and binding obligations of the state finance committee in accordance with their terms, notwithstanding any defects or irregularities in the authorization and issuance of the bonds, or in the sale, execution or delivery thereof. [2009 c 549 § 5090; 1965 c 8 § 43.21.350. Prior: 1957 c 275 § 13. Formerly RCW 43.21.350.]

**43.21A.667 Freshwater aquatic algae control account—Freshwater aquatic algae control program—Reports to the legislature.** (1) The freshwater aquatic algae control account is created in the state treasury. Moneys directed to the account from RCW 88.02.050 must be deposited in the account. Expenditures from the account may only be used as provided in this section. Moneys in the account may be spent only after appropriation.

(2) Funds in the freshwater aquatic algae control account may be appropriated to the department to develop a freshwater aquatic algae control program. Funds must be expended as follows:

(a) As grants to cities, counties, tribes, special purpose districts, and state agencies to manage excessive freshwater algae, with priority for the treatment of lakes in which harmful algal blooms have occurred within the past three years; and during the 2009-2011 fiscal biennium to provide grants for sea lettuce research and removal to assist Puget Sound communities that are impacted by hyperblooms of sea lettuce; and

(b) To provide technical assistance to applicants and the public about aquatic algae control.

(3) The department shall submit a biennial report to the appropriate legislative committees describing the actions taken to implement this section along with suggestions on how to better fulfill the intent of chapter 464, Laws of 2005. The first report is due December 1, 2007. [2009 c 564 § 933; 2005 c 464 § 4.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Findings—Intent—2005 c 464:** See note following RCW 88.02.050.

**43.21A.690 Cost-reimbursement agreements.** (1) The department may enter into a written cost-reimbursement agreement with a permit applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing.

(2) The cost-reimbursement agreement shall identify the tasks and costs for work to be conducted under the agreement. The agreement must include a schedule that states:

- (a) The estimated number of weeks for initial review of the permit application;
- (b) The estimated number of revision cycles;
- (c) The estimated number of weeks for review of subsequent revision submittals;
- (d) The estimated number of billable hours of employee time;
- (e) The rate per hour; and
- (f) A date for revision of the agreement if necessary.

(3) The written cost-reimbursement agreement shall be negotiated with the permit applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to hire temporary employees, to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants or hire temporary employees to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments.

(4) The cost-reimbursement agreement must not negatively impact the processing of other permit applications. In order to maintain permit processing capacity, the agency may hire outside consultants, temporary employees, or make internal administrative changes. Consultants or temporary employees hired as part of a cost-reimbursement agreement or to maintain agency capacity are hired as agents of the state not of the permit applicant. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. [2009 c 97 § 8; 2007 c 94 § 10; 2003 c 70 § 1; 2000 c 251 § 2.]

**Intent—2000 c 251:** "It is the intent of the legislature to allow applicants for environmental permits for complex projects to compensate permitting agencies for providing environmental review through the voluntary negotiation of cost-reimbursement agreements with the permitting agency. It is the further intent of the legislature that cost-reimbursement agreements for complex projects free permitting agency resources to focus on the review of small projects permits." [2000 c 251 § 1.]

**Captions not law—2000 c 251:** "Captions used in this act are not any part of the law." [2000 c 251 § 8.]

**Effective date—2000 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 [March 31, 2000]." [2000 c 251 § 9.]

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## Chapter 43.21B RCW

### ENVIRONMENTAL HEARINGS OFFICE— POLLUTION CONTROL HEARINGS BOARD

#### Sections

- 43.21B.020 Members—Qualifications—Appointment.
- 43.21B.050 Governor to determine basis for operation—Compensation if part-time basis, limitation—Reimbursement of travel expenses.
- 43.21B.060 Restrictions upon conduct while member and upon termination of membership.
- 43.21B.080 Chair, biennial election of.
- 43.21B.110 Pollution control hearings board jurisdiction. (*Effective until June 30, 2019.*)
- 43.21B.110 Pollution control hearings board jurisdiction. (*Effective June 30, 2019.*)
- 43.21B.300 Penalty procedures.
- 43.21B.310 Appeal of orders, permits, and licenses.

**43.21B.020 Members—Qualifications—Appointment.** The hearings board shall consist of three members qualified by experience or training in pertinent matters pertaining to the environment, and at least one member of the hearings board shall have been admitted to practice law in this state and engaged in the legal profession at the time of his or her appointment. The hearings board shall be appointed by the governor with the advice and consent of the senate, and no more than two of whom at the time of appointment or during their term shall be members of the same political party. [2009 c 549 § 5091; 1970 ex.s. c 62 § 32.]

**43.21B.050 Governor to determine basis for operation—Compensation if part-time basis, limitation—Reimbursement of travel expenses.** The hearings board shall operate on either a part-time or a full-time basis, as determined by the governor. If it is determined that the hearings board shall operate on a full-time basis, each member of the hearings board shall receive an annual salary to be determined by the governor pursuant to RCW 43.03.040. If it is determined the hearings board shall operate on a part-time basis, each member of the hearings board shall receive compensation on the basis of seventy-five dollars for each day spent in performance of his or her duties but such compensation shall not exceed ten thousand dollars in a fiscal year. Each hearings 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 as now existing or hereafter amended. [2009 c 549 § 5092; 1975-'76 2nd ex.s. c 34 § 101; 1970 ex.s. c 62 § 35.]

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

**43.21B.060 Restrictions upon conduct while member and upon termination of membership.** Each member of the hearings board: (1) Shall not be a candidate for nor hold any other public office or trust, and shall not engage in any occupation or business interfering with or inconsistent with his or her duty as a member of the hearings board, nor shall he or she serve on or under any committee of any political party; and (2) shall not for a period of one year after the termination of his or her membership on the hearings board, act in a representative capacity before the hearings board on any matter. [2009 c 549 § 5093; 1970 ex.s. c 62 § 36.]



**43.21B.080 Chair, biennial election of.** The hearings board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chair, and shall at least biennially thereafter meet and elect such a chair. [2009 c 549 § 5094; 1970 ex.s. c 62 § 38.]

**43.21B.110 Pollution control hearings board jurisdiction. (Effective until June 30, 2019.)** (1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, and 90.56.330.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) A final decision by the department or director made under chapter 183, Laws of 2009.

(d) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(e) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(f) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(g) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(h) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(i) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(e) Appeals of decisions by the department as provided in chapter 43.21L RCW.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. [2009 c 456 § 16; 2009 c 332 § 18; 2009 c 183 § 17; 2003 c 393 § 19; 2001 c 220 § 2. Prior: 1998 c 262 § 18; 1998 c 156 § 8; 1998 c 36 § 22; 1993 c 387 § 22; prior: 1992 c 174 § 13; 1992 c 73 § 1; 1989 c 175 § 102; 1987 c 109 § 10; 1970 ex.s. c 62 § 41.]

**Reviser's note:** This section was amended by 2009 c 183 § 17, 2009 c 332 § 18, and by 2009 c 456 § 16, 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).

**Application—2009 c 332:** See note following RCW 90.03.110.

**Expiration date—2009 c 183:** See note following RCW 90.92.010.

**Implementation—Effective date—2003 c 393:** See RCW 43.21L.900 and 43.21L.901.

**Intent—2001 c 220:** "The legislature intends to assure that appeals of department of ecology decisions regarding changes or transfers of water rights that are the subject of an ongoing general adjudication of water rights are governed by an appeals process that is efficient and eliminates unnecessary duplication, while fully preserving the rights of all affected parties. The legislature intends to address only the judicial review process for certain decisions of the pollution control hearings board when a general adjudication is being actively litigated. The legislature intends to fully preserve the role of the pollution control hearings board, except as specifically provided in this act." [2001 c 220 § 1.]

**Construction—2001 c 220:** "Nothing in this act shall be construed to affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under federal law. Nothing in this act is intended or shall be construed as affecting or modifying any existing right of a federally recognized Indian tribe to protect from impairment its federally reserved water rights in federal court." [2001 c 220 § 6.]

**Effective date—2001 c 220:** "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 9, 2001]." [2001 c 220 § 7.]

**Effective date—1998 c 262:** See RCW 90.64.900.

**Intent—1998 c 36:** See RCW 15.54.265.

**Short title—1998 c 36:** See note following RCW 15.54.265.

**Effective date—1993 c 387:** See RCW 18.104.930.

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Order for compliance with oil spill contingency or prevention plan not subject to review by pollution control hearings board: RCW 90.56.270.*

**43.21B.110 Pollution control hearings board jurisdiction. (Effective June 30, 2019.)** (1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, and 90.56.330.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095,

86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70.95.205.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(e) Appeals of decisions by the department as provided in chapter 43.21L RCW.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW. [2009 c 456 § 16; 2009 c 332 § 18; 2003 c 393 § 19; 2001 c 220 § 2. Prior: 1998 c 262 § 18; 1998 c 156 § 8; 1998 c 36 § 22; 1993 c 387 § 22; prior: 1992 c 174 § 13; 1992 c 73 § 1; 1989 c 175 § 102; 1987 c 109 § 10; 1970 ex.s. c 62 § 41.]

**Reviser's note:** This section was amended by 2009 c 332 § 18 and by 2009 c 456 § 16, 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).

**Application—2009 c 332:** See note following RCW 90.03.110.

**Implementation—Effective date—2003 c 393:** See RCW 43.21L.900 and 43.21L.901.

**Intent—2001 c 220:** "The legislature intends to assure that appeals of department of ecology decisions regarding changes or transfers of water rights that are the subject of an ongoing general adjudication of water rights

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are governed by an appeals process that is efficient and eliminates unnecessary duplication, while fully preserving the rights of all affected parties. The legislature intends to address only the judicial review process for certain decisions of the pollution control hearings board when a general adjudication is being actively litigated. The legislature intends to fully preserve the role of the pollution control hearings board, except as specifically provided in this act." [2001 c 220 § 1.]

**Construction—2001 c 220:** "Nothing in this act shall be construed to affect or modify any treaty or other federal rights of an Indian tribe, or the rights of any federal agency or other person or entity arising under federal law. Nothing in this act is intended or shall be construed as affecting or modifying any existing right of a federally recognized Indian tribe to protect from impairment its federally reserved water rights in federal court." [2001 c 220 § 6.]

**Effective date—2001 c 220:** "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 9, 2001]." [2001 c 220 § 7.]

**Effective date—1998 c 262:** See RCW 90.64.900.

**Intent—1998 c 36:** See RCW 15.54.265.

**Short title—1998 c 36:** See note following RCW 15.54.265.

**Effective date—1993 c 387:** See RCW 18.104.930.

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**Effective date—1989 c 175:** See note following RCW 34.05.010.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

*Order for compliance with oil spill contingency or prevention plan not subject to review by pollution control hearings board: RCW 90.56.270.*

**43.21B.300 Penalty procedures.** (1) Any civil penalty provided in RCW 18.104.155, 70.94.431, 70.95.315, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, and 90.56.330 and chapter 90.76 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the department or the authority for the remission or mitigation of the penalty. Upon receipt of the application, the department or authority may remit or mitigate the penalty upon whatever terms the department or the authority in its discretion deems proper. The department or the authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority thirty days after the date of receipt by the person penalized of the notice imposing the penalty or thirty days after the date of receipt of the notice of disposition of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

(a) Thirty days after receipt of the notice imposing the penalty;

(b) Thirty days after receipt of the notice of disposition on application for relief from penalty, if such an application is made; or

(c) Thirty days after receipt of the notice of decision of the hearings board if the penalty is appealed.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within thirty days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70.94.431, the disposition of which shall be governed by that provision, RCW 70.105.080, which shall be credited to the hazardous waste control and elimination account created by RCW 70.105.180, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, and RCW 90.76.080, which shall be credited to the underground storage tank account created by RCW 90.76.100. [2009 c 456 § 17; 2009 c 178 § 2; 2007 c 147 § 9; 2004 c 204 § 4; 2001 c 36 § 2; 1993 c 387 § 23; 1992 c 73 § 2; 1987 c 109 § 5.]

**Reviser's note:** This section was amended by 2009 c 178 § 2 and by 2009 c 456 § 17, 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—1993 c 387:** See RCW 18.104.930.

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

### 43.21B.310 Appeal of orders, permits, and licenses.

(1) Except as provided in RCW 90.03.210(2), any order issued by the department or local air authority pursuant to RCW 43.27A.190, 70.94.211, 70.94.332, 70.95.315, 70.105.095, 86.16.020, 88.46.070, 90.46.250, or 90.48.120(2) or any provision enacted after July 26, 1987, or any permit, certificate, or license issued by the department may be appealed to the pollution control hearings board if the appeal is filed with the board and served on the department or authority within thirty days after the date of receipt of the order. Except as provided under chapter 70.105D RCW and RCW 90.03.210(2), this is the exclusive means of appeal of such an order.

(2) The department or the authority in its discretion may stay the effectiveness of an order during the pendency of such an appeal.

(3) At any time during the pendency of an appeal of such an order to the board, the appellant may apply pursuant to

RCW 43.21B.320 to the hearings board for a stay of the order or for the removal thereof.

(4) Any appeal must contain the following in accordance with the rules of the hearings board:

(a) The appellant's name and address;

(b) The date and docket number of the order, permit, or license appealed;

(c) A description of the substance of the order, permit, or license that is the subject of the appeal;

(d) A clear, separate, and concise statement of every error alleged to have been committed;

(e) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and

(f) A statement setting forth the relief sought.

(5) Upon failure to comply with any final order of the department, the attorney general, on request of the department, may bring an action in the superior court of the county where the violation occurred or the potential violation is about to occur to obtain such relief as necessary, including injunctive relief, to insure compliance with the order. The air authorities may bring similar actions to enforce their orders.

(6) An appealable decision or order shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed only by filing an appeal with the hearings board and serving it on the department within thirty days of the date of receipt. [2009 c 456 § 18; 2009 c 178 § 3; 2004 c 204 § 5. Prior: 2001 c 220 § 4; 2001 c 36 § 3; 1992 c 73 § 3; 1989 c 2 § 14 (Initiative Measure No. 97, approved November 8, 1988); (1987 3rd ex.s. c 2 § 49 repealed by 1989 c 2 § 24, effective March 1, 1989); 1987 c 109 § 6.]

**Reviser's note:** This section was amended by 2009 c 178 § 3 and by 2009 c 456 § 18, 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—Effective date—2001 c 220:** See notes following RCW 43.21B.110.

**Effective dates—Severability—1992 c 73:** See RCW 82.23B.902 and 90.56.905.

**Short title—Construction—Existing agreements—Effective date—Severability—1989 c 2:** See RCW 70.105D.900 and 70.105D.910 through 70.105D.921, respectively.

**Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109:** See notes following RCW 43.21B.001.

## Chapter 43.21C RCW

### STATE ENVIRONMENTAL POLICY

#### Sections

43.21C.010 Purposes.

43.21C.020 Legislative recognitions—Declaration—Responsibility.

43.21C.410 Battery charging and exchange station installation.

#### 43.21C.010 Purposes.

The purposes of this chapter are: (1) To declare a state policy which will encourage productive and enjoyable harmony between humankind and the environment; (2) to promote efforts which will prevent or eliminate damage to the environment and biosphere; (3) and [to] stimulate the health and welfare of human beings; and (4) to enrich the understanding of the ecological systems and natural resources important to the state and nation. [2009 c 549 § 5095; 1971 ex.s. c 109 § 1.]

**43.21C.020 Legislative recognitions—Declaration—Responsibility.** (1) The legislature, recognizing that a human being depends on biological and physical surroundings for food, shelter, and other needs, and for cultural enrichment as well; and recognizing further the profound impact of a human being's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource utilization and exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of human beings, declares that it is the continuing policy of the state of Washington, in cooperation with federal and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to: (a) Foster and promote the general welfare; (b) create and maintain conditions under which human beings and nature can exist in productive harmony; and (c) fulfill the social, economic, and other requirements of present and future generations of Washington citizens.

(2) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the state of Washington and all agencies of the state to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

(a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(b) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;

(c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(d) Preserve important historic, cultural, and natural aspects of our national heritage;

(e) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(f) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and

(g) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(3) The legislature recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment. [2009 c 549 § 5096; 1971 ex.s. c 109 § 2.]

**43.21C.410 Battery charging and exchange station installation.** (1) The installation of individual battery charging stations and battery exchange stations, which individually are categorically exempt under the rules adopted under RCW 43.21C.110, may not be disqualified from such categorically exempt status as a result of their being parts of a larger proposal that includes other such facilities and related utility networks under the rules adopted under RCW 43.21C.110.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540. [2009 c 459 § 8.]

**Finding—Purpose—2009 c 459:** See note following RCW 47.80.090.

*Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.*

### Chapter 43.21E RCW

#### GRASS BURNING RESEARCH ADVISORY COMMITTEE

##### Sections

43.21E.010 Committee created—Members.

**43.21E.010 Committee created—Members.** Within thirty days of May 15, 1975 the director of the Washington state department of ecology shall appoint a grass burning research advisory committee consisting of five voting members.

Two members shall be grass growers selected from the area of the state east of the Cascade mountain range, one representing irrigated and one representing dryland growing areas. One member shall be a grass grower selected from the area of the state west of the Cascade mountain range. One member shall be a representative of the Washington state department of agriculture, and one member shall represent the public, and may be selected at large. The committee shall select its own chair. The state department of ecology shall provide an ex officio, nonvoting member to the committee to act as secretary. [2009 c 549 § 5097; 1975 1st ex.s. c 44 § 1.]

### Chapter 43.21F RCW

#### STATE ENERGY OFFICE

##### Sections

43.21F.025 Definitions.

43.21F.405 Western interstate nuclear compact—State board member—Appointment, term—May designate representative.

**43.21F.025 Definitions.** (1) "Assistant director" means the assistant director of the department of commerce responsible for energy policy activities;

(2) "Department" means the department of commerce;

(3) "Director" means the director of the department of commerce;

(4) "Distributor" means any person, private corporation, partnership, individual proprietorship, utility, including investor-owned utilities, municipal utility, public utility dis-

trict, joint operating agency, or cooperative, which engages in or is authorized to engage in the activity of generating, transmitting, or distributing energy in this state;

(5) "Energy" means petroleum or other liquid fuels; natural or synthetic fuel gas; solid carbonaceous fuels; fissionable nuclear material; electricity; solar radiation; geothermal resources; hydropower; organic waste products; wind; tidal activity; or any other substance or process used to produce heat, light, or motion; or the savings from nongeneration technologies, including conservation or improved efficiency in the usage of any of the sources described in this subsection;

(6) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, joint operating agency, or any other entity, public or private, however organized; and

(7) "State energy strategy" means the document and energy policy direction developed under section 1, chapter 201, Laws of 1991 including any related appendices. [2009 c 565 § 27; 1996 c 186 § 102; 1994 c 207 § 2; 1987 c 330 § 501; 1981 c 295 § 2.]

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

**Findings—Intent—Part headings not law—Effective date—1996 c 186:** See notes following RCW 43.330.904.

**Finding—1994 c 207:** "The legislature finds that the state energy strategy presented to the legislature in 1993 was developed by a dedicated and talented committee of hard-working representatives of the industries and people of this state and that the strategy document should serve to guide energy-related policy decisions by the legislature and other entities within this region." [1994 c 207 § 1.]

**Construction—Application of rules—Severability—1987 c 330:** See notes following RCW 28B.12.050.

**43.21F.405 Western interstate nuclear compact—State board member—Appointment, term—May designate representative.** The board member from Washington shall be appointed by and shall serve at the pleasure of the governor. The board member may designate another person as his or her representative to attend meetings of the board. [2009 c 549 § 5098; 1969 c 9 § 2. Formerly RCW 43.31.405.]

**Severability—1969 c 9:** See note following RCW 43.21F.400.

## Chapter 43.21G RCW

### ENERGY SUPPLY EMERGENCIES, ALERTS

#### Sections

43.21G.080 Compliance by distributors—Fair and just reimbursement.

**43.21G.080 Compliance by distributors—Fair and just reimbursement.** The governor may order any distributor to take such action on his or her behalf as may be required to implement orders issued pursuant to this chapter as now or hereafter amended: PROVIDED, That orders to regulated distributors shall be issued by the Washington utilities and transportation commission in conformance with orders of the governor. No distributor shall be liable for actions taken in accordance with such orders issued by the governor or the Washington utilities and transportation commission.

All allocations of energy from one distributor to another distributor pursuant to orders issued or as a result of actions taken under this chapter as now or hereafter amended are subject to fair and just reimbursement. Such reimbursement for any allocation of energy between regulated distributors shall be subject to the approval of the Washington utilities and transportation commission. A distributor is authorized to enter into agreements with another distributor for the purpose of determining financial or commodity reimbursement. [2009 c 549 § 5099; 1977 ex.s. c 328 § 8; 1975-'76 2nd ex.s. c 108 § 22.]

**Severability—1977 ex.s. c 328:** See note following RCW 43.21G.010.

## Chapter 43.21M RCW

### INTEGRATED CLIMATE CHANGE RESPONSE STRATEGY

#### Sections

43.21M.010 Development of strategy—Central clearinghouse—Collaboration.  
43.21M.020 Requirements of strategy—Initial climate change response strategy.  
43.21M.030 Assistance with developing strategy.  
43.21M.040 Incorporation of adaptation plans of action by state agencies.  
43.21M.900 Findings—2009 c 519.

**43.21M.010 Development of strategy—Central clearinghouse—Collaboration.** (1) The departments of ecology, agriculture, community, trade, and economic development, fish and wildlife, natural resources, and transportation shall develop an integrated climate change response strategy to better enable state and local agencies, public and private businesses, nongovernmental organizations, and individuals to prepare for, address, and adapt to the impacts of climate change. The integrated climate change response strategy should be developed, where feasible and consistent with the direction of the strategy, in collaboration with local government agencies with climate change preparation and adaptation plans.

(2) The department of ecology shall serve as a central clearinghouse for relevant scientific and technical information about the impacts of climate change on Washington's ecology, economy, and society, as well as serve as a central convener for the development of vital programs and necessary policies to help the state adapt to a rapidly changing climate.

(3) The department of ecology shall consult and collaborate with the departments of fish and wildlife, agriculture, community, trade, and economic development, natural resources, and transportation in developing an integrated climate change response strategy and plans of action to prepare for and adapt to climate change impacts. [2009 c 519 § 10.]

**43.21M.020 Requirements of strategy—Initial climate change response strategy.** (1) The integrated climate change response strategy should address the impact of and adaptation to climate change, as well as the regional capacity to undertake actions, existing ecosystem and resource management concerns, and health and economic risks. In addition, the departments of ecology, agriculture, community, trade, and economic development, fish and wildlife, natural resources, and transportation should include a range of sce-

narios for the purposes of planning in order to assess project vulnerability and, to the extent feasible, reduce expected risks and increase resiliency to the impacts of climate change.

(2)(a) By December 1, 2011, the department of ecology shall compile an initial climate change response strategy, including information and data from the departments of fish and wildlife, agriculture, community, trade, and economic development, natural resources, and transportation that: Summarizes the best known science on climate change impacts to Washington; assesses Washington's vulnerability to the identified climate change impacts; prioritizes solutions that can be implemented within and across state agencies; and identifies recommended funding mechanisms and technical and other essential resources for implementing solutions.

(b) The initial strategy must include:

(i) Efforts to identify priority planning areas for action, based on vulnerability and risk assessments;

(ii) Barriers challenging state and local governments to take action, such as laws, policies, regulations, rules, and procedures that require revision to adequately address adaptation to climate change;

(iii) Opportunities to integrate climate science and projected impacts into planning and decision making; and

(iv) Methods to increase public awareness of climate change, its projected impacts on the community, and to build support for meaningful adaptation policies and strategies. [2009 c 519 § 11.]

**43.21M.030 Assistance with developing strategy.** The departments of ecology, agriculture, community, trade, and economic development, fish and wildlife, natural resources, and transportation may consult with qualified nonpartisan experts from the scientific community as needed to assist with developing an integrated climate change response strategy. The qualified nonpartisan experts from the scientific community may assist the department of ecology on the following components:

(1) Identifying the timing and extent of impacts from climate change;

(2) Assessing the effects of climate variability and change in the context of multiple interacting stressors or impacts;

(3) Developing forecasting models;

(4) Determining the resilience of the environment, natural systems, communities, and organizations to deal with potential or actual impacts of climate change and the vulnerability to which a natural or social system is susceptible to sustaining damage from climate change impacts; and

(5) Identifying other issues, as determined by the department of ecology, necessary to develop policies and actions for the integrated climate change response strategy. [2009 c 519 § 12.]

**43.21M.040 Incorporation of adaptation plans of action by state agencies.** State agencies shall strive to incorporate adaptation plans of action as priority activities when planning or designing agency policies and programs. Agencies shall consider: The integrated climate change response strategy when designing, planning, and funding infrastructure projects; and incorporating natural resource adaptation

actions and alternative energy sources when designing and planning infrastructure projects. [2009 c 519 § 13.]

**43.21M.900 Findings—2009 c 519.** The legislature finds that in chapter 14, Laws of 2008, the legislature established greenhouse gas emission reduction limits for Washington state, including a reduction of overall emissions by 2020 to emission levels in 1990, a reduction by 2035 to levels twenty-five percent below 1990 levels, and by 2050 a further reduction below 1990 levels. Based upon estimated 2006 emission levels in Washington, this will require a reduction from present emission levels of over twenty-five percent in the next eleven years. The legislature further finds that state government activities are a significant source of emissions, and that state government should meet targets for reducing emissions from its buildings, vehicles, and all operations that demonstrate that these reductions are achievable, cost-effective, and will help to promote innovative energy efficiency technologies and practices. [2009 c 519 § 1.]

## Chapter 43.22 RCW

### DEPARTMENT OF LABOR AND INDUSTRIES

#### Sections

43.22.310	Access to plants—Penalty for refusal.
43.22.400	Mobile homes, recreational or commercial vehicles—Meeting standards of other states at least equal to this state.
43.22.485	Factory built housing and commercial structures, regulating installation of—Recognizing out-of-state standards, enforcement, as department approved.

**43.22.310 Access to plants—Penalty for refusal.** The director or any employee of the department of labor and industries may enter any factory, mill, office, workshop, or public or private works at any time for the purpose of gathering facts and statistics as provided by this chapter, and examine into the methods of protection from danger to employees, and the sanitary conditions in and around such buildings and places and make a record thereof, and any owner or occupant of such factory, mill, office or workshop, or public or private works, or his or her agent who refuses to allow an inspector or employee of the department to enter, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than twenty-five dollars nor more than one hundred dollars, or be imprisoned in the county jail not to exceed ninety days. [2009 c 549 § 5100; 1965 c 8 § 43.22.310. Prior: 1901 c 74 § 5; RRS § 7590.]

**43.22.400 Mobile homes, recreational or commercial vehicles—Meeting standards of other states at least equal to this state.** If the director of the department of labor and industries determines that the standards for body and frame design, construction and the plumbing, heating and electrical equipment installed in mobile homes, commercial coaches, recreational vehicles, and/or park trailers by the statutes or rules and regulations of other states are at least equal to the standards prescribed by this state, he or she may so provide by regulation. Any mobile home, commercial coach, recreational vehicle, and/or park trailer which a state listed in such regulations has approved as meeting its standards for body and frame design, construction and plumbing, heating and

electrical equipment shall be deemed to meet the standards of the director of the department of labor and industries, if he or she determines that the standards of such state are actually being enforced. [2009 c 549 § 5101; 1995 c 280 § 11; 1970 ex.s. c 27 § 7; 1967 c 157 § 7.]

**43.22.485 Factory built housing and commercial structures, regulating installation of—Recognizing out-of-state standards, enforcement, as department approved.** If the director of the department determines that the standards for factory built housing or factory built commercial structures prescribed by statute, rule or regulation of another state are at least equal to the regulations prescribed under RCW 43.22.450 through 43.22.490, and that such standards are actually enforced by such other state, he or she may provide by regulation that factory built housing or factory built commercial structures approved by such other state shall be deemed to have been approved by the department. [2009 c 549 § 5102; 1973 1st ex.s. c 22 § 6; 1970 ex.s. c 44 § 8.]

### Chapter 43.23 RCW

#### DEPARTMENT OF AGRICULTURE

##### Sections

43.23.015	Divisions of department—Reassignment of division functions.
43.23.033	Funding staff support for commodity boards and commissions—Rules.
43.23.090	Powers and duties.
43.23.110	Powers and duties.
43.23.120	Bulletins and reports.
43.23.130	Annual report.
43.23.160	Powers and duties.

**43.23.015 Divisions of department—Reassignment of division functions.** Except for the functions specified in RCW 43.23.070, the director may, at his or her discretion, reassign any of the functions delegated to the various divisions of the department under the provisions of this chapter or any other law to any other division of the department. [2009 c 549 § 5103; 1983 c 248 § 4; 1967 c 240 § 15.]

**43.23.033 Funding staff support for commodity boards and commissions—Rules.** (1) The director may provide by rule for a method to fund staff support for all commodity boards and commissions if a position is not directly funded by the legislature.

(2) Staff support funded under this section, RCW 15.65.047(1)(c), 15.66.055(3), 15.24.215, 15.26.265, 15.28.320, 15.44.190, 15.88.180, 15.89.150, and 16.67.190, and chapter 15.115 RCW shall be limited to one-half full-time equivalent employee for all commodity boards and commissions. [2009 c 33 § 38; 2006 c 330 § 27; 2002 c 313 § 78.]

**Construction—Severability—2006 c 330:** See RCW 15.89.900 and 15.89.901.

**Effective dates—2002 c 313:** See note following RCW 15.65.020.

**43.23.090 Powers and duties.** The director of agriculture shall exercise all powers and perform all duties prescribed by law with respect to the inspection of foods, food products, drinks, milk and milk products, and dairies and dairy products and the components thereof.

He or she shall enforce and supervise the administration of all laws relating to foods, food products, drinks, milk and milk products, dairies and dairy products, and their inspection, manufacture, and sale. [2009 c 549 § 5104; 1983 c 248 § 8; 1967 c 240 § 9; 1965 c 8 § 43.23.090. Prior: 1921 c 7 § 93; RRS § 10851.]

*Commercial feed law: Chapter 15.53 RCW.*

*Eggs and egg products: Chapter 69.25 RCW.*

*Food, drugs and cosmetics: Chapter 69.04 RCW.*

*Honey: Chapter 69.28 RCW.*

*Weighing commodities in highway transport: Chapter 15.80 RCW.*

*Weights and measures: Chapter 19.94 RCW.*

**43.23.110 Powers and duties.** The director of agriculture shall exercise all powers and perform all duties prescribed by law with respect to grains, grain and hay products, grain and terminal warehouses, commercial feeds, commercial fertilizers, and chemical pesticides.

He or she shall enforce and supervise the administration of all laws relating to grains, grain and hay products, grain and terminal warehouses, commercial feeds, commercial fertilizers, and chemical pesticides. [2009 c 549 § 5105; 1983 c 248 § 9; 1967 c 240 § 11; 1965 c 8 § 43.23.110. Prior: 1921 c 7 § 94; RRS § 10852.]

*Commercial fertilizers: Chapter 15.54 RCW.*

*Grain and terminal warehouses: Chapter 22.09 RCW.*

*Quarantine: Chapter 17.24 RCW.*

*Seeds: Chapter 15.49 RCW.*

*Weeds: Chapters 17.04 and 17.06 RCW.*

**43.23.120 Bulletins and reports.** The director of agriculture may publish and distribute bulletins and reports embodying information upon the subjects of agriculture, horticulture, livestock, dairying, foods and drugs, and other matters pertaining to his or her department. [2009 c 549 § 5106; 1977 c 75 § 50; 1965 c 8 § 43.23.120. Prior: (i) 1919 c 126 § 1, part; 1913 c 60 § 6, part; RRS § 2724, part. (ii) 1921 c 7 § 89, part; RRS § 10847, part.]

**43.23.130 Annual report.** The director of agriculture shall make an annual report to the governor containing an account of all matters pertaining to his or her department and its administration. [2009 c 549 § 5107; 1977 c 75 § 51; 1965 c 8 § 43.23.130. Prior: (i) 1919 c 126 § 1, part; 1913 c 60 § 6, part; RRS § 2724, part. (ii) 1921 c 7 § 89, part; RRS § 10847, part.]

**43.23.160 Powers and duties.** The director of agriculture shall exercise all the powers and perform all the duties prescribed by law relating to commission merchants, livestock identification, livestock brand registration and inspection. All officers appointed to enforce these laws who have successfully completed a course of training prescribed by the Washington state criminal justice training commission shall have the authority generally vested in a peace officer solely for the purpose of enforcing these laws.

He or she shall enforce and supervise the administration of all laws relating to commission merchants, livestock identification and shall have the power to enforce all laws relating

to any division under the supervision of the director of agriculture. [2009 c 549 § 5108; 1983 c 248 § 10; 1967 c 240 § 13. Prior: 1965 c 8 § 43.23.160; prior: 1951 c 170 § 3.]

### Chapter 43.24 RCW

#### DEPARTMENT OF LICENSING

##### Sections

43.24.090	Examination of persons with disabilities.
43.24.115	Director's duties as to refusal, revocation or suspension of licenses—Performance by assistants.
43.24.150	Business and professions account. ( <i>Effective until July 1, 2010.</i> )
43.24.150	Business and professions account. ( <i>Effective July 1, 2010.</i> )

#### 43.24.090 Examination of persons with disabilities.

Any person taking any written examination prescribed or authorized by law, for a license or permit to practice any trade, occupation, or profession, who, because of any handicap, is unable to write the examination himself or herself, may dictate it to and have it written or typed by another, to the same effect as though the examination were written out by himself or herself. Any expense connected therewith shall be borne by the person taking the examination. [2009 c 549 § 5109; 1965 c 8 § 43.24.090. Prior: 1947 c 143 § 1; Rem. Supp. 1947 § 8265-20.]

#### 43.24.115 Director's duties as to refusal, revocation or suspension of licenses—Performance by assistants.

The director may deputize one or more of his or her assistants to perform his or her duties with reference to refusal, revocation or suspension of licenses, including the power to preside at hearings and to render decisions therein subject to the approval of the director. [2009 c 549 § 5110; 1965 c 100 § 6.]

**43.24.150 Business and professions account. (*Effective until July 1, 2010.*)** (1) The business and professions account is created in the state treasury. All receipts from business or professional licenses, registrations, certifications, renewals, examinations, or civil penalties assessed and collected by the department from the following chapters must be deposited into the account:

- (a) Chapter 18.11 RCW, auctioneers;
- (b) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;
- (c) Chapter 18.145 RCW, court reporters;
- (d) Chapter 18.165 RCW, private investigators;
- (e) Chapter 18.170 RCW, security guards;
- (f) Chapter 18.185 RCW, bail bond agents;
- (g) Chapter 18.280 RCW, home inspectors;
- (h) Chapter 19.16 RCW, collection agencies;
- (i) Chapter 19.31 RCW, employment agencies;
- (j) Chapter 19.105 RCW, camping resorts;
- (k) Chapter 19.138 RCW, sellers of travel;
- (l) Chapter 42.44 RCW, notaries public;
- (m) Chapter 64.36 RCW, timeshares; and
- (n) Chapter 67.08 RCW, boxing, martial arts, and wrestling.

Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for expenses incurred in carrying out these business and profes-

sions licensing activities of the department. Any residue in the account shall be accumulated and shall not revert to the general fund at the end of the biennium.

(2) The director shall biennially prepare a budget request based on the anticipated costs of administering the business and professions licensing activities listed in subsection (1) of this section, which shall include the estimated income from these business and professions fees. [2009 c 429 § 4; 2009 c 370 § 19; 2008 c 119 § 22; 2005 c 25 § 1.]

**Reviser's note:** This section was amended by 2009 c 370 § 19 and by 2009 c 429 § 4, 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—2009 c 370 §§ 17 and 19:** See note following RCW 18.96.210.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**Effective date—2005 c 25:** "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, 2005." [2005 c 25 § 5.]

**43.24.150 Business and professions account. (*Effective until July 1, 2010.*)** (1) The business and professions account is created in the state treasury. All receipts from business or professional licenses, registrations, certifications, renewals, examinations, or civil penalties assessed and collected by the department from the following chapters must be deposited into the account:

- (a) Chapter 18.11 RCW, auctioneers;
- (b) Chapter 18.16 RCW, cosmetologists, barbers, and manicurists;
- (c) Chapter 18.145 RCW, court reporters;
- (d) Chapter 18.165 RCW, private investigators;
- (e) Chapter 18.170 RCW, security guards;
- (f) Chapter 18.185 RCW, bail bond agents;
- (g) Chapter 18.280 RCW, home inspectors;
- (h) Chapter 19.16 RCW, collection agencies;
- (i) Chapter 19.31 RCW, employment agencies;
- (j) Chapter 19.105 RCW, camping resorts;
- (k) Chapter 19.138 RCW, sellers of travel;
- (l) Chapter 42.44 RCW, notaries public;
- (m) Chapter 64.36 RCW, timeshares;
- (n) Chapter 67.08 RCW, boxing, martial arts, and wrestling; and
- (o) Chapter 18.300 RCW.

Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for expenses incurred in carrying out these business and professions licensing activities of the department. Any residue in the account shall be accumulated and shall not revert to the general fund at the end of the biennium.

(2) The director shall biennially prepare a budget request based on the anticipated costs of administering the business and professions licensing activities listed in subsection (1) of this section, which shall include the estimated income from these business and professions fees. [2009 c 429 § 4; 2009 c 412 § 21; 2009 c 370 § 19; 2008 c 119 § 22; 2005 c 25 § 1.]

**Reviser's note:** This section was amended by 2009 c 370 § 19, 2009 c 412 § 21, and by 2009 c 429 § 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 date—2009 c 412 §§ 1-21:** See RCW 18.300.901.



**Short title—Implementation—2009 c 412:** See RCW 18.300.900 and 18.300.902.

**Effective date—2009 c 370 §§ 17 and 19:** See note following RCW 18.96.210.

**Finding—2009 c 370:** See note following RCW 18.96.010.

**Effective date—2005 c 25:** "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, 2005." [2005 c 25 § 5.]

## Chapter 43.27A RCW WATER RESOURCES

### Sections

43.27A.190 Water resource orders.

**43.27A.190 Water resource orders.** Notwithstanding and in addition to any other powers granted to the department of ecology, whenever it appears to the department that a person is violating or is about to violate any of the provisions of the following:

- (1) Chapter 90.03 RCW; or
- (2) Chapter 90.44 RCW; or
- (3) Chapter 86.16 RCW; or
- (4) Chapter 43.37 RCW; or
- (5) Chapter 43.27A RCW; or
- (6) Any other law relating to water resources administered by the department; or
- (7) A rule or regulation adopted, or a directive or order issued by the department relating to subsections (1) through (6) of this section; the department may cause a written regulatory order to be served upon said person either personally, or by registered or certified mail delivered to addressee only with return receipt requested and acknowledged by him or her. The order shall specify the provision of the statute, rule, regulation, directive or order alleged to be or about to be violated, and the facts upon which the conclusion of violating or potential violation is based, and shall order the act constituting the violation or the potential violation to cease and desist or, in appropriate cases, shall order necessary corrective action to be taken with regard to such acts within a specific and reasonable time. The regulation of a headgate or controlling works as provided in RCW 90.03.070, by a watermaster, stream patrol officer, or other person so authorized by the department shall constitute a regulatory order within the meaning of this section. A regulatory order issued hereunder shall become effective immediately upon receipt by the person to whom the order is directed, except for regulations under RCW 90.03.070 which shall become effective when a written notice is attached as provided therein. Any person aggrieved by such order may appeal the order pursuant to RCW 43.21B.310. [2009 c 549 § 5111; 1987 c 109 § 11; 1969 ex.s. c 284 § 7.]

**Purpose—Short title—Construction—Rules—Severability—Cap-tions—1987 c 109:** See notes following RCW 43.21B.001.

**Severability—1969 ex.s. c 284:** See note following RCW 90.48.290.

## Chapter 43.30 RCW

### DEPARTMENT OF NATURAL RESOURCES

#### Sections

43.30.020	Definitions.
43.30.305	Natural resources equipment fund—Authorized—Purposes—Expenditure.
43.30.385	Park land trust revolving fund.
43.30.490	Cost-reimbursement agreements.
43.30.835	Forest biomass demonstration projects.
43.30.8351	Progress report.
43.30.840	Grants or financing.

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

(1) "Administrator" means the administrator of the department of natural resources.

(2) "Agency" and "state agency" means any branch, department, or unit of the state government, however designated or constituted.

(3) "Board" means the board of natural resources.

(4) "Commissioner" means the commissioner of public lands.

(5) "Department" means the department of natural resources.

(6) "Forest biomass" means the byproducts of: Current forest practices prescribed or permitted under chapter 76.09 RCW; current forest protection treatments prescribed or permitted under chapter 76.04 RCW; or the byproducts of forest health treatments prescribed or permitted under chapter 76.06 RCW. "Forest biomass" does not include wood pieces that have been treated with chemical preservatives such as: Creosote, pentachlorophenol, or copper-chrome-arsenic; wood from old growth forests, except wood removed for forest health treatments under chapter 76.06 RCW and RCW 79.15.540; wood required by chapter 76.09 RCW for large woody debris recruitment; or municipal solid waste.

(7) "Supervisor" means the supervisor of natural resources. [2009 c 163 § 6; 1965 c 8 § 43.30.020. Prior: 1957 c 38 § 2.]

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

**Findings—Intent—2009 c 163:** See note following RCW 43.30.835.

**43.30.305 Natural resources equipment fund—Authorized—Purposes—Expenditure.** A revolving fund in the custody of the state treasurer, to be known as the natural resources equipment fund, is hereby created to be expended by the department without appropriation solely for the purchase of equipment, machinery, and supplies for the use of the department and for the payment of the costs of repair and maintenance of such equipment, machinery, and supplies. During the 2007-2009 fiscal biennium the legislature may transfer such amounts as represent the excess balance of the fund to the state general fund. [2009 c 564 § 1809; 2005 c 518 § 928; 2003 c 334 § 120; 1965 c 8 § 43.30.280. Prior: 1963 c 141 § 1. Formerly RCW 43.30.280.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Severability—Effective date—2005 c 518:** See notes following RCW 28A.500.030.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**43.30.385 Park land trust revolving fund.** (1) The park land trust revolving fund is to be utilized by the department for the purpose of acquiring real property, including all reasonable costs associated with these acquisitions, as a replacement for the property transferred to the state parks and recreation commission, as directed by the legislature in order to maintain the land base of the affected trusts or under RCW 79.22.060 and to receive voluntary contributions for the purpose of operating and maintaining public use and recreation facilities, including trails, managed by the department. Proceeds from transfers of real property to the state parks and recreation commission or other proceeds identified from transfers of real property as directed by the legislature shall be deposited in this fund. Disbursement from the park land trust revolving fund to acquire replacement property and for operating and maintaining public use and recreation facilities shall be on the authorization of the department. The proceeds from real property transferred or disposed under RCW 79.22.060 must be solely used to purchase replacement forest land, that must be actively managed as a working forest, within the same county as the property transferred or disposed. In order to maintain an effective expenditure and revenue control, the park land trust revolving fund is subject in all respects to chapter 43.88 RCW, but no appropriation is required to permit expenditures and payment of obligations from the fund.

(2) The department is authorized to solicit and receive voluntary contributions for the purpose of operating and maintaining public use and recreation facilities, including trails, managed by the department. The department may seek voluntary contributions from individuals and organizations for this purpose. Voluntary contributions will be deposited into the park land trust revolving fund and used solely for the purpose of public use and recreation facilities operations and maintenance. Voluntary contributions are not considered a fee for use of these facilities. [2009 c 354 § 9; 2004 c 103 § 1; 2003 c 334 § 106; 2000 c 148 § 4; 1995 c 211 § 5. Formerly RCW 43.30.115.]

**Finding—Intent—2009 c 354:** See note following RCW 84.33.140.

**Intent—2003 c 334:** See note following RCW 79.02.010.

**Findings—Intent—Effective date—Severability—1995 c 211:** See notes following RCW 79A.05.070.

**43.30.490 Cost-reimbursement agreements.** (1) The department may enter into a written cost-reimbursement agreement with a permit or lease applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, establishment of development units and approval or establishment of pooling agreements under chapter 78.52 RCW, including necessary technical studies, permit or lease processing, and monitoring for permit compliance.

(2) The cost-reimbursement agreement shall identify the tasks and costs for work to be conducted under the agreement. The agreement must include a schedule that states:

- (a) The estimated number of weeks for initial review of the permit application;
- (b) The estimated number of revision cycles;

(c) The estimated number of weeks for review of subsequent revision submittals;

(d) The estimated number of billable hours of employee time;

(e) The rate per hour; and

(f) A date for revision of the agreement if necessary.

(3) The written cost-reimbursement agreement shall be negotiated with the permit or lease applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant or proponent shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to hire temporary employees, to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit or lease. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits or leases, and shall contract with consultants or hire temporary employees to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments.

(4) The cost-reimbursement agreement must not negatively impact the processing of other permit applications. In order to maintain permit processing capacity, the agency may hire outside consultants, temporary employees, or make internal administrative changes. Consultants or temporary employees hired as part of a cost-reimbursement agreement or to maintain agency capacity are hired as agents of the state not of the permit applicant. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. [2009 c 97 § 9. Prior: 2007 c 188 § 1; 2007 c 94 § 11; 2003 c 70 § 2; 2000 c 251 § 3. Formerly RCW 43.30.420.]

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**Intent—Captions not law—Effective date—2000 c 251:** See notes following RCW 43.21A.690.

**43.30.835 Forest biomass demonstration projects.**

(1) The department may develop and implement forest biomass energy demonstration projects, one east of the crest of the Cascade mountains and one west of the crest of the Cascade mountains. The demonstration projects must be designed to:

(a) Reveal the utility of Washington's public and private forest biomass feedstock;

(b) Create green jobs and generate renewable energy;

(c) Generate revenues or improve asset values for beneficiaries of state lands and state forest lands;

(d) Improve forest health, reduce pollution, and restore ecological function; and

(e) Avoid interfering with the current working area for forest biomass collection surrounding an existing fixed location biomass energy production site.

(2) To develop and implement the forest biomass energy demonstration projects, the department may form forest biomass energy partnerships or cooperatives.

(3) The forest biomass energy partnerships or cooperatives are encouraged to be public-private partnerships focused on convening the entities necessary to grow, harvest, process, transport, and utilize forest biomass to generate renewable energy. Particular focus must be given to recruiting and employing emerging technologies that can locally process forest biomass feedstock to create local green jobs and reduce transportation costs.

(4) The forest biomass energy partnerships or cooperatives may include, but are not limited to: Entrepreneurs or organizations developing and operating emerging technology to process forest biomass; industrial electricity producers; contractors capable of providing the local labor needed to collect, process, and transport forest biomass feedstocks; tribes; federal land management agencies; county, city, and other local governments; the department of community, trade, and economic development; state trust land managers; an organization dedicated to protecting and strengthening the jobs, rights, and working conditions of Washington's working families; accredited research institution representatives; an industrial timber land manager; a small forest landowner; and a not-for-profit conservation organization. [2009 c 163 § 2.]

**Findings—Intent—2009 c 163:** "The legislature finds that forest biomass is an abundant and renewable byproduct of Washington's forest land management. Forest biomass can be utilized to generate clean renewable energy.

In some Washington forests, residual forest biomass is burned on site or left to decompose. The lack of forest products markets in some areas means that standing forest biomass removed for forest health and wildfire risk reduction treatments must occur at substantial cost. Utilizing forest biomass to generate energy can reduce the greenhouse gases emitted by burning forest biomass.

The legislature further finds that the emerging forest biomass energy economy is challenged by: Not having a reliable supply of predictably priced forest biomass feedstock; shipping and processing costs; insufficient forest biomass processing infrastructure; and feedstock demand.

The legislature finds that making use of the state's forest biomass resources for energy production may generate new revenues or increase asset values of state lands and state forest lands, protect forest land of all ownerships from severe forest health problems, stimulate Washington's economy, create green jobs, and reduce Washington's dependence on foreign oil.

It is the intent of the legislature to support forest biomass demonstration projects that employ promising processing technologies. The demonstration projects must emphasize public and private forest biomass feedstocks that are generated as byproducts of current forest practices. The project must reveal ways to overcome the current impediments to the developing forest biomass energy economy, and ways to realize ecologically sustainable outcomes from that development." [2009 c 163 § 1.]

**43.30.8351 Progress report.** By December 2010, the department shall provide a progress report to the legislature regarding its efforts to develop, implement, and evaluate forest biomass energy demonstration projects and any other department initiatives related to forest biomass. The report may include an evaluation of:

(1) The status of the department's abilities to secure funding, partners, and other resources for the forest biomass energy demonstration projects;

(2) The status of the biomass energy demonstration projects resulting from the department's efforts;

(3) The status and, if applicable, additional needs of forest landowners within the demonstration project areas for estimating sustainable forest biomass yields and availability;

(4) Forest biomass feedstock supply and forest biomass market demand barriers, and how they can best be overcome including actions by the legislature and United States congress; and

(5) Sustainability measures that may be instituted by the state to ensure that an increasing demand for forest biomass feedstocks does not impair public resources or the ecological conditions of forests. [2009 c 163 § 3.]

**Findings—Intent—2009 c 163:** See note following RCW 43.30.835.

**43.30.840 Grants or financing.** For the purposes of implementing chapter 163, Law of 2009, the department may seek grants or financing from the federal government, industry, or philanthropists. [2009 c 163 § 4.]

**Findings—Intent—2009 c 163:** See note following RCW 43.30.835.

## Chapter 43.31 RCW

### DEPARTMENT OF COMMERCE

(Formerly: Department of community, trade, and economic development)

#### Sections

43.31.455	SEED act—Definitions.
43.31.522	Marketplace program—Definitions.
43.31.800	State international trade fairs—"Director" defined.
43.31.970	Electric vehicle infrastructure.

**43.31.455 SEED act—Definitions.** The definitions in this section apply throughout RCW 43.31.450 through 43.31.475 unless the context clearly requires otherwise.

(1) "Department" means the department of commerce.

(2) "Director" means the director of the department of commerce.

(3) "Foster youth" means a person who is fifteen years of age or older who is a dependent of the department of social and health services; or a person who is at least fifteen years of age, but not more than twenty-three years of age, who was a dependent of the department of social and health services for at least twenty-four months after attaining thirteen years of age.

(4) "Individual development account" or "account" means an account established by contract between a low-income individual and a sponsoring organization for the benefit of the low-income individual and funded through periodic contributions by the low-income individual which are matched with contributions by or through the sponsoring organization.

(5) "Low-income individual" means a person whose household income is equal to or less than either:

(a) Eighty percent of the median family income, adjusted for household size, for the county or metropolitan statistical area where the person resides; or

(b) Two hundred percent of the federal poverty guidelines updated periodically in the federal register by the United States department of health and human services under the authority of 42 U.S.C. 9902(2).

(6) "Program" means the individual development account program established pursuant to RCW 43.31.450 through 43.31.475.

(7) "Sponsoring organization" means: (a) A nonprofit, fund-raising organization that is exempt from taxation under section 501(c)(3) of the internal revenue code as amended and in effect on January 1, 2005; (b) a housing authority established under RCW 35.82.030; or (c) a federally recognized Indian tribe. [2009 c 565 § 28; 2005 c 402 § 3.]

#### 43.31.522 Marketplace program—Definitions.

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 43.31.524:

(1) "Department" means the department of commerce.

(2) "Director" means the director of commerce.

(3) "Local nonprofit organization" means a local nonprofit organization organized to provide economic development or community development services, including but not limited to associate development organizations, economic development councils, and community development corporations. [2009 c 565 § 29; 2005 c 136 § 17; 1993 c 280 § 46; 1990 c 57 § 2; 1989 c 417 § 2.]

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**Finding—1990 c 57; 1989 c 417:** "The legislature finds and declares that substantial benefits in increased employment and business activity can be obtained by assisting businesses in identifying opportunities to purchase the goods and services they need from Washington state suppliers rather than from out-of-state suppliers and in identifying new markets for Washington state firms to provide goods and services. The replacement of out-of-state imports with services and manufactured goods produced in-state can be an important source of economic growth in a local community especially in rural areas. Businesses in the state are often unaware that goods and services they purchase from out-of-state suppliers are available from in-state firms with substantial advantages in responsiveness, service, and price. Increasing the economic partnerships between businesses in Washington state can build bridges between urban and rural communities and can result in the identification of additional opportunities for successful economic development initiatives. Providing additional information to businesses regarding in-state sources of goods and services can be a particularly valuable component of revitalization strategies in economically distressed areas. The legislature finds and declares that it is the policy of the state to strengthen the economies of local communities by increasing the economic partnerships between in-state businesses and creating programs to assist businesses in identifying in-state sources of goods and services, and in addition to identify new markets for Washington firms to provide goods and services." [1990 c 57 § 1; 1989 c 417 § 1.]

**Severability—1989 c 417:** "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 417 § 15.]

**43.31.800 State international trade fairs—"Director" defined.** "Director" as used in RCW \*43.31.790 through 43.31.850 and \*\*67.16.100 means the director of commerce. [2009 c 565 § 30; 1993 c 280 § 52; 1987 c 195 § 4; 1965 c 148 § 2.]

**Reviser's note:** \*(1) RCW 43.31.790 was repealed by 1993 c 280 § 82, effective July 1, 1994.

\*\* (2) RCW 67.16.100 was amended by 1998 c 345 § 5, removing the reference to "director."

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**43.31.970 Electric vehicle infrastructure.** The department of community, trade, and economic development must distribute to local governments model ordinances, model

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development regulations, and guidance for local governments for siting and installing electric vehicle infrastructure, and in particular battery charging stations, and appropriate handling, recycling, and storage of electric vehicle batteries and equipment, when available. The model ordinances, model development regulations, and guidance must be developed by a federal or state agency, or nationally recognized organizations with specific expertise in land-use regulations or electric vehicle infrastructure. [2009 c 459 § 18.]

**Finding—Purpose—2009 c 459:** See note following RCW 47.80.090. *Regional transportation planning organizations—Electric vehicle infrastructure: RCW 47.80.090.*

### Chapter 43.31C RCW

#### COMMUNITY EMPOWERMENT ZONES

##### Sections

43.31C.010 Definitions.

**43.31C.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Area" means a geographic area within a local government that is described by a close perimeter boundary.

(2) "Community empowerment zone" means an area meeting the requirements of RCW 43.31C.020 and officially designated by the director.

(3) "Department" means the department of commerce.

(4) "Director" means the director of the department of commerce.

(5) "Local government" means a city, code city, town, or county. [2009 c 565 § 31; 2000 c 212 § 2.]

### Chapter 43.33 RCW

#### STATE FINANCE COMMITTEE

##### Sections

43.33.040 Rules and regulations—Chair.

**43.33.040 Rules and regulations—Chair.** The state finance committee may make appropriate rules and regulations for the performance of its duties. The state treasurer shall act as chair of the committee. [2009 c 549 § 5112; 1965 c 8 § 43.33.040. Prior: 1907 c 12 § 3; RRS § 5538.]

### Chapter 43.37 RCW

#### WEATHER MODIFICATION

##### Sections

43.37.050 Hearing procedure.  
43.37.120 Separate permit for each operation—Filing and publishing notice of intention—Activities restricted by permit and notice.  
43.37.150 Financial responsibility.  
43.37.160 Fees—Sanctions for failure to pay.  
43.37.170 Records and reports—Open to public examination.

**43.37.050 Hearing procedure.** In the case of hearings pursuant to RCW 43.37.180 the department shall, and in other cases may, cause a record of the proceedings to be taken and filed with the department, together with its findings and

conclusions. For any hearing, the director of the department or a representative designated by him or her is authorized to administer oaths and affirmations, examine witnesses, and issue, in the name of the department, notice of the hearing or subpoenas requiring any person to appear and testify, or to appear and produce documents, or both, at any designated place. [2009 c 549 § 5113; 1973 c 64 § 4; 1965 c 8 § 43.37.050. Prior: 1957 c 245 § 5.]

**43.37.120 Separate permit for each operation—Filing and publishing notice of intention—Activities restricted by permit and notice.** A separate permit shall be issued for each operation. Prior to undertaking any weather modification and control activities the licensee shall file with the department and also cause to be published a notice of intention. The licensee, if a permit is issued, shall confine his or her activities for the permitted operation within the time and area limits set forth in the notice of intention, unless modified by the department; and his or her activities shall also conform to any conditions imposed by the department upon the issuance of the permit or to the terms of the permit as modified after issuance. [2009 c 549 § 5114; 1973 c 64 § 10; 1965 c 8 § 43.37.120. Prior: 1961 c 154 § 3; 1957 c 245 § 12.]

**43.37.150 Financial responsibility.** Proof of financial responsibility may be furnished by an applicant by his or her showing, to the satisfaction of the department, his or her ability to respond in damages for liability which might reasonably be attached to or result from his or her weather modification and control activities in connection with the operation for which he or she seeks a permit. [2009 c 549 § 5115; 1973 c 64 § 12; 1965 c 8 § 43.37.150. Prior: 1957 c 245 § 15.]

**43.37.160 Fees—Sanctions for failure to pay.** The fee to be paid by each applicant for a permit shall be equivalent to one and one-half percent of the estimated cost of such operation, the estimated cost to be computed by the department from the evidence available to it. The fee is due and payable to the department as of the date of the issuance of the permit; however, if the applicant is able to give to the department satisfactory security for the payment of the balance, he or she may be permitted to commence the operation, and a permit may be issued therefor, upon the payment of not less than fifty percent of the fee. The balance due shall be paid within three months from the date of the termination of the operation as prescribed in the permit. Failure to pay a permit fee as required shall be grounds for suspension or revocation of the license of the delinquent permit holder and grounds for refusal to renew his or her license or to issue any further permits to such person. [2009 c 549 § 5116; 1973 c 64 § 13; 1965 c 8 § 43.37.160. Prior: 1957 c 245 § 16.]

**43.37.170 Records and reports—Open to public examination.** (1) Every licensee shall keep and maintain a record of all operations conducted by him or her pursuant to his or her license and each permit, showing the method employed, the type of equipment used, materials and amounts thereof used, the times and places of operation of the equipment, the name and post office address of each individ-

ual participating or assisting in the operation other than the licensee, and such other general information as may be required by the department and shall report the same to the department at the time and in the manner required.

(2) The department shall require written reports in such manner as it provides but not inconsistent with the provisions of this chapter, covering each operation for which a permit is issued. Further, the department shall require written reports from such organizations as are exempted from license, permit, and liability requirements as provided in RCW 43.37.090.

(3) The reports and records in the custody of the department shall be open for public examination. [2009 c 549 § 5117; 1973 c 64 § 14; 1965 c 8 § 43.37.170. Prior: 1957 c 245 § 17.]

## Chapter 43.41 RCW

### OFFICE OF FINANCIAL MANAGEMENT

#### Sections

43.41.060	Director—Appointment—Salary—Vacancy—Delegation of powers and duties.
43.41.100	Director's powers and duties.
43.41.106	Settlement and payment of accounts—Authority to require testimony and evidence.
43.41.130	Passenger motor vehicles owned or operated by state agencies—Duty to establish policies as to acquisition, operation, authorized use—Strategies to reduce fuel consumption and vehicle emissions—Implementation of fuel economy standards—Reports.
43.41.260	Monitoring enrollee level in basic health plan and medicaid caseload of children—Funding levels adjustment.
43.41.270	Natural resource-related and environmentally based grant and loan programs—Administration and monitoring assistance.
43.41.360	Bonds of state officers and employees—Fixing amount—Additional bonds—Exemptions—Duties of director.
43.41.398	Enhanced salary allocation model for educator development and certification—Technical working group—Report and recommendation.
43.41.400	Education data center.
43.41.405	K-12 data—Securing federal funds.

**43.41.060 Director—Appointment—Salary—Vacancy—Delegation of powers and duties.** The executive head of the office of financial management shall be the director, who shall be appointed by the governor with the consent of the senate, and who shall serve at the pleasure of the governor. He or she shall be paid a salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. If a vacancy occurs in his or her position while the senate is not in session, the governor shall make a temporary appointment until the next meeting of the senate, when he or she shall present to that body his or her nomination for the office. The director may delegate such of his or her powers, duties and functions to other officers and employees of the department as he or she may deem necessary to the fulfillment of the purposes of this chapter. [2009 c 549 § 5118; 1979 c 151 § 112; 1969 ex.s. c 239 § 4.]

**43.41.100 Director's powers and duties.** The director of financial management shall:

(1) Supervise and administer the activities of the office of financial management.

(2) Exercise all the powers and perform all the duties prescribed by law with respect to the administration of the state budget and accounting system.

(3) Advise the governor and the legislature with respect to matters affecting program management and planning.

(4) Make efficiency surveys of all state departments and institutions, and the administrative and business methods pursued therein, examine into the physical needs and industrial activities thereof, and make confidential reports to the governor, recommending necessary betterments, repairs, and the installation of improved and more economical administrative methods, and advising such action as will result in a greater measure of self-support and remedies for inefficient functioning.

The director may enter into contracts on behalf of the state to carry out the purposes of this chapter; he or she may act for the state in the initiation of or participation in any multi-governmental agency program relative to the purposes of this chapter; and he or she may accept gifts and grants, whether such grants be of federal or other funds. [2009 c 549 § 5119; 1979 c 151 § 114; 1969 ex.s. c 239 § 8.]

**43.41.106 Settlement and payment of accounts—Authority to require testimony and evidence.** The director of financial management may, in his or her discretion, require any person presenting an account for settlement to be sworn before him or her, and to answer, orally or in writing, as to any facts relating to it. [2009 c 549 § 5120; 1979 c 151 § 117; 1977 ex.s. c 144 § 11.]

**43.41.130 Passenger motor vehicles owned or operated by state agencies—Duty to establish policies as to acquisition, operation, authorized use—Strategies to reduce fuel consumption and vehicle emissions—Implementation of fuel economy standards—Reports.** The director of financial management, after consultation with other interested or affected state agencies, shall establish overall policies governing the acquisition, operation, management, maintenance, repair, and disposal of, all passenger motor vehicles owned or operated by any state agency. Such policies shall include but not be limited to a definition of what constitutes authorized use of a state owned or controlled passenger motor vehicle and other motor vehicles on official state business. The definition shall include, but not be limited to, the use of state-owned motor vehicles for commuter ride sharing so long as the entire capital depreciation and operational expense of the commuter ride-sharing arrangement is paid by the commuters. Any use other than such defined use shall be considered as personal use. By June 15, 2010, the director of the department of general administration, in consultation with the office and other interested or affected state agencies, shall develop strategies to reduce fuel consumption and emissions from all classes of vehicles. State agencies shall use these strategies to:

(1) Phase in fuel economy standards for motor pools and leased vehicles to achieve an average fuel economy standard of thirty-six miles per gallon for passenger vehicle fleets by 2015;

(2) Achieve an average fuel economy of forty miles per gallon for light duty passenger vehicles purchased after June 15, 2010; and

(3) Achieve an average fuel economy standard of twenty-seven miles per gallon for light duty vans and sport utility vehicles purchased after June 15, 2010.

State agencies must report annually on the progress made to achieve the goals under subsections (1) through (3) of this section beginning October 31, 2011.

The department of general administration, in consultation with the office and other affected or interested agencies, shall develop a separate fleet fuel economy standard for all other classes of vehicles and report the progress made toward meeting the fuel consumption and emissions goals established by this section to the governor and the relevant legislative committees by December 1, 2012.

For the purposes of this section, light duty vehicles refers to cars, sport utility vehicles, and passenger vans. The following vehicles are excluded from the agency fleet average fuel economy calculation: Emergency response vehicles, passenger vans with a gross vehicle weight of eight thousand five hundred pounds or greater, vehicles that are purchased for off-pavement use, and vehicles that are driven less than two thousand miles per year. Average fuel economy calculations must be based upon the current United States environmental protection agency composite city and highway mile per gallon rating. [2009 c 519 § 6; 1982 c 163 § 13; 1980 c 169 § 1; 1979 c 111 § 12; 1975 1st ex.s. c 167 § 5.]

**Findings—2009 c 519:** See RCW 43.21M.900.

**Severability—Effective date—1982 c 163:** See notes following RCW 2.10.052.

**Severability—1979 c 111:** See note following RCW 46.74.010.

**Severability—1975 1st ex.s. c 167:** See note following RCW 43.19.010.

*Commuter ride sharing: Chapter 46.74 RCW.*

*Motor vehicle management and transportation: RCW 43.19.500 through 43.19.635.*

**43.41.260 Monitoring enrollee level in basic health plan and medicaid caseload of children—Funding levels adjustment.** The health care authority, the office of financial management, and the department of social and health services shall together monitor the enrollee level in the basic health plan and the medicaid caseload of children. The office of financial management shall adjust the funding levels by interagency reimbursement of funds between the basic health plan and medicaid and adjust the funding levels between the health care authority and the medical assistance administration of the department of social and health services to maximize combined enrollment. [2009 c 479 § 28; 1995 c 265 § 21.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Captions not law—Effective dates—Savings—Severability—1995 c 265:** See notes following RCW 70.47.015.

**43.41.270 Natural resource-related and environmentally based grant and loan programs—Administration and monitoring assistance.** (1) The office of financial management shall assist natural resource-related agencies in developing outcome-focused performance measures for administering natural resource-related and environmentally based grant and loan programs. These performance measures are to be used in determining grant eligibility, for program management and performance assessment.

(2) The office of financial management and the recreation and conservation office shall assist natural resource-related agencies in developing recommendations for a monitoring program to measure outcome-focused performance measures required by this section. The recommendations must be consistent with the framework and coordinated monitoring strategy developed by the monitoring oversight committee established in \*RCW 77.85.210.

(3) Natural resource agencies shall consult with grant or loan recipients including local governments, tribes, nongovernmental organizations, and other interested parties, and report to the office of financial management on the implementation of this section.

(4) For purposes of this section, "natural resource-related agencies" include the department of ecology, the department of natural resources, the department of fish and wildlife, the state conservation commission, the recreation and conservation funding board, the salmon recovery funding board, and the public works board within the department of community, trade, and economic development.

(5) For purposes of this section, "natural resource-related environmentally based grant and loan programs" includes the conservation reserve enhancement program; dairy nutrient management grants under chapter 90.64 RCW; state conservation commission water quality grants under chapter 89.08 RCW; coordinated prevention grants, public participation grants, and remedial action grants under RCW 70.105D.070; water pollution control facilities financing under chapter 70.146 RCW; aquatic lands enhancement grants under RCW 79.105.150; habitat grants under the Washington wildlife and recreation program under RCW 79A.15.040; salmon recovery grants under chapter 77.85 RCW; and the public works trust fund program under chapter 43.155 RCW. The term also includes programs administered by the department of fish and wildlife related to protection or recovery of fish stocks which are funded with moneys from the capital budget. [2009 c 345 § 12. Prior: 2007 c 444 § 7; 2007 c 241 § 5; 2001 c 227 § 2.]

\*Reviser's note: RCW 77.85.210 was repealed by 2005 c 309 § 10.

**Finding—Intent—2009 c 345:** See notes following RCW 77.85.030.

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Findings—Intent—2001 c 227:** "The legislature finds that the amount of overall requests for funding for natural resource-related programs in the capital budget has been steadily growing. The legislature also finds that there is an increasing interest by the public in examining the performance of the projects and programs to determine the return on their investments and that a coordinated and integrated response by state agencies will allow for better targeting of resources. The legislature further finds that there is a need to improve the data and the integration of data that is collected by state agencies and grant and loan recipients in order to better measure the outcomes of projects and programs. The legislature intends to begin implementing the recommendations contained in the joint legislative audit and review committee's report number 01-1 on investing in the environment in order to improve the efficiency, effectiveness, and accountability of these natural resource-related programs funded in the state capital budget." [2001 c 227 § 1.]

**43.41.360 Bonds of state officers and employees—Fixing amount—Additional bonds—Exemptions—Duties of director.** In addition to other powers and duties prescribed by this chapter, the director shall:

(1) Fix the amount of bond to be given by each appointive state officer and each employee of the state in all cases where it is not fixed by law;

(2) Require the giving of an additional bond, or a bond in a greater amount than provided by law, in all cases where in his or her judgment the statutory bond is not sufficient in amount to cover the liabilities of the officer or employee;

(3) Exempt subordinate employees from giving bond when in his or her judgment their powers and duties are such as not to require a bond. [2009 c 549 § 5121; 1975 c 40 § 13. Formerly RCW 43.19.540.]

**Intent—2002 c 332:** See note following RCW 43.41.280.

**43.41.398 Enhanced salary allocation model for educator development and certification—Technical working group—Report and recommendation.**

(1) The legislature recognizes that providing students with the opportunity to access a world-class educational system depends on our continuing ability to provide students with access to world-class educators. The legislature also understands that continuing to attract and retain the highest quality educators will require increased investments. The legislature intends to enhance the current salary allocation model and recognizes that changes to the current model cannot be imposed without great deliberation and input from teachers, administrators, and classified employees. Therefore, it is the intent of the legislature to begin the process of developing an enhanced salary allocation model that is collaboratively designed to ensure the rationality of any conclusions regarding what constitutes adequate compensation.

(2) Beginning July 1, 2011, the office of financial management shall convene a technical working group to recommend the details of an enhanced salary allocation model that aligns state expectations for educator development and certification with the compensation system and establishes recommendations for a concurrent implementation schedule. In addition to any other details the technical working group deems necessary, the technical working group shall make recommendations on the following:

(a) How to reduce the number of tiers within the existing salary allocation model;

(b) How to account for labor market adjustments;

(c) How to account for different geographic regions of the state where districts may encounter difficulty recruiting and retaining teachers;

(d) The role of and types of bonuses available;

(e) Ways to accomplish salary equalization over a set number of years; and

(f) Initial fiscal estimates for implementing the recommendations including a recognition that staff on the existing salary allocation model would have the option to grandfather in permanently to the existing schedule.

(3) As part of its work, the technical working group shall conduct or contract for a preliminary comparative labor market analysis of salaries and other compensation for school district employees to be conducted and shall include the results in any reports to the legislature. For the purposes of this subsection, "salaries and other compensation" includes average base salaries, average total salaries, average employee basic benefits, and retirement benefits.

(4) The analysis required under subsection (1) of this section must:

(a) Examine salaries and other compensation for teachers, other certificated instructional staff, principals, and other building-level certificated administrators, and the types of classified employees for whom salaries are allocated;

(b) Be calculated at a statewide level that identifies labor markets in Washington through the use of data from the United States bureau of the census and the bureau of labor statistics; and

(c) Include a comparison of salaries and other compensation to the appropriate labor market for at least the following subgroups of educators: Beginning teachers and types of educational staff associates.

(5) The working group shall include representatives of the department of personnel, the professional educator standards board, the office of the superintendent of public instruction, the Washington education association, the Washington association of school administrators, the association of Washington school principals, the Washington state school directors' association, the public school employees of Washington, and other interested stakeholders with appropriate expertise in compensation related matters. The working group may convene advisory subgroups on specific topics as necessary to assure participation and input from a broad array of diverse stakeholders.

(6) The working group shall be monitored and overseen by the legislature and the quality education council created in RCW 28A.290.010. The working group shall make an initial report to the legislature by December 1, 2012, and shall include in its report recommendations for whether additional further work of the group is necessary. [2009 c 548 § 601.]

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**43.41.400 Education data center.** (1) An education data center shall be established in the office of financial management. The education data center shall jointly, with the legislative evaluation and accountability program committee, conduct collaborative analyses of early learning, K-12, and higher education programs and education issues across the P-20 system, which includes the department of early learning, the superintendent of public instruction, the professional educator standards board, the state board of education, the state board for community and technical colleges, the workforce training and education coordinating board, the higher education coordinating board, public and private nonprofit four-year institutions of higher education, and the employment security department. The education data center shall conduct collaborative analyses under this section with the legislative evaluation and accountability program committee and provide data electronically to the legislative evaluation and accountability program committee, to the extent permitted by state and federal confidentiality requirements. The education data center shall be considered an authorized representative of the state educational agencies in this section under applicable federal and state statutes for purposes of accessing and compiling student record data for research purposes.

(2) The education data center shall:

(a) In consultation with the legislative evaluation and accountability program committee and the agencies and organizations participating in the education data center, identify the critical research and policy questions that are intended to be addressed by the education data center and the data needed to address the questions;

(b) Coordinate with other state education agencies to compile and analyze education data, including data on student demographics that is disaggregated by distinct ethnic categories within racial subgroups, and complete P-20 research projects;

(c) Collaborate with the legislative evaluation and accountability program committee and the education and fiscal committees of the legislature in identifying the data to be compiled and analyzed to ensure that legislative interests are served;

(d) Annually provide to the K-12 data governance group a list of data elements and data quality improvements that are necessary to answer the research and policy questions identified by the education data center and have been identified by the legislative committees in (c) of this subsection. Within three months of receiving the list, the K-12 data governance group shall develop and transmit to the education data center a feasibility analysis of obtaining or improving the data, including the steps required, estimated time frame, and the financial and other resources that would be required. Based on the analysis, the education data center shall submit, if necessary, a recommendation to the legislature regarding any statutory changes or resources that would be needed to collect or improve the data;

(e) Monitor and evaluate the education data collection systems of the organizations and agencies represented in the education data center ensuring that data systems are flexible, able to adapt to evolving needs for information, and to the extent feasible and necessary, include data that are needed to conduct the analyses and provide answers to the research and policy questions identified in (a) of this subsection;

(f) Track enrollment and outcomes through the public centralized higher education enrollment system;

(g) Assist other state educational agencies' collaborative efforts to develop a long-range enrollment plan for higher education including estimates to meet demographic and workforce needs;

(h) Provide research that focuses on student transitions within and among the early learning, K-12, and higher education sectors in the P-20 system; and

(i) Make recommendations to the legislature as necessary to help ensure the goals and objectives of this section and RCW 28A.655.210 and 28A.300.507 are met.

(3) The department of early learning, superintendent of public instruction, professional educator standards board, state board of education, state board for community and technical colleges, workforce training and education coordinating board, higher education coordinating board, public four-year institutions of higher education, and employment security department shall work with the education data center to develop data-sharing and research agreements, consistent with applicable security and confidentiality requirements, to facilitate the work of the center. Private, nonprofit institutions of higher education that provide programs of education beyond the high school level leading at least to the baccalau-



reate degree and are accredited by the Northwest association of schools and colleges or their peer accreditation bodies may also develop data-sharing and research agreements with the education data center, consistent with applicable security and confidentiality requirements. The education data center shall make data from collaborative analyses available to the education agencies and institutions that contribute data to the education data center to the extent allowed by federal and state security and confidentiality requirements applicable to the data of each contributing agency or institution. [2009 c 548 § 201; 2007 c 401 § 3.]

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

**Findings—2007 c 401:** See note following RCW 28A.300.500.

**43.41.405 K-12 data—Securing federal funds.** The education data center and the superintendent of public instruction shall take all actions necessary to secure federal funds to implement RCW 43.41.400, 28A.655.210, and 28A.300.507. [2009 c 548 § 204.]

**Intent—2009 c 548:** See note following RCW 28A.150.198.

**Finding—2009 c 548:** See note following RCW 28A.410.270.

**Intent—Finding—2009 c 548:** See note following RCW 28A.305.130.

## Chapter 43.42 RCW

### OFFICE OF REGULATORY ASSISTANCE

#### Sections

43.42.005	Findings—Intent.
43.42.010	Office created—Appointment of director—Duties.
43.42.020	Operating principle—Providing information regarding permits.
43.42.030	Definitions.
43.42.050	Project scoping—Factors.
43.42.060	Fully coordinated permit process—Requirements—Procedure.
43.42.070	Cost-reimbursement agreements.
43.42.902	Authority of participating permit agency retained.

**43.42.005 Findings—Intent.** (1) The legislature finds that: The health and safety of its citizens and environment are of vital interest to the state's long-term quality of life; Washington state is a national leader in protecting its environment; and Washington state has a vibrant and diverse economy that is dependent on the state maintaining high environmental standards. Further, the legislature finds that a complex and confusing network of environmental and land use laws and business regulations can create obstacles to sustainable growth.

It is the intent of the legislature to promote accountability, timeliness, and predictability for citizens, business, and state, federal, and local permitting agencies, and to provide information and assistance on the regulatory process through the creation of the office of regulatory assistance in the governor's office.

(2) The office of regulatory assistance is created to work to continually improve the function of environmental and business regulatory processes by identifying conflicts and overlap in the state's rules, statutes, and operational practices; the office is to provide project proponents and business owners with active assistance for all permitting, licensing,

and other regulatory procedures required for completion of specific projects; and the office is to ensure that citizens, businesses, and local governments have access to, and clear information regarding, regulatory processes for permitting and business regulation, including state rules, permit and license requirements, and agency rule-making processes.

(3) The legislature declares that the purpose of this chapter is to provide direction and practical resources for improving the regulatory process and for assistance through regulatory processes on individual projects in furtherance of the state's goals of governmental transparency and accountability.

(4) The legislature intends that establishing an office of regulatory assistance will provide these services without abrogating or limiting the authority of any agency to make decisions on permits, licenses, regulatory requirements, or agency rule making. The legislature further intends that the office of regulatory assistance shall have authority to provide services but shall not have any authority to make decisions on permits. [2009 c 97 § 1; 2007 c 94 § 1; 2003 c 71 § 1; 2002 c 153 § 1.]

**Reviser's note—Sunset Act application:** The office of regulatory assistance is subject to review, termination, and possible extension under chapter 43.131 RCW, the Sunset Act. See RCW 43.131.401. RCW 43.42.005 through 43.42.070, 43.42.900, and 43.42.901 are scheduled for future repeal under RCW 43.131.402.

**Effective date—2003 c 71 § 2:** "Section 2 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 takes effect immediately [April 18, 2003]." [2003 c 71 § 7.]

**43.42.010 Office created—Appointment of director—Duties.** (1) The office of regulatory assistance is created in the office of financial management and shall be administered by the office of the governor to help improve the regulatory system and assist citizens, businesses, and project proponents.

(2) The governor shall appoint a director. The director may employ a deputy director and a confidential secretary and such staff as are necessary, or contract with another state agency pursuant to chapter 39.34 RCW for support in carrying out the purposes of this chapter.

(3) The office shall offer to:

- (a) Act as the central point of contact for the project proponent in communicating about defined issues;
- (b) Conduct project scoping as provided in RCW 43.42.050;
- (c) Verify that the project proponent has all the information needed to correctly apply for all necessary permits;
- (d) Provide general coordination services;
- (e) Coordinate the efficient completion among participating agencies of administrative procedures, such as collecting fees or providing public notice;
- (f) Maintain contact with the project proponent and the permit agencies to promote adherence to agreed schedules;
- (g) Assist in resolving any conflict or inconsistency among permit requirements and conditions;
- (h) Coordinate, to the extent practicable, with relevant federal permit agencies and tribal governments;
- (i) Facilitate meetings;
- (j) Manage a fully coordinated permit process, as provided in RCW 43.42.060;

(k) Help local jurisdictions comply with the requirements of chapter 36.70B RCW by providing information about best permitting practices methods to improve communication with, and solicit early involvement of, state agencies when needed; and

(l) Maintain and furnish information as provided in RCW 43.42.040.

(4) The office shall provide the following by September 1, 2009, and biennially thereafter, to the governor and the appropriate committees of the legislature:

(a) A performance report including:

(i) Information regarding use of the office's voluntary cost-reimbursement services as provided in RCW 43.42.070;

(ii) The number and type of projects where the office provided services and the resolution provided by the office on any conflicts that arose on such projects; and

(iii) The agencies involved on specific projects; and

(b) Recommendations on system improvements including recommendations regarding:

(i) Measurement of overall system performance; and

(ii) Resolving any conflicts or inconsistencies arising from differing statutory or regulatory authorities, roles and missions of agencies, timing and sequencing of permitting and procedural requirements as identified by the office in the course of its duties. [2009 c 97 § 4. Prior: 2007 c 231 § 5; 2007 c 94 § 2; 2003 c 71 § 2; 2002 c 153 § 2.]

**Sunset Act application:** See note following RCW 43.42.005.

**Findings—Recommendations—Reports encouraged—2007 c 231:** See note following RCW 43.155.070.

**43.42.020 Operating principle—Providing information regarding permits.** (1) Principles of accountability and transparency shall guide the office in its operations. The office shall provide the following information regarding permits to citizens and businesses:

(a) An agency's average turnaround time from the date of application to date of decision for the required permit, licenses, or other necessary regulatory decisions, or the most relevant information the agency can provide, for projects of a comparable size and complexity;

(b) The information required for an agency to make a decision on a permit or regulatory requirement, including the agency's best estimate of the number of times projects of a similar size and complexity have been asked to clarify, improve, or provide supplemental information before a decision, and the expected agency response time, recognizing that changes in the project or other circumstances may change the information required; and

(c) An estimate of the maximum amount of costs in fees to be paid to state agencies, the type of any studies an agency expects to need, and the timing of any expected public processes for the project.

(2) This section does not create an independent cause of action, affect any existing cause of action, or establish time limits for purposes of RCW 64.40.020. [2009 c 97 § 2; 2007 c 94 § 3; 2002 c 153 § 3.]

**Sunset Act application:** See note following RCW 43.42.005.

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

(1) "Director" means the director of the office of regulatory assistance.

(2) "Fully coordinated permit process" means a comprehensive coordinated permitting assistance approach supported by a written agreement between the project proponent, the office of regulatory assistance, and the agencies participating in the fully coordinated permit process.

(3) "General coordination services" means services that bring interested parties together to explore opportunities for cooperation and to resolve conflicts. General coordination services may be provided as a stand-alone event or as an element of broader project assistance, nonproject-related inter-agency coordination, or policy and planning teamwork.

(4) "Office" means the office of regulatory assistance established in RCW 43.42.010.

(5) "Permit" means any permit, license, certificate, use authorization, or other form of governmental review or approval required in order to construct, expand, or operate a project in the state of Washington.

(6) "Permit agency" means any state, local, or federal agency authorized by law to issue permits.

(7) "Project" means any activity, the conduct of which requires a permit or permits from one or more permit agencies.

(8) "Project proponent" means a citizen, business, or any entity applying for or seeking a permit or permits in the state of Washington.

(9) "Project scoping" means the identification of relevant issues and information needs of a project proponent and the permitting agencies, and reaching a common understanding regarding the process, timing, and sequencing for obtaining applicable permits. [2009 c 97 § 3; 2007 c 94 § 4; 2003 c 71 § 3; 2002 c 153 § 4.]

**Sunset Act application:** See note following RCW 43.42.005.

**43.42.050 Project scoping—Factors.** (1) Upon request of a project proponent, the office shall determine the level of project scoping needed by the project proponent, taking into consideration the complexity of the project and the experience of those expected to be involved in the project application and review process.

(2) Project scoping shall consider the complexity, size, and needs for assistance of the project and shall address as appropriate:

(a) The permits that are required for the project;

(b) The permit application forms and other application requirements of the participating permit agencies;

(c) The specific information needs and issues of concern of each participant and their significance;

(d) Any statutory or regulatory conflicts that might arise from the differing authorities and roles of the permit agencies;

(e) Any natural resources, including federal or state listed species, that might be adversely affected by the project and might cause an alteration of the project or require mitigation; and

(f) The anticipated time required for permit decisions by each participating permit agency, including the estimated

time required to determine if the permit application is complete, to conduct environmental review, and to review and process the application. In determining the estimated time required, full consideration must be given to achieving the greatest possible efficiencies through any concurrent studies and any consolidated applications, hearings, and comment periods.

(3) The outcome of the project scoping shall be documented in writing, furnished to the project proponent, and be made available to the public.

(4) The project scoping shall be completed prior to the passage of sixty days of the project proponent's request for a project scoping unless the director finds that better results can be obtained by delaying the project scoping meeting or meetings to ensure full participation.

(5) Upon completion of the project scoping, the participating permit agencies shall proceed under their respective authorities. The agencies may remain in communication with the office as needed.

(6) This section does not create an independent cause of action, affect any existing cause of action, or establish time limits for purposes of RCW 64.40.020. [2009 c 97 § 5; 2007 c 94 § 6; 2003 c 54 § 4; 2002 c 153 § 6.]

**Sunset Act application:** See note following RCW 43.42.005.

**43.42.060 Fully coordinated permit process—Requirements—Procedure.** (1) A project proponent may submit a written request to the director of the office for participation in a fully coordinated permit process. Designation as a fully coordinated project requires that:

(a) The project proponent enters into a cost-reimbursement agreement pursuant to RCW 43.42.070;

(b) The project has a designation under chapter 43.157 RCW; or

(c) The director determine that (i)(A) the project raises complex coordination, permit processing, or substantive permit review issues; or (B) if completed, the project would provide substantial benefits to the state; and (ii) the office, as well as the participating permit review agencies, have sufficient capacity within existing resources to undertake the full coordination process without reimbursement and without seriously affecting other services.

(2) A project proponent who requests designation as a fully coordinated permit process project must provide the office with a full description of the project. The office may request any information from the project proponent that is necessary to make the designation under this section, and may convene a scoping meeting or a work plan meeting of the likely participating permit agencies.

(3) When a project is designated for the fully coordinated permit process, the office shall serve as the main point of contact for the project proponent and participating agencies with regard to the permit process for the project as a whole. The office shall keep an up-to-date project management log and schedule illustrating required procedural steps in the permitting process, and highlighting substantive issues as appropriate that must be resolved in order for the project to move forward. In carrying out these responsibilities, the office shall:

(a) Ensure that the project proponent has been informed of all the information needed to apply for the permits that are included in the coordinated permit process;

(b) Coordinate the timing of review for those permits by the respective participating permit agencies;

(c) Facilitate communication between project proponents, consultants, and agency staff to promote timely permit decisions;

(d) Assist in resolving any conflict or inconsistency among the permit requirements and conditions that are expected to be imposed by the participating permit agencies; and

(e) Make contact, at least once, with any local, tribal, or federal jurisdiction that is responsible for issuing a permit for the project and invite them to participate in the coordinated permit process or to receive periodic updates in the project.

(4) Within thirty days, or longer with agreement of the project proponent, of the date that the office designates a project for the fully coordinated permit process, it shall convene a work plan meeting with the project proponent and the participating permit agencies to develop a coordinated permit process schedule. The meeting agenda shall include at least the following:

(a) Review of the permits that are required for the project;

(b) A review of the permit application forms and other application requirements of the agencies that are participating in the coordinated permit process;

(c) An estimation of the timelines that will be used by each participating permit agency to make permit decisions, including the estimated time periods required to determine if the permit applications are complete and to review or respond to each application or submittal of new information.

(i) The estimation must also include the estimated number of revision cycles for the project, or the typical number of revision cycles for projects of similar size and complexity.

(ii) In the development of this timeline, full attention shall be given to achieving the maximum efficiencies possible through concurrent studies and consolidated applications, hearings, and comment periods.

(iii) Estimated action or response times for activities of the office that are required before or trigger further action by a participant must also be included;

(d) Available information regarding the timing of any public hearings that are required to issue permits for the project and a determination of the feasibility of coordinating or consolidating any of those required public hearings; and

(e) A discussion of fee arrangements for the coordinated permit process, including an estimate of the costs allowed by statute, any reimbursable agency costs, and billing schedules, if applicable.

(5) Each agency shall send at least one representative qualified to discuss the applicability and timelines associated with all permits administered by that agency or jurisdiction. At the request of the project proponent, the office shall notify any relevant local or federal agency or federally recognized Indian tribe of the date of the meeting and invite that agency's participation in the process.

(6) Any accelerated time period for the consideration of a permit application shall be consistent with any statute, rule, or regulation, or adopted state policy, standard, or guideline

that requires the participation of other agencies, federally recognized Indian tribes, or interested persons in the application process.

(7) If a permit agency or the project proponent foresees, at any time, that it will be unable to meet the estimated timelines or other obligations under the agreement, it shall notify the office of the reasons for the problem and offer potential solutions or an amended timeline for resolving the problem. The office shall notify the participating permit agencies and the project proponent and, upon agreement of all parties, adjust the schedule, or, if necessary, schedule another work plan meeting.

(8) The project proponent may withdraw from the coordinated permit process by submitting to the office a written request that the process be terminated. Upon receipt of the request, the office shall notify each participating permit agency that a coordinated permit process is no longer applicable to the project. [2009 c 421 § 8; 2009 c 97 § 6; 2007 c 94 § 7; 2003 c 54 § 5; 2002 c 153 § 7.]

**Reviser's note:** This section was amended by 2009 c 97 § 6 and by 2009 c 421 § 8, 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).

**Sunset Act application:** See note following RCW 43.42.005.

**Effective date—2009 c 421:** See note following RCW 43.157.005.

**43.42.070 Cost-reimbursement agreements.** (1) The office may enter into cost-reimbursement agreements with a project proponent to recover from the project proponent the reasonable costs incurred by the office in carrying out the provisions of RCW 43.42.050. The agreement shall include the permit agencies that are participating in the cost-reimbursement project and carrying out permit processing tasks referenced in the agreement.

(2) The office shall maintain policies or guidelines for coordinating cost-reimbursement agreements with participating agencies, project proponents, and outside independent consultants. Policies or guidelines must ensure that, in developing cost-reimbursement agreements, conflicts of interest are eliminated. Contracts with independent consultants hired by the office under this section must be based on competitive bids that are awarded for each agreement from a prequalified consultant roster.

(3) For fully coordinated permit processes, the office shall coordinate the negotiation of all cost-reimbursement agreements executed under RCW 43.21A.690, 43.30.490, 43.70.630, 43.300.080, and 70.94.085. The office, project proponent, and the permit agencies shall be signatories to the agreement or agreements. Each permit agency shall manage performance of its portion of the agreement. Independent consultants hired under a cost-reimbursement agreement shall report directly to the hiring office or permit agency. Any cost-reimbursement agreement must require that final decisions are made by the permit agency and not by a hired consultant.

(4) For a fully coordinated project using cost reimbursement, the office and participating permit agencies shall include a cost-reimbursement work plan, including deliverables and schedules for invoicing and reimbursement in the fully coordinated project work plan described in RCW 43.42.060. Upon request, the office shall verify that the

agencies have met the obligations contained in the cost-reimbursement work plan and agreement. The cost-reimbursement agreement shall identify the tasks of each agency and the maximum costs for work conducted under the agreement. The agreement must include a schedule that states:

(a) The estimated number of weeks for initial review of the permit application for comparable projects;

(b) The anticipated number of revision cycles;

(c) The estimated number of weeks for review of subsequent revision submittals;

(d) The estimated number of billable hours of employee time;

(e) The rate per hour; and

(f) A process for revision of the agreement if necessary.

(5) If a permit agency or the project proponent foresees, at any time, that it will be unable to meet its obligations under the cost-reimbursement agreement and fully coordinated project work plan, it shall notify the office and state the reasons, along with proposals for resolving the problems and potentially amending the timelines. The office shall notify the participating permit agencies and the project proponent and, upon agreement of all parties, adjust the schedule, or, if necessary, coordinate revision of the cost-reimbursement agreement and fully coordinated project work plan. [2009 c 97 § 7; 2007 c 94 § 8; 2003 c 70 § 7; 2002 c 153 § 8.]

**Sunset Act application:** See note following RCW 43.42.005.

**43.42.902 Authority of participating permit agency retained.** This chapter shall not be construed to limit or abridge the powers and duties granted to a participating permit agency under the law that authorizes or requires the agency to issue a permit for a project. Each participating permit agency shall retain its authority to make all decisions on all nonprocedural matters with regard to the respective component permit that is within its scope of its responsibility including, but not limited to, the determination of permit application completeness, permit approval or approval with conditions, or permit denial. The office may not substitute its judgment for that of a participating permit agency on any such nonprocedural matters. [2009 c 97 § 13.]

## Chapter 43.43 RCW

### WASHINGTON STATE PATROL

#### Sections

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- 43.43.912 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*)

**43.43.013 Donations, gifts, conveyances, devises, and grants.** The Washington state patrol may accept any and all donations, bequests, gifts, conveyances, devices [devises], and grants conditional or otherwise; or money, property, service, or other things of value which may be received from the United States or any agency thereof, any governmental agency, institution, person, firm, or corporation, public and private, to be held, used, or applied for the purpose of fulfilling its mission. [2009 c 108 § 1.]

**43.43.040 Disability of patrol officers.** (1) The chief of the Washington state patrol shall relieve from active duty Washington state patrol officers who, while in the performance of their official duties, or while on standby or available for duty, have been or hereafter may be injured or incapacitated to such an extent as to be mentally or physically incapable of active service: PROVIDED, That:

(a) Any officer disabled while performing line duty who is found by the chief to be physically incapacitated shall be placed on disability leave for a period not to exceed six months from the date of injury or the date incapacitated. During this period, the officer shall be entitled to all pay, benefits, insurance, leave, and retirement contributions awarded to an officer on active status, less any compensation received through the department of labor and industries. No such disability leave shall be approved until an officer has been unavailable for duty for more than forty consecutive work hours. Prior to the end of the six-month period, the chief shall either place the officer on disability status or return the officer to active status.

For the purposes of this section, "line duty" is active service which encompasses the traffic law enforcement duties and/or other law enforcement responsibilities of the state patrol. These activities encompass all enforcement practices of the laws, accident and criminal investigations, or actions requiring physical exertion or exposure to hazardous elements.

The chief shall define by rule the situations where a disability has occurred during line duty;

(b) Benefits under this section for a disability that is incurred while in other employment will be reduced by any amount the officer 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;

(c) An officer injured while engaged in willfully tortious or criminal conduct shall not be entitled to disability benefits under this section; and

(d) Should a disability beneficiary whose disability was not incurred in line of duty, prior to attaining age fifty, engage in a gainful occupation, the chief shall reduce the amount of his or her retirement allowance to an amount which when added to the compensation earned by him or her in such occupation shall not exceed the basic salary currently being paid for the rank the retired officer held at the time he or she was disabled. All such disability beneficiaries under age fifty shall file with the chief every six months a signed and sworn statement of earnings and any person who shall knowingly swear falsely on such statement shall be subject to prosecution for perjury. Should the earning capacity of such beneficiary be further altered, the chief may further alter his or her disability retirement allowance as indicated above. The failure of any officer to file the required statement of earnings shall be cause for cancellation of retirement benefits.

(2) Officers on disability status shall receive one-half of their compensation at the existing wage, during the time the disability continues in effect, less any compensation received through the department of labor and industries. They shall be subject to mental or physical examination at any state institution or otherwise under the direction of the chief of the patrol at any time during such relief from duty to ascertain whether or not they are able to resume active duty. [2009 c 549 § 5122; 1998 c 194 § 1; 1987 c 185 § 17; 1981 c 165 § 1; 1973 2nd ex.s. c 20 § 1; 1965 c 8 § 43.43.040. Prior: 1947 c 174 § 1; 1943 c 215 § 1; RRS § 6362-65.]

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

**Severability—1981 c 165:** "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 165 § 2.]

**Effective date—1981 c 165:** "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 January 1, 1981." [1981 c 165 § 3.]

**43.43.110 Reinstatement on acquittal.** If as a result of any trial board hearing, or review proceeding, an officer complained of is found not guilty of the charges against him or her, he or she shall be immediately reinstated to his or her former position, and be reimbursed for any loss of salary suffered by reason of the previous disciplinary action. [2009 c 549 § 5123; 1965 c 8 § 43.43.110. Prior: 1943 c 205 § 7; Rem. Supp. 1943 § 6362-72.]

**43.43.120 Patrol retirement system—Definitions.** As used in RCW 43.43.120 through 43.43.320, unless a different meaning is plainly required by the context:

(1) "Actuarial equivalent" shall mean a benefit of equal value when computed upon the basis of such mortality table as may be adopted and such interest rate as may be determined by the director.

(2) "Annual increase" means as of July 1, 1999, seventy-seven cents per month per year of service which amount shall be increased each subsequent July 1st by three percent, rounded to the nearest cent.

(3)(a) "Average final salary," for members commissioned prior to January 1, 2003, shall mean the average monthly salary received by a member during the member's last two years of service or any consecutive two-year period of service, whichever is the greater, as an employee of the Washington state patrol; or if the member has less than two years of service, then the average monthly salary received by the member during the member's total years of service.

(b) "Average final salary," for members commissioned on or after January 1, 2003, shall mean the average monthly salary received by a member for the highest consecutive sixty service credit months; or if the member has less than sixty months of service, then the average monthly salary received by the member during the member's total months of service.

(4) "Beneficiary" means any person in receipt of retirement allowance or any other benefit allowed by this chapter.

(5)(a) "Cadet," for a person who became a member of the retirement system after June 12, 1980, is a person who has passed the Washington state patrol's entry-level oral, written, physical performance, and background examinations and is, thereby, appointed by the chief as a candidate to be a commissioned officer of the Washington state patrol.

(b) "Cadet," for a person who became a member of the retirement system before June 12, 1980, is a trooper cadet, patrol cadet, or employee of like classification, employed for the express purpose of receiving the on-the-job training required for attendance at the state patrol academy and for becoming a commissioned trooper. "Like classification" includes: Radio operators or dispatchers; persons providing security for the governor or legislature; patrol officers; drivers' license examiners; weighmasters; vehicle safety inspectors; central wireless operators; and warehouse workers.

(6) "Contributions" means the deduction from the compensation of each member in accordance with the contribution rates established under chapter 41.45 RCW.

(7) "Current service" shall mean all service as a member rendered on or after August 1, 1947.

(8) "Department" means the department of retirement systems created in chapter 41.50 RCW.

(9) "Director" means the director of the department of retirement systems.

(10) "Domestic partners" means two adults who have registered as domestic partners under \*RCW 26.60.020.

(11) "Employee" means any commissioned employee of the Washington state patrol.

(12) "Insurance commissioner" means the insurance commissioner of the state of Washington.

(13) "Lieutenant governor" means the lieutenant governor of the state of Washington.

(14) "Member" means any person included in the membership of the retirement fund.

(15) "Plan 2" means the Washington state patrol retirement system plan 2, providing the benefits and funding provisions covering commissioned employees who first become members of the system on or after January 1, 2003.

(16) "Prior service" shall mean all services rendered by a member to the state of Washington, or any of its political sub-

divisions prior to August 1, 1947, unless such service has been credited in another public retirement or pension system operating in the state of Washington.

(17) "Regular interest" means interest compounded annually at such rates as may be determined by the director.

(18) "Retirement board" means the board provided for in this chapter.

(19) "Retirement fund" means the Washington state patrol retirement fund.

(20) "Retirement system" means the Washington state patrol retirement system.

(21)(a) "Salary," for members commissioned prior to July 1, 2001, shall exclude any overtime earnings related to RCW 47.46.040, or any voluntary overtime, earned on or after July 1, 2001.

(b) "Salary," for members commissioned on or after July 1, 2001, shall exclude any overtime earnings related to RCW 47.46.040 or any voluntary overtime, lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, holiday pay, or any form of severance pay.

(22) "Service" shall mean services rendered to the state of Washington or any political subdivisions thereof for which compensation has been paid. Full time employment for seventy or more hours in any given calendar month shall constitute one month of service. An employee who is reinstated in accordance with RCW 43.43.110 shall suffer no loss of service for the period reinstated subject to the contribution requirements of this chapter. Only months of service shall be counted in the computation of any retirement allowance or other benefit provided for herein. Years of service shall be determined by dividing the total number of months of service by twelve. Any fraction of a year of service as so determined shall be taken into account in the computation of such retirement allowance or benefit.

(23) "State actuary" or "actuary" means the person appointed pursuant to RCW 44.44.010(2).

(24) "State treasurer" means the treasurer of the state of Washington.

(25) Unless the context expressly indicates otherwise, words importing the masculine gender shall be extended to include the feminine gender and words importing the feminine gender shall be extended to include the masculine gender. [2009 c 549 § 5124; 2009 c 522 § 1; 2001 c 329 § 3; 1999 c 74 § 1; 1983 c 81 § 1; 1982 1st ex.s. c 52 § 24; 1980 c 77 § 1; 1973 1st ex.s. c 180 § 1; 1969 c 12 § 1; 1965 c 8 § 43.43.120. Prior: 1955 c 244 § 1; 1953 c 262 § 1; 1951 c 140 § 1; 1947 c 250 § 1; Rem. Supp. 1947 § 6362-81.]

**Reviser's note:** \*(1) The reference to RCW 26.60.020 appears to be erroneous. Reference to RCW 26.60.040 was apparently intended.

(2) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(3) This section was amended by 2009 c 522 § 1 and by 2009 c 549 § 5124, 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—2001 c 329:** "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, 2001." [2001 c 329 § 14.]

**Effective date—1983 c 81:** "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, 1983." [1983 c 81 § 4.]

**Effective dates—1982 1st ex.s. c 52:** See note following RCW 2.10.180.

**Construction—1969 c 12:** "The provisions of this 1969 amendatory 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." [1969 c 12 § 8.]

#### **43.43.130 Retirement fund created—Membership.**

(1) A Washington state patrol retirement fund is hereby established for members of the Washington state patrol which shall include funds created and placed under the management of a retirement board for the payment of retirement allowances and other benefits under the provisions hereof.

(2) Any employee of the Washington state patrol, upon date of commissioning, shall be eligible to participate in the retirement plan and shall start contributing to the fund immediately. Any employee of the Washington state patrol employed by the state of Washington or any of its political subdivisions prior to August 1, 1947, unless such service has been credited in another public retirement or pension system operating in the state of Washington shall receive full credit for such prior service but after that date each new commissioned employee must automatically participate in the fund. If a member shall terminate service in the patrol and later reenter, he or she shall be treated in all respects as a new employee.

(3)(a) A member who reenters or has reentered service within ten years from the date of his or her termination, shall upon completion of six months of continuous service and upon the restoration of all withdrawn contributions, plus interest as determined by the director, which restoration must be completed within five years after resumption of service, be returned to the status of membership he or she earned at the time of termination.

(b) A member who does not meet the time limitations for restoration under (a) of this subsection, may restore the service credit destroyed by the withdrawn contributions by paying the amount required under RCW 41.50.165(2) prior to retirement.

(4)(a) An employee of the Washington state patrol who becomes a member of the retirement system after June 12, 1980, and who has service as a cadet in the patrol training program may make an irrevocable election to transfer the service to the retirement system. Any member upon making such election shall have transferred all existing service credited in a prior public retirement system in this state for periods of employment as a cadet. Transfer of credit under this subsection is contingent on completion of the transfer of funds specified in (b) of this subsection.

(b) Within sixty days of notification of a member's cadet service transfer as provided in (a) of this subsection, the department of retirement systems shall transfer the employee's accumulated contributions attributable to the periods of service as a cadet, including accumulated interest.

(5) A member of the retirement system who has served or shall serve on active federal service in the armed forces of the United States pursuant to and by reason of orders by competent federal authority, who left or shall leave the Washington state patrol to enter such service, and who within one year from termination of such active federal service, resumes

employment as a state employee, shall have his or her service in such armed forces credited to him or her as a member of the retirement system: PROVIDED, That no such service in excess of five years shall be credited unless such service was actually rendered during time of war or emergency.

(6) An active employee of the Washington state patrol who either became a member of the retirement system prior to June 12, 1980, and who has prior service as a cadet in the public employees' retirement system may make an irrevocable election to transfer such service to the retirement system within a period ending June 30, 1985, or, if not an active employee on July 1, 1983, within one year of returning to commissioned service, whichever date is later. Any member upon making such election shall have transferred all existing service credited in the public employees' retirement system which constituted service as a cadet together with the employee's contributions plus credited interest. If the employee has withdrawn the employee's contributions, the contributions must be restored to the public employees' retirement system before the transfer of credit can occur and such restoration must be completed within the time limits specified in this subsection for making the elective transfer.

(7) An active employee of the Washington state patrol who either became a member of the retirement system prior to June 12, 1980, or who has prior service as a cadet in the public employees' retirement system may make an irrevocable election to transfer such service to the retirement system if they have not met the time limitations of subsection (6) of this section by paying the amount required under RCW 41.50.165(2) less the contributions transferred. Any member upon making such election shall have transferred all existing service credited in the public employees' retirement system that constituted service as a cadet together with the employee's contributions plus credited interest. If the employee has withdrawn the employee's contributions, the contributions must be restored to the public employees' retirement system before the transfer of credit can occur and such restoration must be completed within the time limits specified in subsection (6) of this section for making the elective transfer.

(8) An active employee of the Washington state patrol may establish up to six months' retirement service credit in the state patrol retirement system for any period of employment by the Washington state patrol as a cadet if service credit for such employment was not previously established in the public employees' retirement system, subject to the following:

(a) Certification by the patrol that such employment as a cadet was for the express purpose of receiving on-the-job training required for attendance at the state patrol academy and for becoming a commissioned trooper.

(b) Payment by the member of employee contributions in the amount of seven percent of the total salary paid for each month of service to be established, plus interest at seven percent from the date of the probationary service to the date of payment. This payment shall be made by the member no later than July 1, 1988.

(c) If the payment required under (b) of this subsection was not made by July 1, 1988, the member may establish the probationary service by paying the amount required under RCW 41.50.165(2).

(d) A written waiver by the member of the member's right to ever establish the same service in the public employees' retirement system at any time in the future.

(9) The department of retirement systems shall make the requested transfer subject to the conditions specified in subsections (6) and (7) of this section or establish additional credit as provided in subsection (8) of this section. Employee contributions and credited interest transferred shall be credited to the employee's account in the Washington state patrol retirement system. [2009 c 549 § 5125; 1994 c 197 § 33; 1987 c 215 § 1; 1986 c 154 § 1; 1983 c 81 § 2; 1980 c 77 § 2; 1965 c 8 § 43.43.130. Prior: 1953 c 262 § 2; 1951 c 140 § 2; 1947 c 250 § 2; Rem. Supp. 1947 § 6362-82.]

**Intent—Severability—Effective date—1994 c 197:** See notes following RCW 41.50.165.

**Effective date—1987 c 215:** "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 215 § 3.]

**Effective date—1983 c 81:** See note following RCW 43.43.120.

**43.43.135 Membership in more than one retirement system.** In any case where the Washington state patrol 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, an employee 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 is by reason of his or her current employment contributing to or otherwise establishing the right to receive benefits from any such retirement plan, shall be allowed membership rights should the agreement so provide. [2009 c 549 § 5126; 1965 c 8 § 43.43.135. Prior: 1951 c 140 § 10.]

**43.43.260 Benefits—Military service credit.** Upon retirement from service as provided in RCW 43.43.250, a member shall be granted a retirement allowance which shall consist of:

(1) A prior service allowance which shall be equal to two percent of the member's average final salary multiplied by the number of years of prior service rendered by the member.

(2) A current service allowance which shall be equal to two percent of the member's average final salary multiplied by the number of years of service rendered while a member of the retirement system.

(3)(a) Any member commissioned prior to January 1, 2003, with twenty-five years service in the Washington state patrol may have the member's service in the uniformed services credited as a member whether or not the individual left the employ of the Washington state patrol to enter such uniformed services: PROVIDED, That in no instance shall military service in excess of five years be credited: AND PROVIDED FURTHER, That in each instance, a member must restore all withdrawn accumulated contributions, which restoration must be completed on the date of the member's retirement, or as provided under RCW 43.43.130, whichever occurs first: AND PROVIDED FURTHER, That this section shall not apply to any individual, not a veteran within the meaning of RCW 41.06.150.

(b) A member who leaves the Washington state patrol to enter the uniformed services 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.

(i) The member qualifies for service credit under this subsection if:

(A) Within ninety days of the member's honorable discharge from the uniformed services of the United States, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the uniformed services; and

(B) The member makes the employee contributions required under RCW 41.45.0631 and 41.45.067 within five years of resumption of service or prior to retirement, whichever comes sooner; or

(C) 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); or

(D) If the member was commissioned on or after January 1, 2003, and, prior to retirement, the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service credit during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(ii) Upon receipt of member contributions under (b)(i)(B), (b)(iv)(C), and (b)(v)(C) of this subsection, or adequate proof under (b)(i)(D), (b)(iv)(D), or (b)(v)(D) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under RCW 41.45.060 for the period of military service, plus interest as determined by the department.

(iii) The contributions required under (b)(i)(B), (b)(iv)(C), and (b)(v)(C) 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.

(iv) The surviving spouse or lawful domestic partner or eligible child or children of a member who left the employ of an employer to enter the uniformed services of the United States and died while serving in the uniformed services may, on behalf of the deceased member, apply for retirement system service credit under this subsection up to the date of the member's death in the uniformed services. The department shall establish the deceased member's service credit if the surviving spouse or lawful domestic partner or eligible child or children:

(A) Provides to the director proof of the member's death while serving in the uniformed services;



(B) Provides to the director proof of the member's honorable service in the uniformed services prior to the date of death; and

(C) If the member was commissioned on or after January 1, 2003, pays the employee contributions required under chapter 41.45 RCW within five years of the date of death or prior to the distribution of any benefit, whichever comes first; or

(D) If the member was commissioned on or after January 1, 2003, and, prior to the distribution of any benefit, provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. If the deceased member made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005, the surviving spouse or eligible child or children may, prior to the distribution of any benefit and on a form provided by the department, request a refund of the funds standing to the deceased member's credit for up to five years of such service, and this amount shall be paid to the surviving spouse or children. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(v) A member who leaves the employ of an employer to enter the uniformed services of the United States and becomes totally incapacitated for continued employment by an employer while serving in the uniformed services is entitled to retirement system service credit under this subsection up to the date of discharge from the uniformed services if:

(A) The member obtains a determination from the director that he or she is totally incapacitated for continued employment due to conditions or events that occurred while serving in the uniformed services;

(B) The member provides to the director proof of honorable discharge from the uniformed services; and

(C) If the member was commissioned on or after January 1, 2003, the member pays the employee contributions required under chapter 41.45 RCW within five years of the director's determination of total disability or prior to the distribution of any benefit, whichever comes first; or

(D) If the member was commissioned on or after January 1, 2003, and, prior to retirement, the member provides to the director proof that the member's interruptive military service was during a period of war as defined in RCW 41.04.005. Any member who made payments for service credit for interruptive military service during a period of war as defined in RCW 41.04.005 may, prior to retirement and on a form provided by the department, request a refund of the funds standing to his or her credit for up to five years of such service, and this amount shall be paid to him or her. Members with one or more periods of interruptive military service during a period of war may receive no more than five years of free retirement system service credit under this subsection.

(4) In no event shall the total retirement benefits from subsections (1), (2), and (3) of this section, of any member exceed seventy-five percent of the member's average final salary.

(5) Beginning July 1, 2001, 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:

(a) The original dollar amount of the retirement allowance;

(b) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";

(c) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(d) 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:

(i) Produce a retirement allowance which is lower than the original retirement allowance;

(ii) Exceed three percent in the initial annual adjustment; or

(iii) 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 for the Seattle-Tacoma-Bremerton Washington area for urban wage earners and clerical workers, all items, compiled by the bureau of labor statistics, United States department of labor.

The provisions of this section shall apply to all members presently retired and to all members who shall retire in the future. [2009 c 522 § 2; 2009 c 205 § 9; 2005 c 64 § 10; 2002 c 27 § 3; 2001 c 329 § 4; 1994 c 197 § 34; 1982 1st ex.s. c 52 § 27; 1973 1st ex.s. c 180 § 3; 1971 ex.s. c 278 § 1; 1969 c 12 § 4; 1965 c 8 § 43.43.260. Prior: 1963 c 175 § 2; 1957 c 162 § 4; 1955 c 244 § 2; 1951 c 140 § 5; 1947 c 250 § 15; Rem. Supp. 1947 § 6362-95.]

**Reviser's note:** This section was amended by 2009 c 205 § 9 and by 2009 c 522 § 2, 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—2001 c 329:** See note following RCW 43.43.120.

**Intent—Severability—Effective date—1994 c 197:** See notes following RCW 41.50.165.

**Effective dates—1982 1st ex.s. c 52:** See note following RCW 2.10.180.

**Effective date—1971 ex.s. c 278:** "This 1971 amendatory act shall have an effective date of July 1, 1971." [1971 ex.s. c 278 § 2.]

**Construction—1969 c 12:** See note following RCW 43.43.120.

**43.43.270 Retirement allowances—Survivors of disabled members—Members commissioned before January 1, 2003.** For members commissioned prior to January 1, 2003:

(1) The normal form of retirement allowance shall be an allowance which shall continue as long as the member lives.

(2) If a member should die while in service, or a member leaves the employ of the employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, the member's lawful spouse or lawful domestic partner shall be paid an allowance which shall be equal to fifty percent of the average final salary of the member. If the member should die after retirement the member's lawful spouse or lawful domestic partner shall be paid an allowance which shall be equal to the retirement allowance then payable to the member or fifty per-

cent of the final average salary used in computing the member's retirement allowance, whichever is less. The allowance paid to the lawful spouse or lawful domestic partner shall continue as long as the spouse or domestic partner lives: PROVIDED, That if a surviving spouse or domestic partner who is receiving benefits under this subsection marries, or enters into a domestic partnership with, another member of this retirement system who subsequently predeceases such spouse or domestic partner, the spouse or domestic partner shall then be entitled to receive the higher of the two survivors' allowances for which eligibility requirements were met, but a surviving spouse or domestic partner shall not receive more than one survivor's allowance from this system at the same time under this subsection. To be eligible for an allowance the lawful surviving spouse or lawful domestic partner of a retired member shall have been married to, or in a domestic partnership with, the member prior to the member's retirement and continuously thereafter until the date of the member's death or shall have been married to, or in a domestic partnership with, the retired member at least two years prior to the member's death. The allowance paid to the lawful spouse or lawful domestic partner may be divided with an ex spouse or ex domestic partner of the member by a dissolution order as defined in RCW 41.50.500(3) incident to a dissolution occurring after July 1, 2002. The dissolution order must specifically divide both the member's benefit and any spousal or domestic partner survivor benefit, and must fully comply with RCW 41.50.670 and 41.50.700.

(3) If a member should die, either while in service or after retirement, the member's surviving unmarried children under the age of eighteen years shall be provided for in the following manner:

(a) If there is a surviving spouse or domestic partner, each child shall be entitled to a benefit equal to five percent of the final average salary of the member or retired member. The combined benefits to the surviving spouse or domestic partner and all children shall not exceed sixty percent of the final average salary of the member or retired member; and

(b) If there is no surviving spouse or domestic partner or the spouse or domestic partner should die, the child or children shall be entitled to a benefit equal to thirty percent of the final average salary of the member or retired member for one child and an additional ten percent for each additional child. The combined benefits to the children under this subsection shall not exceed sixty percent of the final average salary of the member or retired member. Payments under this subsection shall be prorated equally among the children, if more than one.

(4) If a member should die in the line of duty while employed by the Washington state patrol, or a member leaves the employ of the employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, the member's surviving children under the age of twenty years and eleven months if attending any high school, college, university, or vocational or other educational institution accredited or approved by the state of Washington shall be provided for in the following manner:

(a) If there is a surviving spouse or domestic partner, each child shall be entitled to a benefit equal to five percent

of the final average salary of the member. The combined benefits to the surviving spouse or domestic partner and all children shall not exceed sixty percent of the final average salary of the member;

(b) If there is no surviving spouse or domestic partner or the spouse or domestic partner should die, the unmarried child or children shall be entitled to receive a benefit equal to thirty percent of the final average salary of the member or retired member for one child and an additional ten percent for each additional child. The combined benefits to the children under this subsection shall not exceed sixty percent of the final average salary. Payments under this subsection shall be prorated equally among the children, if more than one; and

(c) If a beneficiary under this subsection reaches the age of twenty-one years during the middle of a term of enrollment the benefit shall continue until the end of that term.

(5)(a) The provisions of this section shall apply to members who have been retired on disability as provided in RCW 43.43.040 if the officer was a member of the Washington state patrol retirement system at the time of such disability retirement.

(b) For the purposes of this subsection, average final salary as used in subsection (2) of this section means:

(i) For members commissioned prior to January 1, 2003, the average monthly salary received by active members of the patrol of the rank at which the member became disabled, during the two years prior to the death of the disabled member; and

(ii) For members commissioned on or after January 1, 2003, the average monthly salary received by active members of the patrol of the rank at which the member became disabled, during the five years prior to the death of the disabled member.

(c) The changes to the definitions of average final salary for the survivors of disabled members in this subsection shall apply retroactively. The department shall correct future payments to eligible survivors of members disabled prior to June 7, 2006, and, as soon as administratively practicable, pay each survivor a lump sum payment reflecting the difference, as determined by the director, between the survivor benefits previously received by the member, and those the member would have received under the definitions of average final salary created in chapter 94, Laws of 2006. [2009 c 522 § 3; 2009 c 226 § 3; 2006 c 94 § 1; 2002 c 158 § 15; 2001 c 329 § 6; 1989 c 108 § 1; 1984 c 206 § 1; 1982 1st ex.s. c 52 § 28; 1973 2nd ex.s. c 14 § 3; 1973 1st ex.s. c 180 § 4. Prior: 1969 c 12 § 6; 1965 c 8 § 43.43.270; prior: 1963 c 175 § 3; 1961 c 93 § 2; 1951 c 140 § 6; 1947 c 250 § 16; Rem. Supp. 1947 § 6362-96.]

**Reviser's note:** This section was amended by 2009 c 226 § 3 and by 2009 c 522 § 3, 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—2001 c 329:** See note following RCW 43.43.120.

**Effective date—1989 c 108:** "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, 1989." [1989 c 108 § 2.]

**Applicability—1984 c 206:** "This act shall apply only to surviving spouses receiving benefits under RCW 43.43.270(2) on or after March 27, 1984. No surviving spouse whose benefits under RCW 43.43.270(2) were terminated before March 27, 1984, due to remarriage shall be governed by

this act, and this act shall neither retroactively nor prospectively restore such terminated benefits. This act shall apply only to surviving unmarried children receiving benefits under RCW 43.43.270 (3) or (4) on or after March 27, 1984. No benefits shall be paid under RCW 43.43.270 (3)(b) or (4)(b) for any period before March 27, 1984." [1984 c 206 § 2.]

**Effective dates—1982 1st ex.s. c 52:** See note following RCW 2.10.180.

**Construction—1969 c 12:** See note following RCW 43.43.120.

**43.43.271 Retirement allowances—Members commissioned on or after January 1, 2003—Court-approved property settlement.** (1) A member commissioned on or after January 1, 2003, upon retirement for service as prescribed in RCW 43.43.250 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 the member's life. However, if the retiree dies before the total of the retirement allowance paid to the retiree equals the amount of the 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 domestic partner; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse or domestic partner, 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 or in a domestic partnership, must provide the written consent of his or her spouse or domestic partner to the option selected under this section, except as provided in (b) of this subsection. If a member is married or in a domestic partnership and both the member and member's spouse or domestic partner 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 or domestic partner as the beneficiary. This benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless consent by the spouse or domestic partner 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 spouse or domestic partner consent provisions of (a) of this subsection do not apply.

(3) No later than January 1, 2003, the department shall adopt rules that allow a member additional actuarially equivalent survivor benefit options, and shall include, but are not limited to:

(a)(i) A retired member who retired without designating a survivor beneficiary shall have the opportunity to designate their spouse or domestic partner from a postretirement marriage or domestic partnership as a survivor during a one-year period beginning one year after the date of the postretirement marriage or domestic partnership provided the retirement allowance payable to the retiree is not subject to periodic payments pursuant to a property division obligation as provided for in RCW 41.50.670.

(ii) A member who entered into a postretirement marriage or domestic partnership prior to the effective date of the rules adopted pursuant to this subsection and satisfies the conditions of (a)(i) of this subsection shall have one year to designate their spouse or domestic partner as a survivor beneficiary following the adoption of the rules.

(b) A retired member who elected to receive a reduced retirement allowance under this section and designated a non-spouse or a nondomestic partner as survivor beneficiary shall have the opportunity to remove the survivor designation and have their future benefit adjusted.

(c) The department may make an additional charge, if necessary, to ensure that the benefits provided under this subsection remain actuarially equivalent.

(4) No later than July 1, 2003, the department shall adopt rules to permit:

(a) A court-approved property settlement incident to a court decree of dissolution made before retirement to provide that benefits payable to a member who has completed at least five years of service and the member's divorcing spouse or former domestic partner be divided into two separate benefits payable over the life of each spouse or domestic partner.

The member shall have available the benefit options of subsection (1) of this section upon retirement, and if remarried or in a domestic partnership at the time of retirement remains subject to the spouse or domestic partner consent requirements of subsection (2) of this section. Any reductions of the member's benefit subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

The nonmember ex spouse or former domestic partner shall be eligible to commence receiving their separate benefit upon reaching the ages provided in RCW 43.43.250(2) and after filing a written application with the department.

(b) A court-approved property settlement incident to a court decree of dissolution made after retirement may only divide the benefit into two separate benefits payable over the life of each spouse or domestic partner if the nonmember ex spouse or former domestic partner was selected as a survivor beneficiary at retirement.

The retired member may later choose the survivor benefit options available in subsection (3) of this section. Any actuarial reductions subsequent to the division into two separate benefits shall be made solely to the separate benefit of the member.

Both the retired member and the nonmember divorced spouse or former domestic partner shall be eligible to commence receiving their separate benefits upon filing a copy of

the dissolution order with the department in accordance with RCW 41.50.670.

(c) The department may make an additional charge or adjustment if necessary to ensure that the separate benefits provided under this subsection are actuarially equivalent to the benefits payable prior to the decree of dissolution. [2009 c 522 § 4; 2003 c 294 § 14; 2002 c 158 § 16; 2001 c 329 § 5.]

**Effective date—2001 c 329:** See note following RCW 43.43.120.

**43.43.278 Retirement option.** By July 1, 2000, the department of retirement systems shall adopt rules that allow a member to select an actuarially equivalent retirement option that pays the member a reduced retirement allowance and upon death shall be continued throughout the life of a lawful surviving spouse or lawful domestic partner. The continuing allowance to the lawful surviving spouse or lawful domestic partner shall be subject to the yearly increase provided by RCW 43.43.260(5). The allowance to the lawful surviving spouse or lawful domestic partner under this section, and the allowance for an eligible child or children under RCW 43.43.270, shall not be subject to the limit for combined benefits under RCW 43.43.270. [2009 c 522 § 5; 2001 c 329 § 9; 2000 c 186 § 9; 1999 c 74 § 4.]

**Effective date—2001 c 329:** See note following RCW 43.43.120.

**43.43.280 Repayment of contributions on death or termination of employment—Election to receive reduced retirement allowance at age fifty-five.** (1) If a member dies before retirement, and has no surviving spouse or domestic partner or children under the age of eighteen years, all contributions made by the member, including any amount paid under RCW 41.50.165(2), with interest as determined by the director, 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 such person or persons as the member shall have nominated by written designation duly executed and filed with the department, or if there be no such designated person or persons, then to the member's legal representative.

(2) If a member should cease to be an employee before attaining age sixty for reasons other than the member's death, or retirement, the individual shall thereupon cease to be a member except as provided under RCW 43.43.130 (2), (3), and (4) and, the individual may withdraw the member's contributions to the retirement fund, including any amount paid under RCW 41.50.165(2), with interest as determined by the director, by making application therefor to the department, except that: A member who ceases to be an employee after having completed at least five years of service shall remain a member during the period of the member's absence from employment for the exclusive purpose only of receiving a retirement allowance to begin at attainment of age sixty, however such a member may upon written notice to the department elect to receive a reduced retirement allowance on or after age fifty-five which allowance shall be the actuarial equivalent of the sum necessary to pay regular retirement benefits as of age sixty: PROVIDED, That if such member should withdraw all or part of the member's accumulated contributions, the individual shall thereupon cease to be a member and this subsection shall not apply. [2009 c 522 § 6;

1994 c 197 § 35; 1991 c 365 § 32; 1987 c 215 § 2; 1982 1st ex.s. c 52 § 29; 1973 1st ex.s. c 180 § 5; 1969 c 12 § 7; 1965 c 8 § 43.43.280. Prior: 1961 c 93 § 3; 1951 c 140 § 7; 1947 c 250 § 17; Rem. Supp. 1947 § 6363-97.]

**Intent—Severability—Effective date—1994 c 197:** See notes following RCW 41.50.165.

**Severability—1991 c 365:** See note following RCW 41.50.500.

**Effective date—1987 c 215:** See note following RCW 43.43.130.

**Effective dates—1982 1st ex.s. c 52:** See note following RCW 2.10.180.

**Construction—1969 c 12:** See note following RCW 43.43.120.

**43.43.285 Special death benefit—Course of employment—Occupational disease or infection.** (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 or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, then to such member's legal representatives.

(2)(a) The benefit under this section shall be paid only where death occurs as a result of (i) injuries sustained in the course of employment; or (ii) an occupational disease or infection that arises naturally and proximately out of employment covered under this chapter. 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.

(b) The retirement allowance paid to the spouse or domestic partner and dependent children of a member who is killed in the course of employment, as set forth in \*RCW 41.05.011(14), shall include reimbursement for any payments of premium rates to the Washington state health care authority under RCW 41.05.080. [2009 c 522 § 7. Prior: 2007 c 488 § 1; 2007 c 487 § 9; 1996 c 226 § 2.]

**\*Reviser's note:** RCW 41.05.011 was amended by 2009 c 537 § 3, changing subsection (14) to subsection (16), effective January 1, 2010.

**Short title—2007 c 488:** "This act shall be known as "The Steve Frink's and Jim Saunder's Law" in honor of Steve Frink and Jim Saunders, Washington state patrol officers who were killed in the line of duty." [2007 c 488 § 5.]

**Effective date—1996 c 226:** See note following RCW 41.26.048.

**43.43.295 Accumulated contributions—Payment upon death of member.** (1) For members commissioned on or after January 1, 2003, 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 or domestic partner as if in fact such spouse or domestic partner had been nominated by written designation, or if there be no such surviving spouse or domestic partner, 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 domestic partner or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in RCW 43.43.260, actuarially reduced, except under subsection (4) of this section, 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 43.43.278 and if the member was not eligible for normal retirement at the date of death a further reduction from age fifty-five or when the member could have attained twenty-five years of service, whichever is less; if a surviving spouse or domestic partner 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 or domestic partner, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse or domestic partner 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 under this section making the assumption that the ages of the spouse or domestic partner 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, 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, and is not survived by a spouse or domestic partner 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.

(4) The retirement allowance of a member who is killed in the course of employment, as determined by the director of the department of labor and industries, or the retirement allowance of a member who has left the employ of an employer due to service in the national guard or military reserves and dies while honorably serving in the national guard or military reserves during a period of war as defined in RCW 41.04.005, is not subject to an actuarial reduction. [2009 c 522 § 8; 2009 c 226 § 4; 2004 c 171 § 1; 2004 c 170 § 1; 2003 c 294 § 15; 2001 c 329 § 7.]

**Reviser's note:** This section was amended by 2009 c 226 § 4 and by 2009 c 522 § 8, 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—2001 c 329:** See note following RCW 43.43.120.

**43.43.330 Examinations for promotion.** Appropriate examinations shall be conducted for the promotion of commissioned patrol officers to the rank of sergeant and lieutenant. The examinations shall be prepared and conducted under the supervision of the chief of the Washington state patrol, who shall cause at least thirty days written notice thereof to be given to all patrol officers eligible for such examinations. The written notice shall specify the expected type of examination and relative weights to be assigned if a combination of tests is to be used. Examinations shall be given once every two years, or whenever the eligible list becomes exhausted as the case may be. After the giving of each such examination a new eligible list shall be compiled replacing any existing eligible list for such rank. Only grades attained in the last examination given for a particular rank shall be used in compiling each eligible list therefor. The chief, or in his or her discretion a committee of three individuals appointed by him or her, shall prepare and conduct the examinations, and thereafter grade and evaluate them in accordance with the following provisions, or factors: For promotion to the rank of sergeant or lieutenant, the examination shall consist of one or more of the following components: (1) Oral examination; (2) written examination; (3) service rating; (4) personnel record; (5) assessment center or other valid tests that measures the skills, knowledge, and qualities needed to perform these jobs. A cutoff score may be set for each testing component that allows only those scoring above the cutoff on one component to proceed to take a subsequent component. [2009 c 549 § 5127; 1993 c 155 § 1; 1985 c 4 § 1; 1969 ex.s. c 20 § 1; 1965 c 8 § 43.43.330. Prior: 1959 c 115 § 1; 1949 c 192 § 2; Rem. Supp. 1949 § 6362-61a.]

**43.43.350 Determination of eligibility for examination for promotion.** Eligibility for examination for promotion shall be determined as follows:

Patrol officers with one year of probationary experience, in addition to three years experience as a regular patrol officer before the date of the first examination occurrence, shall be eligible for examination for the rank of sergeant; patrol officers with one year of probationary experience in the rank of sergeant before the date of the first examination occurrence, in addition to two years as a regular sergeant,

shall be eligible for examination for the rank of lieutenant. [2009 c 549 § 5128; 1998 c 193 § 1; 1969 ex.s. c 20 § 2; 1965 c 8 § 43.43.350. Prior: 1949 c 192 § 4, part; Rem. Supp. 1949 § 6362-61c, part.]

**43.43.370 Staff or technical officers.** The chief of the Washington state patrol may appoint such staff or technical officers as he or she deems necessary for the efficient operation of the patrol, and he or she may assign whatever rank he or she deems necessary to such staff or technical officers for the duration of their service as such.

Staff or technical officers may be returned to their line rank or position whenever the chief so desires. Staff or technical officers without line command assignment and whose duties are of a special or technical nature shall hold their staff or technical rank on a continuing probationary basis; however, such staff or technical officers, if otherwise eligible, shall not be prevented from taking the line promotion examinations, and qualifying for promotion whenever the examinations may be held.

If a staff or technical officer returns to line operations he or she shall return in the rank that he or she holds in the line command, unless promoted to a higher rank through examination and appointment as herein provided: PROVIDED, Nothing contained herein shall be construed as giving the chief the right to demote or to reduce the rank of any officer of the patrol who was holding such office on April 1, 1949. [2009 c 549 § 5129; 1965 c 8 § 43.43.370. Prior: 1949 c 192 § 5; Rem. Supp. 1949 § 6362-61d.]

**43.43.735 Photographing and fingerprinting—Powers and duties of law enforcement agencies—Other data.**

(1) It shall be the duty of the sheriff or director of public safety of every county, and the chief of police of every city or town, and of every chief officer of other law enforcement agencies duly operating within this state, to cause the photographing and fingerprinting of all adults and juveniles lawfully arrested for the commission of any criminal offense constituting a felony or gross misdemeanor. (a) When such juveniles are brought directly to a juvenile detention facility, the juvenile court administrator is also authorized, but not required, to cause the photographing, fingerprinting, and record transmittal to the appropriate law enforcement agency; and (b) a further exception may be made when the arrest is for a violation punishable as a gross misdemeanor and the arrested person is not taken into custody.

(2) It shall be the right, but not the duty, of the sheriff or director of public safety of every county, and the chief of police of every city or town, and every chief officer of other law enforcement agencies operating within this state to photograph and record the fingerprints of all adults lawfully arrested.

(3) Such sheriffs, directors of public safety, chiefs of police, and other chief law enforcement officers, may record, in addition to photographs and fingerprints, the palmprints, soleprints, toeprints, or any other identification data of all persons whose photograph and fingerprints are required or allowed to be taken under this section when in the discretion of such law enforcement officers it is necessary for proper identification of the arrested person or the investigation of the

crime with which he or she is charged. [2009 c 549 § 5130; 2006 c 294 § 6; 1991 c 3 § 297. Prior: 1989 c 334 § 9; 1989 c 6 § 2; prior: 1987 c 486 § 12; 1987 c 450 § 2; 1985 c 201 § 13; 1972 ex.s. c 152 § 8.]

**43.43.750 Use of force to obtain identification information—Liability.** In exercising their duties and authority under RCW 43.43.735 and 43.43.740, the sheriffs, directors of public safety, chiefs of police, and other chief law enforcement officers, may, consistent with constitutional and legal requirements, use such reasonable force as is necessary to compel an unwilling person to submit to being photographed, or fingerprinted, or to submit to any other identification procedure, except interrogation, which will result in obtaining physical evidence serving to identify such person. No one having the custody of any person subject to the identification procedures provided for in chapter 152, Laws of 1972 ex. sess., and no one acting in his or her aid or under his or her direction, and no one concerned in such publication as is provided for in RCW 43.43.740, shall incur any liability, civil or criminal, for anything lawfully done in the exercise of the provisions of chapter 152, Laws of 1972 ex. sess. [2009 c 549 § 5131; 1972 ex.s. c 152 § 11.]

**43.43.815 Conviction record furnished to employer—Purposes—Notification to subject of record—Fees—Limitations—Injunctive relief, damages, attorneys' fees—Disclaimer of liability—Rules.** (1) Notwithstanding any provision of RCW 43.43.700 through 43.43.810 to the contrary, the Washington state patrol shall furnish a conviction record, as defined in RCW 10.97.030, pertaining to any person of whom the Washington state patrol has a record upon the written or electronic request of any employer for the purpose of:

- (a) Securing a bond required for any employment;
- (b) Conducting preemployment and postemployment evaluations of employees and prospective employees who, in the course of employment, may have access to information affecting national security, trade secrets, confidential or proprietary business information, money, or items of value; or
- (c) Assisting an investigation of suspected employee misconduct where such misconduct may also constitute a penal offense under the laws of the United States or any state.

(2) When an employer has received a conviction record under subsection (1) of this section, the employer shall notify the subject of the record of such receipt within thirty days after receipt of the record, or upon completion of an investigation under subsection (1)(c) of this section. The employer shall make the record available for examination by its subject and shall notify the subject of such availability.

(3) The Washington state patrol shall charge fees for disseminating records pursuant to this section which will cover, as nearly as practicable, the direct and indirect costs to the Washington state patrol of disseminating such records.

(4) Information disseminated pursuant to this section or RCW 43.43.760 shall be available only to persons involved in the hiring, background investigation, or job assignment of the person whose record is disseminated and shall be used only as necessary for those purposes enumerated in subsection (1) of this section.

(5) Any person may maintain an action to enjoin a continuance of any act or acts in violation of any of the provisions of this section, and if injured thereby, for the recovery of damages and for the recovery of reasonable attorneys' fees. If, in such action, the court finds that the defendant is violating or has violated any of the provisions of this section, it shall enjoin the defendant from a continuance thereof, and it shall not be necessary that actual damages to the plaintiff be alleged or proved. In addition to such injunctive relief, the plaintiff in the action is entitled to recover from the defendant the amount of the actual damages, if any, sustained by him or her if actual damages to the plaintiff are alleged and proved. In any suit brought to enjoin a violation of this chapter, the prevailing party may be awarded reasonable attorneys' fees, including fees incurred upon appeal. Commencement, pendency, or conclusion of a civil action for injunction or damages shall not affect the liability of a person or agency to criminal prosecution for a violation of chapter 10.97 RCW.

(6) Neither the section, its employees, nor any other agency or employee of the state is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information pursuant to this section or RCW 43.43.760.

(7) The Washington state patrol may adopt rules and forms to implement this section and to provide for security and privacy of information disseminated pursuant hereto, giving first priority to the criminal justice requirements of chapter 43.43 RCW. Such rules may include requirements for users, audits of users, and other procedures to prevent use of criminal history record information inconsistent with this section.

(8) Nothing in this section shall authorize an employer to make an inquiry not otherwise authorized by law, or be construed to affect the policy of the state declared in RCW 9.96A.010, encouraging the employment of ex-offenders. [2009 c 549 § 5132; 1995 c 169 § 1; 1982 c 202 § 1.]

**43.43.837 Fingerprint-based background checks—Requirements for applicants and service providers—Fees—Rules to establish financial responsibility.** (1) Except as provided in subsection (2) of this section, in order to determine the character, competence, and suitability of any applicant or service provider to have unsupervised access, the secretary may require a fingerprint-based background check through both the Washington state patrol and the federal bureau of investigation at any time, but shall require a fingerprint-based background check when the applicant or service provider has resided in the state less than three consecutive years before application, and:

(a) Is an applicant or service provider providing services to children or people with developmental disabilities under RCW 74.15.030;

(b) Is an individual residing in an applicant or service provider's home, facility, entity, agency, or business or who is authorized by the department to provide services to children or people with developmental disabilities under RCW 74.15.030; or

(c) Is an applicant or service provider providing in-home services funded by:

(i) Medicaid personal care under RCW 74.09.520;

(ii) Community options program entry system waiver services under RCW 74.39A.030;

(iii) Chore services under RCW 74.39A.110; or

(iv) Other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department.

(2) Long-term care workers, as defined in RCW 74.39A.009, who are hired after January 1, 2012, are subject to background checks under RCW 74.39A.055.

(3) The secretary shall require a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation when the department seeks to approve an applicant or service provider for a foster or adoptive placement of children in accordance with federal and state law.

(4) Any secure facility operated by the department under chapter 71.09 RCW shall require applicants and service providers to undergo a fingerprint-based background check through the Washington state patrol identification and criminal history section and the federal bureau of investigation.

(5) Service providers and service provider applicants who are required to complete a fingerprint-based background check may be hired for a one hundred twenty-day provisional period as allowed under law or program rules when:

(a) A fingerprint-based background check is pending; and

(b) The applicant or service provider is not disqualified based on the immediate result of the background check.

(6) Fees charged by the Washington state patrol and the federal bureau of investigation for fingerprint-based background checks shall be paid by the department for applicants or service providers providing:

(a) Services to people with a developmental disability under RCW 74.15.030;

(b) In-home services funded by medicaid personal care under RCW 74.09.520;

(c) Community options program entry system waiver services under RCW 74.39A.030;

(d) Chore services under RCW 74.39A.110;

(e) Services under other home and community long-term care programs, established pursuant to chapters 74.39 and 74.39A RCW, administered by the department;

(f) Services in, or to residents of, a secure facility under RCW 71.09.115; and

(g) Foster care as required under RCW 74.15.030.

(7) Service providers licensed under RCW 74.15.030 must pay fees charged by the Washington state patrol and the federal bureau of investigation for conducting fingerprint-based background checks.

(8) Children's administration service providers licensed under RCW 74.15.030 may not pass on the cost of the background check fees to their applicants unless the individual is determined to be disqualified due to the background information.

(9) The department shall develop rules identifying the financial responsibility of service providers, applicants, and the department for paying the fees charged by law enforcement to roll, print, or scan fingerprints-based for the purpose of a Washington state patrol or federal bureau of investigation fingerprint-based background check.

(10) For purposes of this section, unless the context plainly indicates otherwise:

(a) "Applicant" means a current or prospective department or service provider employee, volunteer, student, intern, researcher, contractor, or any other individual who will or may have unsupervised access because of the nature of the work or services he or she provides. "Applicant" includes but is not limited to any individual who will or may have unsupervised access and is:

(i) Applying for a license or certification from the department;

(ii) Seeking a contract with the department or a service provider;

(iii) Applying for employment, promotion, reallocation, or transfer;

(iv) An individual that a department client or guardian of a department client chooses to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department for services rendered; or

(v) A department applicant who will or may work in a department-covered position.

(b) "Authorized" means the department grants an applicant, home, or facility permission to:

(i) Conduct licensing, certification, or contracting activities;

(ii) Have unsupervised access to vulnerable adults, juveniles, and children;

(iii) Receive payments from a department program; or

(iv) Work or serve in a department-covered position.

(c) "Department" means the department of social and health services.

(d) "Secretary" means the secretary of the department of social and health services.

(e) "Secure facility" has the meaning provided in RCW 71.09.020.

(f) "Service provider" means entities, facilities, agencies, businesses, or individuals who are licensed, certified, authorized, or regulated by, receive payment from, or have contracts or agreements with the department to provide services to vulnerable adults, juveniles, or children. "Service provider" includes individuals whom a department client or guardian of a department client may choose to hire or engage to provide services to himself or herself or another vulnerable adult, juvenile, or child and who might be eligible to receive payment from the department for services rendered. "Service provider" does not include those certified under chapter 70.96A RCW. [2009 c 580 § 6; 2007 c 387 § 1.]

**43.43.838 Record checks—Transcript of conviction record—Fees—Immunity—Rules.** (1) After January 1, 1988, and notwithstanding any provision of RCW 43.43.700 through 43.43.810 to the contrary, the state patrol shall furnish a transcript of the conviction record pertaining to any person for whom the state patrol or the federal bureau of investigation has a record upon the written request of:

(a) The subject of the inquiry;

(b) Any business or organization for the purpose of conducting evaluations under RCW 43.43.832;

(c) The department of social and health services;

(d) Any law enforcement agency, prosecuting authority, or the office of the attorney general;

(e) The department of social and health services for the purpose of meeting responsibilities set forth in chapter 74.15, 18.51, 18.20, or 72.23 RCW, or any later-enacted statute which purpose is to regulate or license a facility which handles vulnerable adults. However, access to conviction records pursuant to this subsection (1)(e) does not limit or restrict the ability of the department to obtain additional information regarding conviction records and pending charges as set forth in \*RCW 74.15.030(2)(b); or

(f) The department of early learning for the purpose of meeting responsibilities in chapter 43.215 RCW.

(2) The state patrol shall by rule establish fees for disseminating records under this section to recipients identified in subsection (1)(a) and (b) of this section. The state patrol shall also by rule establish fees for disseminating records in the custody of the national crime information center. The revenue from the fees shall cover, as nearly as practicable, the direct and indirect costs to the state patrol of disseminating the records. No fee shall be charged to a nonprofit organization for the records check. Record checks requested by school districts and educational service districts using only name and date of birth will be provided free of charge.

(3) No employee of the state, employee of a business or organization, or the business or organization is liable for defamation, invasion of privacy, negligence, or any other claim in connection with any lawful dissemination of information under RCW 43.43.830 through 43.43.840 or 43.43.760.

(4) Before July 26, 1987, the state patrol shall adopt rules and forms to implement this section and to provide for security and privacy of information disseminated under this section, giving first priority to the criminal justice requirements of this chapter. The rules may include requirements for users, audits of users, and other procedures to prevent use of civil adjudication record information or criminal history record information inconsistent with this chapter.

(5) Nothing in RCW 43.43.830 through 43.43.840 shall authorize an employer to make an inquiry not specifically authorized by this chapter, or be construed to affect the policy of the state declared in chapter 9.96A RCW. [2009 c 170 § 1; 2007 c 17 § 5; 2005 c 421 § 5; 1995 c 29 § 1; 1992 c 159 § 7; 1990 c 3 § 1104. Prior: 1989 c 334 § 4; 1989 c 90 § 4; 1987 c 486 § 5.]

*\*Reviser's note:* RCW 74.15.030(2)(b) was amended by 2007 c 387 § 5, changing the scope of the subsection.

**Findings—1992 c 159:** See note following RCW 28A.400.303.

**Index, part headings not law—Severability—Effective dates—Application—1990 c 3:** See RCW 18.155.900 through 18.155.902.

**43.43.845 Notification of conviction or guilty plea of certain felony crimes—Transmittal of information to superintendent of public instruction.** (1) Upon a guilty plea or conviction of a person of any felony crime specified under RCW 28A.400.322, the prosecuting attorney shall notify the state patrol of such guilty pleas or convictions.

(2) When the state patrol receives the notice required under subsection (1) of this section, the state patrol shall transmit that information to the superintendent of public instruction. It shall be the duty of the superintendent of public instruction, on at least a quarterly basis, to identify



whether the person holds a certificate or permit issued under chapters 28A.405 and 28A.410 RCW or is employed by a school district, and provide this information to the Washington professional educator standards board and the school district employing the person. [2009 c 396 § 8; 2006 c 263 § 828. Prior: 2005 c 421 § 7; 2005 c 237 § 1; 1990 c 33 § 577; 1989 c 320 § 6.]

**Findings—Purpose—Part headings not law—2006 c 263:** See notes following RCW 28A.150.230.

**Purpose—Statutory references—Severability—1990 c 33:** See RCW 28A.900.100 through 28A.900.102.

**Severability—1989 c 320:** See note following RCW 28A.410.090.

**43.43.858 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.43.860 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.43.862 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.43.864 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.43.866 Organized crime prosecution revolving fund.** There shall be a fund known as the organized crime prosecution revolving fund which shall consist of such moneys as may be appropriated by law. The state treasurer shall be custodian of the revolving fund. Disbursements from the revolving fund shall be subject to budget approval given by the chief of the Washington state patrol, and may be made either on authorization of the governor or the governor's designee, or upon request of the chief of the Washington state patrol. In order to maintain an effective expenditure and revenue control, the organized crime prosecution revolving fund shall be subject in all respects to chapter 43.88 RCW but no appropriation shall be required to permit expenditures and payment of obligations from the fund. [2009 c 560 § 25; 1980 c 146 § 16.]

**Intent—Effective date—Disposition of property and funds—Assignment/delegation of contractual rights or duties—2009 c 560:** See notes following RCW 18.06.080.

**Severability—1980 c 146:** See RCW 10.29.900.

**43.43.912 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) (*Effective January 1, 2014.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and

wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 107.]

**Effective dates—2009 c 521 §§ 5-8, 79, 87-103, 107, 151, 165, 166, 173-175, and 190-192:** See note following RCW 2.10.900.

### Chapter 43.44 RCW

#### STATE FIRE PROTECTION

##### Sections

43.44.100 Repealed.

**43.44.100 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

### Chapter 43.46 RCW

#### ARTS COMMISSION

##### Sections

43.46.090 Commission as reflecting state's responsibility—Acquisition of works of art for public buildings and lands—Visual arts program established.

**43.46.090 Commission as reflecting state's responsibility—Acquisition of works of art for public buildings and lands—Visual arts program established.** The legislature recognizes this state's responsibility to foster culture and the arts and its interest in the viable development of the state's artists by the establishment of the Washington state arts commission. The legislature declares it to be a policy of this state that a portion of appropriations for capital expenditures be set aside for the acquisition of works of art to be placed in public buildings or lands. There is hereby established a visual arts program to be administered by the Washington state arts commission. [2009 c 549 § 5134; 1983 c 204 § 1; 1974 ex.s. c 176 § 1.]

**Severability—1983 c 204:** "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 204 § 11.]

*Allocation of moneys for acquisition of works of art—Expenditure by arts commission—Conditions:* RCW 43.17.200.

*Colleges and universities, purchases of works of art—Procedure:* RCW 28B.10.025.

*Purchase of works of art—Procedure:* RCW 43.19.455.

*School districts, purchases of works of art—Procedure:* RCW 28A.335.210.

### Chapter 43.52 RCW

#### OPERATING AGENCIES

##### Sections

43.52.290 Members of the board of directors of an operating agency—Compensation—May hold other public position—Incompatibility of offices doctrine voided.

43.52.374 Operating agency executive board—Members—Terms—Removal—Rules—Proceedings—Managing director—Civil immunities—Defense and indemnification.

43.52.375 Treasurer—Auditor—Powers and duties—Official bonds—Funds.

43.52.378 Executive board—Appointment of administrative auditor—Retention of firm for performance audits—Duties of auditor and firm—Reports.

**43.52.290 Members of the board of directors of an operating agency—Compensation—May hold other public position—Incompatibility of offices doctrine voided.** Members of the board of directors of an operating agency shall be paid the sum of fifty dollars per day as compensation for each day or major part thereof devoted to the business of the operating agency, together with their traveling and other necessary expenses. Such member may, regardless of any charter or other provision to the contrary, be an officer or employee holding another public position and, if he or she be such other public officer or employee, he or she shall be paid by the operating agency such amount as will, together with the compensation for such other public position equal the sum of fifty dollars per day. The common law doctrine of incompatibility of offices is hereby voided as it applies to persons sitting on the board of directors or the executive board of an operating agency and holding an elective or appointive position on a public utility district commission or municipal legislative authority or being an employee of a public utility district or municipality. [2009 c 549 § 5135; 1983 1st ex.s. c 3 § 1; 1982 1st ex.s. c 43 § 5; 1977 ex.s. c 184 § 3; 1965 c 8 § 43.52.290. Prior: 1953 c 281 § 4.]

**Severability—Savings—1982 1st ex.s. c 43:** See notes following RCW 43.52.374.

**43.52.374 Operating agency executive board—Members—Terms—Removal—Rules—Proceedings—Managing director—Civil immunities—Defense and indemnification.** (1) With the exception of the powers and duties of the board of directors described in RCW 43.52.370(2), the management and control of an operating agency constructing, operating, terminating, or decommissioning a nuclear power plant under a site certification agreement under chapter 80.50 RCW is vested in an executive board established under this subsection and consisting of eleven members.

(a) Five members of the executive board shall be elected to four-year terms by the board of directors from among the members of the board of directors. The board of directors may provide by rule for the composition of the five members of the executive board elected from among the members of the board of directors so as to reflect the member public utility districts' and cities' participation in the joint operating agency's projects. Members elected to the executive board from the board of directors are ineligible for continued membership on the executive board if they cease to be members of the board of directors. The board of directors may also provide by rule for the removal of a member of the executive board, except for the outside directors. Members of the board of directors may be elected to serve successive terms on the executive board. Members elected to the executive board from the board of directors shall receive a salary from the operating agency at a rate set by the board of directors.

(b) Six members of the executive board shall be outside directors. Three shall be selected and appointed by the board of directors, and three shall be selected and appointed by the governor and confirmed by the senate. All outside directors shall:

(i) Serve four-year terms on the executive board. However, of the initial members of the executive board, the board of directors and the governor shall each appoint one outside director to serve a two-year term, one outside director to

serve a three-year term, and one outside director to serve a four-year term. Thereafter, all outside directors shall be appointed for four-year terms. All outside directors are eligible for reappointment;

(ii) Receive travel expenses on the same basis as the five members elected from the board of directors. The outside directors shall also receive a salary from the operating agency as fixed by the governor;

(iii) Not be an officer or employee of, or in any way affiliated with, the Bonneville power administration or any electric utility conducting business in the states of Washington, Oregon, Idaho, or Montana;

(iv) Not be involved in the financial affairs of the operating agency as an underwriter or financial adviser of the operating agency or any of its members or any of the participants in any of the operating agency's plants; and

(v) Be representative of policy makers in business, finance, or science, or have expertise in the construction or management of such facilities as the operating agency is constructing or operating, or have expertise in the termination, disposition, or liquidation of corporate assets.

(c) The governor may remove outside directors from the executive board for incompetency, misconduct, or malfeasance in office in the same manner as state appointive officers under chapter 43.06 RCW. For purposes of this subsection, misconduct shall include, but not be limited to, nonfeasance and misfeasance.

(2) Nothing in this chapter shall be construed to mean that an operating agency is in any manner an agency of the state. Nothing in this chapter alters or destroys the status of an operating agency as a separate municipal corporation or makes the state liable in any way or to any extent for any pre-existing or future debt of the operating agency or any present or future claim against the agency.

(3) The eleven members of the executive board shall be selected with the objective of establishing an executive board which has the resources to effectively carry out its responsibilities. All members of the executive board shall conduct their business in a manner which in their judgment is in the interest of all ratepayers affected by the joint operating agency and its projects.

(4) The executive board shall elect from its members a chair, vice chair, and secretary, who shall serve at the pleasure of the executive board. The executive board shall adopt rules for the conduct of its meetings and the carrying out of its business. All proceedings shall be by motion or resolution and shall be recorded in the minute book, which shall be a public record. A majority of the executive board shall constitute a quorum for the transaction of business.

(5) With respect to any operating agency existing on April 20, 1982, to which the provisions of this section are applicable:

(a) The board of directors shall elect five members to the executive board no later than sixty days after April 20, 1982; and

(b) The board of directors and the governor shall select and appoint the initial outside directors and the executive board shall hold its organizational meeting no later than sixty days after April 20, 1982, and the powers and duties prescribed in this chapter shall devolve upon the executive board at that time.

(6) The executive board shall select and employ a managing director of the operating agency and may delegate to the managing director such authority for the management and control of the operating agency as the executive board deems appropriate. The managing director's employment is terminable at the will of the executive board.

(7) Members of the executive board shall be immune from civil liability for mistakes and errors of judgment in the good faith performance of acts within the scope of their official duties involving the exercise of judgment and discretion. This grant of immunity shall not be construed as modifying the liability of the operating agency.

The operating agency shall undertake the defense of and indemnify each executive board member made a party to any civil proceeding including any threatened, pending, or completed action, suit, or proceeding, whether civil, administrative, or investigative, by reason of the fact he or she is or was a member of the executive board, against judgments, penalties, fines, settlements, and reasonable expenses, actually incurred by him or her in connection with such proceeding if he or she had conducted himself or herself in good faith and reasonably believed his or her conduct to be in the best interest of the operating agency.

In addition members of the executive board who are utility employees shall not be fired, forced to resign, or demoted from their utility jobs for decisions they make while carrying out their duties as members of the executive board involving the exercise of judgment and discretion. [2009 c 549 § 5136; 1983 1st ex.s. c 3 § 3; 1982 1st ex.s. c 43 § 3; 1981 1st ex.s. c 3 § 2.]

**Severability—1982 1st ex.s. c 43:** "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 43 § 11.]

**Savings—1982 1st ex.s. c 43:** "(1) All personnel and employees of a board of directors or executive board or committee displaced by section 3 of this act shall become personnel and employees of the executive board created in section 3 of this act without any loss of rights, subject to any appropriate action thereafter.

(2) All pending business before a board of directors or executive board or committee which is replaced by the executive board created in section 3 of this act shall be continued and acted upon by the new executive board.

(3) This act shall not be construed to alter:

(a) Any existing rights acquired under laws relating to operating agencies;

(b) The status of any actions, activities, or civil or criminal proceedings of any existing operating agencies;

(c) The status of any collective bargaining agreements, indebtedness, contracts, or other obligations;

(d) Any valid resolutions, covenants, or agreements between an operating agency and members, participants in any electric generating facility, privately owned public utilities, or agencies of the federal government; or

(e) Any rules, resolutions, or orders adopted by a board of directors or executive board or committee until canceled or superseded." [1982 1st ex.s. c 43 § 4.]

**43.52.375 Treasurer—Auditor—Powers and duties—Official bonds—Funds.** (1) The board of each joint operating agency shall by resolution appoint a treasurer. The treasurer shall be the chief financial officer of the operating agency, who shall report at least annually to the board a detailed statement of the financial condition of the operating agency and of its financial operations for the preceding fiscal year. The treasurer shall advise the board on all matters affecting the financial condition of the operating agency.

Before entering upon his or her duties the treasurer shall give bond to the operating agency, with a surety company authorized to write such bonds in this state as surety, in an amount which the board finds by resolution will protect the operating agency against loss, conditioned that all funds which he or she receives as such treasurer will be faithfully kept and accounted for and for the faithful discharge of his or her duties. The amount of such bond may be decreased or increased from time to time as the board may by resolution direct.

(2) The board shall also appoint an auditor and may require him or her to give a bond with a surety company authorized to do business in the state of Washington in such amount as it shall by resolution prescribe, conditioned for the faithful discharge of his or her duties. The auditor shall report directly to the board and be responsible to it for discharging his or her duties.

(3) The premiums on the bonds of the auditor and the treasurer shall be paid by the operating agency. The board may provide for coverage of said officers and other persons on the same bond.

(4) All funds of the joint operating agency shall be paid to the treasurer and shall be disbursed by the treasurer only on checks or warrants issued by the auditor upon orders or vouchers approved by the board: PROVIDED, That the board by resolution may authorize the managing director or any other bonded officer or employee as legally permissible to approve or disapprove vouchers presented to defray salaries of employees and other expenses of the operating agency arising in the usual and ordinary course of its business, including expenses incurred by the board of directors, its executive committee, or the executive board in the performance of their duties. All moneys of the operating agency shall be deposited forthwith by the treasurer in such depositories, and with such securities as are designated by rules of the board. The treasurer shall establish a general fund and such special funds as shall be created by the board, into which he or she shall place all money of the joint operating agency as the board by resolution or motion may direct.

(5) The board may adopt a policy for the payment of claims or other obligations of the operating agency, which are payable out of solvent funds, and may elect to pay such obligations by check or warrant. However, if the applicable fund is not solvent at the time payment is ordered, then no check may be issued and payment shall be by warrant. When checks are to be used, the board shall designate the qualified public depository upon which the checks are to be drawn as well as the officers required or authorized to sign the checks. For the purposes of this chapter, "warrant" includes checks where authorized by this subsection. [2009 c 173 § 1; 1982 1st ex.s. c 43 § 7; 1981 1st ex.s. c 3 § 3; 1965 c 8 § 43.52.375. Prior: 1957 c 295 § 4.]

**Severability—Savings—1982 1st ex.s. c 43:** See notes following RCW 43.52.374.

**43.52.378 Executive board—Appointment of administrative auditor—Retention of firm for performance audits—Duties of auditor and firm—Reports.** The executive board of any operating agency constructing, operating, terminating, or decommissioning a nuclear power plant under a site certification agreement issued pursuant to chapter 80.50

RCW shall appoint an administrative auditor. The administrative auditor shall be deemed an officer under chapter 42.23 RCW. The appointment of the administrative auditor shall be in addition to the appointment of the auditor for the issuance of warrants and other purposes as provided in RCW 43.52.375. The executive board shall retain a qualified firm or firms to conduct performance audits which is in fact independent and does not have any interest, direct or indirect, in any contract with the operating agency other than its employment hereunder. No member or employee of any such firm shall be connected with the operating agency as an officer, employee, or contractor. The administrative auditor and the firm or firms shall be independently and directly responsible to the executive board of the operating agency. The executive board shall require a firm to conduct continuing audits of the methods, procedures and organization used by the operating agency to control costs, schedules, productivity, contract amendments, project design and any other topics deemed desirable by the executive board. The executive board may also require a firm to analyze particular technical aspects of the operating agency's projects and contract amendments. The firm or firms shall provide advice to the executive board in its management and control of the operating agency. At least once each year, the firm or firms shall prepare and furnish a report of its actions and recommendations to the executive board for the purpose of enabling it to attain the highest degree of efficiency in the management and control of any thermal power project under construction or in operation. The administrative auditor shall assist the firm or firms in the performance of its duties. The administrative auditor and the firm or firms shall consult regularly with the executive board and furnish any information or data to the executive board which the administrative auditor, firm, or executive board deems helpful in accomplishing the purpose above stated. The administrative auditor shall perform such other duties as the executive board shall prescribe to accomplish the purposes of this section.

Upon the concurrent request of the chairs of the senate or house energy and utilities committees, the operating agency shall report to the committees on a quarterly basis. [2009 c 549 § 5138; 1987 c 505 § 84; 1986 c 158 § 13; 1982 1st ex.s. c 43 § 8; 1981 1st ex.s. c 3 § 4; 1979 ex.s. c 220 § 1.]

**Severability—Savings—1982 1st ex.s. c 43:** See notes following RCW 43.52.374.

### Chapter 43.52A RCW

#### ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL—STATE'S MEMBERS

##### Sections

43.52A.050 Sufficient time on council activities required—Technical assistance—Reimbursement—Liaison—Report—Compensation—Travel expenses.

**43.52A.050 Sufficient time on council activities required—Technical assistance—Reimbursement—Liaison—Report—Compensation—Travel expenses.** (1) Council members shall spend sufficient time on council activities to fully represent the state of Washington in carrying out the purposes of the act.

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(2) State agencies shall provide technical assistance to council members upon request. The council members shall request that the council request the administrator of the Bonneville Power Administration to reimburse the state for the expenses associated with such assistance as provided in the act.

(3) The members of the council shall maintain liaison with the governor or his or her designees and the committees on energy and utilities, or their successor entities, of the senate and house of representatives.

(4) The members of the council shall submit to the governor and legislature an annual report describing the activities and plans of the council.

(5) Each member of the council shall receive compensation to be determined by the governor and applicable federal law and shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060, as now or hereafter amended. [2009 c 549 § 5139; 1981 c 14 § 5.]

### Chapter 43.56 RCW

#### UNIFORM LAW COMMISSION

(Formerly: Uniform legislation commission)

##### Sections

43.56.010 Appointment of qualified persons.  
43.56.020 Duties of commission.  
43.56.040 Travel expenses of members.  
43.56.050 Repealed.  
43.56.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*)

**43.56.010 Appointment of qualified persons.** (1) The governor shall appoint three qualified persons to serve on the Washington state uniform law commission for the promotion of uniformity of legislation in the United States. A qualified person is a resident of the state of Washington and a member of the state bar association of this or another state, who is or has been a judge, law professor, legislator, or practicing attorney.

(2) In addition to the members of the commission appointed pursuant to subsection (1) of this section, the governor may appoint to the commission any person who has served at least twenty years on the commission and who is a life member in the national conference of commissioners on uniform state laws or its successor.

(3) In addition to the members of the commission appointed pursuant to subsections (1) and (2) of this section, the code reviser shall serve as a member of the commission. [2009 c 218 § 1; 1965 c 8 § 43.56.010. Prior: 1905 c 59 § 1; RRS § 8204.]

**43.56.020 Duties of commission.** (1) The commission shall identify areas of the law in which (a) uniformity in the laws among the states and other jurisdictions is desirable and practicable and (b)(i) the congress of the United States lacks jurisdiction to act or (ii) it is preferable that the several states enact the laws.

(2) The commissioners, at the national conference of commissioners on uniform state laws or its successor, shall confer upon these matters with the commissioners appointed

by other states for the same purpose and shall consider and draft uniform laws to be submitted for approval and adoption by the several states.

(3) The commission shall propose to the legislature for approval and adoption the uniform acts developed with the other commissioners and generally devise and recommend such other and further courses of action as shall accomplish such uniformity. [2009 c 218 § 2; 1965 c 8 § 43.56.020. Prior: 1905 c 59 § 2; RRS § 8205.]

**43.56.040 Travel expenses of members.** No member of the commission shall receive any compensation for services, but each member shall be paid travel expenses incurred in the discharge of official duty in accordance with RCW 43.03.050 and 43.03.060, after the account thereof has been audited by the commission.

The commission shall keep a full account of its expenditures and shall report it in each report. The commission shall allow expenses for only one meeting of the commission within this state each year, and shall allow expenses for the members to attend, no more than once in each year, any conference of the national conference of commissioners on uniform state laws, or its successor, outside of this state. [2009 c 218 § 3; 1975-'76 2nd ex.s. c 34 § 118; 1965 c 8 § 43.56.040. Prior: 1955 c 91 § 1; 1905 c 59 § 4; RRS § 8207.]

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

**43.56.050 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.56.900 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521.** (*Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.*) For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 108.]

## Chapter 43.59 RCW

### TRAFFIC SAFETY COMMISSION

#### Sections

43.59.010	Purpose—Finding.
43.59.030	Members of commission—Appointment—Vacancies—Governor's designee to act during governor's absence.
43.59.060	Director of commission—Appointment—Salary.
43.59.080	Governor's duties as chair.

**43.59.010 Purpose—Finding.** (1) The purpose of this chapter is to establish a new agency of state government to be known as the Washington traffic safety commission. The functions and purpose of this commission shall be to find solutions to the problems that have been created as a result of the tremendous increase of motor vehicles on our highways and the attendant traffic death and accident tolls; to plan and supervise programs for the prevention of accidents on streets and highways including but not limited to educational campaigns designed to reduce traffic accidents in cooperation with all official and unofficial organizations interested in traffic safety; to coordinate the activities at the state and local level in the development of statewide and local traffic safety programs; to promote a uniform enforcement of traffic safety laws and establish standards for investigation and reporting of traffic accidents; to promote and improve driver education; and to authorize the governor to perform all functions required to be performed by him or her under the federal Highway Safety Act of 1966 (Public Law 89-564; 80 Stat. 731).

(2) The legislature finds and declares that bicycling and walking are becoming increasingly popular in Washington as clean and efficient modes of transportation, as recreational activities, and as organized sports. Future plans for the state's transportation system will require increased access and safety for bicycles and pedestrians on our common roadways, and federal transportation legislation and funding programs have created strong incentives to implement these changes quickly. As a result, many more people are likely to take up bicycling in Washington both as a leisure activity and as a convenient, inexpensive form of transportation. Bicyclists are more vulnerable to injury and accident than motorists, and should be as knowledgeable as possible about traffic laws, be highly visible and predictable when riding in traffic, and be encouraged to wear bicycle safety helmets. Hundreds of bicyclists and pedestrians are seriously injured every year in accidents, and millions of dollars are spent on health care costs associated with these accidents. There is clear evidence that organized training in the rules and techniques of safe and effective cycling can significantly reduce the incidence of serious injury and accidents, increase cooperation among road users, and significantly increase the incidence of bicycle helmet use, particularly among minors. A reduction in accidents benefits the entire community. Therefore it is appropriate for businesses and community organizations to provide donations to bicycle and pedestrian safety training programs. [2009 c 549 § 5141; 1998 c 165 § 2; 1967 ex.s. c 147 § 1.]

**Short title—1998 c 165:** "This act may be known and cited as the Cooper Jones Act." [1998 c 165 § 1.]

*Driver education courses:* Chapter 28A.220 RCW.

*Drivers' training schools:* Chapter 46.82 RCW.

**43.59.030 Members of commission—Appointment—Vacancies—Governor's designee to act during governor's absence.** The governor shall be assisted in his or her duties and responsibilities by the Washington state traffic safety commission. The Washington traffic safety commission shall be composed of the governor as chair, the superintendent of public instruction, the director of licensing, the secretary of transportation, the chief of the state patrol, the secretary of health, the secretary of social and health services,

a representative of the association of Washington cities to be appointed by the governor, a member of the association of counties to be appointed by the governor, and a representative of the judiciary to be appointed by the governor. Appointments to any vacancies among appointee members shall be as in the case of original appointment.

The governor may designate an employee of the governor's office to act on behalf of the governor during the absence of the governor at one or more of the meetings of the commission. The vote of the designee shall have the same effect as if cast by the governor if the designation is in writing and is presented to the person presiding at the meetings included within the designation.

The governor may designate a member to preside during the governor's absence. [2009 c 549 § 5142; 1991 c 3 § 298; 1982 c 30 § 1; 1979 c 158 § 105; 1971 ex.s. c 85 § 7; 1969 ex.s. c 105 § 1; 1967 ex.s. c 147 § 3.]

**43.59.060 Director of commission—Appointment—Salary.** The governor as chair of the commission shall appoint a person to be director of the Washington traffic safety commission which director shall be paid such salary as shall be deemed reasonable and shall serve at the pleasure of the governor. [2009 c 549 § 5143; 1967 ex.s. c 147 § 7.]

**43.59.080 Governor's duties as chair.** The governor as chair of said commission shall have the authority to appoint advisory committees as he or she may deem advisable to aid, advise and assist the commission in carrying out the purposes of this chapter. All actions and decisions, however, shall be made by the commission. [2009 c 549 § 5144; 1967 ex.s. c 147 § 9.]

### Chapter 43.63A RCW

#### DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

##### Sections

43.63A.068	Advisory committee on policies and programs for children and families with incarcerated parents—Funding for programs and services.
43.63A.125	Nonresidential social services facilities—Building communities fund program—Assistance to nonprofit organizations—Competitive process—Recommendations to legislature for funding. ( <i>Effective until June 30, 2011.</i> )
43.63A.305	Independent youth housing program—Created—Collaboration with the department of social and health services—Duties of subcontractor organizations.
43.63A.307	Independent youth housing program—Definitions.
43.63A.740	Prostitution prevention and intervention account.

**43.63A.068 Advisory committee on policies and programs for children and families with incarcerated parents—Funding for programs and services.** (1)(a) The department of community, trade, and economic development shall establish an advisory committee to monitor, guide, and report on recommendations relating to policies and programs for children and families with incarcerated parents.

(b) The advisory committee shall include representatives of the department of corrections, the department of social and health services, the department of early learning, the office of the superintendent of public instruction, representatives of the private nonprofit and business sectors, child advocates,

representatives of Washington state Indian tribes as defined under the federal Indian welfare act (25 U.S.C. Sec. 1901 et seq.), court administrators, the administrative office of the courts, the Washington association of sheriffs and police chiefs, jail administrators, the office of the governor, and others who have an interest in these issues.

(c) The advisory committee shall:

(i) Gather the data collected by the departments as required in RCW 72.09.495, 74.04.800, 43.215.065, and 28A.300.520;

(ii) Monitor and provide consultation on the implementation of recommendations contained in the 2006 children of incarcerated parents report;

(iii) Identify areas of need and develop recommendations for the legislature, the department of social and health services, the department of corrections, the department of early learning, and the office of the superintendent of public instruction to better meet the needs of children and families of persons incarcerated in department of corrections facilities; and

(iv) Advise the department of community, trade, and economic development regarding community programs the department should fund with moneys appropriated for this purpose in the operating budget. The advisory committee shall provide recommendations to the department regarding the following:

(A) The goals for geographic distribution of programs and funding;

(B) The scope and purpose of eligible services and the priority of such services;

(C) Grant award funding limits;

(D) Entities eligible to apply for the funding;

(E) Whether the funding should be directed towards starting or supporting new programs, expanding existing programs, or whether the funding should be open to all eligible services and providers; and

(F) Other areas the advisory committee determines appropriate.

(d) The children of incarcerated parents advisory committee shall update the legislature and governor biennially on committee activities, with the first update due by January 1, 2010.

(2) The department of community, trade, and economic development shall select community programs or services to receive funding that focus on children and families of inmates incarcerated in a department of corrections facility and sustaining the family during the period of the inmate's incarceration.

(a) Programs or services which meet the needs of the children of incarcerated parents should be the greatest consideration in the programs that are identified by the department.

(b) The department shall consider the recommendations of the advisory committee regarding which services or programs the department should fund.

(c) The programs selected shall collaborate with an agency, or agencies, experienced in providing services to aid families and victims of sexual assault and domestic violence to ensure that the programs identify families who have a history of sexual assault or domestic violence and ensure the ser-

vices provided are appropriate for the children and families. [2009 c 518 § 18; 2007 c 384 § 6.]

**Intent—Finding—2007 c 384:** See note following RCW 72.09.495.

**43.63A.125 Nonresidential social services facilities—Building communities fund program—Assistance to nonprofit organizations—Competitive process—Recommendations to legislature for funding. (Effective until June 30, 2011.)**

(1) The department shall establish the building communities fund program. Under the program, capital and technical assistance grants may be made to nonprofit organizations for acquiring, constructing, or rehabilitating facilities used for the delivery of nonresidential community services, including social service centers and multipurpose community centers, including those serving a distinct or ethnic population. Such facilities must be located in a distressed community or serve a substantial number of low-income or disadvantaged persons.

(2) The department shall establish a competitive process to solicit, evaluate, and rank applications for the building communities fund program as follows:

(a) The department shall conduct a statewide solicitation of project applications from nonprofit organizations.

(b) The department shall evaluate and rank applications in consultation with a citizen advisory committee using objective criteria. To be considered qualified, applicants must demonstrate that the proposed project:

(i) Will increase the range, efficiency, or quality of the services provided to citizens;

(ii) Will be located in a distressed community or will serve a substantial number of low-income or disadvantaged persons;

(iii) Will offer three or more distinct activities that meet a single community service objective or a diverse set of activities that meet multiple community service objectives, including but not limited to: Providing social services; expanding employment opportunities for or increasing the employability of community residents; or offering educational or recreational opportunities separate from the public school system or private schools, as long as recreation is not the sole purpose of the facility;

(iv) Reflects a long-term vision for the development of the community, shared by residents, businesses, leaders, and partners;

(v) Requires state funding to accomplish a discrete, usable phase of the project;

(vi) Is ready to proceed and will make timely use of the funds;

(vii) Is sponsored by one or more entities that have the organizational and financial capacity to fulfill the terms of the grant agreement and to maintain the project into the future;

(viii) Fills an unmet need for community services;

(ix) Will achieve its stated objectives; and

(x) Is a community priority as shown through tangible commitments of existing or future assets made to the project by community residents, leaders, businesses, and government partners.

(c) The evaluation process shall also include an examination of existing assets that applicants may apply to projects.

Grant assistance under this section shall not exceed twenty-five percent of the total cost of the project, except, under exceptional circumstances, the department may reduce the amount of nonstate match required. The nonstate portion of the total project cost may include cash, the value of real property when acquired solely for the purpose of the project, and in-kind contributions.

(d) The department may not set a monetary limit to funding requests.

(e) No more than ten percent of the total granted amount may be awarded to qualified eligible projects that meet the definition of exceptional circumstances defined in this subsection. For purposes of this subsection, exceptional circumstances include but are not limited to: Natural disasters affecting projects; emergencies beyond an applicant's control, such as a fire or an unanticipated loss of a lease where services are currently provided; a delay that could result in a threat to public health or safety; or instances where a local community could quantifiably demonstrate that they had exhausted all possible fund-raising efforts.

(3) The department shall submit biennially to the governor and the legislature in the department's capital budget request a ranked list of the qualified eligible projects for which applications were received. The list must include a description of each project, its total cost, and the amount of state funding requested. The appropriate fiscal committees of the legislature shall use this list to determine building communities fund projects that may receive funding in the capital budget. The total amount of state capital funding available for all projects on the biennial list shall be determined by the capital budget beginning with the 2009-2011 biennium and thereafter. In addition, if cash funds have been appropriated, up to three million dollars may be used for technical assistance grants. The department shall not sign contracts or otherwise financially obligate funds under this section until the legislature has approved a specific list of projects.

(4) In addition to the list of ranked qualified eligible projects, the department shall submit to the appropriate fiscal committees of the legislature a summary report that describes the solicitation and evaluation processes, including but not limited to the number of applications received, the total amount of funding requested, issues encountered, if any, and any recommendations for process improvements.

(5) After the legislature has approved a specific list of projects in law, the department shall develop and manage appropriate contracts with the selected applicants; monitor project expenditures and grantee performance; report project and contract information; and exercise due diligence and other contract management responsibilities as required.

(6) In contracts for grants authorized under this section the department shall include provisions which require that capital improvements shall be held by the grantee for a specified period of time appropriate to the amount of the grant and that facilities shall be used for the express purpose of the grant. If the grantee is found to be out of compliance with provisions of the contract, the grantee shall repay to the state general fund the principal amount of the grant plus interest calculated at the rate of interest on state of Washington general obligation bonds issued most closely to the date of authorization of the grant. [2009 c 497 § 6023; 2008 c 327 § 15;

2006 c 371 § 233; 2005 c 160 § 1; 1999 c 295 § 3; 1997 c 374 § 2.]

**Expiration date—2009 c 497 §§ 6022 and 6023:** See note following RCW 28B.50.360.

**Effective date—2009 c 497:** See note following RCW 28B.15.210.

**Part headings not law—Severability—Effective date—2006 c 371:** See notes following RCW 43.325.040.

**Findings—1997 c 374:** "The legislature finds that nonprofit organizations provide a variety of social services that serve the needs of the citizens of Washington, including many services implemented under contract with state agencies. The legislature also finds that the efficiency and quality of these services may be enhanced by the provision of safe, reliable, and sound facilities, and that, in certain cases, it may be appropriate for the state to assist in the development of these facilities." [1997 c 374 § 1.]

**43.63A.305 Independent youth housing program—Created—Collaboration with the department of social and health services—Duties of subcontractor organizations.** (1) The independent youth housing program is created in the department to provide housing stipends to eligible youth to be used for independent housing. In developing a plan for the design, implementation, and operation of the independent youth housing program, the department shall:

(a) Adopt policies, requirements, and procedures necessary to administer the program;

(b) Contract with one or more eligible organizations described under RCW 43.185A.040 to provide services and conduct administrative activities as described in subsection (3) of this section;

(c) Establish eligibility criteria for youth to participate in the independent youth housing program, giving priority to youth who have been dependents of the state for at least one year;

(d) Refer interested youth to the designated subcontractor organization administering the program in the area in which the youth intends to reside;

(e) Develop a method for determining the amount of the housing stipend, first and last month's rent, and security deposit, where applicable, to be dedicated to participating youth. The method for determining a housing stipend must take into account a youth's age, the youth's total income from all sources, the fair market rent for the area in which the youth lives or intends to live, and a variety of possible living situations for the youth. The amount of housing stipends must be adjusted, by a method and formula established by the department, to promote the successful transition for youth to complete housing self-sufficiency over time;

(f) Ensure that the independent youth housing program is integrated and aligned with other state rental assistance and case management programs operated by the department, as well as case management and supportive services programs, including the independent living program, the transitional living program, and other related programs offered by the department of social and health services; and

(g) Consult with the department of social and health services and other stakeholders involved with dependent youth, homeless youth, and homeless young adults, as appropriate.

(2) The department of social and health services shall collaborate with the department in implementing and operating the independent youth housing program including, but not limited to, the following:

(a) Refer potential eligible youth to the department before the youth's eighteenth birthday, if feasible, to include an indication, if known, of where the youth plans to reside after aging out of foster care;

(b) Provide information to all youth aged fifteen or older, who are dependents of the state under chapter 13.34 RCW, about the independent youth housing program, encouraging dependents nearing their eighteenth birthday to consider applying for enrollment in the program;

(c) Encourage organizations participating in the independent living program and the transitional living program to collaborate with independent youth housing program providers whenever possible to capitalize on resources and provide the greatest amount and variety of services to eligible youth;

(d) Annually provide to the department data reflecting changes in the percentage of youth aging out of the state dependency system each year who are eligible for state assistance, as well as any other data and performance measures that may assist the department to measure program success; and

(e) Annually, beginning by December 31, 2007, provide to the appropriate committees of the legislature and the inter-agency council on homelessness as described under RCW 43.185C.170 recommendations of strategies to reach the goals described in RCW 43.63A.311(2)(g).

(3) Under the independent youth housing program, subcontractor organizations shall:

(a) Use moneys awarded to the organizations for housing stipends, security deposits, first and last month's rent stipends, case management program costs, and administrative costs. When subcontractor organizations determine that it is necessary to assist participating youth in accessing and maintaining independent housing, subcontractor organizations may also use moneys awarded to pay for professional mental health services and tuition costs for court-ordered classes and programs;

(i) Administrative costs for each subcontractor organization may not exceed twelve percent of the estimated total annual grant amount to the subcontractor organization;

(ii) All housing stipends, security deposits, and first and last month's rent stipends must be payable only to a landlord or housing manager of any type of independent housing;

(b) Enroll eligible youth who are referred by the department and who choose to reside in their assigned service area;

(c) Enter eligible youth program participants into the homeless client management information system as described in RCW 43.185C.180;

(d) Monitor participating youth's housing status;

(e) Evaluate participating youth's eligibility and compliance with department policies and procedures at least twice a year;

(f) Assist participating youth to develop or update an independent living plan focused on obtaining and retaining independent housing or collaborate with a case manager with whom the youth is already involved to ensure that the youth has an independent living plan;

(g) Educate participating youth on tenant rights and responsibilities;

(h) Provide support to participating youth in the form of general case management and information and referral services, when necessary, or collaborate with a case manager



with whom the youth is already involved to ensure that the youth is receiving the case management and information and referral services needed;

(i) Connect participating youth, when possible, with individual development account programs, other financial literacy programs, and other programs that are designed to help young people acquire economic independence and self-sufficiency, or collaborate with a case manager with whom the youth is already involved to ensure that the youth is receiving information and referrals to these programs, when appropriate;

(j) Submit expenditure and performance reports, including information related to the performance measures in RCW 43.63A.311, to the department on a time schedule determined by the department; and

(k) Provide recommendations to the department regarding program improvements and strategies that might assist the state to reach its goals as described in RCW 43.63A.311(2)(g). [2009 c 148 § 1; 2007 c 316 § 3.]

**Finding—2007 c 316:** "(1) The legislature finds that providing needy youth aging out of the state dependency system with safe and viable options for housing to avoid homelessness confers a valuable benefit on the public that is intended to improve public health, safety, and welfare.

(2) It is the goal of this state to:

(a) Ensure that all youth aging out of the state dependency system have access to a decent, appropriate, and affordable home in a healthy safe environment to prevent such young people from experiencing homelessness; and

(b) Reduce each year the percentage of young people eligible for state assistance upon aging out of the state dependency system." [2007 c 316 § 1.]

**Study—2007 c 316:** "Beginning in September 2008, the Washington state institute for public policy shall conduct a study measuring the outcomes for youth who are participating or who have participated in the independent youth housing program created in section 3 of this act. The institute shall issue a report containing its preliminary findings to the legislature by December 1, 2009, and a final report by December 1, 2010." [2007 c 316 § 8.]

### 43.63A.307 Independent youth housing program—

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

(1) "Department" means the department of community, trade, and economic development.

(2) "Eligible youth" means an individual who:

(a) On or after September 1, 2006, is at least eighteen, was a dependent of the state under chapter 13.34 RCW at any time during the four-month period before his or her eighteenth birthday, and has not yet reached the age of twenty-three;

(b) Except as provided in RCW 43.63A.309(2)(a), has a total income from all sources, except for temporary sources that include, but are not limited to, overtime wages, bonuses, or short-term temporary assignments, that does not exceed fifty percent of the area median income;

(c) Is not receiving services under \*RCW 74.13.031(10)(b);

(d) Complies with other eligibility requirements the department may establish.

(3) "Fair market rent" means the fair market rent in each county of the state, as determined by the United States department of housing and urban development.

(4) "Independent housing" means a housing unit that is not owned by or located within the home of the eligible youth's biological parents or any of the eligible youth's

former foster care families or dependency guardians. "Independent housing" may include a unit in a transitional or other supportive housing facility.

(5) "Individual development account" or "account" means an account established by contract between a low-income individual and a sponsoring organization for the benefit of the low-income individual and funded through periodic contributions by the low-income individual that are matched with contributions by or through the sponsoring organization.

(6) "Subcontractor organization" means an eligible organization described under RCW 43.185A.040 that contracts with the department to administer the independent youth housing program. [2009 c 148 § 2; 2007 c 316 § 2.]

\***Reviser's note:** RCW 74.13.031 was amended by 2009 c 235 §§ 2 and 4, deleting subsection (10)(b).

**Finding—2007 c 316:** See note following RCW 43.63A.305.

**43.63A.740 Prostitution prevention and intervention account.** The prostitution prevention and intervention account is created in the state treasury. All designated receipts from fees under RCW 9.68A.105 and 9A.88.120 and fines collected under RCW 9A.88.140 shall be deposited into the account. Expenditures from the account may be used only for funding the grant program to enhance prostitution prevention and intervention services under RCW 43.63A.720. [2009 c 387 § 2; 1995 c 353 § 11.]

## Chapter 43.70 RCW

### DEPARTMENT OF HEALTH

#### Sections

43.70.050	Collection, use, and accessibility of health-related data.
43.70.056	Health care-associated infections—Data collection and reporting—Advisory committee—Rules.
43.70.110	License fees—Costs—Other charges—Waiver.
43.70.112	Online access to health care resources—Annual accounting of use of funds and use of online resources—University of Washington.
43.70.210	Right of person to rely on prayer to alleviate ailments not abridged.
43.70.518	Repealed.
43.70.630	Cost-reimbursement agreements.
43.70.690	State asthma plan.
43.70.710	Annual review of medication practices of five jails that use nonpractitioner jail personnel—Noncompliance.
43.70.720	Universal vaccine purchase account.

**43.70.050 Collection, use, and accessibility of health-related data.** (1) The legislature intends that the department and board promote and assess the quality, cost, and accessibility of health care throughout the state as their roles are specified in chapter 9, Laws of 1989 1st ex. sess. in accordance with the provisions of this chapter. In furtherance of this goal, the secretary shall create an ongoing program of data collection, storage, assessability, and review. The legislature does not intend that the department conduct or contract for the conduct of basic research activity. The secretary may request appropriations for studies according to this section from the legislature, the federal government, or private sources.

(2) All state agencies which collect or have access to population-based, health-related data are directed to allow the secretary access to such data. This includes, but is not

limited to, data on needed health services, facilities, and personnel; future health issues; emerging bioethical issues; health promotion; recommendations from state and national organizations and associations; and programmatic and statutory changes needed to address emerging health needs. Private entities, such as insurance companies, health maintenance organizations, and private purchasers are also encouraged to give the secretary access to such data in their possession. The secretary's access to and use of all data shall be in accordance with state and federal confidentiality laws and ethical guidelines. Such data in any form where the patient or provider of health care can be identified shall not be disclosed, subject to disclosure according to chapter 42.56 RCW, discoverable or admissible in judicial or administrative proceedings. Such data can be used in proceedings in which the use of the data is clearly relevant and necessary and both the department and the patient or provider are parties.

(3) The department shall serve as the clearinghouse for information concerning innovations in the delivery of health care services, the enhancement of competition in the health care marketplace, and federal and state information affecting health care costs.

(4) The secretary shall review any data collected, pursuant to this chapter, to:

(a) Identify high-priority health issues that require study or evaluation. Such issues may include, but are not limited to:

(i) Identification of variations of health practice which indicate a lack of consensus of appropriateness;

(ii) Evaluation of outcomes of health care interventions to assess their benefit to the people of the state;

(iii) Evaluation of specific population groups to identify needed changes in health practices and services;

(iv) Evaluation of the risks and benefits of various incentives aimed at individuals and providers for both preventing illnesses and improving health services;

(v) Identification and evaluation of bioethical issues affecting the people of the state; and

(vi) Other such objectives as may be appropriate;

(b) Further identify a list of high-priority health study issues for consideration by the board, within their authority, for inclusion in the state health report required by RCW 43.20.050. The list shall specify the objectives of each study, a study timeline, the specific improvements in the health status of the citizens expected as a result of the study, and the estimated cost of the study; and

(c) Provide background for the state health report required by RCW 43.20.050.

(5) Any data, research, or findings may also be made available to the general public, including health professions, health associations, the governor, professional boards and regulatory agencies and any person or group who has allowed the secretary access to data.

(6) Information submitted as part of the health professional licensing application and renewal process, excluding social security number and background check information, shall be available to the office of financial management consistent with RCW 43.370.020, whether the license is issued by the secretary of the department of health or a board or commission. The department shall replace any social security number with an alternative identifier capable of linking

all licensing records of an individual. The office of financial management shall also have access to information submitted to the department of health as part of the medical or health facility licensing process.

(7) The secretary may charge a fee to persons requesting copies of any data, research, or findings. The fee shall be no more than necessary to cover the cost to the department of providing the copy. [2009 c 343 § 2; 2005 c 274 § 301; 1989 1st ex.s. c 9 § 107.]

**Part headings not law—Effective date—2005 c 274:** See RCW 42.56.901 and 42.56.902.

#### **43.70.056 Health care-associated infections—Data collection and reporting—Advisory committee—Rules.**

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Health care-associated infection" means a localized or systemic condition that results from adverse reaction to the presence of an infectious agent or its toxins and that was not present or incubating at the time of admission to the hospital.

(b) "Hospital" means a health care facility licensed under chapter 70.41 RCW.

(2)(a) A hospital shall collect data related to health care-associated infections as required under this subsection (2) on the following:

(i) Beginning July 1, 2008, central line-associated bloodstream infection in the intensive care unit;

(ii) Beginning January 1, 2009, ventilator-associated pneumonia; and

(iii) Beginning January 1, 2010, surgical site infection for the following procedures:

(A) Deep sternal wound for cardiac surgery, including coronary artery bypass graft;

(B) Total hip and knee replacement surgery; and

(C) Hysterectomy, abdominal and vaginal.

(b) Until required otherwise under (c) of this subsection, a hospital must routinely collect and submit the data required to be collected under (a) of this subsection to the national healthcare safety network of the United States centers for disease control and prevention in accordance with national healthcare safety network definitions, methods, requirements, and procedures.

(c)(i) With respect to any of the health care-associated infection measures for which reporting is required under (a) of this subsection, the department must, by rule, require hospitals to collect and submit the data to the centers for medicare and medicaid services according to the definitions, methods, requirements, and procedures of the hospital compare program, or its successor, instead of to the national healthcare safety network, if the department determines that:

(A) The measure is available for reporting under the hospital compare program, or its successor, under substantially the same definition; and

(B) Reporting under this subsection (2)(c) will provide substantially the same information to the public.

(ii) If the department determines that reporting of a measure must be conducted under this subsection (2)(c), the department must adopt rules to implement such reporting. The department's rules must require reporting to the centers for medicare and medicaid services as soon as practicable, but not more than one hundred twenty days, after the centers

for medicare and medicaid services allow hospitals to report the respective measure to the hospital compare program, or its successor. However, if the centers for medicare and medicaid services allow infection rates to be reported using the centers for disease control and prevention's national health-care safety network, the department's rules must require reporting that reduces the burden of data reporting and minimizes changes that hospitals must make to accommodate requirements for reporting.

(d) Data collection and submission required under this subsection (2) must be overseen by a qualified individual with the appropriate level of skill and knowledge to oversee data collection and submission.

(e)(i) A hospital must release to the department, or grant the department access to, its hospital-specific information contained in the reports submitted under this subsection (2), as requested by the department.

(ii) The hospital reports obtained by the department under this subsection (2), and any of the information contained in them, are not subject to discovery by subpoena or admissible as evidence in a civil proceeding, and are not subject to public disclosure as provided in RCW 42.56.360.

(3) The department shall:

(a) Provide oversight of the health care-associated infection reporting program established in this section;

(b) By January 1, 2011, submit a report to the appropriate committees of the legislature based on the recommendations of the advisory committee established in subsection (5) of this section for additional reporting requirements related to health care-associated infections, considering the methodologies and practices of the United States centers for disease control and prevention, the centers for medicare and medicaid services, the joint commission, the national quality forum, the institute for healthcare improvement, and other relevant organizations;

(c) Delete, by rule, the reporting of categories that the department determines are no longer necessary to protect public health and safety;

(d) By December 1, 2009, and by each December 1st thereafter, prepare and publish a report on the department's web site that compares the health care-associated infection rates at individual hospitals in the state using the data reported in the previous calendar year pursuant to subsection (2) of this section. The department may update the reports quarterly. In developing a methodology for the report and determining its contents, the department shall consider the recommendations of the advisory committee established in subsection (5) of this section. The report is subject to the following:

(i) The report must disclose data in a format that does not release health information about any individual patient; and

(ii) The report must not include data if the department determines that a data set is too small or possesses other characteristics that make it otherwise unrepresentative of a hospital's particular ability to achieve a specific outcome; and

(e) Evaluate, on a regular basis, the quality and accuracy of health care-associated infection reporting required under subsection (2) of this section and the data collection, analysis, and reporting methodologies.

(4) The department may respond to requests for data and other information from the data required to be reported under

subsection (2) of this section, at the requestor's expense, for special studies and analysis consistent with requirements for confidentiality of patient records.

(5)(a) The department shall establish an advisory committee which may include members representing infection control professionals and epidemiologists, licensed health care providers, nursing staff, organizations that represent health care providers and facilities, health maintenance organizations, health care payers and consumers, and the department. The advisory committee shall make recommendations to assist the department in carrying out its responsibilities under this section, including making recommendations on allowing a hospital to review and verify data to be released in the report and on excluding from the report selected data from certified critical access hospitals. Annually, beginning January 1, 2011, the advisory committee shall also make a recommendation to the department as to whether current science supports expanding presurgical screening for methicillin-resistant staphylococcus aureus prior to open chest cardiac, total hip, and total knee elective surgeries.

(b) In developing its recommendations, the advisory committee shall consider methodologies and practices related to health care-associated infections of the United States centers for disease control and prevention, the centers for medicare and medicaid services, the joint commission, the national quality forum, the institute for healthcare improvement, and other relevant organizations.

(6) The department shall adopt rules as necessary to carry out its responsibilities under this section. [2009 c 244 § 2; 2007 c 261 § 2.]

**Findings—2007 c 261:** "The legislature finds that each year health care-associated infections affect two million Americans. These infections result in the unnecessary death of ninety thousand patients and costs the health care system 4.5 billion dollars. Hospitals should be implementing evidence-based measures to reduce hospital-acquired infections. The legislature further finds the public should have access to data on outcome measures regarding hospital-acquired infections. Data reporting should be consistent with national hospital reporting standards." [2007 c 261 § 1.]

**43.70.110 License fees—Costs—Other charges—Waiver.** (1) The secretary shall charge fees to the licensee for obtaining a license. Physicians regulated pursuant to chapter 18.71 RCW who reside and practice in Washington and obtain or renew a retired active license are exempt from such fees. After June 30, 1995, municipal corporations providing emergency medical care and transportation services pursuant to chapter 18.73 RCW shall be exempt from such fees, provided that such other emergency services shall only be charged for their pro rata share of the cost of licensure and inspection, if appropriate. The secretary may waive the fees when, in the discretion of the secretary, the fees would not be in the best interest of public health and safety, or when the fees would be to the financial disadvantage of the state.

(2) Except as provided in subsection (3) of this section, fees charged shall be based on, but shall not exceed, the cost to the department for the licensure of the activity or class of activities and may include costs of necessary inspection.

(3) License fees shall include amounts in addition to the cost of licensure activities in the following circumstances:

(a) For registered nurses and licensed practical nurses licensed under chapter 18.79 RCW, support of a central nurs-

ing resource center as provided in RCW 18.79.202, until June 30, 2013;

(b) For all health care providers licensed under RCW 18.130.040, the cost of regulatory activities for retired volunteer medical worker licensees as provided in RCW 18.130.360; and

(c) For physicians licensed under chapter 18.71 RCW, physician assistants licensed under chapter 18.71A RCW, osteopathic physicians licensed under chapter 18.57 RCW, osteopathic physicians' assistants licensed under chapter 18.57A RCW, naturopaths licensed under chapter 18.36A RCW, podiatrists licensed under chapter 18.22 RCW, chiropractors licensed under chapter 18.25 RCW, psychologists licensed under chapter 18.83 RCW, registered nurses licensed under chapter 18.79 RCW, optometrists licensed under chapter 18.53 RCW, mental health counselors licensed under chapter 18.225 RCW, massage therapists licensed under chapter 18.108 RCW, clinical social workers licensed under chapter 18.225 RCW, and acupuncturists licensed under chapter 18.06 RCW, the license fees shall include up to an additional twenty-five dollars to be transferred by the department to the University of Washington for the purposes of RCW 43.70.112.

(4) Department of health advisory committees may review fees established by the secretary for licenses and comment upon the appropriateness of the level of such fees. [2009 c 403 § 5; 2007 c 259 § 11; 2006 c 72 § 3; 2005 c 268 § 2; 1993 sp.s. c 24 § 918; 1989 1st ex.s. c 9 § 263.]

**Finding—Intent—2009 c 403:** See note following RCW 18.71.080.

**Severability—Subheadings not law—2007 c 259:** See notes following RCW 41.05.033.

**Finding—2005 c 268:** See note following RCW 18.79.202.

**Severability—Effective dates—1993 sp.s. c 24:** See notes following RCW 28A.310.020.

**43.70.112 Online access to health care resources—Annual accounting of use of funds and use of online resources—University of Washington.** Within the amounts transferred from the department of health under RCW 43.70.110(3), the University of Washington shall, through the health sciences library, provide online access to selected vital clinical resources, medical journals, decision support tools, and evidence-based reviews of procedures, drugs, and devices to the health professionals listed in RCW 43.70.110(3)(c). Online access shall be available no later than January 1, 2009. Each year, by December 1st, the University of Washington shall provide an annual accounting of the use of the funds transferred, including which categories of health professionals are using the materials available under the program. The accounting must be transmitted by electronic mail to the members of the health care committees of the legislature. [2009 c 558 § 2; 2007 c 259 § 12.]

**Severability—Subheadings not law—2007 c 259:** See notes following RCW 41.05.033.

**43.70.210 Right of person to rely on prayer to alleviate ailments not abridged.** Nothing in chapter 43.20 or 43.70 RCW, or RCW 43.70.120 shall be construed to abridge the right of any person to rely exclusively on spiritual means alone through prayer to alleviate human ailments, sickness or disease, in accordance with the tenets and practice of the

Church of Christ, Scientist, nor shall anything in chapters 43.20, 43.70 RCW, or RCW 43.70.120 be deemed to prohibit a person so relying who is inflicted with a contagious or communicable disease from being isolated or quarantined in a private place of his or her own choice, provided, it is approved by the local health officer, and all laws, rules and regulations governing control, sanitation, isolation and quarantine are complied with. [2009 c 549 § 5145; 1989 1st ex.s. c 9 § 260; 1979 c 141 § 59; 1967 ex.s. c 102 § 14. Formerly RCW 43.20A.665 and 43.20.210.]

**Severability—1967 ex.s. c 102:** See note following RCW 43.70.130.

*Prayer:* RCW 18.50.030, 70.127.040, 70.128.170, 74.09.190.

**43.70.518 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.70.630 Cost-reimbursement agreements.** (1) The department may enter into a written cost-reimbursement agreement with a permit applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing.

(2) The cost-reimbursement agreement shall identify the tasks and costs for work to be conducted under the agreement. The agreement must include a schedule that states:

(a) The estimated number of weeks for initial review of the permit application;

(b) The estimated number of revision cycles;

(c) The estimated number of weeks for review of subsequent revision submittals;

(d) The estimated number of billable hours of employee time;

(e) The rate per hour; and

(f) A date for revision of the agreement if necessary.

(3) The written cost-reimbursement agreement shall be negotiated with the permit applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant or proponent shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to hire temporary employees, to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants or hire temporary employees to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments.

(4) The cost-reimbursement agreement must not negatively impact the processing of other permit applications. In order to maintain permit processing capacity, the agency may hire outside consultants, temporary employees, or make internal administrative changes. Consultants or temporary employees hired as part of a cost-reimbursement agreement or to maintain agency capacity are hired as agents of the state not of the permit applicant. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. [2009 c 97 § 10; 2007 c 94 § 12; 2003 c 70 § 3; 2000 c 251 § 4.]

**Intent—Captions not law—Effective date—2000 c 251:** See notes following RCW 43.21A.690.

**43.70.690 State asthma plan.** (1) The department, in collaboration with its public and private partners, shall design a state asthma plan, based on clinically sound criteria including nationally recognized guidelines such as those established by the national asthma education prevention partnership expert panel report guidelines for the diagnosis and management of asthma.

(2) The plan shall include recommendations in the following areas:

(a) Evidence-based processes for the prevention and management of asthma;

(b) Data systems that support asthma prevalence reporting, including population disparities and practice variation in the treatment of asthma;

(c) Quality improvement strategies addressing the successful diagnosis and management of the disease; and

(d) Cost estimates and sources of funding for plan implementation.

(3) The department shall submit the completed state plan to the governor and the legislature by December 1, 2005.

(4) The department shall implement the state plan recommendations made under subsection (2) of this section only to the extent that federal, state, or private funds, including grants, are available for that purpose. [2009 c 518 § 8; 2005 c 462 § 4.]

**Findings—2005 c 462:** See note following RCW 28A.210.370.

**43.70.710 Annual review of medication practices of five jails that use nonpractitioner jail personnel—Non-compliance.** The department of health shall annually review the medication practices of five jails that provide for the delivery and administration of medications to inmates in their custody by nonpractitioner jail personnel. The review shall assess whether the jails are in compliance with sections 3 and 4, chapter 411, Laws of 2009. To the extent that a jail is found not in compliance, the department shall provide technical assistance to assist the jail in resolving any areas of non-compliance. [2009 c 411 § 5.]

**43.70.720 Universal vaccine purchase account.** The universal vaccine purchase account is created in the custody of the state treasurer. Receipts from public and private sources for the purpose of increasing access to vaccines for children may be deposited into the account. Expenditures from the account must be used exclusively for the purchase of

vaccines, at no cost to health care providers in Washington, to administer to children under nineteen years old who are not eligible to receive vaccines at no cost through federal programs. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2009 c 564 § 934.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

### Chapter 43.72 RCW

#### HEALTH SYSTEM REFORM— HEALTH SERVICES COMMISSION

##### Sections

43.72.900 Repealed.

**43.72.900 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

### Chapter 43.78 RCW

#### PUBLIC PRINTER—PUBLIC PRINTING

##### Sections

43.78.010 Appointment of public printer.

43.78.020 Bond.

43.78.070 Use of state plant—Conditions—Public printer's salary.

43.78.110 Securing printing from private sources—Definitions.

43.78.170 Recycled copy and printing paper requirement.

**43.78.010 Appointment of public printer.** There shall be a public printer appointed by the governor with the advice and consent of the senate, who shall hold office at the pleasure of the governor and until his or her successor is appointed and qualified. [2009 c 549 § 5146; 1981 c 338 § 6; 1965 c 8 § 43.78.010. Prior: 1905 c 168 § 1; RRS § 10323.]

**43.78.020 Bond.** Before entering upon the duties of his or her office, the public printer shall execute to the state a bond in the sum of ten thousand dollars conditioned for the faithful and punctual performance of all duties and trusts of his or her office. [2009 c 549 § 5147; 1965 c 8 § 43.78.020. Prior: 1933 c 97 § 4; 1905 c 168 § 2; RRS § 10324.]

**43.78.070 Use of state plant—Conditions—Public printer's salary.** The public printer shall use the state printing plant upon the following conditions, to wit:

(1) He or she shall do the public printing, and charge therefor the fees as provided by law. He or she may print the Washington Reports for the publishers thereof under a contract approved in writing by the governor.

(2) The gross income of the public printer shall be deposited in an account designated "state printing plant revolving fund" in depositaries approved by the state treasurer, and shall be disbursed by the public printer by check and only as follows:

First, in payment of the actual cost of labor, material, supplies, replacements, repairs, water, light, heat, telephone, rent, and all other expenses necessary in the operation of the plant: PROVIDED, That no machinery shall be purchased except on written approval of the governor;

Second, in payment of the cost of reasonable insurance upon the printing plant, payable to the state and of all fidelity bonds required by law of the public printer;

Third, in payment to the public printer of a salary which shall be fixed by the governor in accordance with the provisions of RCW 43.03.040;

Fourth, in remitting the balance to the state treasurer for the general fund: PROVIDED, That a reasonable sum to be determined by the governor, the public printer, and the director of financial management shall be retained in the fund for working capital for the public printer. [2009 c 549 § 5148; 1979 c 151 § 134; 1965 c 8 § 43.78.070. Prior: 1961 c 307 § 5; 1955 c 340 § 12; 1951 c 151 § 1; 1933 c 97 § 3; RRS § 10327-2.]

#### 43.78.110 Securing printing from private sources—

**Definitions.** (1) Whenever in the judgment of the public printer certain printing, ruling, binding, or supplies can be secured from private sources more economically than by doing the work or preparing the supplies in the state printing plant, the public printer may obtain such work or supplies from such private sources. The solicitation for the contract opportunity must be posted on the state's common vendor registration and bid notification system. The public printer shall develop procurement policies and procedures, such as unbundled contracting and subcontracting, that encourage and facilitate the purchase of such services or supplies from Washington small businesses to the maximum extent practicable and consistent with international trade agreement commitments.

(2) In event any work or supplies are secured on behalf of the state under this section the state printing plant shall be entitled to add up to five percent to the cost thereof to cover the handling of the orders which shall be added to the bills and charged to the respective authorities ordering the work or supplies. The five percent handling charge shall not apply to contracts with institutions of higher education.

(3) The definitions in this subsection apply throughout this section.

(a) "Common vendor registration and bid notification system" has the definition in RCW 39.29.006.

(b) "Small business" has the definition in RCW 39.29.006. [2009 c 486 § 12; 1993 c 379 § 107; 1982 c 164 § 3; 1969 c 79 § 1; 1965 c 8 § 43.78.110. Prior: 1935 c 130 § 3; RRS § 10333-1.]

**Intent—2009 c 486:** See note following RCW 39.29.006.

**Conflict with federal requirements—2009 c 486:** See note following RCW 28B.30.530.

**Intent—Severability—Effective date—1993 c 379:** See notes following RCW 28B.10.029.

**43.78.170 Recycled copy and printing paper requirement.** The public printer shall use one hundred percent recycled copy and printing paper for all jobs printed on white copy and printing paper. [2009 c 356 § 5; 1996 c 198 § 3; 1991 c 297 § 10.]

**Captions not law—1991 c 297:** See RCW 43.19A.900.

## Chapter 43.79 RCW

### STATE FUNDS

#### Sections

43.79.074	University of Washington fund—Warrants to be paid from general fund.
43.79.201	C.E.P. & R.I. account—Moneys transferred to charitable, educational, penal and reformatory institutions account—Exception.
43.79.280	Unanticipated receipts—Duty of governor on approval.
43.79.303	Central College fund—Warrants to be paid from general fund.
43.79.313	Eastern College fund—Warrants to be paid from general fund.
43.79.323	Western College fund—Warrants to be paid from general fund.
43.79.343	General obligation bond retirement fund—Warrants to be paid from general fund.
43.79.393	United States vocational education account—Warrants to be paid from general fund.
43.79.460	Savings incentive account—Report.
43.79.465	Education savings account.
43.79.480	Tobacco settlement account—Transfers to life sciences discovery fund—Tobacco prevention and control account.
43.79.485	Reading achievement account.
43.79.505	Judicial stabilization trust account.

**43.79.074 University of Washington fund—Warrants to be paid from general fund.** From and after the first day of May, 1955, all warrants drawn on the University of Washington fund and not presented for payment shall be paid from the general fund, and it shall be the duty of the state treasurer and he or she is hereby directed to pay such warrants when presented from the general fund. [2009 c 549 § 5149; 1965 c 8 § 43.79.074. Prior: 1955 c 332 § 4.]

**43.79.201 C.E.P. & R.I. account—Moneys transferred to charitable, educational, penal and reformatory institutions account—Exception.** (1) The charitable, educational, penal and reformatory institutions account is hereby created, in the state treasury, into which account there shall be deposited all moneys arising from the sale, lease or transfer of the land granted by the United States government to the state for charitable, educational, penal and reformatory institutions by section 17 of the enabling act, or otherwise set apart for such institutions, except all moneys arising from the sale, lease, or transfer of that certain one hundred thousand acres of such land assigned for the support of the University of Washington by chapter 91, Laws of 1903 and section 9, chapter 122, Laws of 1893.

(2) If feasible, not less than one-half of all income to the charitable, educational, penal, and reformatory institutions account shall be appropriated for the purpose of providing housing, including repair and renovation of state institutions, for persons with mental illness or developmental disabilities, or youth who are blind, deaf, or otherwise disabled. If moneys are appropriated for community-based housing, the moneys shall be appropriated to the department of community, trade, and economic development for the housing assistance program under chapter 43.185 RCW. During the 2009-2011 fiscal biennium, the legislature may transfer from the charitable, educational, penal and reformatory institutions account to the state general fund such amounts as reflect excess fund balance of the fund [account]. [2009 c 564 § 935; 1995 c 399 § 77; 1991 sp.s. c 13 § 39; 1991 c 204 § 3; 1985 c 57 § 37; 1965 ex.s. c 135 § 2; 1965 c 8 § 43.79.201. Prior: 1961 c 170 § 1.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**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.

*Income potential:* RCW 79.02.410.

*Inventory of land:* RCW 79.02.400.

**43.79.280 Unanticipated receipts—Duty of governor on approval.** (1) If the governor approves such estimate in whole or part, he or she shall endorse on each copy of the statement his or her approval, together with a statement of the amount approved in the form of an allotment amendment, and transmit one copy to the head of the department, agency, board, or commission authorizing the expenditure. An identical copy of the governor's statement of approval and a statement of the amount approved for expenditure shall be transmitted simultaneously to the joint legislative audit and review committee and also to the standing committee on ways and means of the house and senate of all executive approvals of proposals to expend money in excess of appropriations provided by law.

(2) If the governor approves an estimate with transportation funding implications, in whole or part, he or she shall endorse on each copy of the statement his or her approval, together with a statement of the amount approved in the form of an allotment amendment, and transmit one copy to the head of the department, agency, board, or commission authorizing the expenditure. An identical copy of the governor's statement of approval of a proposal to expend transportation money in excess of appropriations provided by law and a statement of the amount approved for expenditure must be transmitted simultaneously to the standing committees on transportation of the house and senate. [2009 c 549 § 5150; 2005 c 319 § 106; 1998 c 177 § 2; 1996 c 288 § 38; 1973 c 144 § 3; 1965 c 8 § 43.79.280. Prior: 1945 c 243 § 5; Rem. Supp. 1945 § 5517-14.]

**Findings—Intent—Part headings—Effective dates—2005 c 319:** See notes following RCW 43.17.020.

**43.79.303 Central College fund—Warrants to be paid from general fund.** From and after the first day of May, 1955, all warrants drawn on the Central College fund and not presented for payment shall be paid from the general fund, and it shall be the duty of the state treasurer and he or she is hereby directed to pay such warrants when presented from the general fund. [2009 c 549 § 5151; 1965 c 8 § 43.79.303. Prior: 1955 c 333 § 4.]

**43.79.313 Eastern College fund—Warrants to be paid from general fund.** From and after the first day of May, 1955, all warrants drawn on the Eastern College fund and not presented for payment shall be paid from the general fund, and it shall be the duty of the state treasurer and he or she is hereby directed to pay such warrants when presented from the general fund. [2009 c 549 § 5152; 1965 c 8 § 43.79.313. Prior: 1955 c 334 § 4.]

**43.79.323 Western College fund—Warrants to be paid from general fund.** From and after the first day of May, 1955, all warrants drawn on the Western College fund and not presented for payment shall be paid from the general fund, and it shall be the duty of the state treasurer and he or

she is hereby directed to pay such warrants when presented from the general fund. [2009 c 549 § 5153; 1965 c 8 § 43.79.323. Prior: 1955 c 335 § 4.]

**43.79.343 General obligation bond retirement fund—Warrants to be paid from general fund.** From and after the first day of May, 1955, all warrants drawn on the general obligation bond retirement fund and not presented for payment shall be paid from the general fund, and it shall be the duty of the state treasurer and he or she is hereby directed to pay such warrants when presented from the general fund. [2009 c 549 § 5154; 1965 c 8 § 43.79.343. Prior: 1955 c 330 § 4.]

**43.79.393 United States vocational education account—Warrants to be paid from general fund.** From and after the first day of August, 1957, all warrants drawn on the United States vocational education account in the general fund and not presented for payment shall be paid from the general fund, and it shall be the duty of the state treasurer and he or she is hereby directed to pay such warrants when presented from the general fund. [2009 c 549 § 5155; 1965 c 8 § 43.79.393. Prior: 1957 c 226 § 4.]

**43.79.460 Savings incentive account—Report.** (1) The savings incentive account is created in the custody of the state treasurer. The account shall consist of all moneys appropriated to the account by the legislature. The account is subject to the allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures from the account.

(2) Within the savings incentive account, the state treasurer may create subaccounts to be credited with incentive savings attributable to individual state agencies, as determined by the office of financial management in consultation with the legislative fiscal committees. Moneys deposited in the subaccounts may be expended only on the authorization of the agency's executive head or designee and only for the purpose of one-time expenditures to improve the quality, efficiency, and effectiveness of services to customers of the state, such as one-time expenditures for employee training, employee incentives, technology improvements, new work processes, or performance measurement. Funds may not be expended from the account to establish new programs or services, expand existing programs or services, or incur ongoing costs that would require future expenditures.

(3) For purposes of this section, "incentive savings" means state general fund appropriations that are unspent as of June 30th of a fiscal year, excluding any amounts included in across-the-board reductions under RCW 43.88.110 and excluding unspent appropriations for:

(a) Caseload and enrollment in entitlement programs, except to the extent that an agency has clearly demonstrated that efficiencies have been achieved in the administration of the entitlement program. "Entitlement program," as used in this section, includes programs for which specific sums of money are appropriated for pass-through to third parties or other entities;

(b) Enrollments in state institutions of higher education;

(c) A specific amount contained in a condition or limitation to an appropriation in the biennial appropriations act, if the agency did not achieve the specific purpose or objective of the condition or limitation;

(d) Debt service on state obligations; and

(e) State retirement system obligations.

(4) The office of financial management, after consulting with the legislative fiscal committees, shall report the amount of savings incentives achieved.

(5) For fiscal year 2009, the legislature may transfer from the savings incentive account to the state general fund such amounts as reflect the fund balance of the account attributable to unspent state general fund appropriations for fiscal year 2008. [2009 c 518 § 21; 2009 c 4 § 902; 1998 c 302 § 1; 1997 c 261 § 1.]

**Effective date—2009 c 4:** See note following RCW 28A.505.220.

**Effective date—1997 c 261:** "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 6, 1997]." [1997 c 261 § 3.]

**43.79.465 Education savings account.** The education savings account is created in the state treasury. The account shall consist of all moneys appropriated to the account by the legislature.

(1) Ten percent of legislative appropriations to the education savings account shall be distributed as follows: (a) Fifty percent to the distinguished professorship trust fund under RCW 28B.76.565; (b) seventeen percent to the graduate fellowship trust fund under RCW 28B.76.610; and (c) thirty-three percent to the college faculty awards trust fund under RCW 28B.50.837.

(2) The remaining moneys in the education savings account may be appropriated solely for (a) common school construction projects that are eligible for funding from the common school construction account, (b) technology improvements in the common schools, (c) during the 2001-03 fiscal biennium, technology improvements in public higher education institutions, and (d) during the 2007-2009 fiscal biennium, the legislature may transfer from the education savings account to the state general fund such amounts as reflect the excess fund balance of the account attributable to unspent state general fund appropriations for fiscal year 2008. [2009 c 4 § 903; 2004 c 275 § 64; 2001 2nd sp.s. c 7 § 917; 1998 c 302 § 2; 1997 c 261 § 2. Formerly RCW 28A.305.235.]

**Effective date—2009 c 4:** See note following RCW 28A.505.220.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

**Severability—Effective date—2001 2nd sp.s. c 7:** See notes following RCW 43.320.110.

**Effective date—1997 c 261:** See note following RCW 43.79.460.

**43.79.480 Tobacco settlement account—Transfers to life sciences discovery fund—Tobacco prevention and control account.** (1) Moneys received by the state of Washington in accordance with the settlement of the state's legal action against tobacco product manufacturers, exclusive of costs and attorneys' fees, shall be deposited in the tobacco settlement account created in this section except as these moneys are sold or assigned under chapter 43.340 RCW.

(2) The tobacco settlement account is created in the state treasury. Moneys in the tobacco settlement account may only be transferred to the state general fund, and to the tobacco prevention and control account for purposes set forth in this section. The legislature shall transfer amounts received as strategic contribution payments as defined in RCW 43.350.010 to the life sciences discovery fund created in RCW 43.350.070. During the 2009-2011 fiscal biennium, the legislature may transfer less than the entire strategic contribution payments.

(3) The tobacco prevention and control account is created in the state treasury. The source of revenue for this account is moneys transferred to the account from the tobacco settlement account, investment earnings, donations to the account, and other revenues as directed by law. Expenditures from the account are subject to appropriation. During the 2009-2011 fiscal biennium, the legislature may transfer from the tobacco prevention and control account to the state general fund such amounts as represent the excess fund balance of the account. [2009 c 564 § 937; 2009 c 479 § 30; 2005 c 424 § 12; 2002 c 365 § 15; 1999 c 309 § 927.]

**Reviser's note:** This section was amended by 2009 c 479 § 30 and by 2009 c 564 § 937, 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—2009 c 564:** See note following RCW 2.68.020.

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Captions not law—Liberal construction—Severability—Effective dates—2005 c 424:** See RCW 43.350.900 through 43.350.903.

**Captions not law—Severability—Effective date—2002 c 365:** See RCW 43.340.900 through 43.340.902.

**Effective dates—1999 c 309 §§ 927-929, 931, and 1101-1902:** "(1) Sections 927, 928, 931, and 1101 through 1902 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 [May 14, 1999].

(2) Section 929 of this act takes effect September 1, 2000." [1999 c 309 § 2002.]

**Severability—1999 c 309:** See note following RCW 41.06.152.

**43.79.485 Reading achievement account.** (1) The reading achievement account is created in the custody of the state treasurer. The purposes of the account are to establish a depository for state and other funds made available for reading achievement, and to ensure that unspent amounts appropriated for reading achievement continue to be available for that purpose in future biennia.

(2) The director of early learning shall deposit in the account all appropriations to the department and nonstate moneys received by the department for reading achievement, including reading foundations and implementation of research-based reading models.

Moneys deposited in the account do not lapse at the close of the fiscal period for which they were appropriated. Both during and after the fiscal period in which moneys were deposited in the account, the director may expend moneys in the account only for the purposes for which they were appropriated, and the expenditures are subject to any other conditions or limitations placed on the appropriations.

(3) Expenditures from the account may be used only for reading achievement, including reading foundations, implementation of research-based reading models, and grants to



school districts. During the 2007-2009 fiscal biennium, the legislature may transfer from the reading achievement account to the state general fund such amounts as reflect the excess fund balance of the account.

(4) Only the director of early learning or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2009 c 4 § 904; 2006 c 120 § 1.]

**Effective date—2009 c 4:** See note following RCW 28A.505.220.

**43.79.505 Judicial stabilization trust account.** The judicial stabilization trust account is created within the state treasury, subject to appropriation. All receipts from the surcharges authorized by sections 1 through 4, chapter 572, Laws of 2009 shall be deposited in this account. Moneys in the account may be spent only after appropriation.

Expenditures from the account may be used only for the support of judicial branch agencies. [2009 c 572 § 5.]

**Effective date—2009 c 572:** "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, 2009." [2009 c 572 § 6.]

## Chapter 43.79A RCW

### TREASURER'S TRUST FUND

#### Sections

- 43.79A.020 Treasurer's trust fund—Created—Nontreasury trust funds to be placed in—Exceptions.  
43.79A.040 Management—Income—Investment income account—Distribution.

**43.79A.020 Treasurer's trust fund—Created—Nontreasury trust funds to be placed in—Exceptions.** There is created a trust fund outside the state treasury to be known as the "treasurer's trust fund." All nontreasury trust funds which are in the custody of the state treasurer on April 10, 1973, shall be placed in the treasurer's trust fund and be subject to the terms of this chapter. Funds of the state department of transportation shall be placed in the treasurer's trust fund only if mutually agreed to by the state treasurer and the department. In order to assure an orderly transition to a centralized management system, the state treasurer may place each of such trust funds in the treasurer's trust fund at such times as he or she deems advisable. Except for department of transportation trust funds, all such funds shall be incorporated in the treasurer's trust fund by June 30, 1975. Other funds in the custody of state officials or state agencies may, upon their request, be established as accounts in the treasurer's trust fund with the discretionary concurrence of the state treasurer. All income received from the treasurer's trust fund investments shall be deposited in the investment income account pursuant to RCW 43.79A.040. [2009 c 549 § 5156; 1991 sp.s. c 13 § 81; 1984 c 7 § 47; 1973 1st ex.s. c 15 § 2.]

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Severability—1984 c 7:** See note following RCW 47.01.141.

**43.79A.040 Management—Income—Investment income account—Distribution.** (1) Money in the trea-

surer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the students with dependents grant account, the basic health plan self-insurance reserve account, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the Washington international exchange scholarship endowment fund, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family leave insurance account, the food animal veterinarian conditional scholarship account, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the grain inspection revolving fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the pilotage account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the sulfur dioxide abatement account, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account (earnings from the Washington horse racing commission operating account must be credited to the Washington horse racing commission class C purse fund account), the life sciences discovery fund, the Washington state heritage center account, the reduced cigarette ignition propensity account, and the reading achievement account. However, the earnings to be distributed shall

first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(c) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right-of-way revolving fund, the advanced environmental mitigation revolving account, the city and county advance right-of-way revolving fund, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2009 c 87 § 4. Prior: 2008 c 239 § 9; 2008 c 208 § 9; 2008 c 128 § 20; 2008 c 122 § 24; prior: 2007 c 523 § 5; 2007 c 357 § 21; 2007 c 214 § 14; prior: 2006 c 311 § 21; 2006 c 120 § 2; prior: 2005 c 424 § 18; 2005 c 402 § 8; 2005 c 215 § 10; 2005 c 16 § 2; prior: 2004 c 246 § 8; 2004 c 58 § 10; prior: 2003 c 403 § 9; 2003 c 313 § 10; 2003 c 191 § 7; 2003 c 148 § 15; 2003 c 92 § 8; 2003 c 19 § 12; prior: 2002 c 322 § 5; 2002 c 204 § 7; 2002 c 61 § 6; prior: 2001 c 201 § 4; 2001 c 184 § 4; 2000 c 79 § 45; prior: 1999 c 384 § 8; 1999 c 182 § 2; 1998 c 268 § 1; prior: 1997 c 368 § 8; 1997 c 289 § 13; 1997 c 220 § 221 (Referendum Bill No. 48, approved June 17, 1997); 1997 c 140 § 6; 1997 c 94 § 3; 1996 c 253 § 409; prior: 1995 c 394 § 2; 1995 c 365 § 1; prior: 1993 sp.s. c 8 § 2; 1993 c 500 § 5; 1991 sp.s. c 13 § 82; 1973 1st ex.s. c 15 § 4.]

**Effective date—2009 c 87 § 4:** "Section 4 of this act takes effect August 1, 2009." [2009 c 87 § 5.]

**Effective date—2008 c 239:** See RCW 19.305.900.

**Findings—Intent—2008 c 208:** See RCW 28B.121.005.

**Effective date—2008 c 128 §§ 17-20:** See note following RCW 88.16.061.

**Effective date—2008 c 122 §§ 23 and 24:** See note following RCW 47.56.167.

**Contingency—2007 c 523:** See note following RCW 43.07.128.

**Joint legislative task force—2007 c 357:** See note following RCW 49.86.005.

**Findings—2006 c 311:** See note following RCW 36.120.020.

**Captions not law—Liberal construction—Severability—Effective dates—2005 c 424:** See RCW 43.350.900 through 43.350.903.

**SEED act—Findings—Purpose—Short title—2005 c 402:** See RCW 43.31.450 and 43.31.485.

**Effective date—2004 c 246:** See note following RCW 67.16.270.

**Intent—2003 c 403:** See RCW 70.210.010.

**Findings—Severability—2003 c 313:** See notes following RCW 79.15.500.

**Severability—Effective date—2003 c 92:** See RCW 41.26.905 and 41.26.906.

**Finding—Intent—Short title—Captions not law—2003 c 19:** See RCW 28B.133.005, 28B.133.900, and 28B.133.901.

**Effective date—2002 c 322:** See note following RCW 15.17.240.

**Effective date—2002 c 204:** See RCW 28B.119.900.

**Effective date—Severability—2000 c 79:** See notes following RCW 48.04.010.

**Intent—Captions not law—1999 c 384:** See notes following RCW 43.330.200.

**Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368:** See notes following RCW 82.08.810.

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**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.

**Intent—1997 c 140:** See note following RCW 47.12.330.

**Effective date—1997 c 94:** See note following RCW 47.04.210.

**Findings—Purpose—Severability—Part headings not law—1996 c 253:** See notes following RCW 28B.109.010.

**Effective date—1995 c 394:** See note following RCW 43.84.092.

**Effective date—1995 c 365:** "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 June 1, 1995." [1995 c 365 § 2.]

**Effective date—Application—1993 sp.s. c 8:** See note following RCW 43.84.092.

**Finding—Severability—Effective date—1993 c 500:** See notes following RCW 43.41.180.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

## Chapter 43.80 RCW FISCAL AGENCIES

### Sections

43.80.130 Receipts—Payment procedure—Cremation—Certificate of destruction.

**43.80.130 Receipts—Payment procedure—Cremation—Certificate of destruction.** The fiscal agencies, on the receipt of any moneys transmitted to them by or for this state, or for any affected subdivision, for the purpose of paying therewith any of its bonds or coupons by their terms made payable at the situs of the state of Washington fiscal agencies, shall transmit forthwith to the sender of such moneys a proper receipt therefor; pay such bonds or coupons upon presentation thereof for payment at the office of the fiscal agencies at or after the maturity thereof, in the order of their presentation insofar as the moneys received for that purpose suffice therefor; and cancel all such bonds and coupons upon payment thereof, and thereupon forthwith return the same to the proper officers of this state or affected subdivisions which issued them; and, concerning the same, report to the state and/or affected subdivision within thirty days following a maturity date the amount of bonds and coupons presented and paid to that date: PROVIDED, That nothing herein shall prevent the state or any of the subdivisions thereof from designating its fiscal agencies, or the trustee of any revenue bond issue, or both, also as its agencies for cremation and to provide by agreement therewith, that after one year any general or revenue obligation bonds or interest coupons that have been canceled or paid, may be destroyed as directed by the proper officers of the state or other subdivisions hereinbefore mentioned: PROVIDED FURTHER, That a certificate of destruction giving full descriptive reference to the instruments destroyed shall be made by the person or persons authorized to perform such destruction and one copy of the certificate shall be filed with the treasurer of the state or local subdivisions as applicable. Whenever said treasurer has redeemed any of the bonds or coupons referred to in this section through his or her local office, or whenever such

redemption has been performed by the trustee of any revenue bond issue, and the canceled instruments or certificates of transmittal thereafter have been forwarded to said treasurer for recording, such canceled instruments may be forwarded to the fiscal agents designated as agents for cremation for destruction pursuant to any agreements therefor, or said treasurer may, notwithstanding any provision of state statute to the contrary, destroy such canceled instruments in the presence of the public officers or boards or their authorized representatives, which by law perform the auditing functions within the state or such political subdivisions as hereinbefore specified: PROVIDED, That he or she and the said auditing officers or boards shall execute a certificate of destruction, giving full descriptive reference to the instruments destroyed, which certificates shall be filed with those of the agencies for cremation herein designated. No certificate required by this section shall be destroyed until all of the bonds and coupons of the issue or series described thereon shall have matured and been paid or canceled. [2009 c 549 § 5157; 1969 ex.s. c 80 § 4.]

### Chapter 43.82 RCW STATE AGENCY HOUSING

#### Sections

43.82.140 Insurance on buildings.

**43.82.140 Insurance on buildings.** The director may, in his or her discretion, obtain fire or other hazard insurance on any building under his or her management. [2009 c 549 § 5158; 1965 c 8 § 43.82.140. Prior: 1961 c 184 § 7.]

### Chapter 43.83B RCW WATER SUPPLY FACILITIES

#### Sections

43.83B.220 Contractual agreements.

43.83B.360 State emergency water projects revolving account—Proceeds from sale of bonds.

**43.83B.220 Contractual agreements.** In addition to the powers granted by RCW 43.83B.210, the director of the department of ecology or his or her designee is authorized to make contractual agreements in accordance with provisions of this chapter on behalf of the state of Washington. Contractual agreements shall include provisions to secure such loans, and shall assure the proper and timely payment of said loans or loan portions of combination loans and grants. [2009 c 549 § 5159; 1989 c 11 § 17; 1975 1st ex.s. c 295 § 5.]

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

**43.83B.360 State emergency water projects revolving account—Proceeds from sale of bonds.** The proceeds from the sale of bonds authorized by RCW 43.83B.300, and 43.83B.355 through 43.83B.375 shall be deposited in the state emergency water projects revolving account, hereby created in the state treasury, and shall be used exclusively for the purposes specified in RCW 43.83B.300, and 43.83B.355 through 43.83B.375 and for the payment of expenses incurred in the issuance and sale of such bonds. During the

2009-2011 fiscal biennium, the legislature may transfer from the state emergency water projects revolving account to the state general fund such amounts as reflect the excess fund balance of the account. [2009 c 564 § 938; 1991 sp.s. c 13 § 33; 1985 c 57 § 46; 1977 ex.s. c 1 § 13.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**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.

### Chapter 43.84 RCW INVESTMENTS AND INTERFUND LOANS

#### Sections

43.84.041 Management of permanent funds—Disposition of securities.

43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited.

43.84.120 Investment in state warrants.

**43.84.041 Management of permanent funds—Disposition of securities.** All securities purchased or held on behalf of said funds, shall be held and disbursed through the state treasury and shall be in the physical custody of the state treasurer, who may deposit with the fiscal agent of the state, or with a state depository, such of said securities as he or she shall consider advisable to be held in safekeeping by said agent or bank for collection of principal and interest, or of the proceeds of sale thereof. [2009 c 549 § 5160; 1965 ex.s. c 104 § 4.]

**43.84.092 Deposit of surplus balance investment earnings—Treasury income account—Accounts and funds credited.** (1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments

shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the budget stabilization account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the common school construction fund, the county arterial preservation account, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight congestion relief account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the health system capacity account, the personal health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety account, the high occupancy toll lanes operations account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public transportation systems account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound

ferry operations account, the Puyallup tribal settlement account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural Washington loan fund, the site closure account, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 corridor account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the urban arterial trust account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington fruit express account, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section. [2009 c 479 § 31; 2009 c 472 § 5; 2009 c 451 § 8; (2009 c 451 § 7 expired July 1, 2009). Prior: 2008 c 128 § 19; 2008 c 106 § 4; (2008 c 106 § 3 expired July 1, 2009); (2008 c 106 § 2 expired July 1, 2008); prior: 2007 c 514 § 3; 2007 c 513 § 1; 2007 c 484 § 4; 2007 c 356 § 9; prior: 2006 c 337 § 11; (2006 c 337 § 10 expired July 1, 2006); 2006 c 311 § 23; (2006 c 311 § 22 expired July 1, 2006); 2006 c 171 § 10; (2006 c 171 § 9 expired July 1, 2006); 2006 c 56 § 10; (2006 c 56 § 9 expired July 1, 2006); 2006 c 6 § 8; prior: 2005 c 514 § 1106; 2005 c 353 § 4; 2005 c 339 § 23; 2005 c 314 § 110;

2005 c 312 § 8; 2005 c 94 § 2; 2005 c 83 § 5; prior: (2005 c 353 § 2 expired July 1, 2005); 2004 c 242 § 60; prior: 2003 c 361 § 602; 2003 c 324 § 1; 2003 c 150 § 2; 2003 c 48 § 2; prior: 2002 c 242 § 2; 2002 c 114 § 24; 2002 c 56 § 402; prior: 2001 2nd sp.s. c 14 § 608; (2001 2nd sp.s. c 14 § 607 expired March 1, 2002); 2001 c 273 § 6; (2001 c 273 § 5 expired March 1, 2002); 2001 c 141 § 3; (2001 c 141 § 2 expired March 1, 2002); 2001 c 80 § 5; (2001 c 80 § 4 expired March 1, 2002); 2000 2nd sp.s. c 4 § 6; prior: 2000 2nd sp.s. c 4 § 5; (2000 2nd sp.s. c 4 §§ 3, 4 expired September 1, 2000); 2000 c 247 § 702; 2000 c 79 § 39; (2000 c 79 §§ 37, 38 expired September 1, 2000); prior: 1999 c 380 § 9; 1999 c 380 § 8; 1999 c 309 § 929; (1999 c 309 § 928 expired September 1, 2000); 1999 c 268 § 5; (1999 c 268 § 4 expired September 1, 2000); 1999 c 94 § 4; (1999 c 94 §§ 2, 3 expired September 1, 2000); 1998 c 341 § 708; 1997 c 218 § 5; 1996 c 262 § 4; prior: 1995 c 394 § 1; 1995 c 122 § 12; prior: 1994 c 2 § 6 (Initiative Measure No. 601, approved November 2, 1993); 1993 sp.s. c 25 § 511; 1993 sp.s. c 8 § 1; 1993 c 500 § 6; 1993 c 492 § 473; 1993 c 445 § 4; 1993 c 329 § 2; 1993 c 4 § 9; 1992 c 235 § 4; 1991 sp.s. c 13 § 57; 1990 2nd ex.s. c 1 § 204; 1989 c 419 § 12; 1985 c 57 § 51.]

**Reviser's note:** This section was amended by 2009 c 451 § 8, 2009 c 472 § 5, and by 2009 c 479 s 31, 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 date—2009 c 479:** See note following RCW 2.56.030.

**Intent—Effective date—2009 c 472:** See notes following RCW 47.56.870.

**Effective date—2009 c 451 § 8:** "Section 8 of this act takes effect July 1, 2009." [2009 c 451 § 9.]

**Expiration dates—2009 c 451 §§ 2, 3, 5, 6, and 7:** See note following RCW 43.325.010.

**Effective date—Intent—2009 c 451:** See notes following RCW 43.325.010.

**Effective date—2008 c 128 §§ 17-20:** See note following RCW 88.16.061.

**Expiration dates—2008 c 106 §§ 2 and 3:** "(1) Section 2 of this act expires July 1, 2008.

(2) Section 3 of this act expires July 1, 2009." [2008 c 106 § 5.]

**Effective dates—2008 c 106 §§ 3 and 4:** "(1) Section 3 of this act takes effect July 1, 2008.

(2) Section 4 of this act takes effect July 1, 2009." [2008 c 106 § 6.]

**Effective date—2007 c 513:** "This act takes effect July 1, 2009." [2007 c 513 § 2.]

**Contingent effective date—2007 c 484 §§ 2-8:** See note following RCW 43.79.495.

**Short title—2007 c 356:** See note following RCW 74.31.005.

**Effective date—2006 c 337 § 11:** "Section 11 of this act takes effect July 1, 2006." [2006 c 337 § 14.]

**Expiration date—2006 c 337 § 10:** "Section 10 of this act expires July 1, 2006." [2006 c 337 § 13.]

**Effective date—2006 c 311 § 23:** "Section 23 of this act takes effect July 1, 2006." [2006 c 311 § 31.]

**Expiration date—2006 c 311 § 22:** "Section 22 of this act expires July 1, 2006." [2006 c 311 § 30.]

**Findings—2006 c 311:** See note following RCW 36.120.020.

**Expiration date—2006 c 171 § 9:** "Section 9 of this act expires July 1, 2006." [2006 c 171 § 14.]

**Effective date—2006 c 171 §§ 8 and 10:** See note following RCW 42.56.270.

**Findings—Severability—2006 c 171:** See RCW 43.325.001 and 43.325.901.

**Expiration date—2006 c 56 § 9:** "Section 9 of this act expires July 1, 2006." [2006 c 56 § 11.]

**Effective dates—2006 c 56:** See note following RCW 41.45.230.

**Effective date—2006 c 6:** See RCW 90.90.900.

**Effective date—2005 c 514 § 1106:** "Section 1106 of this act takes effect July 1, 2006." [2005 c 514 § 1313.]

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

**Effective dates—2005 c 353:** See note following RCW 71A.20.170.

**Effective date—2005 c 339 § 23:** "Section 23 of this act takes effect July 1, 2006." [2005 c 339 § 25.]

**Effective dates—2005 c 314 §§ 110 and 201-206:** See note following RCW 46.17.010.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Effective dates—2005 c 312 §§ 6 and 8:** See note following RCW 42.17.310.

**Intent—Captions—2005 c 312:** See notes following RCW 47.56.401.

**Effective dates—2005 c 94:** "(1) Section 1 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 takes effect July 1, 2005.

(2) Section 2 of this act takes effect July 1, 2006." [2005 c 94 § 3.]

**Findings—Effective dates—2005 c 83:** See notes following RCW 47.26.340.

**Effective date—2004 c 242:** See RCW 41.37.901.

**Findings—Part headings not law—Severability—2003 c 361:** See notes following RCW 82.36.025.

**Effective dates—2003 c 361:** See note following RCW 82.08.020.

**Effective date—2003 c 150 §§ 2 and 3:** "Sections 2 and 3 of this act take effect July 1, 2005." [2003 c 150 § 4.]

**Findings—Intent—2003 c 150; 2002 c 242:** "The legislature finds that the community economic revitalization board plays a valuable and unique role in stimulating and diversifying local economies, attracting private investment, creating new jobs, and generating additional state and local tax revenues by investing in public facilities projects that result in new or expanded economic development. The legislature also finds that it is in the best interest of the state and local communities to secure a stable and dedicated source of funds for the community economic revitalization board. It is the intent of the legislature to establish an ongoing funding source for the community economic revitalization board that will be used exclusively to advance economic development infrastructure. This act provides a partial funding solution by directing that beginning July 1, 2005, the interest earnings generated by the public works assistance account shall be used to fund the community economic revitalization board's financial assistance programs. These funds are not for use other than for the stated purpose and goals of the community economic revitalization board." [2003 c 150 § 1; 2002 c 242 § 1.]

**Effective date—2003 c 48:** See note following RCW 29A.04.440.

**Finding—Intent—2002 c 114:** See RCW 47.46.011.

**Captions not law—2002 c 114:** See note following RCW 47.46.011.

**Captions and subheadings not law—Severability—2002 c 56:** See RCW 36.120.900 and 36.120.901.

**Effective date—2001 2nd sp.s. c 14 § 608:** "Section 608 of this act takes effect March 1, 2002." [2001 2nd sp.s. c 14 § 611.]

**Expiration date—2001 2nd sp.s. c 14 § 607:** "Section 607 of this act expires March 1, 2002." [2001 2nd sp.s. c 14 § 610.]

**Severability—Effective date—2001 2nd sp.s. c 14:** See notes following RCW 47.04.210.

**Effective date—2001 c 273 § 6:** "Section 6 of this act takes effect March 1, 2002." [2001 c 273 § 8.]

**Expiration date—2001 c 273 § 5:** "Section 5 of this act expires March 1, 2002." [2001 c 273 § 7.]

**Effective date—2001 c 141 § 3:** "Section 3 of this act takes effect March 1, 2002." [2001 c 141 § 6.]

**Expiration date—2001 c 141 § 2:** "Section 2 of this act expires March 1, 2002." [2001 c 141 § 5.]

**Purpose—2001 c 141:** "This act is needed to comply with federal law, which is the source of funds in the drinking water assistance account, used to fund the Washington state drinking water loan program as part of the federal safe drinking water act." [2001 c 141 § 1.]

**Effective date—2001 c 80 § 5:** "Section 5 of this act takes effect March 1, 2002." [2001 c 80 § 7.]

**Expiration date—2001 c 80 § 4:** "Section 4 of this act expires March 1, 2002." [2001 c 80 § 6.]

**Findings—Intent—2001 c 80:** See note following RCW 43.70.040.

**Expiration date—2000 2nd sp.s. c 4 §§ 3 and 4:** "Sections 3 and 4 of this act expire September 1, 2000." [2000 2nd sp.s. c 4 § 37.]

**Effective date—2000 2nd sp.s. c 4 §§ 1-3 and 20:** See note following RCW 82.08.020.

**Effective dates—2000 2nd sp.s. c 4 §§ 4-10:** See note following RCW 43.89.010.

**Effective dates—Subchapter headings not law—2000 c 247:** See RCW 41.40.931 and 41.40.932.

**Expiration date—2000 c 79 §§ 37 and 38:** "Sections 37 and 38 of this act expire September 1, 2000." [2000 c 79 § 49.]

**Effective dates—2000 c 79 §§ 26, 38, and 39:** See note following RCW 48.43.041.

**Severability—2000 c 79:** See note following RCW 48.04.010.

**Severability—Effective date—1999 c 380:** See RCW 43.99P.900 and 43.99P.901.

**Expiration date—1999 c 309 § 928:** "Section 928 of this act expires September 1, 2000." [1999 c 309 § 930.]

**Effective dates—1999 c 309 §§ 927-929, 931, and 1101-1902:** See note following RCW 43.79.480.

**Severability—1999 c 309:** See note following RCW 41.06.152.

**Effective date—1999 c 268 § 5:** "Section 5 of this act takes effect September 1, 2000." [1999 c 268 § 7.]

**Expiration date—1999 c 268 § 4:** "Section 4 of this act expires September 1, 2000." [1999 c 268 § 6.]

**Expiration date—1999 c 94 §§ 2 and 3:** "Sections 2 and 3 of this act expire September 1, 2000." [1999 c 94 § 36.]

**Legislative finding—1999 c 94:** "The legislature finds that a periodic review of the accounts and their uses is necessary. While creating new accounts may facilitate the implementation of legislative intent, the creation of too many accounts limits the effectiveness of performance-based budgeting. Too many accounts also limit the flexibility of the legislature to address emerging and changing issues in addition to creating administrative burdens for the responsible agencies. Accounts created for specific purposes may no longer be valid or needed. Accordingly, this act eliminates accounts that are not in use or are unneeded and consolidates accounts that are similar in nature." [1999 c 94 § 1.]

**Effective dates—1999 c 94:** "(1) Sections 1, 2, 5 through 24, 29 through 31, and 33 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 July 1, 1999.

(2) Section 4 of this act takes effect September 1, 2000.

(3) Sections 32 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 take effect June 30, 1999.

(4) Sections 3, 25 through 28, and 34 of this act take effect July 1, 2000." [1999 c 94 § 35.]

**Effective date—1998 c 341:** See RCW 41.35.901.

**Findings—Effective date—1997 c 218:** See notes following RCW 70.119.030.

**Transportation infrastructure account—Highway infrastructure account—Finding—Intent—Purpose—1996 c 262:** See RCW 82.44.195.

**Effective date—1996 c 262:** See note following RCW 82.44.190.

**Effective date—1995 c 394:** "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 June 1, 1995." [1995 c 394 § 3.]

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**Declaration—Intent—Purpose—1995 c 122:** See RCW 59.21.006.

**Severability—Effective date—1995 c 122:** See RCW 59.21.904 and 59.21.905.

**Severability—Effective dates—1994 c 2 (Initiative Measure No. 601):** See RCW 43.135.903 and 43.135.904.

**Severability—Effective dates—Part headings, captions not law—1993 sp.s. c 25:** See notes following RCW 82.04.230.

**Findings—Intent—1993 sp.s. c 25:** See note following RCW 82.45.010.

**Effective date—Application—1993 sp.s. c 8:** "This act shall take effect July 1, 1993, but shall not be effective for earnings on balances prior to July 1, 1993." [1993 sp.s. c 8 § 3.]

**Finding—Severability—Effective date—1993 c 500:** See notes following RCW 43.41.180.

**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 329:** See note following RCW 90.50A.020.

**Legislative declaration—Effective date—1993 c 4:** See notes following RCW 47.56.770.

**Effective dates—Severability—1991 sp.s. c 13:** See notes following RCW 18.08.240.

**Applicability—1990 2nd ex.s. c 1:** See note following RCW 82.14.050.

**Severability—1990 2nd ex.s. c 1:** See note following RCW 82.14.300.

**Intent—Effective date—1989 c 419:** See notes following RCW 4.92.006.

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

**43.84.120 Investment in state warrants.** Whenever there is in any fund or in cash balances in the state treasury more than sufficient to meet the current expenditures properly payable therefrom, and over and above the amount belonging to the permanent school fund as shown by the separation made by the state treasurer, the state treasurer may invest such portion of such funds or balances over and above that belonging to the permanent school fund in registered warrants of the state of Washington at such times and in such amounts, and may sell them at such times, as he or she deems advisable: PROVIDED, That those funds having statutory authority to make investments are excluded from the provisions of RCW 43.84.120.

Upon such investment being made, the state treasurer shall pay into the appropriate fund the amount so invested, and the warrants so purchased shall be deposited with the state treasurer, who shall collect all interest and principal payments falling due thereon and allocate the same to the proper fund or funds. [2009 c 549 § 5161; 1971 ex.s. c 88 § 4; 1965 c 8 § 43.84.120. Prior: 1951 c 232 § 2.]

**Severability—1971 ex.s. c 88:** See note following RCW 43.08.070.

## Chapter 43.85 RCW STATE DEPOSITARIES

### Sections

43.85.070 Deposits deemed in state treasury—Liability.  
43.85.190 Investment deposits and rate of interest.

**43.85.070 Deposits deemed in state treasury—Liability.** The state treasurer may deposit with any qualified public depositary which has fully complied with all requirements of

law and the regulations of the public deposit protection commission any state moneys in his or her hands or under his or her official control and any sum so on deposit shall be deemed to be in the state treasury, and he or she shall not be liable for any loss thereof resulting from the failure or default of any such depository without fault or neglect on his or her part or on the part of his or her assistants or clerks. [2009 c 549 § 5162; 1969 ex.s. c 193 § 18; 1965 c 8 § 43.85.070. Prior: 1945 c 129 § 2; 1943 c 134 § 1; 1935 c 139 § 3; 1931 c 87 § 2; 1907 c 37 § 4; Rem. Supp. 1945 § 5551.]

**Construction—Severability—1969 ex.s. c 193:** See notes following RCW 39.58.010.

*Liability of treasurers for losses of deposits:* RCW 39.58.140.

**43.85.190 Investment deposits and rate of interest.** It is the purpose of RCW 43.85.190 through 43.85.230 to authorize the state treasurer to make investment deposits of state moneys or funds in his or her custody in qualified public depositories at a rate of interest permitted by any applicable statute or regulation. [2009 c 549 § 5163; 1983 c 66 § 17; 1982 c 3 § 113; 1969 ex.s. c 193 § 21; 1965 c 8 § 43.85.190. Prior: 1955 c 198 § 1.]

**Severability—1983 c 66:** See note following RCW 39.58.010.

**Construction—Severability—1969 ex.s. c 193:** See notes following RCW 39.58.010.

## Chapter 43.86A RCW

### SURPLUS FUNDS—INVESTMENT PROGRAM

#### Sections

- 43.86A.020 Surplus funds held as demand deposits to be limited.
- 43.86A.030 Time certificate of deposit investment program—Available funds—Allocation.
- 43.86A.060 Linked deposit program—Eligible entities—Interest rates—Rule-making authority.

**43.86A.020 Surplus funds held as demand deposits to be limited.** After March 19, 1973, the state treasurer shall limit surplus funds held as demand deposits to an amount necessary for current operating expenses including direct warrant redemption payments, investments and revenue collection. The state treasurer may hold such additional funds as demand deposits as he or she deems necessary to insure efficient treasury management. [2009 c 549 § 5164; 1973 c 123 § 2.]

**43.86A.030 Time certificate of deposit investment program—Available funds—Allocation.** (1) Funds held in public depositories not as demand deposits, as provided in RCW 43.86A.020 and this section, shall be available for a time certificate of deposit investment program according to the following formula: The state treasurer shall apportion to all participating depositories an amount equal to five percent of the three year average mean of general state revenues as certified in accordance with Article VIII, section 1(b) of the state Constitution, or fifty percent of the total surplus treasury investment availability, whichever is less. Within thirty days after certification, those funds determined to be available according to this formula for the time certificate of deposit investment program shall be deposited in qualified public depositories. These deposits shall be allocated among the

participating depositories on a basis to be determined by the state treasurer.

(2) Of all funds available under this section, the state treasurer may use up to one hundred seventy-five million dollars per year for the purposes of RCW 43.86A.060(2)(c) (i) and (iii) and up to fifteen million dollars per year for the purposes of RCW 43.86A.060(2)(c)(ii). The amounts made available to these public depositories shall be equal to the amounts of outstanding loans made under RCW 43.86A.060.

(3) The formula so devised shall be a matter of public record giving consideration to, but not limited to deposits, assets, loans, capital structure, investments or some combination of these factors. However, if in the judgment of the state treasurer the amount of allocation for certificates of deposit as determined by this section will impair the cash flow needs of the state treasury, the state treasurer may adjust the amount of the allocation accordingly. [2009 c 384 § 2; 2008 c 187 § 2; 2007 c 500 § 1; 2005 c 302 § 2; 1993 c 512 § 33; 1982 c 74 § 1; 1973 c 123 § 3.]

**Intent—2005 c 302:** "The legislature intends that funds provided under the linked deposit program shall be used to create jobs and economic opportunity as well as to remedy the problem of a lack of access to capital by minority and women's business enterprises." [2005 c 302 § 1.]

#### **43.86A.060 Linked deposit program—Eligible entities—Interest rates—Rule-making authority.**

(1) The state treasurer shall establish a linked deposit program for investment of deposits in qualified public depositories. As a condition of participating in the program, qualified public depositories must make qualifying loans as provided in this section. The state treasurer may purchase a certificate of deposit that is equal to the amount of the qualifying loan made by the qualified public depository or may purchase a certificate of deposit that is equal to the aggregate amount of two or more qualifying loans made by one or more qualified public depositories.

(2) Qualifying loans made under this section are those:

(a) Having terms that do not exceed ten years;

(b) Where an individual loan does not exceed one million dollars;

(c)(i) That are made to a minority or women's business enterprise that has received state certification under chapter 39.19 RCW;

(ii) That are made to a veteran-owned business that has received state certification under RCW 43.60A.190; or

(iii) That are made to a community development financial institution that is: (A) Certified by the United States department of the treasury pursuant to 12 U.S.C. Sec. 4701 et seq.; and (B) using that loan to make qualifying loans under (c)(i) of this subsection;

(d) Where the interest rate on the loan to the minority or women's business enterprise or veteran-owned business does not exceed an interest rate that is two hundred basis points below the interest rate the qualified public depository would charge for a loan for a similar purpose and a similar term, except that, if the preference given by the state treasurer to the qualified public depository under subsection (3) of this section is less than two hundred basis points, the qualified public depository may reduce the preference given on the loan by an amount that corresponds to the reduction in pref-

erence below two hundred basis points given to the qualified public depository; and

(e) Where the points or fees charged at loan closing do not exceed one percent of the loan amount.

(3) In setting interest rates of time certificate of deposits, the state treasurer shall offer rates so that a two hundred basis point preference will be given to the qualified public depository, except that the treasurer may lower the amount of the preference to ensure that the effective interest rate on the deposit is not less than zero percent.

(4) Upon notification by the state treasurer that a minority or women's business enterprise is no longer certified under chapter 39.19 RCW or that a veteran-owned business is no longer certified under RCW 43.60A.190, the qualified public depository shall reduce the amount of qualifying loans by the outstanding balance of the loan made under this section to the minority or women's business enterprise or the veteran-owned business, as applicable.

(5) The office of minority and women's business enterprises has the authority to adopt rules to:

(a) Ensure that when making a qualified loan under the linked deposit program, businesses that have never received a loan under the linked deposit program are given first priority;

(b) Limit the total principal loan amount that any one business receives in qualified loans under the linked deposit program over the lifetime of the businesses;

(c) Limit the total principal loan amount that an owner of one or more businesses receives in qualified loans under the linked deposit program during the owner's lifetime;

(d) Limit the total amount of any one qualified loan made under the linked deposit program; and

(e) Ensure that loans made by community development financial institutions are qualifying loans under subsection (2)(c)(i) of this section. [2009 c 385 § 3; 2009 c 384 § 1; 2008 c 187 § 3; 2007 c 500 § 2; 2005 c 302 § 3; 2002 c 305 § 1; 1993 c 512 § 30.]

**Reviser's note:** This section was amended by 2009 c 384 § 1 and by 2009 c 385 § 3, 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—2005 c 302:** See note following RCW 43.86A.030.

**Finding—Intent—1993 c 512:** "The legislature finds that minority and women's business enterprises have been historically excluded from access to capital in the marketplace. The lack of capital has been a major barrier to the development and expansion of business by various minority groups and women. There has been a significant amount of attention on the capital needs of minority and women's business enterprises. It is the intent of the legislature to remedy the problem of a lack of access to capital by minority and women's business enterprises, and other small businesses by authorizing the state treasurer to operate a program that links state deposits to business loans by financial institutions to minority and women's business enterprises." [1993 c 512 § 29.]

### Chapter 43.88 RCW

## STATE BUDGETING, ACCOUNTING, AND REPORTING SYSTEM

#### Sections

43.88.067	Repealed.
43.88.100	Executive hearings.
43.88.110	Expenditure programs—Allotments—Reserves—Monitor capital appropriations—Predesign review for major capital construction.

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**43.88.067 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.88.100 Executive hearings.** The governor may provide for hearings on all agency requests for expenditures to enable him or her to make determinations as to the need, value or usefulness of activities or programs requested by agencies. The governor may require the attendance of proper agency officials at his or her hearings and it shall be their duty to disclose such information as may be required to enable the governor to arrive at his or her final determination. [2009 c 549 § 5165; 1965 c 8 § 43.88.100. Prior: 1959 c 328 § 10.]

**43.88.110 Expenditure programs—Allotments—Reserves—Monitor capital appropriations—Predesign review for major capital construction.** This section sets forth the expenditure programs and the allotment and reserve procedures to be followed by the executive branch for public funds.

(1) Allotments of an appropriation for any fiscal period shall conform to the terms, limits, or conditions of the appropriation.

(2) The director of financial management shall provide all agencies with a complete set of operating and capital instructions for preparing a statement of proposed expenditures at least thirty days before the beginning of a fiscal period. The set of instructions need not include specific appropriation amounts for the agency.

(3) Within forty-five days after the beginning of the fiscal period or within forty-five days after the governor signs the omnibus biennial appropriations act, whichever is later, all agencies shall submit to the governor a statement of proposed expenditures at such times and in such form as may be required by the governor.

(4) The office of financial management shall develop a method for monitoring capital appropriations and expenditures that will capture at least the following elements:

(a) Appropriations made for capital projects including transportation projects;

(b) Estimates of total project costs including past, current, ensuing, and future biennial costs;

(c) Comparisons of actual costs to estimated costs;

(d) Comparisons of estimated construction start and completion dates with actual dates;

(e) Documentation of fund shifts between projects.

This data may be incorporated into the existing accounting system or into a separate project management system, as deemed appropriate by the office of financial management.

(5) The office of financial management, prior to approving allotments for major capital construction projects valued over five million dollars, shall institute procedures for reviewing such projects at the predesign stage that will reduce long-term costs and increase facility efficiency. The procedures shall include, but not be limited to, the following elements:

(a) Evaluation of facility program requirements and consistency with long-range plans;

(b) Utilization of a system of cost, quality, and performance standards to compare major capital construction projects; and



(c) A requirement to incorporate value-engineering analysis and constructability review into the project schedule.

(6) No expenditure may be incurred or obligation entered into for such major capital construction projects including, without exception, land acquisition, site development, pre-design, design, construction, and equipment acquisition and installation, until the allotment of the funds to be expended has been approved by the office of financial management. This limitation does not prohibit the continuation of expenditures and obligations into the succeeding biennium for projects for which allotments have been approved in the immediate prior biennium.

(7) If at any time during the fiscal period the governor projects a cash deficit in a particular fund or account as defined by RCW 43.88.050, the governor shall make across-the-board reductions in allotments for that particular fund or account so as to prevent a cash deficit, unless the legislature has directed the liquidation of the cash deficit over one or more fiscal periods. Except for the legislative and judicial branches and other agencies headed by elective officials, the governor shall review the statement of proposed operating expenditures for reasonableness and conformance with legislative intent. The governor may request corrections of proposed allotments submitted by the legislative and judicial branches and agencies headed by elective officials if those proposed allotments contain significant technical errors. Once the governor approves the proposed allotments, further revisions may at the request of the office of financial management or upon the agency's initiative be made on a quarterly basis and must be accompanied by an explanation of the reasons for significant changes. However, changes in appropriation level authorized by the legislature, changes required by across-the-board reductions mandated by the governor, changes caused by executive increases to spending authority, and changes caused by executive decreases to spending authority for failure to comply with the provisions of chapter 36.70A RCW may require additional revisions. Revisions shall not be made retroactively. However, the governor may assign to a reserve status any portion of an agency appropriation withheld as part of across-the-board reductions made by the governor and any portion of an agency appropriation conditioned on a contingent event by the appropriations act. The governor may remove these amounts from reserve status if the across-the-board reductions are subsequently modified or if the contingent event occurs. The director of financial management shall enter approved statements of proposed expenditures into the state budgeting, accounting, and reporting system within forty-five days after receipt of the proposed statements from the agencies. If an agency or the director of financial management is unable to meet these requirements, the director of financial management shall provide a timely explanation in writing to the legislative fiscal committees.

(8) It is expressly provided that all agencies shall be required to maintain accounting records and to report thereon in the manner prescribed in this chapter and under the regulations issued pursuant to this chapter. Within ninety days of the end of the fiscal year, all agencies shall submit to the director of financial management their final adjustments to close their books for the fiscal year. Prior to submitting fiscal data, written or oral, to committees of the legislature, it is the responsibility of the agency submitting the data to reconcile it

with the budget and accounting data reported by the agency to the director of financial management.

(9) The director of financial management may exempt certain public funds from the allotment controls established under this chapter if it is not practical or necessary to allot the funds. Allotment control exemptions expire at the end of the fiscal biennium for which they are granted. The director of financial management shall report any exemptions granted under this subsection to the legislative fiscal committees. [2009 c 518 § 3; 2003 c 206 § 1; 1997 c 96 § 6; 1994 c 219 § 5. Prior: 1991 sp.s. c 32 § 27; 1991 c 358 § 2; 1987 c 502 § 5; 1986 c 215 § 4; 1984 c 138 § 8; 1983 1st ex.s. c 47 § 1; 1982 2nd ex.s. c 15 § 1; 1981 c 270 § 5; 1979 c 151 § 138; 1975 1st ex.s. c 293 § 6; 1965 c 8 § 43.88.110; prior: 1959 c 328 § 11.]

**Effective date—2003 c 206:** "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, 2003." [2003 c 206 § 2.]

**Findings—Purpose—1997 c 96:** See note following RCW 43.82.150.

**Finding—1994 c 219:** See note following RCW 43.88.030.

**Section headings not law—1991 sp.s. c 32:** See RCW 36.70A.902.

**Effective date—1991 c 358:** See note following RCW 43.88.030.

**Severability—1982 2nd ex.s. 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." [1982 2nd ex.s. c 15 § 5.]

**Effective date—Severability—1981 c 270:** See notes following RCW 43.88.010.

*Exception: RCW 43.88.265.*

## Chapter 43.89 RCW TELETYPEWRITER COMMUNICATIONS NETWORK

### Sections

43.89.040 Transfer of powers, duties, functions to chief of state patrol.

**43.89.040 Transfer of powers, duties, functions to chief of state patrol.** The powers, duties, and functions of the director of budget relating to the state teletypewriter communication network are transferred to the chief of the Washington state patrol. All existing contracts, orders, rules, regulations, records, and obligations together with communications equipment, motor vehicles, and any other property, device, or thing and any remaining appropriation pertaining to such communication network shall be transferred by the director of budget or his or her agent to the chief of the Washington state patrol as of July 1, 1965. [2009 c 549 § 5166; 1965 ex.s. c 60 § 1.]

## Chapter 43.99H RCW FINANCING FOR APPROPRIATIONS— 1989-1991 BIENNIUM

### Sections

43.99H.060 Reimbursement of general fund.

**43.99H.060 Reimbursement of general fund.** (1) For bonds issued for the purposes of RCW 43.99H.020(16), on each date on which any interest or principal and interest pay-

ment is due, the board of regents or the board of trustees of Washington State University shall cause the amount computed in RCW 43.99H.040(1) to be paid out of the appropriate building account or capital projects account to the state treasurer for deposit into the general fund of the state treasury.

(2) For bonds issued for the purposes of RCW 43.99H.020(15), on each date on which any interest or principal and interest payment is due, the state treasurer shall transfer the amount computed in RCW 43.99H.040(2) from the capitol campus reserve account, hereby created in the state treasury, to the general fund of the state treasury. At the time of sale of the bonds issued for the purposes of RCW 43.99H.020(15), and on or before June 30th of each succeeding year while such bonds remain outstanding, the state finance committee shall determine, based on current balances and estimated receipts and expenditures from the capitol campus reserve account, that portion of principal and interest on such RCW 43.99H.020(15) bonds which will, by virtue of payments from the capitol campus reserve account, be reimbursed from sources other than "general state revenues" as that term is defined in Article VIII, section 1 of the state Constitution.

(3) For bonds issued for the purposes of RCW 43.99H.020(17), on each date on which any interest or principal and interest payment is due, the director of the department of labor and industries shall cause fifty percent of the amount computed in RCW 43.99H.040(3) to be transferred from the accident fund created in RCW 51.44.010 and fifty percent of the amount computed in RCW 43.99H.040(3) to be transferred from the medical aid fund created in RCW 51.44.020, to the general fund of the state treasury.

(4) For bonds issued for the purposes of RCW 43.99H.020(18), on each date on which any interest or principal and interest payment is due, the board of regents of the University of Washington shall cause the amount computed in RCW 43.99H.040(4) to be paid out of University of Washington nonappropriated local funds to the state treasurer for deposit into the general fund of the state treasury.

(5) For bonds issued for the purposes of RCW 43.99H.020(4), on each date on which any interest or principal and interest payment is due, the state treasurer shall transfer from property taxes in the state general fund levied for the support of the common schools under RCW 84.52.065 to the general fund of the state treasury for unrestricted use the amount computed in RCW 43.99H.040(6). [2009 c 500 § 8; 2009 c 479 § 32; 1991 sp.s. c 31 § 15; 1990 1st ex.s. c 15 § 6; 1989 1st ex.s. c 14 § 6.]

**Reviser's note:** This section was amended by 2009 c 479 § 32 and by 2009 c 500 § 8, 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—2009 c 500:** See note following RCW 39.42.070.

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Severability—1991 sp.s. c 31:** See RCW 43.991.900.

**Severability—1990 1st ex.s. c 15:** See note following RCW 43.99H.010.

[2009 RCW Supp—page 850]

## Chapter 43.99K RCW

### FINANCING FOR APPROPRIATIONS— 1995-1997 BIENNIUM

#### Sections

43.99K.030 Retirement of bonds—Reimbursement of general fund—Pledge and promise—Remedies.

**43.99K.030 Retirement of bonds—Reimbursement of general fund—Pledge and promise—Remedies.** (1)(a) The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 43.99K.020 (1), (2), and (3).

(b) The debt-limit reimbursable bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 43.99K.020(4).

(c) The nondebt-limit reimbursable bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 43.99K.020(5).

(2) The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements. On each date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account, debt-limit reimbursable bond retirement account, nondebt-limit reimbursable bond retirement account, as necessary, an amount equal to the amount certified by the state finance committee to be due on the payment date.

(3) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of RCW 43.99K.020(5), the board of regents of the University of Washington shall cause to be paid out of University of Washington nonappropriated local funds to the state treasurer for deposit into the general fund of the state treasury the amount computed in subsection (2) of this section for bonds issued for the purposes of RCW 43.99K.020(5).

(4) Bonds issued under this section and RCW 43.99K.010 and 43.99K.020 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.

(5) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2009 c 479 § 33; 2005 c 487 § 8; 1997 c 456 § 23; 1995 2nd sp.s. c 17 § 3.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Severability—Effective date—2005 c 487:** See RCW 43.99S.900 and 43.99S.901.

**Severability—1997 c 456:** See RCW 43.99L.900.

**Effective date—1997 c 456 §§ 9-43:** See RCW 43.99M.901.

**Chapter 43.99L RCW**  
**FINANCING FOR APPROPRIATIONS—**  
**1997-1999 BIENNIUM**

## Sections

43.99L.040 Retirement of bonds—Reimbursement of general fund from debt-limit reimbursable bond retirement account.

**43.99L.040 Retirement of bonds—Reimbursement of general fund from debt-limit reimbursable bond retirement account.** (1) The debt-limit reimbursable bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 43.99L.020(2).

(2) The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in RCW 43.99L.020(2).

(3) On each date on which any interest or principal and interest payment is due on bonds issued for the purpose of RCW 43.99L.020(2), the state treasurer shall transfer from the state general fund to the debt-limit reimbursable bond retirement account the amount computed in subsection (2) of this section for the bonds issued for the purpose of RCW 43.99L.020(2). [2009 c 479 § 34; 1997 c 456 § 4.]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Chapter 43.99N RCW**  
**STADIUM AND EXHIBITION CENTER BOND ISSUE**  
**(REFERENDUM 48)**

## Sections

43.99N.060 Stadium and exhibition center account—Youth athletic facility account—Community outdoor athletic facility loans and grants.

43.99N.110 Repealed.

**43.99N.060 Stadium and exhibition center account—Youth athletic facility account—Community outdoor athletic facility loans and grants.** (1) The stadium and exhibition center account is created in the custody of the state treasurer. All receipts from the taxes imposed under RCW 82.14.0494 and distributions under RCW 67.70.240(5) shall be deposited into the account. Only the director of the office of financial management or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW. An appropriation is not required for expenditures from this account.

(2) Until bonds are issued under RCW 43.99N.020, up to five million dollars per year beginning January 1, 1999, shall be used for the purposes of subsection (3)(b) of this section, all remaining moneys in the account shall be transferred to the public stadium authority, created under RCW 36.102.020, to be used for public stadium authority operations and development of the stadium and exhibition center.

(3) After bonds are issued under RCW 43.99N.020, all moneys in the stadium and exhibition center account shall be used exclusively for the following purposes in the following priority:

(a) On or before June 30th of each year, the office of financial management shall accumulate in the stadium and

exhibition center account an amount at least equal to the amount required in the next succeeding twelve months for the payment of principal of and interest on the bonds issued under RCW 43.99N.020;

(b) An additional reserve amount not in excess of the expected average annual principal and interest requirements of bonds issued under RCW 43.99N.020 shall be accumulated and maintained in the account, subject to withdrawal by the state treasurer at any time if necessary to meet the requirements of (a) of this subsection, and, following any withdrawal, reaccumulated from the first tax revenues and other amounts deposited in the account after meeting the requirements of (a) of this subsection; and

(c) The balance, if any, shall be transferred to the youth athletic facility account under subsection (4) of this section.

Any revenues derived from the taxes authorized by RCW 36.38.010(5) and 36.38.040 or other amounts that if used as provided under (a) and (b) of this subsection would cause the loss of any tax exemption under federal law for interest on bonds issued under RCW 43.99N.020 shall be deposited in and used exclusively for the purposes of the youth athletic facility account and shall not be used, directly or indirectly, as a source of payment of principal of or interest on bonds issued under RCW 43.99N.020, or to replace or reimburse other funds used for that purpose.

(4) Any moneys in the stadium and exhibition center account not required or permitted to be used for the purposes described in subsection (3)(a) and (b) of this section shall be deposited in the youth athletic facility account hereby created in the state treasury. Expenditures from the account may be used only for purposes of grants or loans to cities, counties, and qualified nonprofit organizations for community outdoor athletic facilities. Only the director of the recreation and conservation office or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. The athletic facility grants or loans may be used for acquiring, developing, equipping, maintaining, and improving community outdoor athletic facilities. Funds shall be divided equally between the development of new community outdoor athletic facilities, the improvement of existing community outdoor athletic facilities, and the maintenance of existing community outdoor athletic facilities. Cities, counties, and qualified nonprofit organizations must submit proposals for grants or loans from the account. To the extent that funds are available, cities, counties, and qualified nonprofit organizations must meet eligibility criteria as established by the director of the recreation and conservation office. The grants and loans shall be awarded on a competitive application process and the amount of the grant or loan shall be in proportion to the population of the city or county for where the community outdoor athletic facility is located. Grants or loans awarded in any one year need not be distributed in that year. In the 2009-2011 biennium, if there are not enough project applications submitted in a category within the account to meet the requirement of equal distribution of funds to each category, the director of the recreation and conservation office may distribute any remaining funds to other categories within the account. The director of the recreation and conservation office may expend up to one and one-half percent of the moneys deposited in the

account created in this subsection for administrative purposes. [2009 c 497 § 6026; 2008 c 328 § 6017; 2007 c 241 § 11; 2006 c 371 § 227; 2000 c 137 § 1; 1997 c 220 § 214 (Referendum Bill No. 48, approved June 17, 1997).]

**Effective date—2009 c 497:** See note following RCW 28B.15.210.

**Part headings not law—Severability—Effective date—2008 c 328:** See notes following RCW 43.155.050.

**Intent—Effective date—2007 c 241:** See notes following RCW 79A.25.005.

**Part headings not law—Severability—Effective date—2006 c 371:** See notes following RCW 43.325.040.

**43.99N.110 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

### Chapter 43.99Q RCW FINANCING FOR APPROPRIATIONS— 2001-2003 BIENNIUM

#### Sections

- 43.99Q.120 Legislative building rehabilitation project—Finding—Intent.  
43.99Q.130 Legislative building rehabilitation project—General obligation bonds.

**43.99Q.120 Legislative building rehabilitation project—Finding—Intent.** The legislature finds that it is necessary to complete the rehabilitation of the state legislative building, to extend the useful life of the building, and provide for the permanent relocation of offices displaced by the rehabilitation and create new space for public uses.

Furthermore, it is the intent of the legislature to fund the majority of the rehabilitation and construction using bonds repaid by the capitol building construction account, as provided for in the enabling act and dedicated by the federal government for the sole purpose of establishing a state capitol, to fund the cash elements of the project using capital project surcharge revenues in the Thurston county capital facilities account, and to support the establishment of a private foundation to engage the public in the preservation of the state legislative building and raise private funds for restoration and educational efforts. [2009 c 500 § 9; 2001 2nd sp.s. c 9 § 13.]

**Effective date—2009 c 500:** See note following RCW 39.42.070.

**43.99Q.130 Legislative building rehabilitation project—General obligation bonds.** For the purpose of providing funds for the planning, design, construction, and other necessary costs for the rehabilitation of the state legislative building, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of eighty-two million five hundred ten thousand dollars or as much thereof as may be required to finance the rehabilitation and improvements to the legislative building and all costs incidental thereto. The approved rehabilitation plan includes costs associated with earthquake repairs and future earthquake mitigation and allows for associated relocation costs and the acquisition of appropriate relocation space. Bonds authorized in this section may be sold at a price the state finance committee determines. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. The proceeds of the sale of the bonds issued for the purposes

of this section shall be deposited in the capitol historic district construction account hereby created in the state treasury. These proceeds shall be used exclusively for the purposes specified in this section and for the payment of expenses incurred in the issuance and sale of the bonds issued for the purposes of this section, and shall be administered by the office of financial management subject to legislative appropriation. [2009 c 500 § 10; 2001 2nd sp.s. c 9 § 14.]

**Effective date—2009 c 500:** See note following RCW 39.42.070.

### Chapter 43.99V RCW SCHOOL CONSTRUCTION ASSISTANCE GRANT PROGRAM

#### Sections

- 43.99V.010 School construction assistance grant program—Bond issue.  
43.99V.020 Conditions and limitations.  
43.99V.030 Retirement of bonds.  
43.99V.040 Pledge and promise—Remedies.  
43.99V.050 Payment of principal and interest—Additional means for raising money authorized.  
43.99V.900 Effective date—2009 c 6.  
43.99V.901 Effective date—2009 c 6.  
43.99V.902 Severability—2009 c 6.

**43.99V.010 School construction assistance grant program—Bond issue.** For the purpose of providing funds to finance the school construction assistance grant program described and authorized by the legislature in the capital appropriations acts for the 2007-2009 and 2009-2011 fiscal biennia, and all costs incidental thereto, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one hundred thirty-three million dollars, or as much thereof as may be required, to finance these projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. [2009 c 6 § 1.]

**43.99V.020 Conditions and limitations.** The proceeds from the sale of the bonds authorized in RCW 43.99V.010 shall be deposited in the state building construction account created by RCW 43.83.020. If the state finance committee deems it necessary to issue taxable bonds in order to comply with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds, the proceeds of such taxable bonds shall be transferred to the state taxable building construction account in lieu of any deposits otherwise provided by this section. The state treasurer shall submit written notice to the director of financial management if it is determined that any such transfer to the state taxable building construction account is necessary. Moneys in the account may be spent only after appropriation.

These proceeds shall be used exclusively for the purposes specified in this section and for the payment of expenses incurred in the issuance and sale of the bonds issued for the purposes of this section, and shall be administered by the office of financial management subject to legislative appropriation. [2009 c 6 § 2.]

## Chapter 43.99W RCW

FINANCING FOR APPROPRIATIONS—  
2007-2009 AND 2009-2011 BIENNIA

## Sections

- 43.99W.010 General obligation bonds for capital and operating appropriations acts.  
 43.99W.020 Conditions and limitations.  
 43.99W.030 Retirement of bonds—Reimbursement of general fund from debt-limit general fund bond retirement account.  
 43.99W.040 Pledge and promise—Remedies.  
 43.99W.050 Payment of principal and interest—Additional means for raising money authorized.  
 43.99W.900 Effective date—2009 c 498.

**43.99V.030 Retirement of bonds.** (1) The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in chapter 6, Laws of 2009.

(2) The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in RCW 43.99V.010.

(3) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of chapter 6, Laws of 2009, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date. [2009 c 6 § 3.]

**43.99V.040 Pledge and promise—Remedies.** (1) Bonds issued under RCW 43.99V.010 through 43.99V.030 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.

(2) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2009 c 6 § 4.]

**43.99V.050 Payment of principal and interest—Additional means for raising money authorized.** The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 43.99V.010, and RCW 43.99V.020 and 43.99V.030 shall not be deemed to provide an exclusive method for the payment. [2009 c 6 § 5.]

**43.99V.900 Effective date—2009 c 6.** 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 [February 18, 2009]. [2009 c 6 § 8.]

**43.99V.901 Effective date—2009 c 6.** 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 [February 18, 2009]. [2009 c 6 § 10.]

**43.99V.902 Severability—2009 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. [2009 c 6 § 9.]

**43.99W.010 General obligation bonds for capital and operating appropriations acts.** For the purpose of providing funds to finance the projects described and authorized by the legislature in the capital and operating appropriations acts for the 2007-2009 and 2009-2011 fiscal bienniums, and all costs incidental thereto, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of two billion two hundred nineteen million dollars, or as much thereof as may be required, to finance these projects and all costs incidental thereto. Bonds authorized in this section may be sold at such price as the state finance committee shall determine. No bonds authorized in this section may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds. [2009 c 498 § 1.]

**43.99W.020 Conditions and limitations.** The proceeds from the sale of the bonds authorized in RCW 43.99W.010 shall be deposited in the state building construction account created by RCW 43.83.020. The proceeds shall be transferred as follows:

(1) One billion nine hundred forty-seven million dollars to remain in the state building construction account created by RCW 43.83.020;

(2) Twenty-seven million dollars to the outdoor recreation account created by RCW 79A.25.060;

(3) Twenty-seven million dollars to the habitat conservation account created by RCW 79A.15.020;

(4) Six million dollars to the riparian protection account created by RCW 79A.15.120;

(5) Ten million dollars to the farmlands preservation account created by RCW 79A.15.130;

(6) One hundred fifty-nine million dollars to the state taxable building construction account. All receipts from taxable bond issues are to be deposited into the account. If the state finance committee deems it necessary or advantageous to issue more than the amount specified in this subsection (6) as taxable bonds in order to comply with federal internal revenue service rules and regulations pertaining to the use of nontaxable bond proceeds or in order to reduce the total financing costs for bonds issued, the proceeds of such additional taxable bonds shall be transferred to the state taxable building construction account in lieu of any transfer otherwise provided by this section. The state treasurer shall submit written notice to the director of financial management if it is determined that any such additional transfer to the state taxable building construction account is necessary. Moneys in the account may be spent only after appropriation.

These proceeds shall be used exclusively for the purposes specified in this section and for the payment of expenses incurred in the issuance and sale of the bonds issued for the purposes of this section, and shall be administered by the office of financial management subject to legislative appropriation. [2009 c 498 § 2.]

**43.99W.030 Retirement of bonds—Reimbursement of general fund from debt-limit general fund bond retirement account.** (1) The debt-limit general fund bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 43.99W.020 (1), (2), (3), (4), (5), and (6).

(2) The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements on the bonds authorized in RCW 43.99W.020 (1), (2), (3), (4), (5), and (6).

(3) On each date on which any interest or principal and interest payment is due on bonds issued for the purposes of RCW 43.99W.020 (1), (2), (3), (4), (5), and (6) the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date. [2009 c 498 § 3.]

**43.99W.040 Pledge and promise—Remedies.** (1) Bonds issued under RCW 43.99W.010 through 43.99W.030 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.

(2) The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [2009 c 498 § 4.]

**43.99W.050 Payment of principal and interest—Additional means for raising money authorized.** The legislature may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 43.99W.010, and RCW 43.99W.020 and 43.99W.030 shall not be deemed to provide an exclusive method for the payment. [2009 c 498 § 5.]

**43.99W.900 Effective date—2009 c 498.** 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 15, 2009]. [2009 c 498 § 21.]

[2009 RCW Supp—page 854]

## Chapter 43.101 RCW

### CRIMINAL JUSTICE TRAINING COMMISSION— EDUCATION AND TRAINING STANDARDS BOARDS

#### Sections

- 43.101.040 Terms of members—Vacancies.
- 43.101.050 Cessation of membership upon termination of office or employment.
- 43.101.070 Compensation—Reimbursement of travel expenses.
- 43.101.095 Peace officer certification.
- 43.101.220 Training for corrections personnel.
- 43.101.221 Training for corrections personnel—Core training requirements.
- 43.101.380 Hearings—Standard of proof—Appeals—Judicial review.
- 43.101.420 Personal crisis recognition and crisis intervention services—Training.
- 43.101.425 Communications to crisis referral services—Confidentiality of communications and records.

**43.101.040 Terms of members—Vacancies.** All members appointed to the commission by the governor shall be appointed for terms of six years, such terms to commence on July first, and expire on June thirtieth: PROVIDED, That of the members first appointed three shall be appointed for two year terms, three shall be appointed for four year terms, and three shall be appointed for six year terms: PROVIDED, FURTHER, That the terms of the two members appointed as incumbent police chiefs shall not expire in the same year nor shall the terms of the two members appointed as representing correctional systems expire in the same year nor shall the terms of the two members appointed as incumbent sheriffs expire in the same year. Any member chosen to fill a vacancy created otherwise than by expiration of term shall be appointed for the unexpired term of the member he or she is to succeed. Any member may be reappointed for additional terms. [2009 c 549 § 5167; 1974 ex.s. c 94 § 4.]

**43.101.050 Cessation of membership upon termination of office or employment.** Any member of the commission appointed pursuant to RCW 43.101.030 as an incumbent official or as an employee in a correctional system, as the case may be, shall immediately upon the termination of his or her holding of said office or employment, cease to be a member of the commission. [2009 c 549 § 5168; 1974 ex.s. c 94 § 5.]

**43.101.070 Compensation—Reimbursement of travel expenses.** Members of the commission shall be compensated in accordance with RCW 43.03.240 and shall be reimbursed for their travel expenses incurred in the performance of their duties in accordance with RCW 43.03.050 and 43.03.060. Attendance at meetings of the commission shall be deemed performance by a member of the duties of his or her employment. [2009 c 549 § 5169; 1984 c 287 § 85; 1975-'76 2nd ex.s. c 34 § 126; 1974 ex.s. c 94 § 7.]

**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.

**43.101.095 Peace officer certification.** (1) As a condition of continuing employment as peace officers, all Washington peace officers: (a) Shall timely obtain certification as

peace officers, or timely obtain certification or exemption therefrom, by meeting all requirements of RCW 43.101.200, as that section is administered under the rules of the commission, as well by meeting any additional requirements under this chapter; and (b) shall maintain the basic certification as peace officers under this chapter.

(2)(a) As a condition of continuing employment for any applicant that has been offered a conditional offer of employment as a fully commissioned peace officer or a reserve officer after July 24, 2005, including any person whose certification has lapsed as a result of a break of more than twenty-four consecutive months in the officer's service as a fully commissioned peace officer or reserve officer, the applicant shall successfully pass a psychological examination and a polygraph or similar test as administered by the county, city, or state law enforcement agency that complies with the following requirements:

(i) The psychological examination shall be administered by a psychiatrist licensed in the state of Washington pursuant to chapter 18.71 RCW or a psychologist licensed in the state of Washington pursuant to chapter 18.83 RCW in compliance with standards established in rules of the commission.

(ii) The polygraph examination or similar assessment shall be administered by an experienced polygrapher who is a graduate of a polygraph school accredited by the American polygraph association.

(b) The employing county, city, or state law enforcement agency may require that each peace officer or reserve officer who is required to take a psychological examination and a polygraph or similar test pay a portion of the testing fee based on the actual cost of the test or four hundred dollars, whichever is less. County, city, and state law enforcement agencies may establish a payment plan if they determine that the peace officer or reserve officer does not readily have the means to pay for his or her portion of the testing fee.

(3) The commission shall certify peace officers who have satisfied, or have been exempted by statute or by rule from, the basic training requirements of RCW 43.101.200 on or before January 1, 2002. Thereafter, the commission may revoke certification pursuant to this chapter.

(4) The commission shall allow a peace officer to retain status as a certified peace officer as long as the officer: (a) Timely meets the basic law enforcement training requirements, or is exempted therefrom, in whole or in part, under RCW 43.101.200 or under rule of the commission; (b) meets or is exempted from any other requirements under this chapter as administered under the rules adopted by the commission; (c) is not denied certification by the commission under this chapter; and (d) has not had certification revoked by the commission.

(5) As a prerequisite to certification, as well as a prerequisite to pursuit of a hearing under RCW 43.101.155, a peace officer must, on a form devised or adopted by the commission, authorize the release to the commission of his or her personnel files, termination papers, criminal investigation files, or other files, papers, or information that are directly related to a certification matter or decertification matter before the commission.

(6) The commission is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with employment by the commission

or peace officer certification under this chapter. Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited.

(7) For a national criminal history records check, the commission shall require fingerprints be submitted and searched through the Washington state patrol identification and criminal history section. The Washington state patrol shall forward the fingerprints to the federal bureau of investigation. [2009 c 139 § 1; 2008 c 74 § 8; 2005 c 434 § 2; 2001 c 167 § 2.]

**Finding—2008 c 74:** See note following RCW 51.04.024.

#### **43.101.220 Training for corrections personnel.** (1)

The corrections personnel of the state and all counties and municipal corporations initially employed on or after January 1, 1982, shall engage in basic corrections training which complies with standards adopted by the commission. The training shall be successfully completed during the first six months of employment of the personnel, unless otherwise extended or waived by the commission, and shall be requisite to the continuation of employment.

(2) The commission shall provide the training required in this section, together with facilities, supplies, materials, and the room and board for noncommuting attendees.

(3)(a) Subsections (1) and (2) of this section do not apply to the Washington state department of corrections prisons division. The Washington state department of corrections is responsible for identifying training standards, designing curricula and programs, and providing the training for those corrections personnel employed by it. In doing so, the secretary of the department of corrections shall consult with staff development experts and correctional professionals both inside and outside of the agency, to include soliciting input from labor organizations.

(b) The commission and the department of corrections share the responsibility of developing and defining training standards and providing training for community corrections officers employed within the community corrections division of the department of corrections. [2009 c 146 § 2; 2007 c 382 § 1; 1981 c 136 § 26.]

**Intent—2009 c 146:** "The intent of the legislature is that all corrections personnel employed by the Washington department of corrections are prepared to carry out the demands of their position that they are likely to encounter during their daily duties. The protection of the public, department employees, and inmates are a primary reason to ensure that everyone is adequately trained and knowledgeable in routine and emergency procedures.

To best carry out this mission it is necessary for the Washington state department of corrections to have the authority, discretion, and ability to design and conduct mandatory training that best meets the needs of its changing offender population." [2009 c 146 § 1.]

**Effective date—1981 c 136:** See RCW 72.09.900.

**43.101.221 Training for corrections personnel—Core training requirements.** (1) All new corrections personnel employed by the Washington state department of corrections shall, within a period to be determined by the secretary of the department of corrections, successfully complete core training requirements prescribed or obtain a waiver or extension of the core training requirements from the secretary.

(2) Within a period to be determined by the secretary of the Washington state department of corrections after comple-

tion of the core training requirements of this section, corrections personnel employed by the department shall successfully complete all remaining requirements for career level certification prescribed by the secretary applicable to their position or rank, or obtain a waiver or extension of the career level training requirements from the secretary.

(3) The secretary of the department of corrections is responsible for assuring that the training needs of the corrections personnel are met by the department's training program. Once a year, the secretary is responsible for conducting an assessment of the training programs for the corrections personnel employed by the department. [2009 c 146 § 3.]

**Reviser's note:** 2009 c 146 directed that this section be codified in chapter 43.10 RCW. This section has been added to chapter 43.101 RCW, which relates to criminal justice training.

**43.101.380 Hearings—Standard of proof—Appeals—Judicial review.** (1) The procedures governing adjudicative proceedings before agencies under chapter 34.05 RCW, the administrative procedure act, govern hearings before the commission and govern all other actions before the commission unless otherwise provided in this chapter. The standard of proof in actions before the commission is clear, cogent, and convincing evidence.

(2) In all hearings requested under RCW 43.101.155, a five-member hearings panel shall both hear the case and make the commission's final administrative decision. Members of the commission or the board on law enforcement training standards and education may, but need not be, appointed to the hearings panels. The commission shall appoint as follows two or more panels to hear appeals from certification actions:

(a) When a hearing is requested in relation to a certification action of a Washington peace officer who is not a peace officer of the Washington state patrol, the commission shall appoint to the panel: (i) One police chief; (ii) one sheriff; (iii) two certified Washington peace officers who are at or below the level of first line supervisor, one of whom is from a city or county law enforcement agency, and who have at least ten years' experience as peace officers; and (iv) one person who is not currently a peace officer and who represents a community college or four-year college or university.

(b) When a hearing is requested in relation to a certification action of a peace officer of the Washington state patrol, the commission shall appoint to the panel: (i) Either one police chief or one sheriff; (ii) one administrator of the state patrol; (iii) one certified Washington peace officer who is at or below the level of first line supervisor, who is not a state patrol officer, and who has at least ten years' experience as a peace officer; (iv) one state patrol officer who is at or below the level of first line supervisor, and who has at least ten years' experience as a peace officer; and (v) one person who is not currently a peace officer and who represents a community college or four-year college or university.

(c) When a hearing is requested in relation to a certification action of a tribal police officer, the commission shall appoint to the panel (i) either one police chief or one sheriff; (ii) one tribal police chief; (iii) one certified Washington peace officer who is at or below the level of first line supervisor, and who has at least ten years' experience as a peace officer; (iv) one tribal police officer who is at or below the

level of first line supervisor, and who has at least ten years' experience as a peace officer; and (v) one person who is not currently a peace officer and who represents a community college or four-year college or university.

(d) Persons appointed to hearings panels by the commission shall, in relation to any certification action on which they sit, have the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of regular commission members.

(3) Where the charge upon which revocation or denial is based is that a peace officer was "discharged for disqualifying misconduct," and the discharge is "final," within the meaning of RCW 43.101.105(1)(d), and the officer received a civil service hearing or arbitration hearing culminating in an affirming decision following separation from service by the employer, the hearings panel may revoke or deny certification if the hearings panel determines that the discharge occurred and was based on disqualifying misconduct; the hearings panel need not redetermine the underlying facts but may make this determination based solely on review of the records and decision relating to the employment separation proceeding. However, the hearings panel may, in its discretion, consider additional evidence to determine whether such a discharge occurred and was based on such disqualifying misconduct. The hearings panel shall, upon written request by the subject peace officer, allow the peace officer to present additional evidence of extenuating circumstances.

Where the charge upon which revocation or denial of certification is based is that a peace officer "has been convicted at any time of a felony offense" within the meaning of RCW 43.101.105(1)(c), the hearings panel shall revoke or deny certification if it determines that the peace officer was convicted of a felony. The hearings panel need not redetermine the underlying facts but may make this determination based solely on review of the records and decision relating to the criminal proceeding. However, the hearings panel shall, upon the panel's determination of relevancy, consider additional evidence to determine whether the peace officer was convicted of a felony.

Where the charge upon which revocation or denial is based is under RCW 43.101.105(1) (a), (b), (e), or (f), the hearings panel shall determine the underlying facts relating to the charge upon which revocation or denial of certification is based.

(4) The commission's final administrative decision is subject to judicial review under RCW 34.05.510 through 34.05.598. [2009 c 25 § 1; 2006 c 22 § 3; 2001 c 167 § 10.]

**Effective date—Severability—2006 c 22:** See notes following RCW 43.101.085.

**43.101.420 Personal crisis recognition and crisis intervention services—Training.** (1) The commission shall offer a training session on personal crisis recognition and crisis intervention services to criminal justice, correctional personnel, and other public safety employees. The training shall be implemented by the commission in consultation with appropriate public and private organizations that have expertise in crisis referral services and in the underlying conditions leading to the need for crisis referral.



(2) The training shall consist of a minimum of one hour of classroom or internet instruction, and shall include instruction on the following subjects:

(a) The description and underlying causes of problems that may have an impact on the personal and professional lives of public safety employees, including mental health issues, chemical dependency, domestic violence, financial problems, and other personal crises;

(b) Techniques by which public safety employees may recognize the conditions listed in (a) of this subsection and understand the need to seek assistance and obtain a referral for consultation and possible treatment; and

(c) A listing of examples of public and private crisis referral agencies available to public safety employees.

(3) The training developed by the commission shall be made available by the commission to all employees of state and local agencies that perform public safety duties. The commission may charge a reasonable fee to defer the cost of making the training available. [2009 c 19 § 1.]

**43.101.425 Communications to crisis referral services—Confidentiality of communications and records.**

(1) All communications to crisis referral services by employees and volunteers of law enforcement, correctional, fire-fighting, and emergency services agencies, and all records related to the communications, shall be confidential. Crisis referral services include all public or private organizations that advise employees and volunteers of such agencies about sources of consultation and treatment for personal problems including mental health issues, chemical dependency, domestic violence, gambling, financial problems, and other personal crises.

(2) A crisis referral service may reveal information related to crisis referral services to prevent reasonably certain death, substantial bodily harm, or commission of a crime. [2009 c 19 § 2.]

**Chapter 43.105 RCW**

**DEPARTMENT OF INFORMATION SERVICES**

Sections

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**43.105.020 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly required [requires] otherwise.

(1) "Administrator" means the community technology opportunity program administrator designated by the department.

(2) "Backbone network" means the shared high-density portions of the state’s telecommunications transmission facilities. It includes specially conditioned high-speed communications carrier lines, multiplexors, switches associated with such communications lines, and any equipment and software components necessary for management and control of the backbone network.

(3) "Board" means the information services board.

(4) "Broadband" means a high-speed, high capacity transmission medium, using land-based, satellite, wireless, or any other mechanism, that can carry either signals or transmit data, or both, over long distances by using a wide range of frequencies.

(5) "Committee" means the state interoperability executive committee.

(6) "Common vendor registration and bid notification system" has the definition in RCW 39.29.006.

(7) "Community technology programs" means programs that are engaged in diffusing information and communications technology in local communities, particularly in unserved and underserved areas of the state. These programs may include, but are not limited to, programs that provide education and skill-building opportunities, hardware and software, internet connectivity, digital media literacy, development of locally relevant content, and delivery of vital services through technology.

(8) "Council" means the advisory council on digital inclusion created in RCW 43.105.400.

(9) "Department" means the department of information services.

(10) "Director" means the director of the department.

(11) "Educational sectors" means those institutions of higher education, school districts, and educational service districts that use the network for distance education, data transmission, and other uses permitted by the K-20 board.

(12) "Equipment" means the machines, devices, and transmission facilities used in information processing, such as computers, word processors, terminals, telephones, wireless communications system facilities, cables, and any physical facility necessary for the operation of such equipment.

(13) "High-speed internet" means broadband.

(14) "Information" includes, but is not limited to, data, text, voice, and video.

(15) "Information processing" means the electronic capture, collection, storage, manipulation, transmission, retrieval, and presentation of information in the form of data, text, voice, or image and includes telecommunications and office automation functions.

(16) "Information services" means data processing, telecommunications, office automation, and computerized information systems.

(17) "Information technology portfolio" or "portfolio" means a strategic management process documenting relationships between agency missions and information technology and telecommunications investments.

(18) "K-20 educational network board" or "K-20 board" means the K-20 educational network board created in RCW 43.105.800.

(19) "K-20 network" means the network established in RCW 43.105.820.

(20) "K-20 network technical steering committee" or "committee" means the K-20 network technical steering committee created in RCW 43.105.810.

(21) "Local governments" includes all municipal and quasi municipal corporations and political subdivisions, and all agencies of such corporations and subdivisions authorized to contract separately.

(22) "Oversight" means a process of comprehensive risk analysis and management designed to ensure optimum use of information technology resources and telecommunications.

(23) "Proprietary software" means that software offered for sale or license.

(24) "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 for equipment maintenance and repair, operation of a physical plant, security, computer hardware and software installation and maintenance, telecommunications installation and maintenance, data entry, keypunch services, programming services, and computer time-sharing.

(25) "Small business" has the definition in RCW 39.29.006.

(26) "Telecommunications" means the transmission of information by wire, radio, optical cable, electromagnetic, or other means.

(27) "Video telecommunications" means the electronic interconnection of two or more sites for the purpose of transmitting and/or receiving visual and associated audio information. Video telecommunications shall not include existing public television broadcast stations as currently designated by the department of commerce under chapter 43.330 RCW. [2009 c 565 § 32; 2009 c 509 § 7; 2009 c 486 § 14; 2003 c 18 § 2. Prior: 1999 c 285 § 1; 1999 c 80 § 1; 1993 c 280 § 78; 1990 c 208 § 3; 1987 c 504 § 3; 1973 1st ex.s. c 219 § 3; 1967 ex.s. c 115 § 2.]

**Reviser's note:** (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2009 c 486 § 14, 2009 c 509 § 7, and by 2009 c 565 s 32, 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).

**Findings—Intent—Purpose—Effective date—2009 c 509:** See notes following RCW 43.105.370.

**Conflict with federal requirements—2009 c 486:** See note following RCW 28B.30.530.

**Intent—2009 c 486:** See note following RCW 39.29.006.

**Intent—Finding—2003 c 18:** "It is the intent of the legislature to ensure that the state's considerable investment in radio communications facilities, and the radio spectrum that is licensed to government entities in the state, are managed in a way that promotes to the maximum extent the health and safety of the state's citizens and the economic efficiencies of coordinated planning, development, management, maintenance, accountability, and performance. The legislature finds that such coordination is essential for disaster preparedness, emergency management, and public safety, and that such coordination will result in more cost-effective use of state resources and improved government services." [2003 c 18 § 1.]

**Effective date—2003 c 18:** "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, 2003." [2003 c 18 § 6.]

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**Effective date—1967 ex.s. 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, 1967." [1967 ex.s. c 115 § 8.]

**43.105.041 Powers and duties of board.** (1) The board shall have the following powers and duties related to information services:

(a) To develop standards and procedures governing the acquisition and disposition of equipment, proprietary software and purchased services, licensing of the radio spectrum by or on behalf of state agencies, and confidentiality of computerized data;

(b) To purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services, or to delegate to other agencies and institutions of state government, under appropriate standards, the authority to purchase, lease, rent, or otherwise acquire, dispose of, and maintain equipment, proprietary software, and purchased services: PROVIDED, That, agencies and institutions of state government are expressly prohibited from acquiring or disposing of equipment, proprietary software, and purchased services without such delegation of authority. The acquisition and disposition of equipment, proprietary software, and purchased services is exempt from RCW 43.19.1919 and, as provided in RCW 43.19.1901, from the provisions of RCW 43.19.190 through 43.19.200, except that the board, the department, and state agencies, as delegated, must post notices of technology procurement bids on the state's common vendor registration and bid notification system. This subsection (1)(b) does not apply to the legislative branch;

(c) To develop statewide or interagency technical policies, standards, and procedures;

(d) To review and approve standards and common specifications for new or expanded telecommunications networks proposed by agencies, public postsecondary education institutions, educational service districts, or statewide or regional providers of K-12 information technology services, and to assure the cost-effective development and incremental implementation of a statewide video telecommunications system to serve: Public schools; educational service districts; vocational-technical institutes; community colleges; colleges and universities; state and local government; and the general public through public affairs programming;

(e) To provide direction concerning strategic planning goals and objectives for the state. The board shall seek input from the legislature and the judiciary;

(f) To develop and implement a process for the resolution of appeals by:

(i) Vendors concerning the conduct of an acquisition process by an agency or the department; or

(ii) A customer agency concerning the provision of services by the department or by other state agency providers;

(g) To establish policies for the periodic review by the department of agency performance which may include but are not limited to analysis of:

(i) Planning, management, control, and use of information services;

(ii) Training and education; and

(iii) Project management;

(h) To set its meeting schedules and convene at scheduled times, or meet at the request of a majority of its members, the chair, or the director;

(i) To review and approve that portion of the department's budget requests that provides for support to the board; and

(j) To develop procurement policies and procedures, such as unbundled contracting and subcontracting, that encourage and facilitate the purchase of products and services by state agencies and institutions from Washington small businesses to the maximum extent practicable and consistent with international trade agreement commitments.

(2) Statewide technical standards to promote and facilitate electronic information sharing and access are an essential component of acceptable and reliable public access service and complement content-related standards designed to meet those goals. The board shall:

(a) Establish technical standards to facilitate electronic access to government information and interoperability of information systems, including wireless communications systems. Local governments are strongly encouraged to follow the standards established by the board; and

(b) Require agencies to consider electronic public access needs when planning new information systems or major upgrades of systems.

In developing these standards, the board is encouraged to include the state library, state archives, and appropriate representatives of state and local government.

(3)(a) The board, in consultation with the K-20 board, has the duty to govern, operate, and oversee the technical design, implementation, and operation of the K-20 network including, but not limited to, the following duties: Establishment and implementation of K-20 network technical policy, including technical standards and conditions of use; review and approval of network design; procurement of shared network services and equipment; and resolving user/provider disputes concerning technical matters. The board shall delegate general operational and technical oversight to the K-20 network technical steering committee as appropriate.

(b) The board has the authority to adopt rules under chapter 34.05 RCW to implement the provisions regarding the technical operations and conditions of use of the K-20 network. [2009 c 486 § 13; 2003 c 18 § 3; 1999 c 285 § 5. Prior: 1996 c 171 § 8; 1996 c 137 § 12; (1996 c 171 § 7, 1996 c 137 § 11, and 1995 2nd sp.s. c 14 § 512 expired June 30, 1997); 1990 c 208 § 6; 1987 c 504 § 5; 1983 c 3 § 115; 1973 1st ex.s. c 219 § 6.]

**Intent—2009 c 486:** See note following RCW 39.29.006.

**Conflict with federal requirements—2009 c 486:** See note following RCW 28B.30.530.

**Intent—Finding—Effective date—2003 c 18:** See notes following RCW 43.105.020.

**Captions not law—Effective dates—1996 c 171:** See notes following RCW 43.105.250.

**Expiration date—1996 c 171 § 7:** "Section 7 of this act expires June 30, 1997." [1996 c 171 § 20.]

**Effective date—1996 c 137 § 12:** "Section 12 of this act shall take effect June 30, 1997." [1996 c 137 § 18.]

**Expiration date—1996 c 137 § 11:** "Section 11 of this act expires June 30, 1997." [1996 c 137 § 17.]

**Application—1996 c 137:** See note following RCW 43.105.830.

**Expiration date—1995 2nd sp.s. c 14 §§ 511-523, 528-533:** See note following RCW 43.105.017.

**43.105.350 Repealed.** See Supplementary Table of Disposition of Former RCW Sections, this volume.

**43.105.370 Broadband mapping account—Federal broadband data improvement act funding—Coordination of broadband mapping activities.** (1) The broadband mapping account is established in the custody of the state treasurer. The department shall deposit into the account such funds received from legislative appropriation, federal grants authorized under the federal broadband data improvement act, P.L. 110-385, Title I, and donated funds from private and public sources. Expenditures from the account may be used only for the purposes of RCW 43.105.372 through 43.105.376. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) The department of information services is the single eligible entity in the state for purposes of the federal broadband data improvement act, P.L. 110-385, Title I.

(3) Funding received by the department under the federal broadband data improvement act, P.L. 110-385, Title I, must be used in accordance with the requirements of that act and, subject to those requirements, may be distributed by the department on a competitive basis to other entities in the state to achieve the purposes of that act.

(4) The department of information services shall consult with the department of community, trade, and economic development or its successor agency, the office of financial management, and the utilities and transportation commission in coordinating broadband mapping activities. In carrying out any broadband mapping activities, the provisions of P.L. 110-385, Title I, regarding trade secrets, commercial or financial information, and privileged or confidential information submitted by the federal communications commission or a broadband provider are deemed to encompass the consulted agencies. [2009 c 509 § 2.]

**Findings—Intent—Purpose—2009 c 509:** "(1) The legislature finds that the deployment and adoption of high-speed internet services and technology advancements enhance economic development and public safety for the state's communities. Such deployment also offers improved health care, access to consumer and legal services, increased educational and civic participation opportunities, and a better quality of life for the state's residents. The legislature further finds that improvements in the deployment and adoption of high-speed internet services and the strategic inclusion of technology advancements and technology education are critical to ensuring that Washington remains competitive and continues to provide a skilled workforce, attract businesses, and stimulate job growth.

(2) The legislature intends to support strategic partnerships of public, private, nonprofit, and community-based sectors in the continued growth and development of high-speed internet services and information technology. The legislature further intends to ensure that all Washington citizens, businesses, schools, and organizations are able to obtain and utilize broadband fully, regardless of location, economic status, literacy level, age, disability, structure, or size. In addition, the legislature intends that a statewide assessment of the availability, location, service levels, and other characteristics of high-speed internet services and other advanced telecommunications services in the state be conducted.

(3) In recognition of the importance of broadband deployment and adoption to the economy, health, safety, and welfare of the people of Washington, it is the purpose of this act to make high-speed internet service more

readily available throughout the state, especially in areas and for populations with a low utilization rate." [2009 c 509 § 1.]

**Effective date—2009 c 509:** "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, 2009." [2009 c 509 § 16.]

**43.105.372 Reporting availability of high-speed internet—Survey of high-speed internet infrastructure owned or leased by state agencies—Geographic information system map—Rules.** (1) Subject to the availability of federal or state funding, the department may:

(a) Develop an interactive web site to allow residents to self-report whether high-speed internet is available at their home or residence and at what speed; and

(b) Conduct a detailed survey of all high-speed internet infrastructure owned or leased by state agencies and creating [create] a geographic information system map of all high-speed internet infrastructure owned or leased by the state.

(2) State agencies responding to a survey request from the department under subsection (1)(b) of this section shall respond in a reasonable and timely manner, not to exceed one hundred twenty days. The department shall request of state agencies, at a minimum:

(a) The total bandwidth of high-speed internet infrastructure owned or leased;

(b) The cost of maintaining that high-speed internet infrastructure, if owned, or the price paid for the high-speed internet infrastructure, if leased; and

(c) The leasing entity, if applicable.

(3) The department may adopt rules as necessary to carry out the provisions of this section.

(4) For purposes of this section, "state agency" includes every state office, department, division, bureau, board, commission, or other state agency. [2009 c 509 § 3.]

**Findings—Intent—Purpose—Effective date—2009 c 509:** See notes following RCW 43.105.370.

**43.105.374 Procurement of geographic information system map—Accountability and oversight structure—Application of public records act.** (1) The department is authorized, through a competitive bidding process, to procure on behalf of the state a geographic information system map detailing high-speed internet infrastructure, service availability, and adoption. This geographic information system map may include adoption information, availability information, type of high-speed internet deployment technology, and available speed tiers for high-speed internet based on any publicly available data.

(2) The department may procure this map either by:

(a) Contracting for and purchasing a completed map from a third party; or

(b) Working directly with the federal communications commission to accept publicly available data.

(3) The department shall establish an accountability and oversight structure to ensure that there is transparency in the bidding and contracting process and full financial and technical accountability for any information or actions taken by a third-party contractor creating this map.

(4) In contracting for purchase of the map in subsection (2)(a) of this section, the department may take no action, nor impose any condition on the third party, that causes any

record submitted by a public or private broadband service provider to the third party to meet the standard of a public record as defined in RCW 42.56.010. This prohibition does not apply to any records delivered to the department by the third party as a component of the completed map. For the purpose of RCW 42.56.010(2), the purchase by the department of a completed map may not be deemed use or ownership by the department of the underlying information used by the third party to complete the map.

(5) Data or information that is publicly available as of July 1, 2009, will not cease to be publicly available due to any provision of chapter 509, Laws of 2009. [2009 c 509 § 4.]

**Findings—Intent—Purpose—Effective date—2009 c 509:** See notes following RCW 43.105.370.

**43.105.376 Broadband mapping, deployment, and adoption—Reports.** (1) The department, in coordination with the department of community, trade, and economic development and the utilities and transportation commission, and such advisors as the department chooses, may prepare regular reports that identify the following:

(a) The geographic areas of greatest priority for the deployment of advanced telecommunications infrastructure in the state;

(b) A detailed explanation of how any amount of funding received from the federal government for the purposes of broadband mapping, deployment, and adoption will be or have been used; and

(c) A determination of how nonfederal sources may be utilized to achieve the purposes of broadband mapping, deployment, and adoption activities in the state.

(2) To the greatest extent possible, the initial report should be based upon the information identified in the geographic system maps developed under the requirements of this chapter.

(3) The initial report should be delivered to the appropriate committees of the legislature as soon as feasible, but no later than January 18, 2010.

(4) Future reports based upon the requirements of subsection (1) of this section should be delivered to the appropriate committees of the legislature by January 15th of each year. [2009 c 509 § 5.]

**Findings—Intent—Purpose—Effective date—2009 c 509:** See notes following RCW 43.105.370.

**43.105.380 Community technology opportunity program—Administration—Grant program.** The community technology opportunity program is created to support the efforts of community technology programs throughout the state. The community technology opportunity program must be administered by the department of information services. The department may contract for services in order to carry out the department's obligations under this section.

(1) In implementing the community technology opportunity program the administrator must, to the extent funds are appropriated for this purpose:

(a) Provide organizational and capacity building support to community technology programs throughout the state, and identify and facilitate the availability of other public and private sources of funds to enhance the purposes of the program and the work of community technology programs. No more

than fifteen percent of funds received by the administrator for the program may be expended on these functions;

(b) Establish a competitive grant program and provide grants to community technology programs to provide training and skill-building opportunities; access to hardware and software; internet connectivity; digital media literacy; assistance in the adoption of information and communication technologies in low-income and underserved areas of the state; and development of locally relevant content and delivery of vital services through technology.

(2) Grant applicants must:

(a) Provide evidence that the applicant is a nonprofit entity or a public entity that is working in partnership with a nonprofit entity;

(b) Define the geographic area or population to be served;

(c) Include in the application the results of a needs assessment addressing, in the geographic area or among the population to be served: The impact of inadequacies in technology access or knowledge, barriers faced, and services needed;

(d) Explain in detail the strategy for addressing the needs identified and an implementation plan including objectives, tasks, and benchmarks for the applicant and the role that other organizations will play in assisting the applicant's efforts;

(e) Provide evidence of matching funds and resources, which are equivalent to at least one-quarter of the grant amount committed to the applicant's strategy;

(f) Provide evidence that funds applied for, if received, will be used to provide effective delivery of community technology services in alignment with the goals of this program and to increase the applicant's level of effort beyond the current level; and

(g) Comply with such other requirements as the administrator establishes.

(3) The administrator may use no more than ten percent of funds received for the community technology opportunity program to cover administrative expenses.

(4) The administrator must establish expected program outcomes for each grant recipient and must require grant recipients to provide an annual accounting of program outcomes. [2009 c 509 § 6; 2008 c 262 § 6. Formerly RCW 28B.32.010.]

**Findings—Intent—Purpose—Effective date—2009 c 509:** See notes following RCW 43.105.370.

**43.105.382 Washington community technology opportunity account.** The Washington community technology opportunity account is established in the state treasury. The governor or the governor's designee and the director or the director's designee shall deposit into the account federal grants to the state authorized under Division B, Title VI of the American recovery and reinvestment act of 2009, legislative appropriations, and donated funds from private and public sources for purposes related to broadband deployment and adoption, including matching funds required by the act. Donated funds from private and public sources may be deposited into the account. Expenditures from the account may be used only as matching funds for federal and other grants to fund the operation of the community technology

opportunity program under this chapter and to fund other activities authorized in chapter 509, Laws of 2009. Only the director or the director's designee may authorize expenditures from the account. [2009 c 509 § 8; 2008 c 262 § 8. Formerly RCW 28B.32.030.]

**Findings—Intent—Purpose—Effective date—2009 c 509:** See notes following RCW 43.105.370.

**43.105.390 Broadband deployment and adoption—Governor's actions—Oversight and implementation by the department.** (1) The governor may take all appropriate steps to carry out the purposes of Division B, Title VI of the American recovery and reinvestment act of 2009, P.L. 111-5, and maximize investment in broadband deployment and adoption in the state of Washington consistent with chapter 509, Laws of 2009. Such steps may include the designation of a broadband deployment and adoption coordinator; review and prioritization of grant applications by public and private entities as directed by the national telecommunications and information administration, the rural utility services, and the federal communications commission; disbursement of block grant funding; and direction to state agencies to provide staffing as necessary to carry out this section. The authority for overseeing broadband adoption and deployment efforts on behalf of the state is vested in the department.

(2) The department may apply for federal funds and other grants or donations, may deposit such funds in the Washington community technology opportunity account created in RCW 43.105.382, may oversee implementation of federally funded or mandated broadband programs for the state and may adopt rules to administer the programs. These programs may include but are not limited to the following:

(a) Engaging in periodic statewide surveys of residents, businesses, and nonprofit organizations concerning their use and adoption of high-speed internet, computer, and related information technology for the purpose of identifying barriers to adoption;

(b) Working with communities to identify barriers to the adoption of broadband service and related information technology services by individuals, nonprofit organizations, and businesses;

(c) Identifying broadband demand opportunities in communities by working cooperatively with local organizations, government agencies, and businesses;

(d) Creating, implementing, and administering programs to improve computer ownership, technology literacy, digital media literacy, and high-speed internet access for populations not currently served or underserved in the state. This may include programs to provide low-income families, community-based nonprofit organizations, nonprofit entities, and public entities that work in partnership with nonprofit entities to provide increased access to computers and broadband, with reduced cost internet access;

(e) Administering the community technology opportunity program under RCW 43.105.380 and 43.105.382;

(f) Creating additional programs to spur the development of high-speed internet resources in the state;

(g) Establishing technology literacy and digital inclusion programs and establishing low-cost hardware, software, and internet purchasing programs that may include allowing par-

participation by community technology programs in state purchasing programs; and

(h) Developing technology loan programs targeting small businesses or businesses located in unserved and underserved areas. [2009 c 509 § 9.]

**Findings—Intent—Purpose—Effective date—2009 c 509:** See notes following RCW 43.105.370.

**43.105.400 Advisory council on digital inclusion—Annual report.** (1) Subject to the availability of federal or state funding, the department may reconvene the high-speed internet work group previously established by chapter 262, Laws of 2008. The work group is renamed the advisory council on digital inclusion, and is an advisory group to the department. The council must include, but is not limited to, volunteer representatives from community technology organizations, telecommunications providers, higher education institutions, K-12 education institutions, public health institutions, public housing entities, and local government and other governmental entities that are engaged in community technology activities.

(2) The council shall prepare a report by January 15th of each year and submit it to the department, the governor, and the appropriate committees of the legislature. The report must contain:

(a) An analysis of how support from public and private sector partnerships, the philanthropic community, and other not-for-profit organizations in the community, along with strong relationships with the state board for community and technical colleges, the higher education coordinating board, and higher education institutions, could establish a variety of high-speed internet access alternatives for citizens;

(b) Proposed strategies for continued broadband deployment and adoption efforts, as well as further development of advanced telecommunications applications;

(c) Recommendations on methods for maximizing the state's research and development capacity at universities and in the private sector for developing advanced telecommunications applications and services, and recommendations on incentives to stimulate the demand for and development of these applications and services;

(d) An identification of barriers that hinder the advancement of technology entrepreneurship in the state; and

(e) An evaluation of programs designed to advance digital literacy and computer access that are made available by the federal government, local agencies, telecommunications providers, and business and charitable entities. [2009 c 509 § 10.]

**Findings—Intent—Purpose—Effective date—2009 c 509:** See notes following RCW 43.105.370.

**43.105.906 Conflict with federal requirements—2009 c 509.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that

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are a necessary condition to the receipt of federal funds by the state. [2009 c 509 § 11.]

**Findings—Intent—Purpose—Effective date—2009 c 509:** See notes following RCW 43.105.370.

## Chapter 43.115 RCW

### STATE COMMISSION ON HISPANIC AFFAIRS

#### Sections

43.115.040 Officers and employees—Rules and regulations.

**43.115.040 Officers and employees—Rules and regulations.** The commission shall have the following powers and duties:

(1) Elect one of its members to serve as chair;

(2) Adopt rules and regulations pursuant to chapter 34.05 RCW;

(3) Examine and define issues pertaining to the rights and needs of Hispanics, and make recommendations to the governor and state agencies for changes in programs and laws;

(4) Advise the governor and state agencies on the development and implementation of policies, plans, and programs that relate to the special needs of Hispanics;

(5) Advise the legislature on issues of concern to the Hispanic community;

(6) Establish relationships with state agencies, local governments, and private sector organizations that promote equal opportunity and benefits for Hispanics; and

(7) Receive gifts, grants, and endowments from public or private sources that are made for the use or benefit of the commission and expend, without appropriation, the same or any income from the gifts, grants, or endowments according to their terms. [2009 c 549 § 5170; 1993 c 261 § 3; 1987 c 249 § 4; 1971 ex.s. c 34 § 4.]

**Sunset Act application:** See note following chapter digest.

## Chapter 43.117 RCW

### STATE COMMISSION ON ASIAN PACIFIC AMERICAN AFFAIRS

#### Sections

43.117.040 Membership—Terms—Vacancies—Travel expenses—Quorum—Executive director.

43.117.050 Officers—Rules and regulations—Meetings.

43.117.090 Hearings—Information to be furnished to commission.

**43.117.040 Membership—Terms—Vacancies—Travel expenses—Quorum—Executive director.** (1) The commission shall consist of twelve members appointed by the governor. In making such appointments, the governor shall give due consideration to recommendations submitted to him or her by the commission. The governor may also consider nominations of members made by the various Asian-American organizations in the state. The governor shall consider nominations for membership based upon maintaining a balanced distribution of Asian-ethnic, geographic, sex, age, and occupational representation, where practicable.

(2) Appointments shall be for three years except in case of a vacancy, in which event appointment shall be only for the remainder of the unexpired term for which the vacancy

occurs. Vacancies shall be filled in the same manner as the original appointments.

(3) Members shall receive reimbursement for 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.

(4) Seven members shall constitute a quorum for the purpose of conducting business.

(5) The governor shall appoint an executive director based upon recommendations made by the council. [2009 c 549 § 5171; 1982 c 68 § 1; 1981 c 338 § 16; 1975-'76 2nd ex.s. c 34 § 131; 1974 ex.s. c 140 § 4.]

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

**43.117.050 Officers—Rules and regulations—Meetings.** The commission shall:

(1) Elect one of its members to serve as chair; and also such other officers as necessary to form an executive committee;

(2) Adopt rules and regulations pursuant to chapter 34.05 RCW;

(3) Meet at the call of the chair or the call of a majority of its members, but in no case less often than once during any three month period;

(4) Be authorized to appoint such citizen task force as it deems appropriate. [2009 c 549 § 5172; 1974 ex.s. c 140 § 5.]

**43.117.090 Hearings—Information to be furnished to commission.** (1) The commission may for the purpose of carrying out the purposes of this chapter hold such public hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the commission may deem advisable. The commission may administer oaths or affirmations to witnesses appearing before it. At least five members of the commission must be present to conduct a hearing.

(2) The commission may secure directly from any department or agency of the state information necessary to enable it to carry out the purposes of this chapter. Upon request of the chair of the commission, the head of such department or agency shall furnish such information to the commission. [2009 c 549 § 5173; 1974 ex.s. c 140 § 9.]

### Chapter 43.126 RCW GEOGRAPHIC NAMES

#### Sections

- 43.126.025 State board on geographic names created—Membership—Chair.  
43.126.065 Meetings—Rules—Publication of adopted names.

**43.126.025 State board on geographic names created—Membership—Chair.** There is hereby created a Washington state board on geographic names composed of:

- (1) The state librarian or a representative;
- (2) The commissioner of public lands or a representative;
- (3) The chair of the Washington state heritage council created by 1983 law; and

(4) Four members from the general public to be appointed by the commissioner of public lands.

The commissioner of public lands or his or her representative shall be chair of the board.

The members of the initial board to be appointed by the commissioner shall be appointed as follows: One member for a one-year term, one member for a two-year term, one member for a three-year term, and one member for a four-year term. Thereafter, each member shall be appointed for a three-year term. Each member of the board shall continue in office until a successor is appointed. [2009 c 549 § 5174; 1983 c 273 § 2.]

**43.126.065 Meetings—Rules—Publication of adopted names.** (1) The board shall hold at least two meetings each year, and shall hold special meetings as called by the chair or a majority of the board.

(2) All meetings shall be open to the public.

(3) Notice of all board meetings shall be as provided in RCW 42.30.080. This notice includes those names to be considered by the board and those names to be adopted by the board.

(4) Four board members shall constitute a quorum.

(5) The board shall establish rules for the conduct of its affairs and to carry out the purposes of this chapter.

(6) The department of natural resources shall furnish secretarial and administrative services and shall serve as custodian of the records.

(7) All geographic names adopted by the board shall be published in the Washington State Register. [2009 c 549 § 5175; 1983 c 273 § 6.]

### Chapter 43.130 RCW ECONOMIC IMPACT ACT— CLOSING OF STATE FACILITIES

#### Sections

- 43.130.040 Benefits.  
43.130.050 Eligibility—Conditions.

**43.130.040 Benefits.** In order to carry out the purposes of this chapter, the state shall take every reasonable step at its disposal to provide alternative employment and to minimize the economic loss of state employees affected by the closure of state facilities. Affected state employees shall be paid benefits as specified in this section.

(1) Relocation expenses covering the movement of household goods, incurred by the necessity of an employee moving his or her domicile to be within reasonable commuting distance of a new job site, shall be paid by the state to employees transferring to other state employment by reason of the closure of a facility.

(2) Relocation leave shall be allowed up to five working days' leave with pay for the purpose of locating new residence in the area of employment.

(3) The state shall reimburse the transferring employee to the extent of any unavoidable financial loss suffered by an employee who sells his or her home at a price less than the true and fair market value as determined by the county assessor not exceeding three thousand dollars: PROVIDED, That

this right of reimbursement must be exercised, and sale of the property must be accomplished, within a period of two years from the date other state employment is accepted.

(4) For employees in facilities which have been terminated who do not choose to participate in the transfer program set forth in the preceding subsections, the following terminal pay plan shall be available:

(a) For qualifying employees, for each one year of continuous state service, one week (five working days) of regular compensation shall be provided.

(b) Regular compensation as used in subsection (a) hereof shall include salary compensation at the rate being paid to the employees at the time operation of the facility is terminated.

(c) Terminal pay as set forth in subsections (a) and (b) hereof shall be paid to the employee at the termination of the employees last month of employment or within thirty days after \*the effective date of this 1973 act, whichever is later: PROVIDED, That from the total amount of terminal pay, the average sum of unemployment compensation that the qualifying employee is eligible to receive multiplied by the total number of weeks of terminal pay minus one week shall be deducted.

(d) Those employees electing the early retirement benefits as stated in subsection (5) of this section shall not be eligible for the terminal pay provisions as set forth in this subsection.

(e) Those employees who are reemployed by the state during the period they are receiving terminal pay pursuant to subsections (a), (b) and (c) of this section shall reimburse the state for that portion of the terminal pay covered by the period of new employment.

(5) As an option to transferring to other state employment an employee may elect early retirement under the following conditions:

(a) Notwithstanding the age requirements of RCW 41.40.180, any affected employee under this chapter who has attained the age of fifty-five years, with at least five years creditable service, shall be immediately eligible to retire, with no actuarial reduction in the amount of his or her pension benefit.

(b) Notwithstanding the age requirements of RCW 41.40.180, any affected employee under this chapter who has attained the age of forty-five years, with at least five years creditable service, shall be immediately eligible to retire with an actuarial reduction in the amount of his or her pension benefit of three percent for each complete year that such employee is under fifty-five years of age.

(c) Employees who elect to retire pursuant to RCW 41.40.180 shall be eligible to retire while on authorized leave of absence not in excess of one hundred and twenty days.

(d) Employees who elect to retire under the provisions of this section shall not be eligible for any retirement benefit in a year following a year in which their employment income was in excess of six thousand dollars. This six thousand dollars base shall be adjusted annually beginning in 1974 by such cost of living adjustments as are applied by the public employees' retirement system to membership retirement benefits. The public employees' retirement system board shall adopt necessary rules and regulations to implement the provi-

sions of this subsection. [2009 c 549 § 5176; 1973 2nd ex.s. c 37 § 4.]

**\*Reviser's note:** The effective date of 1973 2nd ex.s. c 37 was September 26, 1973.

*Public employees' retirement system: Chapter 41.40 RCW.*

*Termination date of benefits under subsection (3) of this section: RCW 43.130.910.*

**43.130.050 Eligibility—Conditions.** Notwithstanding any other provision of this chapter employees affected by the closure of a state facility as defined in RCW 43.130.020(2) who were employed as of May 1, 1973 at such facility, and who are still in employment of the state or on an official leave of absence as of September 26, 1973, who would otherwise qualify for the enumerated benefits of this chapter are hereby declared eligible for such benefits under the following conditions:

(1) Such employee must be actively employed by the state of Washington or on an official leave of absence on September 26, 1973, and unless the early retirement or terminal pay provisions of this chapter are elected, continue to be employed or to be available for employment in a same or like job classification at not less than one full range lower than the same salary range for a period of at least thirty days thereafter;

(2) Such employee must give written notice of his or her election to avail himself or herself of such benefits within thirty days after the \*passage of this 1973 act or upon closure of the institution, whichever is later. [2009 c 549 § 5177; 1973 2nd ex.s. c 37 § 5.]

**\*Reviser's note:** The effective date of 1973 2nd ex.s. c 37 was September 26, 1973, due to the emergency clause contained in section 9, codified as RCW 43.130.910.

1973 2nd ex.s. c 37 (Engrossed Substitute Senate Bill No. 2603) passed the Senate September 14, 1973, passed the House September 13, 1973, and was approved by the governor September 26, 1973.

*Employees to whom chapter is operative: RCW 43.130.910.*

## Chapter 43.131 RCW

### WASHINGTON SUNSET ACT OF 1977

#### Sections

43.131.402 Office of regulatory assistance—Repeal.

#### 43.131.402 Office of regulatory assistance—Repeal.

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2012:

- (1) RCW 43.42.005 and 2003 c 71 s 1 & 2002 c 153 s 1;
- (2) RCW 43.42.010 and 2007 c 231 s 5, 2003 c 71 s 2, & 2002 c 153 § 2;
- (3) RCW 43.42.020 and 2002 c 153 s 3;
- (4) RCW 43.42.030 and 2003 c 71 s 3 & 2002 c 153 s 4;
- (5) RCW 43.42.040 and 2003 c 71 s 4 & 2002 c 153 s 5;
- (6) RCW 43.42.050 and 2002 c 153 s 6;
- (7) RCW 43.42.060 and 2009 c 421 s 8 & 2002 c 153 s 7;
- (8) RCW 43.42.070 and 2002 c 153 s 8;
- (9) \*RCW 43.42.905 and 2002 c 153 s 10;
- (10) RCW 43.42.900 and 2002 c 153 s 11; and
- (11) RCW 43.42.901 and 2002 c 153 s 12. [2009 c 421 § 10; 2007 c 231 § 7; 2007 c 94 § 16; 2003 c 71 § 6; 2002 c 153 § 14.]



**Reviser's note:** \*(1) RCW 43.42.905 was decodified pursuant to 2007 c 94 § 17.

(2) The 2009 c 421 amendments to this section did not take cognizance of the 2007 c 94 § 16 amendment.

**Effective date—2009 c 421:** See note following RCW 43.157.005.

**Findings—Recommendations—Reports encouraged—2007 c 231:** See note following RCW 43.155.070.

## Chapter 43.135 RCW

### STATE EXPENDITURES LIMITATIONS

#### Sections

- 43.135.025 General fund expenditure limit—Computation—Annual limit adjustment—Definitions—Emergency exception—State treasurer duty, penalty—State expenditure limit committee.
- 43.135.035 Tax legislation—Referral to voters—Conditions and restrictions—Ballot title—Declarations of emergency—Taxes on intangible property—Expenditure limit to reflect program cost shifting or fund transfer.
- 43.135.045 Education construction fund—Appropriation conditions.

**43.135.025 General fund expenditure limit—Computation—Annual limit adjustment—Definitions—Emergency exception—State treasurer duty, penalty—State expenditure limit committee.** (1) The state shall not expend from the general fund during any fiscal year state moneys in excess of the state expenditure limit established under this chapter.

(2) Except pursuant to a declaration of emergency under RCW 43.135.035 or pursuant to an appropriation under RCW 43.135.045(2), the state treasurer shall not issue or redeem any check, warrant, or voucher that will result in a state general fund expenditure for any fiscal year in excess of the state expenditure limit established under this chapter. A violation of this subsection constitutes a violation of RCW 43.88.290 and shall subject the state treasurer to the penalties provided in RCW 43.88.300.

(3) The state expenditure limit for any fiscal year shall be the previous fiscal year's state expenditure limit increased by a percentage rate that equals the fiscal growth factor.

(4) For purposes of computing the state expenditure limit for the fiscal year beginning July 1, 2009, the phrase "the previous fiscal year's state expenditure limit" means the total state expenditures from the state general fund, the public safety and education account, the health services account, the violence reduction and drug enforcement account, the student achievement fund, the water quality account, and the equal justice subaccount, not including federal funds, for the fiscal year beginning July 1, 2008, plus the fiscal growth factor.

(5) A state expenditure limit committee is established for the purpose of determining and adjusting the state expenditure limit as provided in this chapter. The members of the state expenditure limit committee are the director of financial management, the attorney general or the attorney general's designee, and the chairs and ranking minority members of the senate committee on ways and means and the house of representatives committee on ways and means. All actions of the state expenditure limit committee taken pursuant to this chapter require an affirmative vote of at least four members.

(6) Each November, the state expenditure limit committee shall adjust the expenditure limit for the preceding fiscal year based on actual expenditures and known changes in the fiscal growth factor and then project an expenditure limit for

the next two fiscal years. If, by November 30th, the state expenditure limit committee has not adopted the expenditure limit adjustment and projected expenditure limit as provided in subsection (5) of this section, the attorney general or his or her designee shall adjust or project the expenditure limit, as necessary.

(7) "Fiscal growth factor" means the average growth in state personal income for the prior ten fiscal years.

(8) "General fund" means the state general fund. [2009 c 479 § 35; 2005 c 72 § 4; (2006 c 56 § 7 expired July 1, 2007); 2000 2nd sp.s. c 2 § 1; 1994 c 2 § 2 (Initiative Measure No. 601, approved November 2, 1993).]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Expiration date—2006 c 56 §§ 7 and 8:** "Sections 7 and 8 of this act expire July 1, 2007." [2006 c 56 § 12.]

**Effective dates—2006 c 56:** See note following RCW 41.45.230.

**Findings—Effective dates—2005 c 72:** See notes following RCW 43.135.010.

**Effective date—2000 2nd sp.s. c 2:** "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, 2000." [2000 2nd sp.s. c 2 § 4.]

**43.135.035 Tax legislation—Referral to voters—Conditions and restrictions—Ballot title—Declarations of emergency—Taxes on intangible property—Expenditure limit to reflect program cost shifting or fund transfer.** (1) After July 1, 1995, any action or combination of actions by the legislature that raises taxes may be taken only if approved by a two-thirds vote of each house of the legislature, and then only if state expenditures in any fiscal year, including the new revenue, will not exceed the state expenditure limits established under this chapter. Pursuant to the referendum power set forth in Article II, section 1(b) of the state Constitution, tax increases may be referred to the voters for their approval or rejection at an election.

(2)(a) If the legislative action under subsection (1) of this section will result in expenditures in excess of the state expenditure limit, then the action of the legislature shall not take effect until approved by a vote of the people at a November general election. The state expenditure limit committee shall adjust the state expenditure limit by the amount of additional revenue approved by the voters under this section. This adjustment shall not exceed the amount of revenue generated by the legislative action during the first full fiscal year in which it is in effect. The state expenditure limit shall be adjusted downward upon expiration or repeal of the legislative action.

(b) The ballot title for any vote of the people required under this section shall be substantially as follows:

"Shall taxes be imposed on . . . . . in order to allow a spending increase above last year's authorized spending adjusted for personal income growth?"

(3)(a) The state expenditure limit may be exceeded upon declaration of an emergency for a period not to exceed twenty-four months by a law approved by a two-thirds vote of each house of the legislature and signed by the governor. The law shall set forth the nature of the emergency, which is limited to natural disasters that require immediate government action to alleviate human suffering and provide human-

itarian assistance. The state expenditure limit may be exceeded for no more than twenty-four months following the declaration of the emergency and only for the purposes contained in the emergency declaration.

(b) Additional taxes required for an emergency under this section may be imposed only until thirty days following the next general election, unless an extension is approved at that general election. The additional taxes shall expire upon expiration of the declaration of emergency. The legislature shall not impose additional taxes for emergency purposes under this subsection unless funds in the education construction fund have been exhausted.

(c) The state or any political subdivision of the state shall not impose any tax on intangible property listed in RCW 84.36.070 as that statute exists on January 1, 1993.

(4) If the cost of any state program or function is shifted from the state general fund to another source of funding, or if moneys are transferred from the state general fund to another fund or account, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall lower the state expenditure limit to reflect the shift. For the purposes of this section, a transfer of money from the state general fund to another fund or account includes any state legislative action taken that has the effect of reducing revenues from a particular source, where such revenues would otherwise be deposited into the state general fund, while increasing the revenues from that particular source to another state or local government account. This subsection does not apply to: (a) The dedication or use of lottery revenues under RCW 67.70.240(3), in support of education or education expenditures; or (b) a transfer of moneys to, or an expenditure from, the budget stabilization account.

(5) If the cost of any state program or function and the ongoing revenue necessary to fund the program or function are shifted to the state general fund on or after January 1, 2007, the state expenditure limit committee, acting pursuant to RCW 43.135.025(5), shall increase the state expenditure limit to reflect the shift unless the shifted revenue had previously been shifted from the general fund.

(6) For the purposes of chapter 1, Laws of 2008, "raises taxes" means any action or combination of actions by the legislature that increases state tax revenue deposited in any fund, budget, or account, regardless of whether the revenues are deposited into the general fund. [2009 c 479 § 36. Prior: 2008 c 1 § 5 (Initiative Measure No. 960, approved November 6, 2007); 2007 c 484 § 6; 2005 c 72 § 5; 2005 c 72 § 2; (2006 c 56 § 8 expired July 1, 2007); prior: 2001 c 3 § 8 (Initiative Measure No. 728, approved November 7, 2000); 2000 2nd sp.s. c 2 § 2; (2002 c 33 § 1 expired June 30, 2003); 1994 c 2 § 4 (Initiative Measure No. 601, approved November 2, 1993).]

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Findings—Intent—Construction—Severability—Subheadings and part headings not law—Short title—Effective date—2008 c 1 (Initiative Measure No. 960):** See notes following RCW 43.135.031.

**Contingent effective date—2007 c 484 §§ 2-8:** See note following RCW 43.79.495.

**Expiration date—2006 c 56 §§ 7 and 8:** See note following RCW 43.135.025.

**Effective dates—2006 c 56:** See note following RCW 41.45.230.

**Findings—Effective dates—2005 c 72:** See notes following RCW 43.135.010.

**Expiration date—2002 c 33:** See note following RCW 43.135.045.

**Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728):** See notes following RCW 28A.505.210.

**Effective date—2000 2nd sp.s. c 2:** See note following RCW 43.135.025.

**43.135.045 Education construction fund—Appropriation conditions.** The education construction fund is hereby created in the state treasury.

(1) Funds may be appropriated from the education construction fund exclusively for common school construction or higher education construction. During the 2007-2009 fiscal biennium, funds may also be used for higher education facilities preservation and maintenance. During the 2009-2011 fiscal biennium, the legislature may transfer from the education construction fund to the state general fund such amounts as reflect the excess fund balance of the fund.

(2) Funds may be appropriated for any other purpose only if approved by a two-thirds vote of each house of the legislature and if approved by a vote of the people at the next general election. An appropriation approved by the people under this subsection shall result in an adjustment to the state expenditure limit only for the fiscal period for which the appropriation is made and shall not affect any subsequent fiscal period.

(3) Funds for the student achievement program in RCW 28A.505.210 and 28A.505.220 shall be appropriated to the superintendent of public instruction strictly for distribution to school districts to meet the provisions set out in the student achievement act. Allocations shall be made on an equal per full-time equivalent student basis to each school district. [2009 c 564 § 939; 2009 c 479 § 37. Prior: 2007 c 520 § 6035; 2007 c 484 § 5; prior: 2005 c 518 § 931; (2005 c 488 § 920 expired June 30, 2007); 2005 c 314 § 401; 2005 c 72 § 6; 2003 1st sp.s. c 25 § 920; prior: (2003 1st sp.s. c 26 § 919 expired June 30, 2005); (2003 1st sp.s. c 26 § 918 expired June 30, 2005); (2002 c 33 § 2 expired June 30, 2003); prior: 2001 c 3 § 9 (Initiative Measure No. 728, approved November 7, 2000); 2000 2nd sp.s. c 5 § 1; 2000 2nd sp.s. c 2 § 3; 1994 c 2 § 3 (Initiative Measure No. 601, approved November 2, 1993).]

**Reviser's note:** This section was amended by 2009 c 479 § 37 and by 2009 c 564 § 939, 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—2009 c 564:** See note following RCW 2.68.020.

**Effective date—2009 c 479:** See note following RCW 2.56.030.

**Part headings not law—Severability—Effective dates—2007 c 520:** See notes following RCW 43.19.125.

**Contingent effective date—2007 c 484 §§ 2-8:** See note following RCW 43.79.495.

**Effective date—2005 c 518 § 931:** "Section 931 (RCW 43.135.045) 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 takes effect June 30, 2005." [2005 c 518 § 1808.]

**Severability—2005 c 518:** See note following RCW 28A.500.030.

**Expiration date—2005 c 488 §§ 920 and 921:** "Sections 920 and 921 of this act expire June 30, 2007." [2005 c 488 § 955.]

**Part headings not law—Severability—Effective dates—2005 c 488:** See notes following RCW 28B.50.360.

**Effective date—2005 c 314 §§ 101-107, 109, 303-309, and 401:** See note following RCW 46.68.290.

**Part headings not law—2005 c 314:** See note following RCW 46.17.010.

**Findings—Effective dates—2005 c 72:** See notes following RCW 43.135.010.

**Expiration date—2003 1st sp.s. c 26:** "Sections 918 through 921, 926, and 929 of this act expire June 30, 2005." [2003 1st sp.s. c 26 § 927.]

**Severability—2003 1st sp.s. 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." [2003 1st sp.s. c 26 § 930.]

**Effective dates—2003 1st sp.s. c 26:** "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 [June 26, 2003], except for section 919 of this act which takes effect June 30, 2003." [2003 1st sp.s. c 26 § 931.]

**Severability—Effective date—2003 1st sp.s. c 25:** See notes following RCW 19.28.351.

**Expiration date—2002 c 33:** "This act expires June 30, 2003." [2002 c 33 § 3.]

**Effective date—2002 c 33:** "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 13, 2002]." [2002 c 33 § 4.]

**Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728):** See notes following RCW 28A.505.210.

**Effective date—2000 2nd sp.s. c 2:** See note following RCW 43.135.025.

## Chapter 43.155 RCW

### PUBLIC WORKS PROJECTS

#### Sections

- 43.155.020 Definitions.
- 43.155.050 Public works assistance account. (*Expires June 30, 2011.*)
- 43.155.070 Eligibility, priority, limitations, and exceptions.

**43.155.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Board" means the public works board created in RCW 43.155.030.

(2) "Capital facility plan" means a capital facility plan required by the growth management act under chapter 36.70A RCW or, for local governments not fully planning under the growth management act, a plan required by the public works board.

(3) "Department" means the department of commerce.

(4) "Financing guarantees" means the pledge of money in the public works assistance account, or money to be received by the public works assistance account, to the repayment of all or a portion of the principal of or interest on obligations issued by local governments to finance public works projects.

(5) "Local governments" means cities, towns, counties, special purpose districts, and any other municipal corporations or quasi-municipal corporations in the state excluding school districts and port districts.

(6) "Public works project" means a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets and roads, bridges, water systems, or

storm and sanitary sewage systems and solid waste facilities, including recycling facilities. A planning project may include the compilation of biological, hydrological, or other data on a county, drainage basin, or region necessary to develop a base of information for a capital facility plan.

(7) "Solid waste or recycling project" means remedial actions necessary to bring abandoned or closed landfills into compliance with regulatory requirements and the repair, restoration, and replacement of existing solid waste transfer, recycling facilities, and landfill projects limited to the opening of landfill cells that are in existing and permitted landfills.

(8) "Technical assistance" means training and other services provided to local governments to: (a) Help such local governments plan, apply, and qualify for loans and financing guarantees from the board, and (b) help local governments improve their ability to plan for, finance, acquire, construct, repair, replace, rehabilitate, and maintain public facilities. [2009 c 565 § 33; 2001 c 131 § 1; 1996 c 168 § 2; 1995 c 399 § 85; 1985 c 446 § 8.]

#### **43.155.050 Public works assistance account. (*Expires June 30, 2011.*)**

(1) The public works assistance account is hereby established in the state treasury. Money may be placed in the public works assistance account from the proceeds of bonds when authorized by the legislature or from any other lawful source. Money in the public works assistance account shall be used to make loans and to give financial guarantees to local governments for public works projects. Moneys in the account may also be appropriated to provide for state match requirements under federal law for projects and activities conducted and financed by the board under the drinking water assistance account. Not more than fifteen percent of the biennial capital budget appropriation to the public works board from this account may be expended or obligated for preconstruction loans, emergency loans, or loans for capital facility planning under this chapter; of this amount, not more than ten percent of the biennial capital budget appropriation may be expended for emergency loans and not more than one percent of the biennial capital budget appropriation may be expended for capital facility planning loans. During the 2009-2011 fiscal biennium, the legislature may transfer from the public works assistance account to the general fund and the city-county assistance account such amounts as reflect the excess fund balance of the account.

(2) The job development fund is hereby established in the state treasury. Moneys in the job development fund may be spent only after appropriation. [2009 c 564 § 940; 2008 c 328 § 6002; 2007 c 520 § 6036. Prior: 2005 c 488 § 925; 2005 c 425 § 4; 2001 c 131 § 2; prior: 1995 2nd sp.s. c 18 § 918; 1995 c 376 § 11; 1993 sp.s. c 24 § 921; 1985 c 471 § 8.]

**Expiration date—2009 c 564 § 940:** "Section 940 of this act expires June 30, 2011." [2009 c 564 § 962.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Expiration date—2008 c 328 § 6002:** "Section 6002 of this act expires June 30, 2011." [2008 c 328 § 6018.]

**Part headings not law—2008 c 328:** "Part headings in this act are not any part of the law." [2008 c 328 § 6020.]

**Severability—2008 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." [2008 c 328 § 6021.]

**Effective date—2008 c 328:** "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 1, 2008]." [2008 c 328 § 6022.]

**Expiration date—2007 c 520 § 6036:** "Section 6036 of this act expires June 30, 2011." [2007 c 520 § 6039.]

**Part headings not law—Severability—Effective dates—2007 c 520:** See notes following RCW 43.19.125.

**Part headings not law—Severability—Effective dates—2005 c 488:** See notes following RCW 28B.50.360.

**Finding—2005 c 425:** "The legislature has and continues to recognize the vital importance of economic development to the health and prosperity of Washington state as indicated in RCW 43.160.010, 43.155.070(4)(g), 43.163.005, and 43.168.010. The legislature finds that current economic development programs and funding, which are primarily low-interest loan programs, can be enhanced by creating a grant program to assist with public infrastructure projects that directly stimulate community and economic development by supporting the creation of new jobs or the retention of existing jobs." [2005 c 425 § 1.]

**Expiration date—2005 c 425:** "This act expires June 30, 2011." [2005 c 425 § 6.]

**Severability—2005 c 425:** "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." [2005 c 425 § 7.]

**Severability—Effective date—1995 2nd sp.s. c 18:** See notes following RCW 19.118.110.

**Findings—1995 c 376:** See note following RCW 70.116.060.

**Severability—Effective dates—1993 sp.s. c 24:** See notes following RCW 28A.310.020.

**Severability—Effective date—1985 c 471:** See notes following RCW 82.04.260.

**43.155.070 Eligibility, priority, limitations, and exceptions.** (1) To qualify for loans or pledges under this chapter the board must determine that a local government meets all of the following conditions:

(a) The city or county must be imposing a tax under chapter 82.46 RCW at a rate of at least one-quarter of one percent;

(b) The local government must have developed a capital facility plan; and

(c) The local government must be using all local revenue sources which are reasonably available for funding public works, taking into consideration local employment and economic factors.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 must have adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving a loan or loan guarantee under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 which has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 is not prohibited from receiving a loan or loan guarantee under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before submitting a request for a loan or loan guarantee.

(3) In considering awarding loans for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, the board shall consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

(4) The board shall develop a priority process for public works projects as provided in this section. The intent of the priority process is to maximize the value of public works projects accomplished with assistance under this chapter. The board shall attempt to assure a geographical balance in assigning priorities to projects. The board shall consider at least the following factors in assigning a priority to a project:

(a) Whether the local government receiving assistance has experienced severe fiscal distress resulting from natural disaster or emergency public works needs;

(b) Except as otherwise conditioned by RCW 43.155.110, whether the entity receiving assistance is a Puget Sound partner, as defined in RCW 90.71.010;

(c) Whether the project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310;

(d) Whether the project is critical in nature and would affect the health and safety of a great number of citizens;

(e) Whether the applicant has developed and adhered to guidelines regarding its permitting process for those applying for development permits consistent with section 1(2), chapter 231, Laws of 2007;

(f) The cost of the project compared to the size of the local government and amount of loan money available;

(g) The number of communities served by or funding the project;

(h) Whether the project is located in an area of high unemployment, compared to the average state unemployment;

(i) Whether the project is the acquisition, expansion, improvement, or renovation by a local government of a public water system that is in violation of health and safety standards, including the cost of extending existing service to such a system;

(j) Except as otherwise conditioned by RCW 43.155.120, and effective one calendar year following the development of model evergreen community management plans and ordinances under RCW 35.105.050, whether the entity receiving assistance has been recognized, and what gradation of recognition was received, in the evergreen community recognition program created in RCW 35.105.030;

(k) The relative benefit of the project to the community, considering the present level of economic activity in the community and the existing local capacity to increase local economic activity in communities that have low economic growth; and

(l) Other criteria that the board considers advisable.

(5) Existing debt or financial obligations of local governments shall not be refinanced under this chapter. Each local government applicant shall provide documentation of attempts to secure additional local or other sources of funding for each public works project for which financial assistance is sought under this chapter.

(6) Before November 1st of each even-numbered year, the board shall develop and submit to the appropriate fiscal committees of the senate and house of representatives a description of the loans made under RCW 43.155.065, 43.155.068, and subsection (9) of this section during the preceding fiscal year and a prioritized list of projects which are recommended for funding by the legislature, including one copy to the staff of each of the committees. The list shall include, but not be limited to, a description of each project and recommended financing, the terms and conditions of the loan or financial guarantee, the local government jurisdiction and unemployment rate, demonstration of the jurisdiction's critical need for the project and documentation of local funds being used to finance the public works project. The list shall also include measures of fiscal capacity for each jurisdiction recommended for financial assistance, compared to authorized limits and state averages, including local government sales taxes; real estate excise taxes; property taxes; and charges for or taxes on sewerage, water, garbage, and other utilities.

(7) The board shall not sign contracts or otherwise financially obligate funds from the public works assistance account before the legislature has appropriated funds for a specific list of public works projects. The legislature may remove projects from the list recommended by the board. The legislature shall not change the order of the priorities recommended for funding by the board.

(8) Subsection (7) of this section does not apply to loans made under RCW 43.155.065, 43.155.068, and subsection (9) of this section.

(9) Loans made for the purpose of capital facilities plans shall be exempted from subsection (7) of this section.

(10) To qualify for loans or pledges for solid waste or recycling facilities under this chapter, a city or county must demonstrate that the solid waste or recycling facility is consistent with and necessary to implement the comprehensive solid waste management plan adopted by the city or county under chapter 70.95 RCW.

(11) After January 1, 2010, any project designed to address the effects of storm water or wastewater on Puget Sound may be funded under this section only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2009 c 518 § 16; 2008 c 299 § 25. Prior: 2007 c 341 § 24; 2007 c 231 § 2; 2001 c 131 § 5; 1999 c 164 § 602; 1997 c 429 § 29; 1996 c 168 § 3; 1995 c 363 § 3; 1993 c 39 § 1; 1991 sp.s. c 32 § 23; 1990 1st ex.s. c 17 § 82; 1990 c 133 § 6; 1988 c 93 § 3; 1987 c 505 § 40; 1985 c 446 § 12.]

**Short title—2008 c 299:** See note following RCW 35.105.010.

**Severability—Effective date—2007 c 341:** See RCW 90.71.906 and 90.71.907.

**Findings—Recommendations—Reports encouraged—2007 c 231:**

"(1) The legislature finds that permit programs have been legislatively established to protect the health, welfare, economy, and environment of Washington's citizens and to provide a fair, competitive opportunity for business innovation and consumer confidence. The legislature also finds that uncertainty in government processes to permit an activity by a citizen of Washington state is undesirable and erodes confidence in government. The legislature further finds that in the case of projects that would further economic development in the state, information about the permitting process is critical for an applicant's planning and financial assessment of the proposed project. The legislature also finds that applicants have a responsibility to provide complete and accurate information.

(2) The legislature recommends that applicants be provided with the following information when applying for a development permit from a city, county, or state agency:

(a) The minimum and maximum time an agency will need to make a decision on a permit, including public comment requirements;

(b) The minimum amount of information required for an agency to make a decision on a permit;

(c) When an agency considers an application complete for processing;

(d) The minimum and maximum costs in agency fees that will be incurred by the permit applicant; and

(e) The reasons for a denial of a permit in writing.

(3) In providing this information to applicants, an agency should base estimates on the best information available about the permitting program and prior applications for similar permits, as well as on the information provided by the applicant. New information provided by the applicant subsequent to the agency estimates may change the information provided by an agency per subsection (2) of this section. Project modifications by an applicant may result in more time, more information, or higher fees being required for permit processing.

(4) This section does not create an independent cause of action, affect any existing cause of action, or establish time limits for purposes of RCW 64.40.020.

(5) City, county, and state agencies issuing development permits are encouraged to track the progress in providing the information to applicants per subsection (2) of this section by preparing an annual report of its performance for the preceding fiscal year. The report should be posted on its web site [and] made available and provided to the appropriate standing committees of the senate and house of representatives." [2007 c 231 § 1.]

**Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164:** See notes following RCW 43.160.010.

**Savings—1999 c 164 §§ 301-303, 305, 306, and 601-603:** See note following RCW 82.60.020.

**Effective date—1997 c 429 §§ 29, 30:** "Sections 29 and 30 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 [May 19, 1997]." [1997 c 429 § 55.]

**Severability—1997 c 429:** See note following RCW 36.70A.3201.

**Finding—Purpose—1995 c 363:** See note following RCW 43.155.068.

**Effective date—1993 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, 1993." [1993 c 39 § 2.]

**Section headings not law—1991 sp.s. c 32:** See RCW 36.70A.902.

**Intent—1990 1st ex.s. c 17:** See note following RCW 43.210.010.

**Severability—Part, section headings not law—1990 1st ex.s. c 17:** See RCW 36.70A.900 and 36.70A.901.

**Findings—Severability—1990 c 133:** See notes following RCW 36.94.140.

## Chapter 43.157 RCW

### PROJECTS OF STATEWIDE SIGNIFICANCE

#### Sections

- 43.157.005 Declaration.
- 43.157.010 Definitions (*as amended by 2009 c 421*).
- 43.157.010 Definitions (*as amended by 2009 c 565*).
- 43.157.020 Expediting completion of projects of statewide significance—Requirements of agreements.
- 43.157.030 Application for designation—Project facilitator or coordinator.

**43.157.005 Declaration.** The legislature declares that certain investments, such as investments for industrial development, environmental improvement, and innovation activities, merit special designation and treatment by governmental bodies when they are proposed. Such investments bolster the economies of their locale and impact the economy of the state

as a whole. It is the intention of the legislature to recognize projects of statewide significance and to encourage local governments and state agencies to expedite their completion. [2009 c 421 § 1; 1997 c 369 § 1.]

**Effective date—2009 c 421:** "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 8, 2009]." [2009 c 421 § 11.]

**43.157.010 Definitions (as amended by 2009 c 421).** ((+)) For purposes of this chapter and RCW 28A.525.166, 28B.76.210, \*28C.18.080, 43.21A.350, (47.06.030) and 90.58.100 ((and an industrial)), unless the context requires otherwise:

- (1)(a) A project of statewide significance is:
- (i) A border crossing project that involves both private and public investments carried out in conjunction with adjacent states or provinces;
  - (ii) A development project that will provide a net environmental benefit;
  - (iii) A development project in furtherance of the commercialization of innovations; or
  - (iv) A private industrial development with private capital investment in manufacturing or research and development.
- (b) To qualify for designation under RCW 43.157.030 as ((an industrial)) a project of statewide significance: ((+))
- (i) The project must be completed after January 1, ((1997)) 2009; ((+))
  - (ii) The applicant must submit an application to the department for designation as ((an industrial)) a project of statewide significance to the department of community, trade, and economic development; and ((+))
  - (iii) The project must have:
    - ((+)) (A) In counties with a population ((+)) less than or equal to twenty thousand, a capital investment of ((twenty)) five million dollars;
    - ((+)) (B) In counties with a population ((+)) greater than twenty thousand but no more than fifty thousand, a capital investment of ((fifty)) ten million dollars;
    - ((+)) (C) In counties with a population ((+)) greater than fifty thousand but no more than one hundred thousand, a capital investment of ((one hundred)) fifteen million dollars;
    - ((+)) (D) In counties with a population ((+)) greater than one hundred thousand but no more than two hundred thousand, a capital investment of ((two hundred)) twenty million dollars;
    - ((+)) (E) In counties with a population ((+)) greater than two hundred thousand but no more than four hundred thousand, a capital investment of ((four hundred)) thirty million dollars;
    - ((+)) (F) In counties with a population ((+)) greater than four hundred thousand but no more than one million, a capital investment of ((six hundred)) forty million dollars;
    - ((+)) (G) In counties with a population ((+)) greater than one million, a capital investment of ((one billion)) fifty million dollars;
    - ((+)) (H) In rural counties ((with fewer than one hundred persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th)) as defined by RCW 82.14.370, projected full-time employment positions after completion of construction of fifty or greater;
    - ((+)) (I) In counties ((with one hundred or more persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th)) other than rural counties as defined by RCW 82.14.370, projected full-time employment positions after completion of construction of one hundred or greater; or
    - ((+)) (J) Been ((designated)) qualified by the director of ((community, trade, and economic development)) the department as ((an industrial)) a project of statewide significance either because: ((A) Because the county in which the project is to be located is a distressed county and)
- (I) The economic circumstances of the county merit the additional assistance such designation will bring; ((or (B) because))
- (II) The impact on a region due to the size and complexity of the project merits such designation;
- (III) The project resulted from or is in furtherance of innovation activities at a public research institution in the state or is in or resulted from innovation activities within an innovation partnership zone; or
- (IV) The project will provide a net environmental benefit as evidenced by plans for design and construction under green building standards or for

the creation of renewable energy technology or components or under other environmental criteria established by the director in consultation with the director of the department of ecology.

A project may be qualified under this subsection (1)(b)(iii)(J) only after consultation on the availability of staff resources of the office of regulatory assistance.

(2) ((The term)) "Department" means the department of community, trade, and economic development.

(3) "Manufacturing" shall have the meaning assigned it in RCW ((82.61.040)) 82.62.010.

((3) The term) (4) "Research and development" shall have the meaning assigned it in RCW ((82.61.040)) 82.62.010.

((4) The term) (5) "Applicant" means a person applying to the department ((of community, trade, and economic development)) for designation of a development project as ((an industrial)) a project of statewide significance. [2009 c 421 § 2; 2004 c 275 § 63; 2003 c 54 § 1; 1997 c 369 § 2.]

**\*Reviser's note:** RCW 28C.18.080 was amended by 2009 c 151 § 7, deleting the phrase "projects of statewide significance."

**Effective date—2009 c 421:** See note following RCW 43.157.005.

**43.157.010 Definitions (as amended by 2009 c 565).** (1) For purposes of this chapter and RCW 28A.525.166, 28B.76.210, 28C.18.080, 43.21A.350, \*47.06.030, and 90.58.100 and an industrial project of statewide significance is a border crossing project that involves both private and public investments carried out in conjunction with adjacent states or provinces or a private industrial development with private capital investment in manufacturing or research and development. To qualify as an industrial project of statewide significance: (a) The project must be completed after January 1, 1997; (b) the applicant must submit an application for designation as an industrial project of statewide significance to the department of ((community, trade, and economic development)) commerce; and (c) the project must have:

- (i) In counties with a population of less than or equal to twenty thousand, a capital investment of twenty million dollars;
- (ii) In counties with a population of greater than twenty thousand but no more than fifty thousand, a capital investment of fifty million dollars;
- (iii) In counties with a population of greater than fifty thousand but no more than one hundred thousand, a capital investment of one hundred million dollars;
- (iv) In counties with a population of greater than one hundred thousand but no more than two hundred thousand, a capital investment of two hundred million dollars;
- (v) In counties with a population of greater than two hundred thousand but no more than four hundred thousand, a capital investment of four hundred million dollars;
- (vi) In counties with a population of greater than four hundred thousand but no more than one million, a capital investment of six hundred million dollars;
- (vii) In counties with a population of greater than one million, a capital investment of one billion dollars;
- (viii) In counties with fewer than one hundred persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th, projected full-time employment positions after completion of construction of fifty or greater;
- (ix) In counties with one hundred or more persons per square mile as determined annually by the office of financial management and published by the department of revenue effective for the period July 1st through June 30th, projected full-time employment positions after completion of construction of one hundred or greater; or
- (x) Been designated by the director of community, trade, and economic development as an industrial project of statewide significance either: (A) Because the county in which the project is to be located is a distressed county and the economic circumstances of the county merit the additional assistance such designation will bring; or (B) because the impact on a region due to the size and complexity of the project merits such designation.

(2) The term manufacturing shall have the meaning assigned it in \*\*RCW 82.61.010.

(3) The term research and development shall have the meaning assigned it in \*\*RCW 82.61.010.

(4) The term applicant means a person applying to the department of ((community, trade, and economic development)) commerce for designation of a development project as an industrial project of statewide significance. [2009 c 565 § 34; 2004 c 275 § 63; 2003 c 54 § 1; 1997 c 369 § 2.]

**Reviser's note:** \*(1) RCW 47.06.030 was repealed by 2007 c 516 § 13.  
 \*\*(2) RCW 82.61.010 was repealed by 2005 c 443 § 7, effective July 1, 2006.

**Part headings not law—2004 c 275:** See note following RCW 28B.76.030.

### **43.157.020 Expediting completion of projects of statewide significance—Requirements of agreements.**

Counties and cities with development projects designated as projects of statewide significance within their jurisdictions shall enter into an agreement with the office of regulatory assistance and the project managers of projects of statewide significance for expediting the completion of projects of statewide significance. The agreement shall require:

- (1) Expedited permit processing for the design and construction of the project;
- (2) Expedited environmental review processing;
- (3) Expedited processing of requests for street, right-of-way, or easement vacations necessary for the construction of the project;
- (4) Participation of local officials on the team assembled under the requirements of RCW 43.157.030(2)(b); and
- (5) Such other actions or items as are deemed necessary by the office of regulatory assistance for the design and construction of the project. [2009 c 421 § 3; 2003 c 54 § 2; 1997 c 369 § 3.]

**Effective date—2009 c 421:** See note following RCW 43.157.005.

### **43.157.030 Application for designation—Project facilitator or coordinator.** (1) The department of community, trade, and economic development shall:

(a) Develop an application for designation of development projects as projects of statewide significance. The application must be accompanied by a letter of approval from the legislative authority of any jurisdiction that will have the proposed project of statewide significance within its boundaries. No designation of a project as a project of statewide significance shall be made without such letter of approval. The letter of approval must state that the jurisdiction joins in the request for the designation of the project as one of statewide significance and has or will hire the professional staff that will be required to expedite the processes necessary to the completion of a project of statewide significance. The development project proponents may provide the funding necessary for the jurisdiction to hire the professional staff that will be required to so expedite. The application shall contain information regarding the location of the project, the applicant's average employment in the state for the prior year, estimated new employment related to the project, estimated wages of employees related to the project, estimated time schedules for completion and operation, and other information required by the department; and

(b) Designate a development project as a project of statewide significance if the department determines:

(i) After review of the application under criteria adopted by rule, the development project will provide significant economic benefit to the local or state economy, or both, the project is aligned with the state's comprehensive plan for economic development under RCW 43.162.020, and, by its designation, the project will not prevent equal consideration of all categories of proposals under RCW 43.157.010; and

(ii) The development project meets or will meet the requirements of RCW 43.157.010 regarding designation as a project of statewide significance.

(2) The office of regulatory assistance shall assign a project facilitator or coordinator to each project of statewide significance to:

(a) Assist in the scoping and coordinating functions provided for in chapter 43.42 RCW;

(b) Assemble a team of state and local government and private officials to help meet the planning, permitting, and development needs of each project, which team shall include those responsible for planning, permitting and licensing, infrastructure development, workforce development services including higher education, transportation services, and the provision of utilities; and

(c) Work with each team member to expedite their actions in furtherance of the project. [2009 c 421 § 4; 2003 c 54 § 3; 1997 c 369 § 4.]

**Effective date—2009 c 421:** See note following RCW 43.157.005.

## **Chapter 43.160 RCW**

### **ECONOMIC DEVELOPMENT— PUBLIC FACILITIES LOANS AND GRANTS**

#### Sections

43.160.020 Definitions.

**43.160.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Board" means the community economic revitalization board.

(2) "Department" means the department of commerce.

(3) "Local government" or "political subdivision" means any port district, county, city, town, special purpose district, and any other municipal corporations or quasi-municipal corporations in the state providing for public facilities under this chapter.

(4) "Public facilities" means a project of a local government or a federally recognized Indian tribe for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of bridges, roads, domestic and industrial water, earth stabilization, sanitary sewer, storm sewer, railroad, electricity, telecommunications, transportation, natural gas, buildings or structures, and port facilities, all for the purpose of job creation, job retention, or job expansion.

(5) "Rural county" means a county with a population density of fewer than one hundred persons per square mile or a county smaller than two hundred twenty-five square miles, as determined by the office of financial management and published each year by the department for the period July 1st to June 30th. [2009 c 565 § 35. Prior: 2008 c 327 § 2; 2008 c 131 § 1; 2004 c 252 § 1; 1999 c 164 § 102; 1997 c 367 § 8; 1996 c 51 § 2; 1995 c 226 § 14; prior: 1993 c 320 § 1; 1993 c 280 § 55; 1992 c 21 § 3; 1991 c 314 § 22; 1985 c 466 § 58; 1985 c 6 § 12; 1984 c 257 § 2; 1983 1st ex.s. c 60 § 1; 1982 1st ex.s. c 40 § 2.]

**Effective date—2008 c 327 §§ 1, 2, 4-11, 17:** See note following RCW 43.160.010.

**Effective date—2008 c 131:** "This act takes effect July 1, 2009." [2008 c 131 § 6.]

**Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164:** See notes following RCW 43.160.010.

**Severability—1997 c 367:** "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 367 § 21.]

**Conflict with federal requirements—1997 c 367:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1997 c 367 § 22.]

**Effective date—1997 c 367:** "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 367 § 23.]

**Severability—Effective dates—1996 c 51:** See notes following RCW 43.160.010.

**Severability—1995 c 226:** "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 226 § 37.]

**Conflict with federal requirements—1995 c 226:** "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1995 c 226 § 38.]

**Effective date—1995 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 July 1, 1995." [1995 c 226 § 39.]

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**Findings—1991 c 314:** "The legislature finds that:

(1) Cutbacks in allowable sales of old growth timber in Washington state pose a substantial threat to the region and the state with massive layoffs, loss of personal income, and declines in state revenues;

(2) The timber impact areas are of critical significance to the state because of their leading role in the overall economic well-being of the state and their importance to the quality of life to all residents of Washington, and that these regions require a special state effort to diversify the local economy;

(3) There are key opportunities to broaden the economic base in the timber impact areas including agriculture, high-technology, tourism, and regional exports; and

(4) A coordinated state, local, and private sector effort offers the greatest potential to promote economic diversification and to provide support for new projects within the region.

The legislature further finds that if a special state effort does not take place the decline in allowable timber sales may result in a loss of six thousand logging and milling jobs; two hundred million dollars in direct wages and benefits; twelve thousand indirect jobs; and three hundred million dollars in indirect wages and benefits.

It is the intent of the legislature to develop comprehensive programs to provide diversified economic development and promote job creation and employment opportunities for the citizens of the timber impact areas." [1991 c 314 § 1.]

**Effective date—Severability—1985 c 466:** See notes following RCW 43.31.125.

[2009 RCW Supp—page 872]

## Chapter 43.162 RCW

### ECONOMIC DEVELOPMENT COMMISSION

#### Sections

43.162.020 Duties—Biennial report.

**43.162.020 Duties—Biennial report.** The Washington state economic development commission shall:

(1) Concentrate its major efforts on planning, coordination, evaluation, policy analysis, and recommending improvements to the state's economic development system using, but not limited to, the "Next Washington" plan and the global competitiveness council recommendations;

(2) Develop and maintain on a biennial basis a state comprehensive plan for economic development, including but not limited to goals, objectives, and priorities for the state economic development system; identify the elements local associate development organizations must include in their countywide economic development plans; and review the state system for consistency with the state comprehensive plan. The plan shall include the industry clusters in the state and the strategic clusters targeted by the commission for economic development efforts. The commission shall consult with the workforce training and education coordinating board and include labor market and economic information by the employment security department in developing the list of clusters and strategic clusters that meet the criteria identified by the working group convened by the economic development commission and the workforce training and education coordinating board under chapter 43.330 RCW. In developing the state comprehensive plan for economic development, the commission shall use, but may not be limited to: Economic, labor market, and populations trend reports in office of financial management forecasts; the annual state economic climate report prepared by the economic climate council; joint office of financial management and employment security department labor force, industry employment, and occupational forecasts; the results of scientifically based outcome evaluations; the needs of industry associations, industry clusters, businesses, and employees as evidenced in formal surveys and other input;

(3) Establish and maintain an inventory of the programs of the state economic development system and related state programs; perform a biennial assessment of the ongoing and strategic economic development needs of the state; and assess the extent to which the economic development system and related programs represent a consistent, coordinated, efficient, and integrated approach to meet such needs; and

(4) Produce a biennial report to the governor and the legislature on progress by the commission in coordinating the state's economic development system and meeting the other obligations of this chapter, as well as include recommendations for any statutory changes necessary to enhance operational efficiencies or improve coordination.

The commission may delegate to the executive director any of the functions of this section. [2009 c 151 § 9; 2007 c 232 § 4; 2003 c 235 § 3.]



## Chapter 43.167 RCW

## COMMUNITY PRESERVATION AND DEVELOPMENT AUTHORITIES

## Sections

- 43.167.010 Community preservation and development authorities—Formation—Board of directors.  
 43.167.020 Powers of authorities—Limitations.  
 43.167.030 Duties of authorities.

**43.167.010 Community preservation and development authorities—Formation—Board of directors.** (1) The residents, property owners, employees, or business owners of an impacted community may propose formation of a community preservation and development authority. The proposal to form a community preservation and development authority must be presented in writing to the appropriate legislative committee in both the house of representatives and the senate. The proposal must contain proposed general geographic boundaries that will be used to define the community for the purposes of the authority. Proposals presented after January 1, 2008, must identify in its proposal one or more stable revenue sources that (a) have a nexus with the multiple publicly funded facilities that have adversely impacted the community, and (b) can be used to support future operating or capital projects that will be identified in the strategic plan required under RCW 43.167.030.

(2) Formation of the community preservation and development authority is subject to legislative authorization by statute. The legislature must find that (a) the area within the proposal's geographic boundaries meets the definition of "impacted community" contained in \*section 2(4) of this act and (b) those persons that have brought forth the proposal are members of the community as defined in \*section 2(1) of this act and, if the authority were approved, would meet the definition of constituency contained in \*section 2(3) of this act. For proposals brought after January 1, 2008, the legislature must also find that the community has identified one or more stable revenue sources as required in subsection (1) of this section. The legislature may then act to authorize the establishment of the community preservation and development authority in law.

(3) The affairs of a community preservation and development authority shall be managed by a board of directors, consisting of the following members:

- (a) Two members who own, operate, or represent businesses within the community;
- (b) Two members who reside in the community;
- (c) Two members who are involved in providing nonprofit community or social services within the community;
- (d) Two members who are involved in the arts and entertainment within the community;
- (e) Two members with knowledge of the community's culture and history;
- (f) One member who is involved in a nonprofit or public planning organization that directly serves the impacted community; and
- (g) Two representatives of the local legislative authority or authorities, as ex officio members.

(4) No member of the board shall hold office for more than four years. Board positions shall be numbered one through nine, and the terms staggered as follows:

(a) Board members elected to positions one through five shall serve two-year terms, and if reelected, may serve no more than one additional two-year term.

(b) Board members initially elected to positions six through thirteen shall serve a three-year term only.

(c) Board members elected to positions six through thirteen after the initial three-year term shall serve two-year terms, and if reelected, may serve no more than one additional two-year term.

(5) With respect to an authority's initial board of directors: The state legislative delegation and those proposing formation of the authority shall jointly establish a committee to develop a list of candidates to stand for election once the authority has received legislative approval as established in subsection (2) of this section. For the purpose of developing the list and identifying those persons who meet the criteria in subsection (3)(a) through (e) of this section, community shall mean the proposed geographic boundaries as set out in the proposal. The board of directors shall be elected by the constituency during a meeting convened for that purpose by the state legislative delegation.

(6) With respect to subsequent elections of an authority's board of directors: A list of candidates shall be developed by the authority's existing board of directors and the election shall be held during the annual local town hall meeting as required in RCW 43.167.030. [2009 c 516 § 1; 2007 c 501 § 3.]

\*Reviser's note: Section 2 of this act was vetoed by the governor.

**43.167.020 Powers of authorities—Limitations.** (1) A community preservation and development authority shall have the power to:

- (a) Accept gifts, grants, loans, or other aid from public or private entities;
- (b) Employ and appoint such agents, attorneys, officers, and employees as may be necessary to implement the purposes and duties of an authority;
- (c) Contract and enter into partnerships with individuals, associations, corporations, and local, state, and federal governments;
- (d) Buy, own, lease, and sell real and personal property;
- (e) Hold in trust, improve, and develop land;
- (f) Invest, deposit, and reinvest its funds;
- (g) Incur debt in furtherance of its mission; and
- (h) Lend its funds, property, credit, or services for corporate purposes.

(2) A community preservation and development authority has no power of eminent domain nor any power to levy taxes or special assessments.

(3) A community preservation and development authority that accepts public funds under subsection (1)(a) of this section:

- (a) Is subject in all respects to Article VIII, section 5 or 7, as appropriate, of the state Constitution, and to RCW 42.17.128; and
- (b) May not use the funds to support or oppose a candidate, ballot proposition, political party, or political committee. [2009 c 516 § 2; 2007 c 501 § 4.]

**43.167.030 Duties of authorities.** A community preservation and development authority shall have the duty to:

(1) Establish specific geographic boundaries for the authority within its bylaws based on the general geographic boundaries established in the proposal submitted and approved by the legislature;

(2) Solicit input from members of its community and develop a strategic preservation and development plan to restore and promote the health, safety, and economic well-being of the impacted community and to restore and preserve its cultural and historical identity;

(3) Include within the strategic plan a prioritized list of projects identified and supported by the community, including capital or operating components;

(4) Establish funding mechanisms to support projects and programs identified in the strategic plan including but not limited to grants and loans;

(5) Use gifts, grants, loans, and other aid from public or private entities to carry out projects identified in the strategic plan including, but not limited to, those that: (a) Enhance public safety; (b) reduce community blight; and (c) provide ongoing mitigation of the adverse effects of multiple publicly funded projects on the impacted community; and

(6) Demonstrate ongoing accountability for its actions by:

(a) Reporting to the appropriate committees of the legislature, one year after formation and every biennium thereafter, on the authority's strategic plan, activities, accomplishments, and any recommendations for statutory changes;

(b) Reporting any changes in the authority's geographic boundaries to the appropriate committees of the legislature when the legislature next convenes in regular session;

(c) Convening a local town hall meeting with its constituency on an annual basis to: (i) Report its activities and accomplishments from the previous year; (ii) present and receive input from members of the impacted community regarding its proposed strategic plan and activities for the upcoming year; and (iii) hold board member elections as necessary; and

(d) Maintaining books and records as appropriate for the conduct of its affairs. [2009 c 516 § 3; 2007 c 501 § 5.]

### Chapter 43.168 RCW

#### WASHINGTON STATE DEVELOPMENT LOAN FUND COMMITTEE

##### Sections

43.168.020 Definitions.

**43.168.020 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of commerce.

(2) "Director" means the director of commerce.

(3) "Distressed area" means: (a) A rural county; (b) a county which has an unemployment rate which is twenty percent above the state average for the immediately previous three years; (c) a county that has a median household income that is less than seventy-five percent of the state median household income for the previous three years; (d) a metro-

politan statistical area, as defined by the office of federal statistical policy and standards, United States department of commerce, in which the average level of unemployment for the calendar year immediately preceding the year in which an application is filed under this chapter exceeds the average state unemployment for such calendar year by twenty percent; or (e) an area within a county, which area: (i) Is composed of contiguous census tracts; (ii) has a minimum population of five thousand persons; (iii) has at least seventy percent of its families and unrelated individuals with incomes below eighty percent of the county's median income for families and unrelated individuals; and (iv) has an unemployment rate which is at least forty percent higher than the county's unemployment rate. For purposes of this definition, "families and unrelated individuals" has the same meaning that is ascribed to that term by the federal department of housing and urban development in its regulations authorizing action grants for economic development and neighborhood revitalization projects.

(4) "Fund" means the rural Washington loan fund.

(5) "Local development organization" means a nonprofit organization which is organized to operate within an area, demonstrates a commitment to a long-standing effort for an economic development program, and makes a demonstrable effort to assist in the employment of unemployed or underemployed residents in an area.

(6) "Project" means the establishment of a new or expanded business in an area which when completed will provide employment opportunities. "Project" also means the retention of an existing business in an area which when completed will provide employment opportunities.

(7) "Rural county" has the same meaning as provided in RCW 82.14.370. [2009 c 565 § 36; 2008 c 131 § 2; 2005 c 136 § 3; 1999 c 164 § 502; 1996 c 290 § 3; 1995 c 226 § 27; 1993 c 280 § 56; 1991 c 314 § 19; 1988 c 42 § 18; 1987 c 461 § 2; 1985 c 164 § 2.]

**Effective date—2008 c 131:** See note following RCW 43.160.020.

**Savings—2005 c 136:** "This act does not affect 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 does it affect any proceeding instituted under those sections." [2005 c 136 § 19.]

**Effective date—2005 c 136:** "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, 2005." [2005 c 136 § 20.]

**Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164:** See notes following RCW 43.160.010.

**Severability—Conflict with federal requirements—Effective date—1995 c 226:** See notes following RCW 43.160.020.

**Effective date—Severability—1993 c 280:** See RCW 43.330.902 and 43.330.903.

**Findings—1991 c 314:** See note following RCW 43.160.020.

**Severability—1988 c 42:** See note following RCW 4.24.480.

### Chapter 43.180 RCW

#### HOUSING FINANCE COMMISSION

##### Sections

43.180.020 Definitions.

43.180.160 Debt limitation.

43.180.260 Sustainable energy trust program.

43.180.905 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. *(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)*

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

(1) "Bonds" means the bonds, notes, or other evidences of indebtedness of the commission, the interest paid on which may or may not qualify for tax exemption.

(2) "Certifying authority" means: (a) For improvements involving solar electric systems, the Washington climate and rural energy development center at Washington State University, established under RCW 28B.30.642; or (b) for all other energy efficiency and renewable energy improvements, any utility company or other institution qualified to assess and certify the feasibility and benefit of energy efficiency and renewable energy improvements in a manner that is efficient and minimizes the amount of time or cost.

(3) "Code" means the federal internal revenue code of 1954, as now or hereafter amended, and the regulations and rulings promulgated thereunder.

(4) "Commission" means the Washington state housing finance commission or any board, body, commission, department, or officer succeeding to the principal functions thereof or to whom the powers conferred upon the commission shall be given by law.

(5) "Costs of housing" means all costs related to the development, design, acquisition, construction, reconstruction, leasing, rehabilitation, and other improvements of housing, as determined by the commission.

(6) "Eligible applicant" means, with respect to the sustainable energy trust program, an owner of a residential, agricultural, commercial, state, or municipal property.

(7) "Eligible person" means a person or family eligible in accordance with standards promulgated by the commission. Such persons shall include those persons whose income is insufficient to obtain at a reasonable cost, without financial assistance, decent, safe, and sanitary housing in the area in which the person or family resides, and may include such other persons whom the commission determines to be eligible.

(8) "Energy efficiency improvement" means an installation or modification that is designed to reduce energy consumption in residential, agricultural, commercial, state, or municipal properties. The term includes, but is not limited to: Insulation; storm windows and doors; automatic energy control systems; heating, ventilating, or air conditioning and distribution system modifications or replacements in buildings or central plants; caulking and weather stripping; energy recovery systems; geothermal heat pumps; and day lighting systems.

(9) "Housing" means specific new, existing, or improved residential dwellings within this state or dwellings to be constructed within this state. The term includes land, buildings, and manufactured dwellings, and improvements, furnishings, and equipment, and such other nonhousing facilities, furnishings, equipment, and costs as may be incidental or appurtenant thereto if in the judgment of the commission the facilities, furnishings, equipment and costs are an integral part of the project. Housing may consist of single-family or multi-

family dwellings in one or more structures located on contiguous or noncontiguous parcels or any combination thereof. Improvements may include such equipment and materials as are appropriate to accomplish energy efficiency within a dwelling. The term also includes a dwelling constructed by a person who occupies and owns the dwelling, and nursing homes licensed under chapter 18.51 RCW.

(10) "Mortgage" means a mortgage, mortgage deed, deed of trust, security agreement, or other instrument securing a mortgage loan and constituting a lien on or security interest in housing. The property may be held in fee simple or on a leasehold under a lease having a remaining term, at the time the mortgage is acquired, of not less than the term of repayment of the mortgage loan secured by the mortgage. The property may also be housing which is evidenced by an interest in a cooperative association or corporation if ownership of the interest entitles the owner of the interest to occupancy of a dwelling owned by the association or corporation.

(11) "Mortgage lender" means any of the following entities which customarily provide service or otherwise aid in the financing of housing and which are approved as a mortgage lender by the commission: A bank, trust company, savings bank, national banking association, savings and loan association, building and loan association, mortgage banker, mortgage company, credit union, life insurance company, or any other financial institution, governmental agency, municipal corporation, or any holding company for any of the entities specified in this subsection.

(12) "Mortgage loan" means an interest-bearing loan or a participation therein, made to a borrower, for the purpose of financing the costs of housing, evidenced by a promissory note, and which may or may not be secured (a) under a mortgage agreement, (b) under any other security agreement, regardless of whether the collateral is personal or real property, or (c) by insurance or a loan guarantee of a third party. However, an unsecured loan shall not be considered a mortgage loan under this definition unless the amount of the loan is under two thousand five hundred dollars.

(13) "Qualified improvement" means an energy efficiency improvement which has been approved by a certifying authority or a net metering system as defined under RCW 80.60.010. [2009 c 65 § 2; 1990 c 167 § 1; 1983 c 161 § 2.]

**Intent—Finding—2009 c 65:** "The legislature intends to promote the development of renewable energy technologies and the application of energy efficiency measures by authorizing the issuance of revenue bonds to finance renewable energy and energy efficiency improvement costs. The legislature finds that by providing access to low-cost capital to finance renewable energy and energy efficiency projects, a key barrier is eliminated." [2009 c 65 § 1.]

**43.180.160 Debt limitation.** The total amount of outstanding indebtedness of the commission may not exceed six billion dollars at any time. The calculation of outstanding indebtedness shall include the initial principal amount of an issue and shall not include interest that is either currently payable or that accrues as a part of the face amount of an issue payable at maturity or earlier redemption. Outstanding indebtedness shall not include notes or bonds as to which the obligation of the commission has been satisfied and discharged by refunding or for which payment has been provided by reserves or otherwise. [2009 c 291 § 1; 2008 c 111

§ 1; 2006 c 262 § 1; 1999 c 131 § 2; 1996 c 310 § 2; 1986 c 264 § 2; 1983 c 161 § 16.]

**43.180.260 Sustainable energy trust program.** (1) If economically feasible, the commission shall develop and implement a sustainable energy trust program to provide financing for qualified improvement projects. In developing the sustainable energy trust program, the commission shall establish eligibility criteria for financing that will enable it to choose eligible applicants who are likely to repay loans made or acquired by the commission and funded from the proceeds of commission bonds.

(2) The commission shall, if economically feasible:

(a) Issue bonds, as defined in RCW 43.180.020, for the purpose of financing loans for qualified energy efficiency and renewable energy improvement projects in accordance with RCW 43.180.150;

(b) Participate fully in federal and other governmental programs and take actions that are necessary and consistent with this chapter to secure to itself and the people of the state the benefits of programs to promote energy efficiency and renewable energy technologies;

(c) Contract with a certifying authority to accept applications for energy efficiency and renewable energy improvement projects, to review applications, including binding fixed price bids for the improvements, and to approve qualified improvements for financing by the commission. For solar electric systems, the certifying authority must use an application certification process similar to the investment cost recovery incentive application process provided under RCW 82.16.120. No work by a certifying authority may commence under this section until a request has been made by the commission; and

(d) Before entering into a contract with a certifying authority as defined in RCW 43.180.020(2)(b), consult with the Washington State University energy extension program to determine which potential improvement technologies are appropriate.

(3) No general fund resources may be expended to implement this section. [2009 c 65 § 3.]

**Intent—Finding—2009 c 65:** See note following RCW 43.180.020.

**43.180.905 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)** For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 109.]

[2009 RCW Supp—page 876]

## Chapter 43.185 RCW HOUSING ASSISTANCE PROGRAM

### Sections

43.185.020 Definitions.

43.185.140 Findings—Review of all housing properties—Energy audits.

**43.185.020 Definitions.** "Department" means the department of commerce. "Director" means the director of the department of commerce. [2009 c 565 § 37; 1995 c 399 § 101; 1986 c 298 § 3.]

**43.185.140 Findings—Review of all housing properties—Energy audits.** (1) The legislature finds that growing preservation and rehabilitation needs in the housing trust fund property portfolio provide opportunities to advance energy efficiency and weatherization efforts for low-income individuals in Washington state while protecting the state's six hundred million dollars in affordable housing investments. Preservation of existing affordable housing, when done in conjunction with weatherization activities, is a cost-effective, prudent, and environmentally friendly strategy to ensure that low-income housing remains durable, safe, and affordable. Therefore, the legislature intends that where federal funds are available for increasing and improving energy efficiency of low-income housing that these funds must be utilized, subject to federal requirements, for energy audits and implementing energy efficiency measures in the state housing trust fund real estate portfolio.

(2) The department shall review all housing properties in the housing trust fund real estate portfolio and identify those in need of major renovation or rehabilitation. In its review, the department shall survey property owners for information including, but not limited to, the age of the building and the type of heating, cooling, plumbing, and electrical systems contained in the property. The department shall prioritize all renovation or rehabilitation projects identified in the review by the department's ability to:

(a) Achieve the greatest possible expected monetary and energy savings by low-income households and other energy consumers over the greatest period of time;

(b) Promote the greatest possible health and safety improvements for residents of low-income households; and

(c) Leverage, to the extent feasible, technologically advanced and environmentally friendly sustainable technologies, practices, and designs.

(3) Subject to the availability of amounts appropriated for this specific purpose, the department shall use the prioritization of potential energy efficiency needs and opportunities in subsection (2) of this section to make offers of energy audit services to project owners and operators. The department shall use all practicable means to achieve the completion of energy audits in at least twenty-five percent of the properties in its portfolio that exceed twenty-five years in age, by June 30, 2011. Where the energy audits identify cost-effective weatherization and other energy efficiency measures, the department shall accord a priority within appropriated funding levels to include funding for energy efficiency improvements when the department allocates funding for renovation or rehabilitation of the property. [2009 c 379 § 301.]

**Finding—Intent—Effective date—2009 c 379:** See notes following RCW 70.260.010.

### Chapter 43.185A RCW AFFORDABLE HOUSING PROGRAM

#### Sections

43.185A.010 Definitions.

**43.185A.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affordable housing" means residential housing for rental occupancy which, as long as the same is occupied by low-income households, requires payment of monthly housing costs, including utilities other than telephone, of no more than thirty percent of the family's income. The department shall adopt policies for residential homeownership housing, occupied by low-income households, which specify the percentage of family income that may be spent on monthly housing costs, including utilities other than telephone, to qualify as affordable housing.

(2) "Department" means the department of commerce.

(3) "Director" means the director of the department of commerce.

(4) "First-time home buyer" means an individual or his or her spouse or domestic partner who have not owned a home during the three-year period prior to purchase of a home.

(5) "Low-income household" means a single person, family or unrelated persons living together whose adjusted income is less than eighty percent of the median family income, adjusted for household size, for the county where the project is located. [2009 c 565 § 38; 2008 c 6 § 301; 2000 c 255 § 9; 1995 c 399 § 102; 1991 c 356 § 10.]

**Part headings not law—Severability—2008 c 6:** See RCW 26.60.900 and 26.60.901.

**Severability—Effective date—2000 c 255:** See RCW 59.28.901 and 59.28.902.

### Chapter 43.185B RCW WASHINGTON HOUSING POLICY ACT

#### Sections

43.185B.010 Definitions.

**43.185B.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Affordable housing" means residential housing that is rented or owned by a person or household whose monthly housing costs, including utilities other than telephone, do not exceed thirty percent of the household's monthly income.

(2) "Department" means the department of commerce.

(3) "Director" means the director of commerce.

(4) "Nonprofit organization" means any public or private nonprofit organization that: (a) Is organized under federal, state, or local laws; (b) has no part of its net earnings inuring to the benefit of any member, founder, contributor, or individual; and (c) has among its purposes significant activities

related to the provision of decent housing that is affordable to very low-income, low-income, or moderate-income households and special needs populations.

(5) "Regulatory barriers to affordable housing" and "regulatory barriers" mean any public policies (including those embodied in statutes, ordinances, regulations, or administrative procedures or processes) required to be identified by the state or local government in connection with its strategy under section 105(b)(4) of the Cranston-Gonzalez national affordable housing act (42 U.S.C. 12701 et seq.).

(6) "Tenant-based organization" means a nonprofit organization whose governing body includes a majority of members who reside in the housing development and are considered low-income households. [2009 c 565 § 39; 1995 c 399 § 104; 1993 c 478 § 4.]

### Chapter 43.185C RCW HOMELESS HOUSING AND ASSISTANCE

#### Sections

43.185C.010 Definitions.

43.185C.040 Homeless housing strategic plan—Program outcomes and performance measures and goals—Statewide data gathering instrument—Reports.

**43.185C.010 Definitions.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Community action agency" means a nonprofit private or public organization established under the economic opportunity act of 1964.

(2) "Department" means the department of commerce.

(3) "Director" means the director of the department of commerce.

(4) "Home security fund account" means the state treasury account receiving the state's portion of income from revenue from the sources established by RCW 36.22.179, RCW 36.22.1791, and all other sources directed to the homeless housing and assistance program.

(5) "Homeless housing grant program" means the vehicle by which competitive grants are awarded by the department, utilizing moneys from the home security fund account, to local governments for programs directly related to housing homeless individuals and families, addressing the root causes of homelessness, preventing homelessness, collecting data on homeless individuals, and other efforts directly related to housing homeless persons.

(6) "Homeless housing plan" means the ten-year plan developed by the county or other local government to address housing for homeless persons.

(7) "Homeless housing program" means the program authorized under this chapter as administered by the department at the state level and by the local government or its designated subcontractor at the local level.

(8) "Homeless housing strategic plan" means the ten-year plan developed by the department, in consultation with the interagency council on homelessness and the affordable housing advisory board.

(9) "Homeless person" means an individual living outside or in a building not meant for human habitation or which they have no legal right to occupy, in an emergency shelter,

or in a temporary housing program which may include a transitional and supportive housing program if habitation time limits exist. This definition includes substance abusers, people with mental illness, and sex offenders who are homeless.

(10) "Housing authority" means any of the public corporations created by chapter 35.82 RCW.

(11) "Housing continuum" means the progression of individuals along a housing-focused continuum with homelessness at one end and homeownership at the other.

(12) "Interagency council on homelessness" means a committee appointed by the governor and consisting of, at least, policy level representatives of the following entities: (a) The department of commerce; (b) the department of corrections; (c) the department of social and health services; (d) the department of veterans affairs; and (e) the department of health.

(13) "Local government" means a county government in the state of Washington or a city government, if the legislative authority of the city affirmatively elects to accept the responsibility for housing homeless persons within its borders.

(14) "Local homeless housing task force" means a voluntary local committee created to advise a local government on the creation of a local homeless housing plan and participate in a local homeless housing program. It must include a representative of the county, a representative of the largest city located within the county, at least one homeless or formerly homeless person, such other members as may be required to maintain eligibility for federal funding related to housing programs and services and if feasible, a representative of a private nonprofit organization with experience in low-income housing.

(15) "Long-term private or public housing" means subsidized and unsubsidized rental or owner-occupied housing in which there is no established time limit for habitation of less than two years.

(16) "Performance measurement" means the process of comparing specific measures of success against ultimate and interim goals.

(17) "Washington homeless census" means an annual statewide census conducted as a collaborative effort by towns, cities, counties, community-based organizations, and state agencies, with the technical support and coordination of the department, to count and collect data on all homeless individuals in Washington.

(18) "Washington homeless client management information system" means a database of information about homeless individuals in the state used to coordinate resources to assist homeless clients to obtain and retain housing and reach greater levels of self-sufficiency or economic independence when appropriate, depending upon their individual situations. [2009 c 565 § 40; 2007 c 427 § 3; 2006 c 349 § 6; 2005 c 484 § 3.]

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

**Finding—2006 c 349:** See note following RCW 43.185.130.

**43.185C.040 Homeless housing strategic plan—Program outcomes and performance measures and goals—Statewide data gathering instrument—Reports.** (1) Six months after the first Washington homeless census, the

department shall, in consultation with the interagency council on homelessness and the affordable housing advisory board, prepare and publish a ten-year homeless housing strategic plan which shall outline statewide goals and performance measures and shall be coordinated with the plan for homeless families with children required under RCW 43.63A.650. To guide local governments in preparation of their first local homeless housing plans due December 31, 2005, the department shall issue by October 15, 2005, temporary guidelines consistent with this chapter and including the best available data on each community's homeless population. Local governments' ten-year homeless housing plans shall not be substantially inconsistent with the goals and program recommendations of the temporary guidelines and, when amended after 2005, the state strategic plan.

(2) Program outcomes and performance measures and goals shall be created by the department and reflected in the department's homeless housing strategic plan as well as interim goals against which state and local governments' performance may be measured, including:

(a) By the end of year one, completion of the first census as described in RCW 43.185C.030;

(b) By the end of each subsequent year, goals common to all local programs which are measurable and the achievement of which would move that community toward housing its homeless population; and

(c) By July 1, 2015, reduction of the homeless population statewide and in each county by fifty percent.

(3) The department shall develop a consistent statewide data gathering instrument to monitor the performance of cities and counties receiving grants in order to determine compliance with the terms and conditions set forth in the grant application or required by the department.

The department shall, in consultation with the interagency council on homelessness and the affordable housing advisory board, report biennially to the governor and the appropriate committees of the legislature an assessment of the state's performance in furthering the goals of the state ten-year homeless housing strategic plan and the performance of each participating local government in creating and executing a local homeless housing plan which meets the requirements of this chapter. The annual report may include performance measures such as:

(a) The reduction in the number of homeless individuals and families from the initial count of homeless persons;

(b) The number of new units available and affordable for homeless families by housing type;

(c) The number of homeless individuals identified who are not offered suitable housing within thirty days of their request or identification as homeless;

(d) The number of households at risk of losing housing who maintain it due to a preventive intervention;

(e) The transition time from homelessness to permanent housing;

(f) The cost per person housed at each level of the housing continuum;

(g) The ability to successfully collect data and report performance;

(h) The extent of collaboration and coordination among public bodies, as well as community stakeholders, and the level of community support and participation;

- (i) The quality and safety of housing provided; and
- (j) The effectiveness of outreach to homeless persons, and their satisfaction with the program.

(4) Based on the performance of local homeless housing programs in meeting their interim goals, on general population changes and on changes in the homeless population recorded in the annual census, the department may revise the performance measures and goals of the state homeless housing strategic plan, set goals for years following the initial ten-year period, and recommend changes in local governments' plans. [2009 c 518 § 17; 2005 c 484 § 7.]

### Chapter 43.215 RCW

#### DEPARTMENT OF EARLY LEARNING

##### Sections

43.215.125	Washington head start program proposal—Report.
43.215.495	Child care services—Declaration of policy.
43.215.532	County regulation of family day-care centers—Twelve-month pilot projects.
43.215.550	Child care partnership employer liaison.
43.215.555	Child care expansion grant fund.
43.215.908	Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. <i>(Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)</i>

**43.215.125 Washington head start program proposal—Report.** (1) For the 2009-2011 fiscal biennium, to the extent funds are appropriated for this purpose, the department shall develop a proposal for implementing a statewide Washington head start program. To the extent possible while maintaining quality standards, the proposal should align the state early childhood education and assistance program with federal head start program eligibility criteria, guidelines, performance standards, and methods/processes for ensuring continuous improvement in program quality. In this proposal, the department shall make recommendations that:

(a) Identify federal head start program guidelines, performance measures and standards, or other requirements for which state flexibility would be recommended. This shall include an analysis of how state flexibility may impact outcomes for children and how that flexibility might deviate from outcomes associated with the federal standards. Areas to be examined must include, but are not limited to, transportation requirements, service hour configurations, delivery methods, and impact on rural programs;

(b) Provide comparative data regarding child performance, readiness, and educational outcomes for Washington's existing head start and early childhood education and assistance programs;

(c) Determine the alignment between head start standards and the recommendations of Washington learns;

(d) Identify any change in the state early childhood education and assistance program laws that would be required to implement the Washington head start proposal;

(e) Identify additional resources needed to meet federal guidelines and standards. Areas to be examined must include, but are not limited to: Per-child funding levels, professional development and training needs, facilities needs, and technical assistance;

(f) Identify state early childhood education and assistance programs that do and do not offer full-day, full-year

services to children, and what transition steps would be needed for these programs to operate in the same manner as federal head start programs;

(g) Provide steps for phasing-in the Washington head start proposal;

(h) Include a timeline, strategy, and funding needs to implement a statewide, state-supported early head start program as a component of the Washington head start proposal; and

(i) Detail the process the department would take with the regional office of federal head start in identifying any exceptions or waivers needed to provide flexibility and maintain high quality standards.

(2) In developing its recommendations for this proposal, the department shall seek, where appropriate and available, training or technical assistance from the appropriate regional office of federal head start in order to maximize nonstate resources that might be available for the consultative work and research involved with developing this proposal. The department also shall consult with and solicit input from:

(a) State early childhood education and assistance program providers on Indian reservations and across the state, including providers who operate solely state-supported programs;

(b) Tribal governments operating head start programs and early head start programs in the state to ensure that the needs of Indian and Alaskan native children and their families are incorporated into the recommendations of the proposal, especially as they pertain to standards or guidelines around language acquisition, school readiness, availability and need for services among Indian and Alaskan native children and their families, and curriculum development; and

(c) Providers operating migrant and seasonal head start programs in the state in order to address the needs of the children of migrant and seasonal farmworker families.

(3) The department shall make recommendations on how it would periodically review the standards and guidelines within the Washington head start program, including incorporation of the latest research and information on early childhood development as well as any new innovations that may further improve outcomes to low-income children and their families.

(4) The department's recommendations on a Washington head start proposal shall include how the proposal aligns with the department's current statutory duties. The recommendations shall also include any other options that may improve the quality of state-supported early learning programs.

(5) The department shall deliver its report to the governor and legislature by December 1, 2009. [2009 c 564 § 941; 2008 c 164 § 2.]

**Effective date—2009 c 564:** See note following RCW 2.68.020.

**Findings—2008 c 164:** "The legislature finds that:

(1) It is in the best interest of the state to provide early learning services to economically disadvantaged families;

(2) Research has demonstrated that comprehensive services, including family support services designed to meet the early education needs of low-income and at-risk children, are successful in improving school readiness, reducing the risk of juvenile delinquency and incarceration, and reducing reliance on public assistance among these children later in life;

(3) The state's early childhood education and assistance program was originally established to serve as the state counterpart to the federal head start program. When it was created, it aligned with the federal program in both standards and funding levels;

(4) The state early childhood education and assistance program has served an important role in providing comprehensive services to low-income children. However, since it was first created, per-child funding levels for the state program have not kept pace with funding levels for the federal program. This has resulted in fewer service hours for children and less intensive services for families;

(5) Aligning performance standards and funding levels for the state early childhood education and assistance program with federal head start will improve the quality of state-supported early learning programs. Additionally, it will improve school readiness through measures, such as a forty percent increase in class time, and it will achieve administrative efficiencies and make state-supported services more easily recognizable and accessible to parents and families eligible for these programs; and

(6) Providing quality early learning services for children from birth to age three is the most cost-effective investment society can make. Additionally, the state can use the demonstrated results from the federal early head start program as an example to expand its reach of services already provided to three and four-year old children to children in the critical birth to three years age category." [2008 c 164 § 1.]

**43.215.495 Child care services—Declaration of policy.** It shall be the policy of the state of Washington to:

(1) Recognize the family as the most important social and economic unit of society and support the central role parents play in child rearing. All parents are encouraged to care for and nurture their children through the traditional methods of parental care at home. The availability of quality, affordable child care is a concern for working parents, the costs of care are often beyond the resources of working parents, and child care facilities are not located conveniently to work places and neighborhoods. Parents are encouraged to participate fully in the effort to improve the quality of child care services.

(2) Promote a variety of culturally and developmentally appropriate child care settings and services of the highest possible quality in accordance with the basic principle of continuity of care. These settings shall include, but not be limited to, family day care homes, mini-centers, centers and schools.

(3) Promote the growth, development and safety of children by working with community groups including providers and parents to establish standards for quality service, training of child care providers, fair and equitable monitoring, and salary levels commensurate with provider responsibilities and support services.

(4) Promote equal access to quality, affordable, socio-economically integrated child care for all children and families.

(5) Facilitate broad community and private sector involvement in the provision of quality child care services to foster economic development and assist industry through the department of early learning. [2006 c 265 § 202; 1989 c 381 § 2; 1988 c 213 § 1. Formerly RCW 74.13.085.]

**Part headings not law—Effective date—Severability—2006 c 265:** See RCW 43.215.904 through 43.215.906.

**Findings—1989 c 381:** "The legislature finds that the increasing difficulty of balancing work life and family needs for parents in the workforce has made the availability of quality, affordable child care a critical concern for the state and its citizens. The prospect for labor shortages resulting from the aging of the population and the importance of the quality of the workforce to the competitiveness of Washington businesses make the availability of quality child care an important concern for the state and its businesses.

The legislature further finds that making information on child care options available to businesses can help the market for child care adjust to the needs of businesses and working families. The legislature further finds that investments are necessary to promote partnerships between the public and private sectors, educational institutions, and local governments to

increase the supply, affordability, and quality of child care in the state." [1989 c 381 § 1.]

**Severability—1989 c 381:** "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 381 § 7.]

**Severability—1988 c 213:** "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 213 § 5.]

**43.215.532 County regulation of family day-care centers—Twelve-month pilot projects.** (1) Notwithstanding RCW 74.15.030, counties with a population of three thousand or less may adopt and enforce ordinances and regulations as provided in this section for family day-care providers as defined in \*RCW 74.15.020(1)(f) as a twelve-month pilot project. Before a county may regulate family day-care providers in accordance with this section, it shall adopt ordinances and regulations that address, at a minimum, the following: (a) The size, safety, cleanliness, and general adequacy of the premises; (b) the plan of operation; (c) the character, suitability, and competence of a family day-care provider and other persons associated with a family day-care provider directly responsible for the care of children served; (d) the number of qualified persons required to render care; (e) the provision of necessary care, including food, clothing, supervision, and discipline; (f) the physical, mental, and social well-being of children served; (g) educational and recreational opportunities for children served; and (h) the maintenance of records pertaining to children served.

(2) The county shall notify the department of social and health services in writing sixty days prior to adoption of the family day-care regulations required pursuant to this section. The transfer of jurisdiction shall occur when the county has notified the department in writing of the effective date of the regulations, and shall be limited to a period of twelve months from the effective date of the regulations. Regulation by counties of family day-care providers as provided in this section shall be administered and enforced by those counties. The department shall not regulate these activities nor shall the department bear any civil liability under chapter 74.15 RCW for the twelve-month pilot period. Upon request, the department shall provide technical assistance to any county that is in the process of adopting the regulations required by this section, and after the regulations become effective.

(3) Any county regulating family day-care providers pursuant to this section shall report to the governor and the appropriate committees of the legislature concerning the outcome of the pilot project upon expiration of the twelve-month pilot period. The report shall include the ordinances and regulations adopted pursuant to subsection (1) of this section and a description of how those ordinances and regulations address the specific areas of regulation identified in subsection (1) of this section. [2005 c 509 § 1. Formerly RCW 74.15.031.]

**\*Reviser's note:** Chapter 265, Laws of 2006, deleted the definition of "family day-care provider" in RCW 74.15.020 and created it in RCW 43.215.010.

**Effective date—2005 c 509:** "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 17, 2005]." [2005 c 509 § 2.]



**43.215.550 Child care partnership employer liaison.**

An employer liaison position is established in the department of early learning to be colocated with the department of community, trade, and economic development. The employer liaison shall, within appropriated funds:

(1) Staff and assist the child care partnership in the implementation of its duties;

(2) Provide technical assistance to employers regarding child care services, working with and through local resource and referral organizations whenever possible. Such technical assistance shall include at a minimum:

(a) Assessing the child care needs of employees and prospective employees;

(b) Reviewing options available to employers interested in increasing access to child care for their employees;

(c) Developing techniques to permit small businesses to increase access to child care for their employees;

(d) Reviewing methods of evaluating the impact of child care activities on employers; and

(e) Preparing, collecting, and distributing current information for employers on options for increasing involvement in child care; and

(3) Provide assistance to local child care resource and referral organizations to increase their capacity to provide quality technical assistance to employers in their community. [2006 c 265 § 203; 1989 c 381 § 6. Formerly RCW 74.13.0902.]

**Part headings not law—Effective date—Severability—2006 c 265:** See RCW 43.215.904 through 43.215.906.

**Findings—Severability—1989 c 381:** See notes following RCW 43.215.495.

**43.215.555 Child care expansion grant fund.** (1) The legislature recognizes that a severe shortage of child care exists to the detriment of all families and employers throughout the state. Many workers are unable to enter or remain in the workforce due to a shortage of child care resources. The high costs of starting a child care business create a barrier to the creation of new slots, especially for children with special needs.

(2) A child care expansion grant fund is created in the custody of the secretary of the department of social and health services. Grants shall be awarded on a one-time only basis to persons, organizations, or schools needing assistance to start a child care center or mini-center as defined by the department by rule, or to existing licensed child care providers, including family home providers, for the purpose of making capital improvements in order to accommodate handicapped children as defined under chapter 72.40 RCW, sick children, or infant care, or children needing night time care. No grant may exceed ten thousand dollars. Start-up costs shall not include operational costs after the first three months of business.

(3) Child care expansion grants shall be awarded on the basis of need for the proposed services in the community, within appropriated funds.

(4) The department shall adopt rules under chapter 34.05 RCW setting forth criteria, application procedures, and methods to assure compliance with the purposes described in this section. [1988 c 213 § 3. Formerly RCW 74.13.095.]

**Severability—1988 c 213:** See note following RCW 43.215.495.

**43.215.908 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)**

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 110.]

**Chapter 43.235 RCW****DOMESTIC VIOLENCE FATALITY REVIEW PANELS**

## Sections

43.235.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)

**43.235.901 Construction—Chapter applicable to state registered domestic partnerships—2009 c 521. (Effective if E2SSB 5688 is approved at the November 2009 election under Referendum Measure 71.)**

For the purposes of this chapter, the terms spouse, marriage, marital, husband, wife, widow, widower, next of kin, and family shall be interpreted as applying equally to state registered domestic partnerships or individuals in state registered domestic partnerships as well as to marital relationships and married persons, and references to dissolution of marriage shall apply equally to state registered domestic partnerships that have been terminated, dissolved, or invalidated, to the extent that such interpretation does not conflict with federal law. Where necessary to implement chapter 521, Laws of 2009, gender-specific terms such as husband and wife used in any statute, rule, or other law shall be construed to be gender neutral, and applicable to individuals in state registered domestic partnerships. [2009 c 521 § 111.]

**Chapter 43.300 RCW****DEPARTMENT OF FISH AND WILDLIFE**

## Sections

43.300.080 Cost-reimbursement agreements.

**43.300.080 Cost-reimbursement agreements.** (1) The department may enter into a written cost-reimbursement agreement with a permit applicant or project proponent to recover from the applicant or proponent the reasonable costs incurred by the department in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental

review, application review, technical studies, and permit processing.

(2) The cost-reimbursement agreement shall identify the tasks and costs for work to be conducted under the agreement. The agreement must include a schedule that states:

(a) The estimated number of weeks for initial review of the permit application;

(b) The estimated number of revision cycles;

(c) The estimated number of weeks for review of subsequent revision submittals;

(d) The estimated number of billable hours of employee time;

(e) The rate per hour; and

(f) A date for revision of the agreement if necessary.

(3) The written cost-reimbursement agreement shall be negotiated with the permit applicant or project proponent. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the department to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The department may also use funds provided under a cost-reimbursement agreement to hire temporary employees, to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The department shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The department shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants or hire temporary employees to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments.

(4) The cost-reimbursement agreement must not negatively impact the processing of other permit applications. In order to maintain permit processing capacity, the agency may hire outside consultants, temporary employees, or make internal administrative changes. Consultants or temporary employees hired as part of a cost-reimbursement agreement or to maintain agency capacity are hired as agents of the state not of the permit applicant. The restrictions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. [2009 c 97 § 11; 2007 c 94 § 13; 2003 c 70 § 4; 2000 c 251 § 5.]

**Intent—Captions not law—Effective date—2000 c 251:** See notes following RCW 43.21A.690.

## Chapter 43.320 RCW

### DEPARTMENT OF FINANCIAL INSTITUTIONS

#### Sections

43.320.100	Annual report—Contents.
43.320.1401	Mortgage lending fraud prosecution account—Report to legislature. ( <i>Expires June 30, 2009.</i> )
43.320.160	Prevent or reduce owner-occupied foreclosure program—Report. ( <i>Effective until June 30, 2011.</i> )
43.320.165	Prevent or reduce owner-occupied foreclosure program account. ( <i>Effective until June 30, 2011.</i> )

43.320.170 Prevent or reduce owner-occupied foreclosure program—Households served. (*Effective until June 30, 2011.*)

**43.320.100 Annual report—Contents.** The director of financial institutions shall file in his or her office all reports required to be made to the director, prepare and furnish to banks, savings banks, foreign bank branches, savings and loan associations, credit unions, consumer loan companies, check cashers and sellers, and trust companies and departments blank forms for such reports as are required of them, and, beginning in the 2009-2011 fiscal biennium and each biennium thereafter, make a report to the governor showing:

(1) A summary of the conditions of the banks, savings banks, foreign bank branches, savings and loan associations, credit unions, consumer loan companies, check cashers and sellers, and trust companies and departments at the date of their last report; and

(2) A list of those organized or closed during the year.

The director may publish such other statements, reports, and pamphlets as he or she deems advisable. [2009 c 518 § 11; 1993 c 472 § 24; 1977 c 75 § 43; 1965 c 8 § 43.19.090. Prior: 1917 c 80 § 13; RRS § 3220. Formerly RCW 43.19.090.]

**43.320.1401 Mortgage lending fraud prosecution account—Report to legislature. (*Expires June 30, 2009.*)**

(1) Before December 31st of every year, the department of financial institutions shall provide the senate and house of representatives committees that address matters related to financial institutions with a written report outlining the activity of the mortgage lending fraud prosecution account.

(2) This section expires June 30, 2009. [2009 c 518 § 2; 2006 c 21 § 3; 2003 c 289 § 3.]

**43.320.160 Prevent or reduce owner-occupied foreclosure program—Report. (*Effective until June 30, 2011.*)**

(1) The prevent or reduce owner-occupied foreclosure program is created in the department to assist borrowers facing foreclosure in achieving work-outs, loan modifications, or other results that keep them in their homes. The borrowers are households, families, and individuals who are residents of Washington state, with an emphasis on borrowers with incomes up to one hundred forty percent of median income level of the county in which the borrower resides.

(2) The department shall enter into an interagency agreement with the Washington state housing finance commission to implement and administer this program with moneys from the account created in RCW 43.320.165. The Washington state housing finance commission will request funds from the department as needed to implement and operate the program.

(3) The commission shall, under terms and conditions to be determined by the commission, in consultation with the department, assist homeowners who are facing foreclosure in achieving work-outs, loan modifications, or other results that keep them in their homes. Moneys may also be used for outreach activities to raise awareness of this program; creating and maintaining a pool of volunteers consisting of attorneys, accountants, banking professionals, mortgage brokers, housing counselors, and other relevant professionals who participate in the program as needed and without compensation to provide advice and representation to the borrower in achiev-

ing work-outs, loan modifications, or other results that keep them in their homes; and administering assignments of volunteers to borrowers in the most productive manner. Not more than four percent of the total appropriation for this program may be used for administrative expenses of the department and the commission.

(4) The commission must provide an annual report to the legislature at the end of each fiscal year of program operation. The report must include information determined by the prevent or reduce owner-occupied foreclosure oversight committee established under \*section 4 of this act to be useful in assessing the success of the program. The commission shall establish and report upon performance measures, including measures to gauge program efficiency and effectiveness and customer satisfaction.

(5) For the purposes of this section, "work-out" means an agreement made between the borrower and the mortgagee or beneficiary under a deed of trust, or with the authorized agent of the mortgagee or beneficiary, that results in the borrower's continued residence in the mortgaged residential property. [2009 c 386 § 1; 2008 c 322 § 1.]

\*Reviser's note: Section 4 of this act was vetoed.

**43.320.165 Prevent or reduce owner-occupied foreclosure program account. (Effective until June 30, 2011.)**

The prevent or reduce owner-occupied foreclosure program account is created in the custody of the state treasurer. All receipts from the appropriation in section 4, chapter 322, Laws of 2008 as well as receipts from private contributions and all other sources that are specifically designated for the prevent or reduce owner-occupied foreclosure program must be deposited into the account. Expenditures from the account may be used solely for the purpose of preventing or reducing owner-occupied foreclosures through the prevent or reduce owner-occupied foreclosure program as described in RCW 43.320.160. Only the director of the department or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2009 c 386 § 2; 2008 c 322 § 2.]

**43.320.170 Prevent or reduce owner-occupied foreclosure program—Households served. (Effective until June 30, 2011.)**

The Washington state housing finance commission shall serve households, families, and individuals who are residents of Washington state, with an emphasis on borrowers with incomes up to one hundred forty percent of the median income level of the county in which the borrower resides, through the prevent or reduce owner-occupied foreclosure program described in RCW 43.320.160 using state appropriated general funds in the prevent or reduce owner-occupied foreclosure program account created in RCW 43.320.165 and contributions from private and other sources. [2009 c 386 § 3; 2008 c 322 § 3.]

**Chapter 43.325 RCW**

**ENERGY FREEDOM PROGRAM**

Sections

43.325.010 Definitions. (Expires June 30, 2016.)

- 43.325.020 Energy freedom program—Established. (Expires June 30, 2016.)
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- 43.325.040 Energy freedom account—Green energy incentive account—Energy recovery act account. (Expires June 30, 2016.)
- 43.325.050 Director's report. (Expires June 30, 2016.)
- 43.325.070 Applications—Criteria. (Expires June 30, 2016.)

**43.325.010 Definitions. (Expires June 30, 2016.)** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Alternative fuel" means all products or energy sources used to propel motor vehicles, other than conventional gasoline, diesel, or reformulated gasoline. "Alternative fuel" includes, but is not limited to, cellulose, liquefied petroleum gas, liquefied natural gas, compressed natural gas, bio-fuels, biodiesel fuel, E85 motor fuel, fuels containing seventy percent or more by volume of alcohol fuel, fuels that are derived from biomass, hydrogen fuel, anhydrous ammonia fuel, nonhazardous motor fuel, or electricity, excluding onboard electric generation.

(2) "Applicant" means the state and any political subdivision of the state, including port districts, counties, cities, towns, special purpose districts, and other municipal corporations or quasi-municipal corporations. "Applicant" may also include federally recognized tribes, state institutions of higher education with appropriate research capabilities, any organization described in section 501(c)(3) of the internal revenue code, and private entities that are eligible to receive federal funds.

(3) "Assistance" includes loans, leases, product purchases, or other forms of financial or technical assistance.

(4) "Biofuel" includes, but is not limited to, biodiesel, ethanol, and ethanol blend fuels and renewable liquid natural gas or liquid compressed natural gas made from biogas.

(5) "Biogas" includes waste gases derived from landfills and wastewater treatment plants and dairy and farm wastes.

(6) "Cellulose" means lignocellulosic, hemicellulosic, or other cellulosic matter that is available on a renewable or recurring basis, including dedicated energy crops and trees, wood and wood residues, plants, grasses, agricultural residues, fibers, animal wastes and other waste materials, and municipal solid waste.

(7) "Coordinator" means the person appointed by the director of the department of commerce.

(8) "Department" means the department of commerce.

(9) "Director" means the director of the department of commerce.

(10) "Energy efficiency improvement" means an installation or modification that is designed to reduce energy consumption. The term includes, but is not limited to: Insulation; storm windows and doors; automatic energy control systems; energy efficiency audits; heating, ventilating, or air conditioning and distribution system modifications or replacements in buildings or central plants; caulking and weather stripping; energy recovery systems; geothermal heat pumps; and day lighting systems.

(11) "Green highway zone" means an area in the state designated by the department that is within reasonable proximity of state route number 5, state route number 90, and state route number 82.

(12) "Innovative energy technology" means, but is not limited to, the following: Smart grid or smart metering; bio-

gas from landfills, wastewater treatment plants, anaerobic digesters, or other processes; wave or tidal power; fuel cells; high efficiency cogeneration; and energy storage systems.

(13) "Peer review committee" means a board, appointed by the director, that includes bioenergy specialists, energy conservation specialists, scientists, and individuals with specific recognized expertise.

(14) "Project" includes: (a) The construction of facilities, including the purchase of equipment, to convert farm products or wastes into electricity or gaseous or liquid fuels or other coproducts associated with such conversion; (b) clean energy projects identified by the clean energy leadership council, created in section 2, chapter 318, Laws of 2009; and (c) energy efficiency improvements, renewable energy improvements, or innovative energy technologies. These specifically include fixed or mobile facilities to generate electricity or methane from the anaerobic digestion of organic matter, and fixed or mobile facilities for extracting oils from canola, rape, mustard, and other oilseeds. "Project" may also include the construction of facilities associated with such conversion for the distribution and storage of such feedstocks and fuels. The definition of project does not apply to projects as described in RCW 43.325.020(5).

(15) "Renewable energy improvements" means a fixture, product, system, device, or interacting group of devices that produces energy from renewable resources. The term includes, but is not limited to: Photovoltaic systems; solar thermal systems; small wind systems; biomass systems; and geothermal systems.

(16) "Refueling project" means the construction of new alternative fuel refueling facilities, as well as upgrades and expansion of existing refueling facilities, that will enable these facilities to offer alternative fuels to the public.

(17) "Research and development project" means research and development, by an institution of higher education as defined in subsection (2) of this section, relating to:

(a) Bioenergy sources including but not limited to biomass and associated gases; or

(b) The development of markets for bioenergy coproducts. [2009 c 565 § 41; 2009 c 451 § 2; 2007 c 348 § 301; 2006 c 171 § 2. Formerly RCW 15.110.010.]

**Reviser's note:** (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2009 c 451 § 2 and by 2009 c 565 § 41, 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).

**Expiration dates—2009 c 565 §§ 16 and 41:** See note following RCW 43.330.300.

**Expiration dates—2009 c 451 §§ 2, 3, 5, 6, and 7:** "(1) Sections 2, 3, 5, and 6 of this act expire June 30, 2016.

(2) Section 7 of this act expires July 1, 2009." [2009 c 451 § 10.]

**Effective date—2009 c 451:** "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 11, 2009]." [2009 c 451 § 11.]

**Intent—2009 c 451:** "The legislature intends to modify the energy freedom program and account in order to receive federal funds and other sources of funding. Also, the legislature intends to expand the mission of the energy freedom program to accelerate energy efficiency improvements, renewable energy improvements, and deployment of innovative energy technologies. Additionally, the legislature intends to support, through the energy freedom program, research, demonstration, and commercialization of energy effi-

ciency improvements, renewable energy improvements, and innovation energy technologies." [2009 c 451 § 1.]

**43.325.020 Energy freedom program—Established. (Expires June 30, 2016.)** (1) The energy freedom program is established within the department. The director may establish policies and procedures necessary for processing, reviewing, and approving applications made under this chapter.

(2) When reviewing applications submitted under this program, the director shall consult with those agencies and other public entities having expertise and knowledge to assess the technical and business feasibility of the project and probability of success. These agencies may include, but are not limited to, Washington State University, the University of Washington, the department of ecology, the department of natural resources, the department of agriculture, the department of general administration, local clean air authorities, the Washington state conservation commission, and the clean energy leadership council created in section 2, chapter 318, Laws of 2009.

(3) Except as provided in subsections (4) and (5) of this section, the director, in cooperation with the department of agriculture, may approve an application only if the director finds:

(a) The project will convert farm products, wastes, cellulose, or biogas directly into electricity or biofuel or other coproducts associated with such conversion;

(b) The project demonstrates technical feasibility and directly assists in moving a commercially viable project into the marketplace for use by Washington state citizens;

(c) The facility will produce long-term economic benefits to the state, a region of the state, or a particular community in the state;

(d) The project does not require continuing state support;

(e) The assistance will result in new jobs, job retention, or higher incomes for citizens of the state;

(f) The state is provided an option under the assistance agreement to purchase a portion of the fuel or feedstock to be produced by the project, exercisable by the department of general administration;

(g) The project will increase energy independence or diversity for the state;

(h) The project will use feedstocks produced in the state, if feasible, except this criterion does not apply to the construction of facilities used to distribute and store fuels that are produced from farm products or wastes;

(i) Any product produced by the project will be suitable for its intended use, will meet accepted national or state standards, and will be stored and distributed in a safe and environmentally sound manner;

(j) The application provides for adequate reporting or disclosure of financial and employment data to the director, and permits the director to require an annual or other periodic audit of the project books; and

(k) For research and development projects, the application has been independently reviewed by a peer review committee as defined in RCW 43.325.010 and the findings delivered to the director.

(4) When reviewing an application for a refueling project, the coordinator may award a grant or a loan to an applicant if the director finds:

(a) The project will offer alternative fuels to the motoring public;

(b) The project does not require continued state support;

(c) The project is located within a green highway zone as defined in RCW 43.325.010;

(d) The project will contribute towards an efficient and adequately spaced alternative fuel refueling network along the green highways designated in RCW 47.17.020, 47.17.135, and 47.17.140; and

(e) The project will result in increased access to alternative fueling infrastructure for the motoring public along the green highways designated in RCW 47.17.020, 47.17.135, and 47.17.140.

(5) When reviewing an application for energy efficiency improvements, renewable energy improvements, or innovative energy technology, the director may award a grant or a loan to an applicant if the director finds:

(a) The project or program will result in increased access for the public, state and local governments, and businesses to energy efficiency improvements, renewable energy improvements, or innovative energy technologies;

(b) The project or program demonstrates technical feasibility and directly assists in moving a commercially viable project into the marketplace for use by Washington state citizens;

(c) The project or program does not require continued state support; or

(d) The federal government has provided funds with a limited time frame for use for energy independence and security, energy efficiency, renewable energy, innovative energy technologies, or conservation.

(6)(a) The director may approve a project application for assistance under subsection (3) of this section up to five million dollars. In no circumstances shall this assistance constitute more than fifty percent of the total project cost.

(b) The director may approve a refueling project application for a grant or a loan under subsection (4) of this section up to fifty thousand dollars. In no circumstances shall a grant or a loan award constitute more than fifty percent of the total project cost.

(7) The director shall enter into agreements with approved applicants to fix the terms and rates of the assistance to minimize the costs to the applicants, and to encourage establishment of a viable bioenergy or biofuel industry, or a viable energy efficiency, renewable energy, or innovative energy technology industry. The agreement shall include provisions to protect the state's investment, including a requirement that a successful applicant enter into contracts with any partners that may be involved in the use of any assistance provided under this program, including services, facilities, infrastructure, or equipment. Contracts with any partners shall become part of the application record.

(8) The director may defer any payments for up to twenty-four months or until the project starts to receive revenue from operations, whichever is sooner. [2009 c 451 § 3; 2007 c 348 § 302; 2006 c 171 § 3. Formerly RCW 15.110.020.]

**Expiration dates—2009 c 451 §§ 2, 3, 5, 6, and 7:** See note following RCW 43.325.010.

**Effective date—Intent—2009 c 451:** See notes following RCW 43.325.010.

**43.325.030 Coordinator—Duties.** The director of the department shall appoint a coordinator that is responsible for:

(1) Managing, directing, inventorying, and coordinating state efforts to promote, develop, and encourage biofuel and energy efficiency, renewable energy, and innovative energy technology markets in Washington;

(2) Developing, coordinating, and overseeing the implementation of a plan, or series of plans, for the production, transport, distribution, and delivery of biofuels produced predominantly from recycled products or Washington feedstocks;

(3) Working with the departments of transportation and general administration, and other applicable state and local governmental entities and the private sector, to ensure the development of biofuel fueling stations for use by state and local governmental motor vehicle fleets, and to provide greater availability of public biofuel fueling stations for use by state and local governmental motor vehicle fleets;

(4) Coordinating with the Western Washington University alternative automobile program for opportunities to support new Washington state technology for conversion of fossil fuel fleets to biofuel, hybrid, or alternative fuel propulsion;

(5) Coordinating with the University of Washington's college of forest management and the Olympic natural resources center for the identification of barriers to using the state's forest resources for fuel production, including the economic and transportation barriers of physically bringing forest biomass to the market;

(6) Coordinating with the department of agriculture and Washington State University for the identification of other barriers for future biofuels development and development of strategies for furthering the penetration of the Washington state fossil fuel market with Washington produced biofuels, particularly among public entities. [2009 c 451 § 4; 2007 c 348 § 205.]

**Effective date—Intent—2009 c 451:** See notes following RCW 43.325.010.

**43.325.040 Energy freedom account—Green energy incentive account—Energy recovery act account.**

**(Expires June 30, 2016.)** (1) The energy freedom account is created in the state treasury. All receipts from appropriations made to the account and any loan payments of principal and interest derived from loans made under the energy freedom account must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for financial assistance for further funding for projects consistent with this chapter or otherwise authorized by the legislature.

(2) The green energy incentive account is created in the state treasury as a subaccount of the energy freedom account. All receipts from appropriations made to the green energy incentive account shall be deposited into the account, and may be spent only after appropriation. Expenditures from the account may be used only for:

(a) Refueling projects awarded under this chapter;

(b) Pilot projects for plug-in hybrids, including grants provided for the electrification program set forth in RCW 43.325.110; and

(c) Demonstration projects developed with state universities as defined in RCW 28B.10.016 and local governments that result in the design and building of a hydrogen vehicle fueling station.

(3)(a) The energy recovery act account is created in the state treasury. State and federal funds may be deposited into the account and any loan payments of principal and interest derived from loans made from the energy recovery act account must be deposited into the account. Moneys in the account may be spent only after appropriation.

(b) Expenditures from the account may be used only for loans, loan guarantees, and grants that encourage the establishment of innovative and sustainable industries for renewable energy and energy efficiency technology, including but not limited to:

(i) Renewable energy projects or programs that require interim financing to complete project development and implementation;

(ii) Companies with innovative, near-commercial or commercial, clean energy technology; and

(iii) Energy efficiency technologies that have a viable repayment stream from reduced utility costs.

(c) The director shall establish policies and procedures for processing, reviewing, and approving applications for funding under this section. When developing these policies and procedures, the department must consider the clean energy leadership strategy developed under section 2, chapter 318, Laws of 2009.

(d) The director shall enter into agreements with approved applicants to fix the term and rates of funding provided from this account.

(e) The policies and procedures of this subsection (3) do not apply to assistance awarded for projects under RCW 43.325.020(3).

(4) Any state agency receiving funding from the energy freedom account is prohibited from retaining greater than three percent of any funding provided from the energy freedom account for administrative overhead or other deductions not directly associated with conducting the research, projects, or other end products that the funding is designed to produce unless this provision is waived in writing by the director.

(5) Any university, institute, or other entity that is not a state agency receiving funding from the energy freedom account is prohibited from retaining greater than fifteen percent of any funding provided from the energy freedom account for administrative overhead or other deductions not directly associated with conducting the research, projects, or other end products that the funding is designed to produce.

(6) Subsections (2), (4) and (5) of this section do not apply to assistance awarded for projects under RCW 43.325.020(3).

(7) During the 2009-2011 fiscal biennium, the legislature may transfer from the energy freedom account to the state general fund such amounts as reflect the excess fund balance of the account. [2009 c 564 § 942; 2009 c 451 § 5; 2007 c 348 § 305; 2006 c 371 § 223; 2006 c 171 § 6. Formerly RCW 15.110.050.]

**Reviser's note:** This section was amended by 2009 c 451 § 5 and by 2009 c 564 § 942, 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—2009 c 564:** See note following RCW 2.68.020.

**Expiration dates—2009 c 451 §§ 2, 3, 5, 6, and 7:** See note following RCW 43.325.010.

**Effective date—Intent—2009 c 451:** See notes following RCW 43.325.010.

**Part headings not law—2006 c 371:** "Part headings in this act are not any part of the law." [2006 c 371 § 240.]

**Severability—2006 c 371:** "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." [2006 c 371 § 241.]

**Effective date—2006 c 371:** "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 31, 2006]." [2006 c 371 § 242.]

**43.325.050 Director's report. (Expires June 30, 2016.)** The director shall report to the legislature and governor on the status of the energy freedom program created under this chapter, on or before December 1, 2006, and biennially thereafter. This report must include information on the projects that have been funded, the status of these projects, and their environmental, energy savings, and job creation benefits. [2009 c 518 § 20; 2006 c 171 § 7. Formerly RCW 15.110.060.]

**Expiration date—2009 c 518 § 20:** "Section 20 of this act expires June 30, 2016." [2009 c 518 § 26.]

**43.325.070 Applications—Criteria. (Expires June 30, 2016.)** (1) If the total requested dollar amount of assistance awarded for projects under RCW 43.325.020(3) exceeds the amount available in the energy freedom account created in RCW 43.325.040, the applications must be prioritized based upon the following criteria:

(a) The extent to which the project will help reduce dependence on petroleum fuels and imported energy either directly or indirectly;

(b) The extent to which the project will reduce air and water pollution either directly or indirectly;

(c) The extent to which the project will establish a viable bioenergy or biofuel production capacity, energy efficiency, renewable energy, or innovative energy technology industry in Washington;

(d) The benefits to Washington's agricultural producers;

(e) The benefits to the health of Washington's forests;

(f) The beneficial uses of biogas;

(g) The number and quality of jobs and economic benefits created by the project; and

(h) Other criteria as determined by the clean energy leadership council created in section 2, chapter 318, Laws of 2009.

(2) This section does not apply to grants or loans awarded for refueling projects under RCW 43.325.020 (4) and (5). [2009 c 451 § 6; 2007 c 348 § 303; 2006 c 171 § 5. Formerly RCW 15.110.040.]

**Expiration dates—2009 c 451 §§ 2, 3, 5, 6, and 7:** See note following RCW 43.325.010.

**Effective date—Intent—2009 c 451:** See notes following RCW 43.325.010.

## Chapter 43.330 RCW

## DEPARTMENT OF COMMERCE

(Formerly: Department of community, trade, and economic development)

## Sections

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*Broadband mapping, deployment, and adoption—Reports: RCW 43.105.376.*

*Centers of excellence: RCW 28B.50.902.*

**43.330.007 Management responsibility.** The purpose of this chapter is to establish the broad outline of the structure of the department of commerce, leaving specific details of its internal organization and management to those charged with its administration. This chapter identifies the broad functions and responsibilities of the department and is intended to provide flexibility to the director to reorganize these functions and to make recommendations for changes. [2009 c 565 § 1; 1993 c 280 § 2.]

**Implementation plan—1994 c 5; 1993 c 280:** "(1) The director of the department of trade and economic development and the director of the department of community development shall, by November 15, 1993, jointly submit a plan to the governor for the consolidation and smooth transition of the department of trade and economic development and the department of community development into the department of community, trade, and economic development so that the department will operate as a single entity on March 1, 1994.

- (2) The plan shall include, but is not limited to, the following elements:
- (a) Strategies for combining the existing functions and responsibilities

of both agencies into a coordinated and unified department including a strategic plan for each major program area that includes implementation steps, evaluation measures, and methods for collaboration among programs;

(b) Recommendations for any changes in existing programs and functions of both agencies, including new initiatives and possible transfer of programs and functions to and from other departments;

(c) Implementation steps necessary to bring about operation of the combined department as a single entity;

(d) Benchmarks by which to measure progress and to evaluate the performance and effectiveness of the department's efforts; and

(e) Strategies for coordinating and maximizing federal, state, local, international, and private sector support for community and economic development efforts within the state.

(3) In developing this plan, the directors shall establish an advisory committee of representatives of groups using services and programs of both departments. The advisory committee shall include representatives of cities, counties, port districts, small and large businesses, labor unions, associate development organizations, low-income housing interests, housing industry, Indian tribes, community action programs, public safety groups, nonprofit community and development organizations, international trade organizations, minority and women business organizations, and any other organizations the directors determine should have input to the plan." [1994 c 5 § 1; 1993 c 280 § 8.]

**43.330.010 Definitions.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Associate development organization" means a local economic development nonprofit corporation that is broadly representative of community interests.

(2) "Department" means the department of commerce.

(3) "Director" means the director of the department of commerce.

(4) "Financial institution" means a bank, trust company, mutual savings bank, savings and loan association, or credit union authorized to do business in this state under state or federal law.

(5) "Microenterprise development organization" means a community development corporation, a nonprofit development organization, a nonprofit social services organization or other locally operated nonprofit entity that provides services to low-income entrepreneurs.

(6) "Statewide microenterprise association" means a nonprofit entity with microenterprise development organizations as members that serves as an intermediary between the department of commerce and local microenterprise development organizations. [2009 c 565 § 2; 2007 c 322 § 2; 1993 c 280 § 3.]

**Findings—Purpose—Intent—2007 c 322:** See note following RCW 43.330.290.

**43.330.020 Department created.** A department of commerce is created. The department shall be vested with all powers and duties established or transferred to it under this chapter and such other powers and duties as may be authorized by law. Unless otherwise specifically provided, the existing responsibilities and functions of the agency programs will continue to be administered in accordance with their implementing legislation. [2009 c 565 § 3; 1993 c 280 § 4.]

**43.330.080 Coordination of community and economic development services—Contracts with county-designated associate development organizations—Scope of services.** The department shall contract with county-designated

nated associate development organizations to increase the support for and coordination of community and economic development services in communities or regional areas. The organizations contracted with in each community or regional area shall be broadly representative of community and economic interests. The organization shall be capable of identifying key economic and community development problems, developing appropriate solutions, and mobilizing broad support for recommended initiatives. The contracting organization shall work with and include local governments, local chambers of commerce, workforce development councils, port districts, labor groups, institutions of higher education, community action programs, and other appropriate private, public, or nonprofit community and economic development groups. The scope of services delivered under these contracts shall include two broad areas of work:

(1) Direct assistance, including business planning, to companies who need support to stay in business, expand, or relocate to Washington from out of state or other countries. Assistance includes:

(a) Working with the appropriate partners, including but not limited to, local governments, workforce development councils, port districts, community and technical colleges and higher education institutions, export assistance providers, the Washington manufacturing services, the Washington state quality award council, small business assistance programs, and other federal, state, and local programs to facilitate the alignment of planning efforts and the seamless delivery of business support services in the county;

(b) Providing information on state and local permitting processes, tax issues, and other essential information for operating, expanding, or locating a business in Washington;

(c) Marketing Washington and local areas as excellent locations to expand or relocate a business and positioning Washington as a globally competitive place to grow business, which may include developing and executing regional plans to attract companies from out of state;

(d) Working with businesses on site location and selection assistance;

(e) Providing business retention and expansion services, including business outreach and monitoring efforts to identify and address challenges and opportunities faced by businesses; and

(f) Participating in economic development system-wide discussions regarding gaps in business start-up assistance in Washington; and

(2) Support for regional economic research and regional planning efforts to implement target industry sector strategies and other economic development strategies, including cluster-based strategies, that support increased living standards and increase foreign direct investment throughout Washington. Activities include:

(a) Participation in regional planning efforts with workforce development councils involving coordinated strategies around workforce development and economic development policies and programs. Coordinated planning efforts shall include, but not be limited to, assistance to industry clusters in the region;

(b) Participation between the contracting organization and the state board for community and technical colleges as created in RCW 28B.50.050, and any community and technical colleges in providing for the coordination of the job skills training program and the customized training program within its region;

(c) Collecting and reporting data as specified by the contract with the department for statewide systemic analysis. The department shall consult with the Washington state economic development commission in the establishment of such uniform data as is needed to conduct a statewide systemic analysis of the state's economic development programs and expenditures. In cooperation with other local, regional, and state planning efforts, contracting organizations may provide insight into the needs of target industry clusters, business expansion plans, early detection of potential relocations or layoffs, training needs, and other appropriate economic information;

(d) In conjunction with other governmental jurisdictions and institutions, participate in the development of a county-wide economic development plan, consistent with the state comprehensive plan for economic development developed by the Washington state economic development commission. [2009 c 151 § 10; 2007 c 249 § 2; 1997 c 60 § 1; 1993 c 280 § 11.]

**Findings—Intent—2007 c 249:** "The legislature finds that economic development success requires coordinated state and local efforts. The legislature further finds that economic development happens at the local level. County-designated associate development organizations serve as a networking tool and resource hub for business retention, expansion, and relocation in Washington. Economic development success requires an adequately funded and coordinated state effort and an adequately funded and coordinated local effort. The legislature intends to bolster the partnership between state and local economic development efforts, provide increased funding for local economic development services, and increase local economic development service effectiveness, efficiency, and outcomes." [2007 c 249 § 1.]

**43.330.082 Contracting associate development organizations—Performance measures—Remediation plans—Reports.** (1) Contracting associate development organizations shall provide the department with measures of their performance. Annual reports shall include information on the impact of the contracting organization on employment, wages, tax revenue, and capital investment. Specific measures shall be developed in the contracting process between the department and the contracting organization every two years. Performance measures should be consistent across regions to allow for statewide evaluation.

(2)(a) The department and contracting organizations shall agree upon specific target levels for the performance measures in subsection (1) of this section. Comparison of agreed thresholds and actual performance shall occur annually.

(b) Contracting organizations that fail to achieve the agreed performance targets in more than one-half of the agreed measures shall develop remediation plans to address performance gaps. The remediation plans shall include revised performance thresholds specifically chosen to provide evidence of progress in making the identified service changes.



(c) Contracts and state funding shall be terminated for one year for organizations that fail to achieve the agreed upon progress toward improved performance defined under (b) of this subsection. During the year in which termination for nonperformance is in effect, organizations shall review alternative delivery strategies to include reorganization of the contracting organization, merging of previous efforts with existing regional partners, and other specific steps toward improved performance. At the end of the period of termination, the department may contract with the associate development organization or its successor as it deems appropriate.

(3) The department shall report to the legislature and the Washington economic development commission by December 31st of each even-numbered year on the performance results of the contracts with associate development organizations. [2009 c 518 § 15; 2007 c 249 § 3.]

**Findings—Intent—2007 c 249:** See note following RCW 43.330.080.

**43.330.090 Economic diversification strategies—Targeted industry sectors—Film and video production—Industry cluster advisory committee.** (1) The department shall work with private sector organizations, industry and sector associations, federal agencies, state agencies that use a sector-based approach to service delivery, local governments, local associate development organizations, and higher education and training institutions in the development of industry sector-based strategies to diversify the economy, facilitate technology transfer and diffusion, and increase value-added production. The industry sectors targeted by the department may include, but are not limited to, aerospace, agriculture, food processing, forest products, marine services, health and biomedical, software, digital and interactive media, transportation and distribution, and microelectronics. The department shall, on a continuing basis, evaluate the potential return to the state from devoting additional resources to an industry sector-based approach to economic development and identifying and assisting additional sectors.

(2) The department's sector-based strategies shall include, but not be limited to, cluster-based strategies that focus on assisting regional industry sectors and related firms and institutions that meet the definition of an industry cluster in this section and based on criteria identified by the working group established in this chapter.

(3)(a) The department shall promote, market, and encourage growth in the production of films and videos, as well as television commercials within the state; to this end the department is directed to assist in the location of a film and video production studio within the state.

(b) The department may, in carrying out its efforts to encourage film and video production in the state, solicit and receive gifts, grants, funds, fees, and endowments, in trust or otherwise, from tribal, local, or other governmental entities, as well as private sources, and may expend the same or any income therefrom for the encouragement of film and video production. All revenue received for such purposes shall be deposited into the film and video promotion account created in RCW 43.330.092.

(4) In assisting in the development of regional and state-wide industry cluster-based strategies, the department's activities shall include, but are not limited to:

(a) Facilitating regional focus group discussions and conducting studies to identify industry clusters, appraise the current information linkages within a cluster, and identify issues of common concern within a cluster;

(b) Supporting industry and cluster associations, publications of association and cluster directories, and related efforts to create or expand the activities of industry and cluster associations;

(c) Administering a competitive grant program to fund economic development activities designed to further regional cluster growth. In administering the program, the department shall work with an industry cluster advisory committee with equal representation from the economic development commission, the workforce training and education coordinating board, the state board for community and technical colleges, the employment security department, business, and labor.

(i) The industry cluster advisory committee shall recommend criteria for evaluating applications for grant funds and recommend applicants for receipt of grant funds. Criteria shall include not duplicating the purpose or efforts of industry skill panels.

(ii) Applicants must include organizations from at least two counties and participants from the local business community. Eligible organizations include, but are not limited to, local governments, economic development councils, chambers of commerce, federally recognized Indian tribes, workforce development councils, and educational institutions.

(iii) Applications must evidence financial participation of the partner organizations.

(iv) Eligible activities include the formation of cluster economic development partnerships, research and analysis of economic development needs of the cluster, the development of a plan to meet the economic development needs of the cluster, and activities to implement the plan.

(v) Priority shall be given to applicants that complement industry skill panels and will use the grant funds to build linkages and joint projects.

(vi) The maximum amount of a grant is one hundred thousand dollars.

(vii) A maximum of one hundred thousand dollars total can go to King, Pierce, Kitsap, and Snohomish counties combined.

(viii) No more than ten percent of funds received for the grant program may be used by the department for administrative costs.

(5) As used in this chapter, "industry cluster" means a geographic concentration of interconnected companies in a single industry, related businesses in other industries, including suppliers and customers, and associated institutions, including government and education. [2009 c 151 § 1; 2007 c 228 § 201; 2006 c 105 § 1; 2005 c 136 § 14; 2003 c 153 § 2; 1998 c 245 § 85; 1994 c 144 § 1; 1993 c 280 § 12.]

**Part headings not law—2007 c 228:** See RCW 43.336.900.

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**Findings—2003 c 153:** "The legislature finds that tourism is a growing sector of the Washington economy. Washington has a diverse geography, geology, climate, and natural resources, and offers abundant opportunities for wildlife viewing. Nature-based tourism is the fastest growing outdoor activity and segment of the travel industry and the state can take advantage of this by marketing Washington's natural assets to international as well as national tourist markets. Expanding tourism efforts can provide Washington residents with jobs and local communities with needed revenues.

The legislature also finds that current efforts to promote Washington's natural resources and nature-based tourism to national and international markets are too diffuse and limited by funding and that a collaborative effort among state and local governments, tribes, and private enterprises can serve to leverage the investments in nature-based tourism made by each." [2003 c 153 § 1.]

**Effective date—1994 c 144:** "This act shall take effect July 1, 1994." [1994 c 144 § 3.]

**43.330.092 Film and video promotion account—Promotion of film and video production industry.** The film and video promotion account is created in the state treasury. All revenue received for film and video promotion purposes under \*RCW 43.330.090(2)(b) and all receipts from RCW 36.102.060(14) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of commerce only for the purposes of promotion of the film and video production industry in the state of Washington. [2009 c 565 § 5; 2005 c 136 § 15; 1997 c 220 § 222 (Referendum Bill No. 48, approved June 17, 1997).]

**\*Reviser's note:** RCW 43.330.090 was amended by 2009 c 151 § 1, changing subsection (2)(b) to subsection (3)(b).

**Savings—Effective date—2005 c 136:** See notes following RCW 43.168.020.

**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.

**43.330.094 Tourism development and promotion account—Promotion of tourism industry.** The tourism development and promotion account is created in the state treasury. All receipts from RCW 36.102.060(10) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of commerce only for the purposes of expanding and promoting the tourism industry in the state of Washington. [2009 c 565 § 6; 2007 c 228 § 202; 2003 c 153 § 4; 1997 c 220 § 223 (Referendum Bill No. 48, approved June 17, 1997).]

**Part headings not law—2007 c 228:** See RCW 43.336.900.

**Findings—2003 c 153:** See note following RCW 43.330.090.

**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.

**43.330.125 Assistance to counties and cities.** The department of commerce shall provide training and technical assistance to counties and cities to assist them in fulfilling the requirements of chapter 36.70B RCW. [2009 c 565 § 7; 1995 c 347 § 430.]

[2009 RCW Supp—page 890]

**Finding—Severability—Part headings and table of contents not law—1995 c 347:** See notes following RCW 36.70A.470.

**43.330.135 Court-appointed special advocate programs—Funds—Eligibility.** (1) The department of commerce shall distribute such funds as are appropriated for the statewide technical support, development, and enhancement of court-appointed special advocate programs.

(2) In order to receive money under subsection (1) of this section, an organization providing statewide technical support, development, and enhancement of court-appointed special advocate programs must meet all of the following requirements:

(a) The organization must provide statewide support, development, and enhancement of court-appointed special advocate programs that offer guardian ad litem services as provided in RCW 26.12.175, 26.44.053, and 13.34.100;

(b) All guardians ad litem working under court-appointed special advocate programs supported, developed, or enhanced by the organization must be volunteers and may not receive payment for services rendered pursuant to the program. The organization may include paid positions that are exclusively administrative in nature, in keeping with the scope and purpose of this section; and

(c) The organization providing statewide technical support, development, and enhancement of court-appointed special advocate programs must be a public benefit nonprofit corporation as defined in RCW 24.03.490.

(3) If more than one organization is eligible to receive money under this section, the department shall develop criteria for allocation of appropriated money among the eligible organizations. [2009 c 565 § 8; 1995 c 13 § 1.]

**43.330.167 Homeless families services fund—Created—Eligible activities.** (1)(a) There is created in the custody of the state treasurer an account to be known as the homeless families services fund. Revenues to the fund consist of a one-time appropriation by the legislature, private contributions, and all other sources deposited in the fund.

(b) Expenditures from the fund may only be used for the purposes of the program established in this section, including administrative expenses. Only the director of the department of commerce, or the director's designee, may authorize expenditures.

(c) Expenditures from the fund are exempt from appropriations and the allotment provisions of chapter 43.88 RCW. However, money used for program administration by the department is subject to the allotment and budgetary controls of chapter 43.88 RCW, and an appropriation is required for these expenditures.

(2) The department may expend moneys from the fund to provide state matching funds for housing-based supportive services for homeless families over a period of at least ten years.

(3) Activities eligible for funding through the fund include, but are not limited to, the following:

- (a) Case management;
- (b) Counseling;

(c) Referrals to employment support and job training services and direct employment support and job training services;

(d) Domestic violence services and programs;

(e) Mental health treatment, services, and programs;

(f) Substance abuse treatment, services, and programs;

(g) Parenting skills education and training;

(h) Transportation assistance;

(i) Child care; and

(j) Other supportive services identified by the department to be an important link for housing stability.

(4) Organizations that may receive funds from the fund include local housing authorities, nonprofit community or neighborhood-based organizations, public development authorities, federally recognized Indian tribes in the state, and regional or statewide nonprofit housing assistance organizations. [2009 c 565 § 9; 2004 c 276 § 718.]

**Severability—2004 c 276:** "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." [2004 c 276 § 915.]

**Effective date—2004 c 276:** "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 1, 2004]." [2004 c 276 § 916.]

**43.330.170 Statewide housing market analysis.** The office of community development of the department of commerce is directed to conduct a statewide housing market analysis by region. The purpose of the analysis is to identify areas of greatest need for the appropriate investment of state affordable housing funds, using vacancy data and other appropriate measures of need for low-income housing. The analysis shall include the number and types of projects that counties have developed using the funds collected under chapter 294, Laws of 2002. The analysis shall be completed by September 2003, and updated every two years thereafter. [2009 c 565 § 10; 2002 c 294 § 4.]

**Findings—2002 c 294:** See note following RCW 36.22.178.

**43.330.210 Developmental disabilities endowment—Governing board—Liability of governing board and state investment board.** The developmental disabilities endowment governing board is established to design and administer the developmental disabilities endowment. To the extent funds are appropriated for this purpose, the director of the department of commerce shall provide staff and administrative support to the governing board.

(1) The governing board shall consist of seven members as follows:

(a) Three of the members, who shall be appointed by the governor, shall be persons who have demonstrated expertise and leadership in areas such as finance, actuarial science, management, business, or public policy.

(b) Three members of the board, who shall be appointed by the governor, shall be persons who have demonstrated expertise and leadership in areas such as business, developmental disabilities service design, management, or public policy, and shall be family members of persons with developmental disabilities.

(c) The seventh member of the board, who shall serve as chair of the board, shall be appointed by the remaining six members of the board.

(2) Members of the board shall serve terms of four years and may be appointed for successive terms of four years at the discretion of the appointing authority. However, the governor may stagger the terms of the initial six members of the board so that approximately one-fourth of the members' terms expire each year.

(3) Members of the board shall be compensated for their service under RCW 43.03.240 and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(4) The board shall meet periodically as specified by the call of the chair, or a majority of the board.

(5) Members of the governing board and the state investment board shall not be considered an insurer of the funds or assets of the endowment trust fund or the individual trust accounts. Neither of these two boards or their members shall be liable for the action or inaction of the other.

(6) Members of the governing board and the state investment board are not liable to the state, to the fund, or to any other person as a result of their activities as members, whether ministerial or discretionary, except for willful dishonesty or intentional violations of law. The department and the state investment board, respectively, may purchase liability insurance for members. [2009 c 565 § 11; 2000 c 120 § 5; 1999 c 384 § 4.]

**Intent—Captions not law—1999 c 384:** See notes following RCW 43.330.200.

**43.330.240 Developmental disabilities endowment—Rules.** The department of commerce shall adopt rules for the implementation of policies established by the governing board in RCW 43.330.200 through 43.330.230. Such rules will be consistent with those statutes and chapter 34.05 RCW. [2009 c 565 § 12; 2000 c 120 § 9.]

**43.330.250 Economic development strategic reserve account—Authorized expenditures—Transfer of excess funds to the education construction account.** (1) The economic development strategic reserve account is created in the state treasury to be used only for the purposes of this section.

(2) Only the governor, with the recommendation of the director of the department of commerce and the economic development commission, may authorize expenditures from the account.

(3) Expenditures from the account shall be made in an amount sufficient to fund a minimum of one staff position for the economic development commission and to cover any other operational costs of the commission.

(4) During the 2009-2011 fiscal biennium, moneys in the account may also be transferred into the state general fund.

(5) Expenditures from the account may be made to prevent closure of a business or facility, to prevent relocation of a business or facility in the state to a location outside the state, or to recruit a business or facility to the state. Expenditures may be authorized for:

(a) Workforce development;

(b) Public infrastructure needed to support or sustain the operations of the business or facility; and

(c) Other lawfully provided assistance, including, but not limited to, technical assistance, environmental analysis, relocation assistance, and planning assistance. Funding may be provided for such assistance only when it is in the public interest and may only be provided under a contractual arrangement ensuring that the state will receive appropriate consideration, such as an assurance of job creation or retention.

(6) The funds shall not be expended from the account unless:

(a) The circumstances are such that time does not permit the director of the department of commerce or the business or facility to secure funding from other state sources;

(b) The business or facility produces or will produce significant long-term economic benefits to the state, a region of the state, or a particular community in the state;

(c) The business or facility does not require continuing state support;

(d) The expenditure will result in new jobs, job retention, or higher incomes for citizens of the state;

(e) The expenditure will not supplant private investment; and

(f) The expenditure is accompanied by private investment.

(7) No more than three million dollars per year may be expended from the account for the purpose of assisting an individual business or facility pursuant to the authority specified in this section.

(8) If the account balance in the strategic reserve account exceeds fifteen million dollars at any time, the amount in excess of fifteen million dollars shall be transferred to the education construction account. [2009 c 565 § 13; 2009 c 564 § 943; 2008 c 329 § 914; 2005 c 427 § 1.]

**Reviser's note:** This section was amended by 2009 c 564 § 943 and by 2009 c 565 § 13, 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—2009 c 564:** See note following RCW 2.68.020.

**Severability—Effective date—2008 c 329:** See notes following RCW 28B.105.110.

### 43.330.270 Innovation partnership zone program.

(1) The department shall design and implement an innovation partnership zone program through which the state will encourage and support research institutions, workforce training organizations, and globally competitive companies to work cooperatively in close geographic proximity to create commercially viable products and jobs.

(2) The director shall designate innovation partnership zones on the basis of the following criteria:

(a) Innovation partnership zones must have three types of institutions operating within their boundaries, or show evidence of planning and local partnerships that will lead to dense concentrations of these institutions:

(i) Research capacity in the form of a university or community college fostering commercially valuable research, nonprofit institutions creating commercially applicable innovations, or a national laboratory;

(ii) Dense proximity of globally competitive firms in a research-based industry or industries or of individual firms with innovation strategies linked to (a)(i) of this subsection. A globally competitive firm may be signified through international organization for standardization 9000 or 1400 certification, or other recognized evidence of international success; and

(iii) Training capacity either within the zone or readily accessible to the zone. The training capacity requirement may be met by the same institution as the research capacity requirement, to the extent both are associated with an educational institution in the proposed zone.

(b) The support of a local jurisdiction, a research institution, an educational institution, an industry or cluster association, a workforce development council, and an associate development organization, port, or chamber of commerce;

(c) Identifiable boundaries for the zone within which the applicant will concentrate efforts to connect innovative researchers, entrepreneurs, investors, industry associations or clusters, and training providers. The geographic area defined should lend itself to a distinct identity and have the capacity to accommodate firm growth;

(d) The innovation partnership zone administrator must be an economic development council, port, workforce development council, city, or county.

(3) With respect solely to the research capacity required in subsection (2)(a)(i) of this section, the director may waive the requirement that the research institution be located within the zone. To be considered for such a waiver, an applicant must provide a specific plan that demonstrates the research institution's unique qualifications and suitability for the zone, and the types of jointly executed activities that will be used to ensure ongoing, face-to-face interaction and research collaboration among the zone's partners.

(4) On October 1st of each odd-numbered year, the director shall designate innovation partnership zones on the basis of applications that meet the legislative criteria, estimated economic impact of the zone, evidence of forward planning for the zone, and other criteria as recommended by the Washington state economic development commission. Estimated economic impact must include evidence of anticipated private investment, job creation, innovation, and commercialization. The director shall require evidence that zone applicants will promote commercialization, innovation, and collaboration among zone residents.

(5) Innovation partnership zones are eligible for funds and other resources as provided by the legislature or at the discretion of the governor.

(6) If the innovation partnership zone meets the other requirements of the fund sources, then the zone is eligible for the following funds relating to:

- (a) The local infrastructure financing tools program;
- (b) The sales and use tax for public facilities in rural counties; and
- (c) Job skills.

(7) An innovation partnership zone shall be designated as a zone for a four-year period. At the end of the four-year period, the zone must reapply for the designation through the department.

(8) If the director finds at any time after the initial year of designation that an innovation partnership zone is failing to meet the performance standards required in its contract with the department, the director may withdraw such designation and cease state funding of the zone.

(9) The department shall convene annual information sharing events for innovation partnership zone administrators and other interested parties.

(10) An innovation partnership zone shall provide performance measures as required by the director, including but not limited to private investment measures, job creation measures, and measures of innovation such as licensing of ideas in research institutions, patents, or other recognized measures of innovation.

(11) The department shall compile a biennial report on the innovation partnership zone program by December 1st of every even-numbered year. The report shall provide information for each zone on its: Objectives; funding, tax incentives, and other support obtained from public sector sources; major activities; partnerships; performance measures; and outcomes achieved since the inception of the zone or since the previous biennial report. The Washington state economic development commission shall review the department's draft report and make recommendations on ways to increase the effectiveness of individual zones and the program overall. The department shall submit the report, including the commission's recommendations, to the governor and legislature beginning December 1, 2010. [2009 c 72 § 1; 2007 c 227 § 1.]

**43.330.280 Innovation partnerships—Duties of state economic development commission and workforce training and education coordinating board—Working group.**

(1) The Washington state economic development commission shall, with the advice of an innovation partnership advisory group selected by the commission:

(a) Provide information and advice to the department of commerce to assist in the implementation of the innovation partnership zone program, including criteria to be used in the selection of grant applicants for funding;

(b) Document clusters of companies throughout the state that have comparative competitive advantage or the potential for comparative competitive advantage, using the process and criteria for identifying strategic clusters developed by the working group specified in subsection (2) of this section;

(c) Conduct an innovation opportunity analysis to identify (i) the strongest current intellectual assets and research teams in the state focused on emerging technologies and their commercialization, and (ii) faculty and researchers that could increase their focus on commercialization of technology if provided the appropriate technical assistance and resources;

(d) Based on its findings and analysis, and in conjunction with the higher education coordinating board and research institutions:

(i) Develop a plan to build on existing, and develop new, intellectual assets and innovation research teams in the state in research areas where there is a high potential to commercialize technologies. The commission shall present the plan to the governor and legislature by December 31, 2009. The higher education coordinating board shall be responsible for implementing the plan in conjunction with the publicly

funded research institutions in the state. The plan shall address the following elements and such other elements as the commission deems important:

(A) Specific mechanisms to support, enhance, or develop innovation research teams and strengthen their research and commercialization capacity in areas identified as useful to strategic clusters and innovative firms in the state;

(B) Identification of the funding necessary for laboratory infrastructure needed to house innovation research teams;

(C) Specification of the most promising research areas meriting enhanced resources and recruitment of significant entrepreneurial researchers to join or lead innovation research teams;

(D) The most productive approaches to take in the recruitment, in the identified promising research areas, of a minimum of ten significant entrepreneurial researchers over the next ten years to join or lead innovation research teams;

(E) Steps to take in solicitation of private sector support for the recruitment of entrepreneurial researchers and the commercialization activity of innovation research teams; and

(F) Mechanisms for ensuring the location of innovation research teams in innovation partnership zones;

(ii) Provide direction for the development of comprehensive entrepreneurial assistance programs at research institutions. The programs may involve multidisciplinary students, faculty, entrepreneurial researchers, entrepreneurs, and investors in building business models and evolving business plans around innovative ideas. The programs may provide technical assistance and the support of an entrepreneur-in-residence to innovation research teams and offer entrepreneurial training to faculty, researchers, undergraduates, and graduate students. Curriculum leading to a certificate in entrepreneurship may also be offered;

(e) Develop performance measures to be used in evaluating the performance of innovation research teams, the implementation of the plan and programs under (d)(i) and (ii) of this subsection, and the performance of innovation partnership zone grant recipients, including but not limited to private investment measures, business initiation measures, job creation measures, and measures of innovation such as licensing of ideas in research institutions, patents, or other recognized measures of innovation. The performance measures developed shall be consistent with the economic development commission's comprehensive plan for economic development and its standards and metrics for program evaluation. The commission shall report to the legislature and the governor by June 30, 2009, on the measures developed; and

(f) Using the performance measures developed, perform a biennial assessment and report, the first of which shall be due December 31, 2012, on:

(i) Commercialization of technologies developed at state universities, found at other research institutions in the state, and facilitated with public assistance at existing companies;

(ii) Outcomes of the funding of innovation research teams and recruitment of significant entrepreneurial researchers;

(iii) Comparison with other states of Washington's outcomes from the innovation research teams and efforts to recruit significant entrepreneurial researchers; and

(iv) Outcomes of the grants for innovation partnership zones.

The report shall include recommendations for modifications of chapter 227, Laws of 2007 and of state commercialization efforts that would enhance the state's economic competitiveness.

(2) The economic development commission and the workforce training and education coordinating board shall jointly convene a working group to:

(a) Specify the process and criteria for identification of substate geographic concentrations of firms or employment in an industry and the industry's customers, suppliers, supporting businesses, and institutions, which process will include the use of labor market information from the employment security department and local labor markets; and

(b) Establish criteria for identifying strategic clusters which are important to economic prosperity in the state, considering cluster size, growth rate, and wage levels among other factors. [2009 c 565 § 14; 2009 c 72 § 2; 2007 c 227 § 2.]

**Reviser's note:** This section was amended by 2009 c 72 § 2 and by 2009 c 565 § 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).

#### **43.330.290 Microenterprise development program.**

The microenterprise development program is established in the department of commerce. In implementing the program, the department:

(1) Shall provide organizational support to a statewide microenterprise association and shall contract with the association for the delivery of services and distribution of grants;

(a) The association shall serve as the department's agent in carrying out the purpose and service delivery requirements of this section;

(b) The association's contract with the department shall specify that in administering the funds provided for under subsection (3) of this section, the association may use no greater than ten percent of the funds to cover administrative expenses;

(2) Shall provide funds for capacity building for the statewide microenterprise association and microenterprise development organizations throughout the state;

(3) Shall provide grants to microenterprise development organizations for the delivery of training and technical assistance services;

(4) Shall identify and facilitate the availability of state, federal, and private sources of funds which may enhance microenterprise development in the state;

(5) Shall develop with the statewide microenterprise association criteria for the distribution of grants to microenterprise development organizations. Such criteria may include:

(a) The geographic representation of all regions of the state, including both urban and rural communities;

(b) The ability of the microenterprise development organization to provide business development services in low-income communities;

(c) The scope of services offered by a microenterprise development organization and their efficiency in delivery of such services;

(d) The ability of the microenterprise development organization to monitor the progress of its customers and identify technical and financial assistance needs;

(e) The ability of the microenterprise development organization to work with other organizations, public entities, and financial institutions to meet the technical and financial assistance needs of its customers;

(f) The sufficiency of operating funds for the microenterprise development organization; and

(g) Such other criteria as agreed by the department and the association;

(6) Shall require the statewide microenterprise association and any microenterprise development organization receiving funds through the microenterprise development program to raise and contribute to the effort funded by the microenterprise development program an amount equal to twenty-five percent of the microenterprise development program funds received. Such matching funds may come from private foundations, federal or local sources, financial institutions, or any other source other than funds appropriated from the legislature;

(7) Shall require under its contract with the statewide microenterprise association an annual accounting of program outcomes, including job creation, access to capital, leveraging of nonstate funds, and other outcome measures specified by the department. By January 1, 2012, the joint legislative audit and review committee shall use these outcome data and other relevant information to evaluate the program's effectiveness; and

(8) May adopt rules as necessary to implement this section. [2009 c 565 § 15; 2007 c 322 § 3.]

**Findings—Purpose—Intent—2007 c 322:** "(1) The legislature finds that:

(a) Microenterprises are an important portion of Washington's economy, providing approximately twenty percent of the employment in Washington and playing a vital role in job creation.

(b) While community-based microenterprise development organizations have expanded their assistance to their microentrepreneur customers in recent years, there remains a lack of access to capital, training, and technical assistance for low-income microentrepreneurs.

(c) Support for microenterprise development offers a means to expand business and job creation in low-income communities in both rural and urban areas of the state.

(d) Local and state charitable foundation support, federal program funding, and private sector support can be leveraged by a statewide program for development of microenterprises.

(2) It is the purpose of this act to assist microenterprises in job creation by increasing the training, technical assistance, and financial resources available to microenterprises. It is the intention of the legislature to carry out this purpose by enabling the department of community, trade, and economic development to contract with a statewide microenterprise association with the potential to provide organizational support and administer grants to local microenterprise development organizations, subject to the requirements of this act, and to leverage additional funds from sources other than moneys appropriated from the general fund." [2007 c 322 § 1.]

**43.330.300 Financial fraud and identity theft crimes investigation and prosecution program. (Expires July 1, 2015.)** (1) The financial fraud and identity theft crimes investigation and prosecution program is created in the department of commerce. The department shall:

(a) Appoint members of the financial fraud task forces created in subsection (2) of this section;

(b) Administer the account created in subsection (3) of this section; and

(c) By December 31st of each year submit a report to the appropriate committees of the legislature and the governor regarding the progress of the program and task forces. The report must include recommendations on changes to the program, including expansion.

(2)(a) The department shall establish two regional financial fraud and identity theft crime task forces that include a central Puget Sound task force that includes King and Pierce counties, and a Spokane county task force. Each task force must be comprised of local law enforcement, county prosecutors, representatives of the office of the attorney general, financial institutions, and other state and local law enforcement.

(b) The department shall appoint: (i) Representatives of local law enforcement from a list provided by the Washington association of sheriffs and police chiefs; (ii) representatives of county prosecutors from a list provided by the Washington association of prosecuting attorneys; and (iii) representatives of financial institutions.

(c) Each task force shall:

(i) Hold regular meetings to discuss emerging trends and threats of local financial fraud and identity theft crimes;

(ii) Set priorities for the activities for the task force;

(iii) Apply to the department for funding to (A) hire prosecutors and/or law enforcement personnel dedicated to investigating and prosecuting financial fraud and identity theft crimes; and (B) acquire other needed resources to conduct the work of the task force;

(iv) Establish outcome-based performance measures; and

(v) Twice annually report to the department regarding the activities and performance of the task force.

(3) The financial fraud and identity theft crimes investigation and prosecution account is created in the state treasury. Moneys in the account may be spent only after appropriation. Revenue to the account may include appropriations, revenues generated by the surcharge imposed in RCW 62A.9A-525, federal funds, and any other gifts or grants. Expenditures from the account may be used only to support the activities of the financial fraud and identity theft crime investigation and prosecution task forces and the program administrative expenses of the department, which may not exceed ten percent of the amount appropriated.

(4) For purposes of this section, "financial fraud and identity theft crimes" includes those that involve: Check fraud, chronic unlawful issuance of bank checks, embezzlement, credit/debit card fraud, identity theft, forgery, counterfeit instruments such as checks or documents, organized counterfeit check rings, and organized identification theft rings. [2009 c 565 § 16; 2008 c 290 § 1.]

**Expiration dates—2009 c 565 §§ 16 and 41:** "(1) Section 16 of this act expires July 1, 2015.

(2) Section 41 of this act expires June 30, 2016." [2009 c 565 § 57.]

**Expiration date—2008 c 290:** "This act expires July 1, 2015." [2008 c 290 § 4.]

**43.330.320 Obtaining energy efficiency services—Awarding grants to financial institutions—Credit enhancements.** (1) The department must: (a) Establish a process to award grants on a competitive basis to provide grants to financial institutions for the purpose of creating credit enhancements, such as loan loss reserve funds as specified in RCW 43.330.330 and 43.330.350, and consumer financial products and services that will be used to obtain energy efficiency services; and (b) develop criteria, in consultation with the department of financial institutions, regarding the extent to which funds will be provided for the purposes of credit enhancements and set forth principles for accountability for financial institutions receiving funding for credit enhancements.

(2) The department must:

(a) Give priority to financial institutions that provide both consumer financial products or services and direct outreach;

(b) Approve any financing mechanisms offered by local municipalities under RCW 43.330.350; and

(c) Require any financial institution or other entity receiving funding for credit enhancements to:

(i) Provide books, accounts, and other records in such a form and manner as the department may require;

(ii) Provide an estimate of projected loan losses; and

(iii) Provide the financial institution's plan to manage loan loss risks, including the rationale for sizing a loan loss reserve and the use of other credit enhancements, as applicable. [2009 c 379 § 205.]

**Finding—Intent—Effective date—2009 c 379:** See notes following RCW 70.260.010.

**43.330.330 Funding energy efficiency improvements--Risk reduction mechanisms--Legislative intent.**

(1) The legislature finds that the creation and use of risk reduction mechanisms will promote greater involvement of local financial institutions and other financing mechanisms in funding energy efficiency improvements and will achieve greater leverage of state and federal dollars. Risk reduction mechanisms will allow financial institutions to lend to a broader pool of applicants on more attractive terms, such as potentially lower rates and longer loan terms. Placing a portion of funds in long-term risk reduction mechanisms will support a sustained level of energy efficiency investment by financial institutions while providing funding to projects quickly.

(2) It is the intent of the legislature to leverage new federal funding aimed at promoting energy efficiency projects, improving energy efficiency, and increasing family-wage jobs. To this end, the legislature intends to invest a portion of all federal funding, subject to federal requirements, for energy efficiency projects in financial mechanisms that will provide for maximum leverage of financing. [2009 c 379 § 206.]

**Finding--Intent--Effective date—2009 c 379:** See notes following RCW 70.260.010.

**43.330.340 Appliance efficiency rebate program.** The department may create an appliance efficiency rebate program with available funds from the energy efficient appli-

ances rebate program authorized under the federal energy policy act of 2005 (P.L. 109-58). [2009 c 379 § 207.]

**Finding—Intent—Effective date—2009 c 379:** See notes following RCW 70.260.010.

**43.330.350 Use of moneys by local municipalities to leverage financing for energy efficiency projects.** (1) Local municipalities receiving federal stimulus moneys through the federal energy efficiency and conservation block grant program or state energy program are authorized to use those funds, subject to federal requirements, to establish loan loss reserves or toward risk reduction mechanisms, such as loan loss reserves, to leverage financing for energy efficiency projects.

(2) Interest rate subsidies, financing transaction cost subsidies, capital grants to energy users, and other forms of grants and incentives that support financing energy efficiency projects are authorized uses of federal energy efficiency funding.

(3) Financing mechanisms offered by local municipalities under this section must conform to all applicable state and federal rules and regulations. [2009 c 379 § 208.]

**Finding—Intent—Effective date—2009 c 379:** See notes following RCW 70.260.010.

**43.330.360 Findings—Involvement of state bond authorities in financing energy efficiency projects.** (1) The legislature finds that the state bond authorities have capacities that can be applied to financing energy efficiency projects for their respective eligible borrowers: Washington economic development finance authority for industry; Washington state housing finance commission for single-family and multifamily housing, commercial properties, agricultural properties, and nonprofit facilities; Washington higher education facilities authority for private, nonprofit higher education; and Washington health care facilities authority for hospitals and all types of health clinics.

(2)(a) Subject to federal requirements, the state bond authorities may accept and administer an allocation of the state's share of the federal energy efficiency funding for designing energy efficiency finance loan products and for developing and operating energy efficiency finance programs. The state bond authorities shall coordinate with the department on the design of the bond authorities' program.

(b) The department may make allocations of the federal funding to the state bond authorities and may direct and administer funding for outreach, marketing, and delivery of energy services to support the programs by the state bond authorities.

(c) The legislature authorizes a portion of the federal energy efficiency funds to be used by the state bond authorities for credit enhancements and reserves for such programs.

(3) The Washington state housing finance commission may:

(a) Issue revenue bonds as the term "bond" is defined in RCW 43.180.020 for the purpose of financing loans for energy efficiency and renewable energy improvement projects in accordance with RCW 43.180.150;

(b) Establish eligibility criteria for financing that will enable it to choose applicants who are likely to repay loans made or acquired by the commission and funded from the proceeds of federal funds or commission bonds; and

(c) Participate fully in federal and other governmental programs and take such actions as are necessary and consistent with chapter 43.180 RCW to secure to itself and the people of the state the benefits of programs to promote energy efficiency and renewable energy technologies. [2009 c 379 § 209.]

**Finding—Intent—Effective date—2009 c 379:** See notes following RCW 70.260.010.

**43.330.370 Evergreen jobs initiative.** The Washington state evergreen jobs initiative is established as a comprehensive green economy jobs growth initiative with the goals of:

(1) Creating fifteen thousand new green economy jobs by 2020, with a target of thirty percent of those jobs going to veterans, members of the national guard, and low-income and disadvantaged populations;

(2) Capturing and deploying federal funds in a focused, effective, and coordinated manner;

(3) Preparing the state's workforce to take full advantage of green economy job opportunities and to meet the recruitment and training needs of industry and small businesses;

(4) Attracting private sector investment that will create new and expand existing jobs, with an emphasis on services and products that have a high economic or environmental impact and can be exported domestically and internationally;

(5) Making Washington state a net exporter of green industry products and services, with special attention to renewable energy technology and components;

(6) Empowering local agencies and organizations to recruit green economy businesses and jobs into the state by providing state support and assistance;

(7) Capitalizing on existing partnership agreements in the Washington works plan and the Washington workforce compact; and

(8) Operating in concert with the fourteen guiding principles identified by the department in its Washington state's green economy strategic framework. [2009 c 536 § 2.]

**Short title—2009 c 536:** "This act may be known and cited as the evergreen jobs act." [2009 c 536 § 15.]

**43.330.375 Evergreen jobs efforts—Coordination and support—Identification of technologies and strategies—Outreach efforts—Performance reports.** (1) The department and the workforce board, in consultation with the \*leadership team, must:

(a) Coordinate efforts across the state to ensure that federal training and education funds are captured and deployed in a focused and effective manner in order to support green economy projects and accomplish the goals of the evergreen jobs initiative;

(b) Accelerate and coordinate efforts by state and local organizations to identify, apply for, and secure all sources of funds, particularly those created by the 2009 American recovery and reinvestment act, and to ensure that distributions of funding to local organizations are allocated in a manner that is time-efficient and user-friendly for the local orga-



nizations. Local organizations eligible to receive support include but are not limited to:

- (i) Associate development organizations;
  - (ii) Workforce development councils;
  - (iii) Public utility districts; and
  - (iv) Community action agencies;
- (c) Support green economy projects at both the state and local level by developing a process and a framework to provide, at a minimum:
- (i) Administrative and technical assistance;
  - (ii) Assistance with and expediting of permit processes; and
  - (iii) Priority consideration of opportunities leading to exportable green economy goods and services, including renewable energy technology;
- (d) Coordinate local and state implementation of projects using federal funds to ensure implementation is time-efficient and user-friendly for local organizations;
- (e) Emphasize through both support and outreach efforts, projects that:
- (i) Have a strong and lasting economic or environmental impact;
  - (ii) Lead to a domestically or internationally exportable good or service, including renewable energy technology;
  - (iii) Create training programs leading to a credential, certificate, or degree in a green economy field;
  - (iv) Strengthen the state's competitiveness in a particular sector or cluster of the green economy;
  - (v) Create employment opportunities for veterans, members of the national guard, and low-income and disadvantaged populations;
  - (vi) Comply with prevailing wage provisions of chapter 39.12 RCW;
  - (vii) Ensure at least fifteen percent of labor hours are performed by apprentices;
  - (f) Identify emerging technologies and innovations that are likely to contribute to advancements in the green economy, including the activities in designated innovation partnership zones established in RCW 43.330.270;
  - (g) Identify statewide performance metrics for projects receiving agency assistance. Such metrics may include:
    - (i) The number of new green jobs created each year, their wage levels, and, to the extent determinable, the percentage of new green jobs filled by veterans, members of the national guard, and low-income and disadvantaged populations;
    - (ii) The total amount of new federal funding secured, the respective amounts allocated to the state and local levels, and the timeliness of deployment of new funding by state agencies to the local level;
    - (iii) The timeliness of state deployment of funds and support to local organizations; and
    - (iv) If available, the completion rates, time to completion, and training-related placement rates for green economy postsecondary training programs;
  - (h) Identify strategies to allocate existing and new funding streams for green economy workforce training programs and education to emphasize those leading to a credential, certificate, or degree in a green economy field;

(i) Identify and implement strategies to allocate existing and new funding streams for workforce development councils and associate development organizations to increase their effectiveness and efficiency and increase local capacity to respond rapidly and comprehensively to opportunities to attract green jobs to local communities;

(j) Develop targeting criteria for existing investments that are consistent with the economic development commission's economic development strategy and the goals of this section and RCW 28C.18.170, 28B.50.281, and 49.04.200; and

(k) Make and support outreach efforts so that residents of Washington, particularly members of target populations, become aware of educational and employment opportunities identified and funded through the evergreen jobs act.

(2) The department and the workforce board, in consultation with the \*leadership team, must provide semiannual performance reports to the governor and appropriate committees of the legislature on:

(a) Actual statewide performance based on the performance measures identified in subsection (1)(g) of this section;

(b) How the state is emphasizing and supporting projects that lead to a domestically or internationally exportable good or service, including renewable energy technology;

(c) A list of projects supported, created, or funded in furtherance of the goals of the evergreen jobs initiative and the actions taken by state and local organizations, including the effectiveness of state agency support provided to local organizations as directed in subsection (1)(b) and (c) of this section;

(d) Recommendations for new or expanded financial incentives and comprehensive strategies to:

(i) Recruit, retain, and expand green economy industries and small businesses; and

(ii) Stimulate research and development of green technology and innovation, which may include designating innovation partnership zones linked to the green economy;

(e) Any information that associate development organizations and workforce development councils choose to provide to appropriate legislative committees regarding the effectiveness, timeliness, and coordination of support provided by state agencies under this section and RCW 28C.18.170, 28B.50.281, and 49.04.200; and

(f) Any recommended statutory changes necessary to increase the effectiveness of the evergreen jobs initiative and state responsiveness to local agencies and organizations.

(3) The definitions, designations, and results of the employment security department's broader labor market research under RCW 43.330.010 shall inform the planning and strategic direction of the department, the state workforce training and education coordinating board, the state board for community and technical colleges, and the higher education coordinating board. [2009 c 536 § 4.]

\*Reviser's note: The leadership team was created in 2009 c 536 § 3, which was vetoed.

Short title—2009 c 536: See note following RCW 43.330.370.

#### 43.330.900 References to director and department.

All references to the director or department of community, trade, and economic development in the Revised Code of

Washington shall be construed to mean the director of commerce or the department of commerce. [2009 c 565 § 17; 1993 c 280 § 79.]

### Chapter 43.336 RCW

#### WASHINGTON TOURISM COMMISSION

##### Sections

- 43.336.010 Definitions.  
 43.336.020 Commission created—Composition—Terms—Executive director—Rule-making authority.  
 43.336.060 Tourism development program—Report to the legislature.

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

- (1) "Commission" means the Washington tourism commission.
- (2) "Department" means the department of commerce.
- (3) "Director" means the director of the department.
- (4) "Executive director" means the executive director of the commission. [2009 c 565 § 42; 2007 c 228 § 101.]

**43.336.020 Commission created—Composition—Terms—Executive director—Rule-making authority.** (1) The Washington tourism commission is created.

(2) The commission shall be cochaired by the director of the department or the director's designee, and by an industry-member representative who is elected by the commission members.

(3) The commission shall have nineteen members. In appointing members, the governor shall endeavor to balance the geographic and demographic composition of the commission to include members with special expertise from tourism organizations, local jurisdictions, and small businesses directly engaged in tourism-related activities. Before making appointments to the Washington tourism commission, the governor shall consider nominations from recognized organizations that represent the entities or interests identified in this section. Commission members shall be appointed by the governor as follows:

- (a) Three members to represent the lodging industry, at least two of which shall be chosen from a list of three nominees per position submitted by the state's largest lodging industry trade association. Members should represent all property categories and different regions of the state;
- (b) Three representatives from nonprofit destination marketing organizations or visitor and convention bureaus;
- (c) Three industry representatives from the arts, entertainment, attractions, or recreation industry;
- (d) Four private industry representatives, two from each of the business categories in this subsection:
  - (i) The food, beverage, and wine industries; and
  - (ii) The travel and transportation industries;
- (e) Four legislative members, one from each major caucus of the senate, designated by the president of the senate, and one from each major caucus of the house of representatives, designated by the speaker of the house of representatives;

(f) The chair of the Washington convention and trade center; and

(g) The director or the director's designee.

(4)(a) Terms of nonlegislative members shall be three years, except that initial terms shall be staggered such that terms of one-third of the initial members shall expire each year.

(b) Terms of legislative members shall be two years.

(c) Vacancies shall be appointed in the same manner as the original appointment.

(d) A member appointed by the governor may not be absent from more than fifty percent of the regularly scheduled meetings in any one calendar year. Any member who exceeds this absence limitation is deemed to have withdrawn from the office and may be replaced by the governor.

(5) Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(6) The commission shall meet at least four times per year, but may meet more frequently as necessary.

(7) A majority of members currently appointed constitutes a quorum.

(8) Staff support shall be provided by the department, and staff shall report to the executive director.

(9) The director, in consultation with the commission, shall appoint an executive director.

(10) The commission may adopt rules under chapter 34.05 RCW as necessary to carry out the purposes of this chapter. [2009 c 549 § 5178; 2007 c 228 § 102.]

**43.336.060 Tourism development program—Report to the legislature.** On or before June 30th of each even-numbered year, the commission shall submit a report to the appropriate policy and fiscal committees of the house of representatives and senate that describes the tourism development program for the previous fiscal year and quantifies the financial benefits to the state. The report must contain information concerning targeted markets, benefits to different areas of the state, return on the state's investment, grants disbursed under the tourism competitive grant program, a copy of the most recent strategic plan, and other relevant information related to tourism development. [2009 c 518 § 13; 2007 c 228 § 107; 1998 c 299 § 5. Formerly RCW 43.330.096.]

**Intent—1998 c 299:** "It is the intent of this act to provide for predictable and stable funding for tourism development activities of the state of Washington by establishing funding levels based on proven performance and return on state funds invested in tourism development and to establish a tourism development advisory committee." [1998 c 299 § 1.]

**Effective date—1998 c 299:** "This act takes effect July 1, 1998." [1998 c 299 § 6.]

### Chapter 43.338 RCW

#### WASHINGTON MANUFACTURING INNOVATION AND MODERNIZATION EXTENSION SERVICE PROGRAM

##### Sections

- 43.338.010 Definitions.

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

(1) "Costs of extension services" and "extension service costs" mean the direct costs experienced under a contract with a qualified manufacturing extension partnership affiliate for modernization extension services, including but not limited to amounts in the contract for costs of consulting, instruction, materials, equipment, rental of class space, marketing, and overhead.

(2) "Department" means the department of commerce.

(3) "Director" means the director of the department of commerce.

(4) "Innovation and modernization extension services" and "service" mean a service funded under this chapter and performed by a qualified manufacturing extension partnership affiliate. The services may include but are not limited to strategic planning, continuous improvement, business development, six sigma, quality improvement, environmental health and safety, lean processes, energy management, innovation and product development, human resources and training, supply chain management, and project management.

(5) "Innovation and modernization extension voucher" and "voucher" mean an instrument issued to a successful applicant from the department, verifying that funds from the manufacturing innovation and modernization account will be forwarded to the qualified manufacturing extension partnership affiliate selected by the participant and will cover identified costs of extension services.

(6) "Outreach services" means those activities performed by an affiliate to either assess the technical assistance needs of Washington manufacturers or increase manufacturers' awareness of the opportunities and benefits of implementing cutting edge technology, techniques, and best practices. "Outreach services" includes but is not limited to salaries of outreach staff, needs assessments, client follow-up, public educational events, manufacturing orientated trade shows, electronic communications, newsletters, advertising, direct mail efforts, and contacting business organizations for names of manufacturers who might need assistance.

(7) "Program" means the Washington manufacturing innovation and modernization extension service program created in RCW 43.338.020.

(8) "Program participant" and "participant" mean an applicant for assistance under the program that has received a voucher or a small manufacturer receiving services through an industry association or cluster association that has received a voucher.

(9) "Qualified manufacturing extension partnership affiliate" and "affiliate" mean a private nonprofit organization established under RCW 24.50.010 or other organization that is eligible or certified to receive federal matching funds from the national institute of standards and technology manufacturing extension partnership program of the United States department of commerce.

(10) "Small manufacturer" means a private employer whose primary business is adding value to a product through a manufacturing process and employs one hundred or fewer employees within Washington state. [2009 c 565 § 43; 2008 c 315 § 2.]

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

**Sunset Act application:** See note following chapter digest.

## Chapter 43.360 RCW

### WASHINGTON MAIN STREET PROGRAM

#### Sections

43.360.010 Definitions.

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

(1) "Area" means a geographic area within a local government that is described by a closed perimeter boundary.

(2) "Department" means the department of commerce.

(3) "Director" means the director of the department of commerce.

(4) "Local government" means a city, code city, or town.

(5) "Qualified levels of participation" means a local downtown or neighborhood commercial district revitalization program that has been designated by the department. [2009 c 565 § 44; 2005 c 514 § 908.]

**Short title—2005 c 514 §§ 901-912:** See note following RCW 43.360.005.

**Effective date—2005 c 514:** See note following RCW 83.100.230.

**Part headings not law—Severability—2005 c 514:** See notes following RCW 82.12.808.

## Chapter 43.362 RCW

### REGIONAL TRANSFER OF DEVELOPMENT RIGHTS PROGRAM

#### Sections

43.362.005 Findings.

43.362.010 Definitions.

43.362.030 Program established in central Puget Sound.

43.362.040 Designation of sending and receiving areas—Inclusion of certain lands in programs for agricultural or forest land conservation.

43.362.050 Interlocal agreement for transfers of development rights—Rules.

43.362.060 Participation in regional transfer of development rights program—Requirements—Incentives for developers.

43.362.070 Quantitative and qualitative performance measures—Reporting—Posting on web site.

**43.362.005 Findings.** (1) The legislature finds that current concern over the rapid and increasing loss of rural, agricultural, and forested land has led to the exploration of creative approaches to preserving these important lands, and that the creation of a regional transfer of development rights marketplace will assist in conserving these lands.

(2) A transfer of development rights is a market-based exchange mechanism that encourages the voluntary transfer of development rights from sending areas with lower population densities to receiving areas with higher population densities. When development rights are transferred through a transfer of development rights exchange, permanent deed restrictions are placed on the sending area properties to ensure that the land will be used only for approved activities, activities that may include farming, forest management, conservation, or passive recreation. Additionally, in a transfer of development rights exchange, the costs of purchasing the recorded development restrictions are borne by the developers who receive the transferred right in the form of a building credit or bonus.

(3) The legislature further finds that a successful transfer of development rights program must consider housing affordable to all economic segments of the population, and economic development programs and policies in designated receiving areas. Counties, cities, and towns that decide to participate in the regional transfer of development rights program for central Puget Sound are encouraged to adopt comprehensive plan policies and development regulations to implement the program that do not compete or conflict with comprehensive plan policies and development regulations that require or encourage affordable housing. Participating cities and towns are also encouraged to use the development of receiving areas to maximize opportunities for economic development that supports the creation or retention of jobs.

(4) Participation in a regional transfer of development rights program by counties, cities, and towns should be as simple as possible.

(5) Accordingly, the legislature has determined that it is good public policy to build upon existing transfer of development rights programs, pilot projects, and private initiatives that foster effective use of transferred development rights through the creation of a market-based program that focuses on the central Puget Sound region. A regional transfer of development rights program in the central Puget Sound should be voluntary, incentive-driven, and separate, but compatible with existing local transfer of development rights programs. [2009 c 474 § 1; 2007 c 482 § 1.]

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

(1) "By-right permitting" means that project applications for permits that use transferable development rights would be subject to administrative review. Administrative review allows a local planning official to approve a project without noticed public hearings.

(2) "Department" means the department of commerce.

(3) "Nongovernmental entities" includes nonprofit or membership organizations with experience or expertise in transferring development rights.

(4) "Receiving area ratio" means the number or character of development rights that are assigned to a development right for use in a receiving area. Development rights in a receiving area may be used at the discretion of the receiving area jurisdiction, including but not limited to additional residential density, additional building height, additional commercial floor area, or to meet regulatory requirements.

(5) "Receiving areas" are lands within and designated by a city or town in which transferable development rights from the regional program established by this chapter may be used.

(6) "Regional transfer of development rights program" or "regional program" means the regional transfer of development rights program established by RCW 43.362.030 in central Puget Sound, including King, Pierce, Kitsap, and Snohomish counties and the cities and towns within these counties.

(7) "Sending area" includes those lands that meet conservation criteria as described in RCW 43.362.040.

(8) "Sending area ratio" means the number of development rights that a sending area landowner can sell per acre.

(9) "Transfer of development rights" includes methods for protecting land from development by voluntarily removing the development rights from a sending area and transferring them to a receiving area for the purpose of increasing development density or intensity in the receiving area.

(10) "Transferable development right" means a right to develop one or more residential units in a sending area that can be sold and transferred for use consistent with a receiving ratio adopted for development in a designated receiving area consistent with the regional program. [2009 c 565 § 45; 2009 c 474 § 2; 2007 c 482 § 2.]

**Reviser's note:** (1) The definitions in this section have been alphabetized pursuant to RCW 1.08.015(2)(k).

(2) This section was amended by 2009 c 474 § 2 and by 2009 c 565 § 45, 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).

**43.362.030 Program established in central Puget Sound.** (1) Subject to the availability of funds appropriated for this specific purpose or another source of funding made available for this specific purpose, the department shall establish a regional transfer of development rights program in central Puget Sound, including King, Kitsap, Snohomish, and Pierce counties and the cities and towns within these counties. The program must be guided by the Puget Sound regional council's multicounty planning policies adopted under RCW 36.70A.210(7).

(2) The purpose of the program is to foster voluntary county, city, and town participation in the program so that interjurisdictional transfers occur between the counties, cities, and towns, including transfers from counties to cities and towns in other counties. Private transactions between buyers and sellers of transferable development rights are allowed and encouraged under this program. In fulfilling the requirements of this chapter, the department shall work with the Puget Sound regional council to implement a regional program.

(3) The department shall encourage participation by the cities, towns, and counties in the regional program. The regional program shall not be implemented in a manner that negatively impacts existing local programs. The department shall encourage and work to enhance the efforts in any of these counties, cities, or towns to develop local transfer of development rights programs or enhance existing programs.

(4) Subject to the availability of funds appropriated for this specific purpose or another source of funding made available for this specific purpose, the department shall do the following to implement a regional transfer of development rights program in central Puget Sound:

(a) Serve as the central coordinator for state government in the implementation of RCW 43.362.030 through 43.362.070.

(b) Offer technical assistance to cities, towns, and counties planning for participation in the regional transfer of development rights program. The department's technical assistance shall:

(i) Include written guidance for local development and implementation of the regional transfer of development rights program;

(ii) Include guidance for and encourage permitting or environmental review incentives for developers to participate. Activities may include, but are not limited to, provision for by-right permitting, substantial environmental review of a subarea plan for the receiving area that includes the use of transferable development rights, adoption of a categorical exemption for infill under RCW 43.21C.229 for a receiving area, or adoption of a planned action under RCW 43.21C.240;

(iii) Provide guidance to counties, cities, and towns to negotiate receiving area ratios and foster private transactions;

(iv) Provide guidance and encourage planning for receiving areas that do not compete or conflict with comprehensive plan policies and development regulations that require or encourage affordable housing; and

(v) Provide guidance and encourage planning for receiving areas that maximizes opportunities for economic development through the creation or retention of jobs.

(c) Work with counties, cities, and towns to inform elected officials, planning commissions, and the public regarding the regional transfer of development rights program. The information provided by the department shall discuss the importance of preserving farmland and farming, and forest land and forestry, to cities and towns and the local economy.

(d) Based on information provided by the counties, cities, and towns, post on a web site information regarding transfer of development rights transactions and a list of interested buyers and sellers of transferable development rights.

(e) Coordinate with and provide resources to state and local agencies and stakeholders to provide public outreach. [2009 c 474 § 3.]

**43.362.040 Designation of sending and receiving areas—Inclusion of certain lands in programs for agricultural or forest land conservation.** (1) Counties shall use the following criteria to guide the designation of sending areas for participation in the regional transfer of development rights program:

(a) Land designated as agricultural or forest land of long-term commercial significance;

(b) Land designated rural that is being farmed or managed for forestry;

(c) Land whose conservation meets other state and regionally adopted priorities; and

(d) Land that is in current use as a manufactured/mobile home park as defined in chapter 59.20 RCW.

Nothing in these criteria limits a county's authority to designate additional lands as a sending area for conservation under a local county transfer of development rights program.

(2) Upon purchase of a transferable development right from land designated rural that is being farmed or managed for forestry, a county must include the land from which the right was purchased in any programs it administers for conservation of agricultural land or forest land.

(3) The designation of receiving areas is limited to incorporated cities or towns. Prior to designating a receiving area, a city or town should have adequate infrastructure planned

and funding identified for development in the receiving area at densities or intensities consistent with what can be achieved under the local transfer of development rights program. Nothing in this subsection limits a city's, town's, or county's authority to designate additional lands for a receiving area under a local intrajurisdictional transfer of development rights program that is not part of the regional program.

(4) Cities and towns participating in the regional transfer of development rights program shall have discretion to determine which sending areas they receive development rights from to be used in their designated receiving areas.

(5) Designation of sending and receiving areas should include a process for public outreach consistent with the public participation requirements in chapter 36.70A RCW. [2009 c 474 § 4.]

**43.362.050 Interlocal agreement for transfers of development rights—Rules.** (1) To facilitate participation, the department shall develop and adopt by rule terms and conditions of an interlocal agreement for transfers of development rights between counties, cities, and towns. Counties, cities, and towns participating in the regional program have the option of adopting the rule by reference to transfer development rights across jurisdictional boundaries as an alternative to entering into an interlocal agreement under chapter 39.34 RCW.

(2) This section and the rules adopted under this section shall be deemed to provide an alternative method for the implementation of a regional transfer of development rights program, and shall not be construed as imposing any additional condition upon the exercise of any other powers vested in municipalities.

(3) Nothing in this section prohibits a county, city, or town from entering into an interlocal agreement under chapter 39.34 RCW to transfer development rights under the regional program. [2009 c 474 § 5.]

**43.362.060 Participation in regional transfer of development rights program—Requirements—Incentives for developers.** (1) Counties, cities, and towns that choose to participate in the regional transfer of development rights program must:

(a) Enter into an interlocal agreement or adopt a resolution adopting by reference the provisions in the department rule authorized in RCW 43.362.050; and

(b) Adopt transfer of development rights policies or implement development regulations that:

(i) Comply with chapter 36.70A RCW;

(ii) Designate sending or receiving areas consistent with RCW 43.362.030 through 43.362.070; and

(iii) Adopt a sending or receiving area ratio in cooperation with the sending or receiving jurisdiction.

(2) Cities and towns that choose to participate in the regional transfer of development rights program are encouraged to provide permitting or environmental review incentives for developers to participate. Such incentives may include, but are not limited to, provision for by-right permitting, substantial environmental review of a subarea plan for the receiving area that includes the use of transferable development rights, adoption of a categorical exemption for infill

under RCW 43.21C.229 for a receiving area, or adoption of a planned action under RCW 43.21C.240. [2009 c 474 § 6.]

**43.362.070 Quantitative and qualitative performance measures—Reporting—Posting on web site.** The department will develop quantitative and qualitative performance measures for monitoring the regional transfer of development rights program. The performance measures may address conservation of land and creation of compact communities, as well as other measures identified by the department. The department may require cities, towns, and counties to report on these performance measures biannually. The department shall compile any performance measure information that has been reported by the counties, cities, and towns and post it on a web site. [2009 c 474 § 7.]

### Chapter 43.365 RCW

#### MOTION PICTURE COMPETITIVENESS PROGRAM

##### Sections

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**43.365.010 Definitions.** The following definitions apply to this chapter, unless the context clearly requires otherwise.

(1) "Approved motion picture competitiveness program" means a nonprofit organization under the internal revenue code, section 501(c)(6), with the sole purpose of revitalizing the state's economic, cultural, and educational standing in the national and international market of motion picture production by recommending and awarding financial assistance for costs associated with motion pictures in the state of Washington.

(2) "Contribution" means cash contributions.

(3) "Costs" means actual expenses of production and postproduction expended in Washington state for the production of motion pictures, including but not limited to payments made for salaries, wages, and health insurance and retirement benefits, the rental costs of machinery and equipment and the purchase of services, food, property, lodging, and permits for work conducted in Washington state.

(4) "Department" means the department of commerce.

(5) "Funding assistance" means cash expenditures from an approved motion picture competitiveness program.

(6) "Motion picture" means a recorded audio-visual production intended for distribution to theaters, DVD, video, or the internet, or television, or one or more episodes of a single television series, television pilots or presentations, or a commercial. "Motion picture" does not mean production of a television commercial of an amount less than two hundred fifty thousand dollars in actual total investment or one or more segments of a newscast or sporting event.

(7) "Person" has the same meaning as provided in RCW 82.04.030. [2009 c 565 § 46; 2006 c 247 § 2.]

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

[2009 RCW Supp—page 902]

**43.365.020 Program criteria—Permissible expenditures—Maximum funding assistance—Funding assistance approval—Rules.** (1) The department shall adopt criteria for an approved motion picture competitiveness program with the sole purpose of revitalizing the state's economic, cultural, and educational standing in the national and international market of motion picture production. Rules adopted by the department shall allow the program, within the established criteria, to provide funding assistance only when it captures economic opportunities for Washington's communities and businesses and shall only be provided under a contractual arrangement with a private entity. In establishing the criteria, the department shall consider:

(a) The additional income and tax revenue to be retained in the state for general purposes;

(b) The creation and retention of family wage jobs which provide health insurance and payments into a retirement plan;

(c) The impact of motion picture projects to maximize in-state labor and the use of in-state film production and film postproduction companies;

(d) The impact upon the local economies and the state economy as a whole, including multiplier effects;

(e) The intangible impact on the state and local communities that comes with motion picture projects;

(f) The regional, national, and international competitiveness of the motion picture filming industry;

(g) The revitalization of the state as a premier venue for motion picture production and national television commercial campaigns;

(h) Partnerships with the private sector to bolster film production in the state and serve as an educational and cultural purpose for its citizens;

(i) The vitality of the state's motion picture industry as a necessary and critical factor in promoting the state as a premier tourist and cultural destination;

(j) Giving preference to additional seasons of television series that have previously qualified;

(k) Other factors the department may deem appropriate for the implementation of this chapter.

(2) The board of directors created under RCW 43.365.030 shall create and administer an account for carrying out the purposes of subsection (3) of this section.

(3) Money received by an approved motion picture competitiveness program shall be used only for: (a) Health insurance and payments into a retirement plan, and other costs associated with film production; (b) a tax credit marketer to market the tax credits authorized under RCW 82.04.4489; and (c) staff and related expenses to maintain the program's proper administration and operation.

(4) Maximum funding assistance from an approved motion picture competitiveness program is limited to an amount up to thirty percent of the total actual investment in the state of at least:

(a) Five hundred thousand dollars for a single feature film produced in Washington state;

(b) Three hundred thousand dollars per television episode produced in Washington state; or

(c) One hundred fifty thousand dollars for an infomercial or television commercial associated with a national or regional advertisement campaign produced in Washington state.

(5) Funding assistance approval must be determined by the approved motion picture competitiveness program within a maximum of thirty calendar days from when the application is received, if the application is submitted after August 15, 2006. [2009 c 100 § 1; 2008 c 85 § 1; 2006 c 247 § 3.]

**Effective date—2009 c 100:** "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 15, 2009]." [2009 c 100 § 2.]

**43.365.040 Annual survey.** (1) The legislature finds that accountability and effectiveness are important aspects of setting tax policy. In order to make policy choices regarding the best use of limited state resources the legislature needs information on how incentives are used.

(2) Each motion picture production receiving funding assistance under RCW 43.365.020 shall report information to the department by filing a complete annual survey. The survey is due by March 31st of the year following any calendar year in which funding assistance under RCW 43.365.020 is taken. The department may extend the due date for timely filing of annual surveys under this section if failure to file was the result of circumstances beyond the control of the motion picture production receiving the funding assistance.

(3) The survey shall include the amount of funding assistance received. The survey shall also include the following information for employment positions in Washington by the motion picture production receiving funding assistance, including indirect employment by contractors or other affiliates:

- (a) The number of total employment positions;
- (b) Full-time, part-time, and temporary employment positions as a percent of total employment;
- (c) The number of employment positions according to the following wage bands: Less than thirty thousand dollars; thirty thousand dollars or greater, but less than sixty thousand dollars; and sixty thousand dollars or greater. A wage band containing fewer than three individuals may be combined with another wage band; and
- (d) The number of employment positions that have employer-provided medical, dental, and retirement benefits, by each of the wage bands.

(4) The department may request additional information necessary to measure the results of the funding assistance program, to be submitted at the same time as the survey.

(5) If a person fails to submit an annual survey under subsection (2) of this section by the due date of the report or any extension the department shall declare the amount of funding assistance for the previous calendar year to be immediately due and payable. The department shall assess interest, but not penalties, on the amounts due under this section. The interest shall be assessed at the rate provided for delinquent taxes under chapter 82.32 RCW, retroactively to the date the funding assistance was received, and shall accrue until the funding assistance is repaid.

(6) The department shall use the information from this section to prepare summary descriptive statistics. The department shall report these statistics to the legislature each even-numbered year by September 1st. The department shall provide the complete annual surveys to the joint legislative

audit and review committee. [2009 c 518 § 14; 2006 c 247 § 6.]

## Chapter 43.370 RCW

### STATEWIDE HEALTH RESOURCES STRATEGY

#### Sections

43.370.020 Office of financial management—Duties—Technical advisory committee.

**43.370.020 Office of financial management—Duties—Technical advisory committee.** (1) The office shall serve as a coordinating body for public and private efforts to improve quality in health care, promote cost-effectiveness in health care, and plan health facility and health service availability. In addition, the office shall facilitate access to health care data collected by public and private organizations as needed to conduct its planning responsibilities.

(2) The office shall:

- (a) Conduct strategic health planning activities related to the preparation of the strategy, as specified in this chapter;
- (b) Develop a computerized system for accessing, analyzing, and disseminating data relevant to strategic health planning responsibilities. The office may contract with an organization to create the computerized system capable of meeting the needs of the office;

(c) Have access to the information submitted as part of the health professional licensing application and renewal process, excluding social security number and background check information, whether the license is issued by the secretary of the department of health or a board or commission. The office shall also have access to information submitted to the department of health as part of the medical or health facility licensing process. Access to and use of all data shall be in accordance with state and federal confidentiality laws and ethical guidelines, and the office shall maintain the same degree of confidentiality as the department of health. For professional licensing information provided to the office, the department of health shall replace any social security number with an alternative identifier capable of linking all licensing records of an individual; and

(d) Conduct research and analysis or arrange for research and analysis projects to be conducted by public or private organizations to further the purposes of the strategy.

(3) The office shall establish a technical advisory committee to assist in the development of the strategy. Members of the committee shall include health economists, health planners, representatives of government and nongovernment health care purchasers, representatives of state agencies that use or regulate entities with an interest in health planning, representatives of acute care facilities, representatives of long-term care facilities, representatives of community-based long-term care providers, representatives of health care providers, a representative of one or more federally recognized Indian tribes, and representatives of health care consumers. The committee shall include members with experience in the provision of health services to rural communities. [2009 c 343 § 1; 2007 c 259 § 51.]

